

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
September 10, 2019

A public hearing of the Zoning Board of Adjustment was held on Tuesday, September 10, 2019 at 6:30 PM in the Auditorium, 229 Main Street, at City Hall.

Members in attendance were:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Jay Minkarah
Efstathia Booras

Carter Falk, Deputy Planning Manager/Zoning

Mr. Boucher explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Boucher 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. Mr. Boucher also explained procedures involving the timing light, as well as the projector in front of the stage for plans to show the audience.

1. Linda Beaudoin (Owner) 2 Chaucer Road (Sheet B Lot 1615) requesting the following variances: 1) from Land Use Code Section 190-264, to exceed maximum accessory use area, 40% permitted, 43% proposed; and, 2) from Land Use Code Section 190-31 (A)(1), to exceed maximum height of an accessory structure within 10 feet of side and rear property lines, 12 feet permitted, 20 feet proposed - both requests to construct a 25'x40' detached garage. R18 Zone, Ward 8.

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Jay Minkarah
Efstathia Booras

Andrew Prolman, Prunier & Prolman, P.A., 20 Trafalgar Square, Nashua, NH. Atty. Proman identified the two requested variance

requests, and indicated that the advertisement said that the height would be 20 feet, however, the proposed height of the garage would be 16 feet at the peak of the roof line.

Atty. Prolman said that the proposed garage is 25'x40', a three-bay detached garage. He said that it is tucked into the back corner of the lot. He said that the owner wants to maintain a majority of the back yard as possible, and there are numerous trees and shrubs in the back, and the shed will meet the setbacks, as well as a straight driveway to the garage. He said that there are some other sheds on the lot, they will be gone.

Atty. Prolman said that the height at the rear lot line, the Ordinance requires that at 10 feet from the rear lot line, the maximum height of an accessory structure is 12 feet, this will just be over by about a foot, it will be very close. He said that coming off the side property line there will be the 16 foot roof, which is higher than the 12 feet that is allowed, so that four foot variance is requested.

Atty. Prolman said that the 25'x40' garage is 1,000 square feet. He said that the Ordinance allows 40% of the size of the house, which is 2,310 square feet, which allows a 920 square foot garage, so it is 76 square feet over what is allowed, so it comes out to 43%, which is a nominal variance request on the size of the garage.

Atty. Prolman said that there are two letters in support that were in the package, the Pappadeas family at 4 Chaucer Road, the immediate side neighbor, and the Flatley-owned property to the rear, are also in favor.

Atty. Prolman passed out an overhead view of the lot, which illustrates how much of a treed area is around the garage, there is a large buffer to the rear of the lot, lots of trees.

Atty. Prolman said that for the public interest, they want to set the garage back as far as possible, the requests are nominal, and will not result in a change to the neighborhood or harm to any public rights.

Atty. Prolman said that for the spirit and intent of the Ordinance, the location of the garage will be in the corner, in back of the house, and should have no impact to the neighborhood or public health or safety.

Atty. Prolman said that substantial justice would be done with this request, as it will be of great benefit to the homeowner, with little to no impact or harm to the neighborhood or any public rights.

Atty. Prolman said that there will be no negative impact to property values, it will be quality construction, the owner is in the construction industry, and the doors will be closed most of the time, it will have clapboard siding, typical stand-alone garage, no adverse impact.

Atty. Prolman said that for hardship, garages are a common feature of this neighborhood, and throughout Nashua, it is a reasonable proposed use, and given the location of the garage, they have minimized the impact to the lot with this use.

Mr. Minkarah asked if they considered any way to meet the Ordinance with regards to height and setback, and asked what the need is for the three-bay garage, where two-car garages are more common in the neighborhood. He said that some of the relief may not be needed with a two-car garage.

Atty. Prolman said that they looked at a number of alternatives, and at first, they wanted it to be four feet from the property line, and it was moved to meet the yard setbacks. He said that they want to keep the garage where it is proposed, as it is tucked away in the corner of the lot to maximize the use of the back yard. He said it's possible to move the garage forward a couple feet, to eliminate the rear height request. He said they want the three bays, they are storing cars, and in addition, are removing two sheds, so it will be storage.

Mr. Minkarah asked what the side and rear setbacks are for this zone.

Mr. Falk said that for an accessory structure, it is 6 feet to the side and rear property lines.

Mr. Lionel said that it appears as if it were a two-bay garage, they wouldn't need the variance requests at all. He said that the third bay is creating the issues.

Atty. Prolman said that they are over by only 76 square feet, and by removing the two sheds on the lot, it will be cleaner. He said that this is what the applicant wants to do.

SPEAKING IN FAVOR:

Mr. Boucher said that there are two letters of support, from Sandra & Gregory Pappadeas at 4 Chaucer Road, and a letter from Kevin Walker, Flatley Company, the abutter to the rear.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Mr. Minkarah said that he hasn't heard anything about special conditions of the property, the lot is a regular lot, not unusually shaped, no steep slopes. He said that the Board commonly sees requests for garages, they are customary uses, but three-bay garages are not customary, and the neighborhood mostly has two-car garages. He said that they could readily design a two-car garage, and it would meet all the requirements, and they could also easily move the garage forward, or make it smaller, so it can comply with the height requirements. He said he isn't seeing anything unique about the property.

Mr. Lionel said that the Board sees lots of requests for garages, ones with unique topography, or placement of the house, or the lot shape, that creates the need for a variance. He said that in this case, it is all manufactured, and a reasonable garage could be put there to meet all the requirements of the Code, it could be moved just a few feet and be a little smaller.

Mrs. MacKay said she is going to agree to disagree. She said that a three-car garage, understanding the homeowners needs, and a place to put tools, they're removing two sheds, and the request seems logical, and necessary and prudent, also, the owner is a contractor, and may have more tools than normal. She said she doesn't have an issue with the height. She said that being 76 square feet over shouldn't bother anyone. She said she understands the logic behind the need, and is in favor.

Mr. Boucher said that if the garage is moved over two feet, and a different style roof, it may work. He said he is in agreement with the location of the garage and agrees with the applicant, as it is tucked in the far corner, and should be consistent in

the neighborhood, and the two most affected abutters are in support. He said he doesn't see enough to not be in favor of the application, and it is reasonable to have it tucked in the back corner.

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

MOTION by Mr. Boucher to approve the application on behalf of the owner as advertised. He said that the Board believes that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, those in favor of the application looked at the placement of the garage, and the perceived impact on the abutters and the area and the aesthetics within the neighborhood, and that the garage will not impact property values or such, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than the variance.

Mr. Boucher said that the Board feels that it is within the spirit and intent of the ordinance.

Mr. Boucher said that it would not negatively impact surrounding property values.

Mr. Boucher said that the request is within the public interest, and substantial justice is served.

SECONDED by Mrs. MacKay.

MOTION CARRIED 3-2 (Mr. Minkarah and Mr. Lionel).

2. Elizabeth Colebrooke (Owner) 632 South Main Street (Sheet A Lot 271) requesting the following variances from Land Use Code Section 190-16, Table 16-3: 1) to encroach 8.1 feet into the 25 foot required front yard setback; and, 2) to encroach 1.9 feet into the 10 foot required side yard setback - both requests to construct an attached 24'x30' garage. RA Zone, Ward 7.

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk

Jay Minkarah
Efstathia Booras

Carlton Colebrooke, 632 South Main Street, Nashua, NH. Mr. Colebrooke said that he shares the house with his sister, and lives there with his wife and daughter. He said that they want the garage to keep vehicles out of the weather, and being disabled, it would make it much easier for access. He said that they are on the corner, and the house is oriented to the corner.

Mr. Boucher asked if there were any other alternatives for placing the garage.

Mr. Colebrooke said he didn't think there were any other locations feasible, it was reviewed pretty heavily.

Mr. Boucher said it looks like there is a pool on the other side of the house.

Mr. Boucher said it looks like most of the traffic on Veterans Drive to South Main Street going to the college, at this end, it's only the people who live down there, or a little traffic to the Armory.

Mr. Minkarah asked what the need is for the garage to be that deep.

Mr. Colebrooke said he has a big car, and a shed will be removed in the back yard, so there is need to store the tractor, snowblower, and other items.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Board members all expressed support for the application.

MOTION by Mr. Minkarah to approve the application on behalf of the owner as advertised. He said that the Board believes that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property,

which is the unusual shape of the lot, and the unusual placement of the house on the lot, 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, as a two-car garage is a reasonable and customary within the area and the City, and it is not possible to construct one without seeking relief from the setback requirements.

Mr. Minkarah said that the Board feels that it is within the spirit and intent of the ordinance.

Mr. Minkarah said that it would not negatively impact surrounding property values.

Mr. Minkarah said that the request is within the public interest, and substantial justice is served.

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 5-0.

3. Weston Associates Development Company, Inc. (Owner) 546 Amherst Street (Sheet H Lot 179) requesting special exception from Land Use Code Section 190-115 (B) to work within the 40-foot critical wetland buffer of Round Pond to remove existing building and construct two new buildings. GB/PI Zones, Ward 2.

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Jay Minkarah
Efstathia Booras

Attorney Gerald Prunier, Prunier & Prolman, P.A., 20 Trafalgar Square, Nashua, NH. Atty. Prunier said that the existing building would be removed, and two new buildings are proposed. He said that once the two new buildings are up, they will align the driveway with the traffic light. He said that the request is a special exception, and the use is listed as a special exception. He said that the use will not create undue traffic congestion, nor unduly impair pedestrian safety, actually, the proposal will help the traffic. He said that the proposed use

will not overload public water, drainage or sewer or other municipal systems, the present building had quite a few students. He said that the special regulations are attached to the application, all nine have been answered and all are acceptable. He said that the requested use will not impair the integrity or be out of character with the neighborhood, or be detrimental to health, morals, or welfare of citizens.

Atty. Prunier said that the Conservation Commission has approved this on August 7, 2019, with four stipulations of approval.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

James Maddock, 110 Sun Drive, Nashua NH. Mr. Maddock said that the traffic on Amherst Street is quite crowded there, and asked if the light has a left turn, as traffic at rush hour is clogged up a lot. He said that the two lanes are very busy.

SPEAKING IN FAVOR - REBUTTAL:

Chris Rice, TF Moran, Portsmouth, NH. Mr. Rice said that right now, the existing site has two curb-cuts both are right-in, right-out. He said that anyone who exits the site has to take a right out of the site, and somewhere down the road make a U-turn or turn into a business to make their way back in this direction. He said that what they are trying to accomplish is to take the driveway and line it up with the existing signal at Blackstone Drive, so that if someone wanted to take a left, they don't have to take a right and go make a U-turn. He said that this will be an improvement overall to the traffic situation.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR COMMENTS - REBUTTAL:

None.

Mr. Boucher said that we're here because they're working in the wetland buffer, and they're actually removing pavement from the buffer. He said that they are taking all the necessary precautions, have met with the Conservation Commission, are following guidelines, and this also still has to go to the

Planning Board. He reiterated that the Zoning Board is only looking at the wetland issues, not the traffic.

Mr. Minkarah said that the request is minimal, and necessary to achieve the proposed development.

Board members all expressed support for the application.

MOTION by Mr. Lionel to approve the application on behalf of the owner as advertised. He said that the use is listed in the Table of Uses, Section 190-115 (B).

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

Mr. Lionel said that the use will not overload public water, drainage or sewer or other municipal systems, actually, the project should be an improvement to the drainage on the site.

Mr. Lionel said that all the special conditions are fulfilled per testimony, it was approved by the Conservation Commission.

Mr. Lionel said that the use 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. Minkarah.

MOTION CARRIED UNANIMOUSLY 5-0.

4. Laurie J. Kopka (Owner) 5 Lynde Street (Sheet 65 Lot 54) requesting variance from Land Use Code Section 190-16, Table 16-3, to encroach 4 feet into the 10 foot required right side yard setback to construct a 12'x18' three-season porch. RA Zone, Ward 3.

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Jay Minkarah
Efstathia Booras

Laurie Kopka, 5 Lynde Street, Nashua, NH. Ms. Kopka said that she is requesting a variance to encroach 4 feet into the 10 foot right side yard setback to build a three-season porch on the back of the house. She said her lot is small, 50'x100'. She said that there are two other lots in the block that are the same size, and most of the properties in the area have three-season porches, so this is a reasonable request.

Ms. Kopka said that most of the houses, or garages and sheds encroach within the setbacks. She said that the house has a second floor window, and the proposed roof can't block the window, it has to be below the window.

Mr. Boucher said it looks as if construction has already started.

Ms. Kopka said that her contractor didn't apply for a building permit, and when they applied, he was told that a variance would be required.

Mr. Boucher said it looks as if the variance is needed because of the window, and the roof line.

Ms. Kopka said that building the porch won't take away anything from the neighbors.

SPEAKING IN FAVOR:

George Levintsky, 5 Lynde Street, Nashua, NH. Mr. Levintsky said that the lot is a smaller lot than some of the lots that surround the lot. He said that the house itself is a lot smaller than a lot of the houses in the area. He said he is in favor of the request.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Mr. Boucher read a letter of concern into the record from Jeff Weiner, 11 Rockland Street, Nashua, NH, stating that there are structures in the rear yard that do not have permits.

Mr. Falk stated that there have been several building permits issued for this property, including two sheds, and a deck.

SPEAKING IN FAVOR - REBUTTAL:

Ms. Kopka said that she talked to several neighbors, none of whom was opposed to the three-season porch.

Mr. Minkarah said that a three-season porch is a reasonable and customary addition to a house, and the size is not unusually large, and is in support.

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

Mrs. MacKay said that the property is small, and fully supports the request.

Mr. Lionel said he is in support, and his only concern was that construction had already started.

Mr. Boucher said that it appears that in the past, the applicant has done the right thing with getting permits, and maybe the contractor just overlooked it.

MOTION by Mr. Boucher to approve the application on behalf of the owner as advertised. He said that the Board believes that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, the Board stated that the property is relatively small, it pre-dates zoning, and many of the nearby structures are very close to the property line, or on the property line, and the proposed structure needs its proposed location due to pre-existing construction where the doors and windows are located, and the benefit sought by the applicant cannot be achieved by some other means to pursue, other than the area variance.

Mr. Boucher said that the Board feels that it is within the spirit and intent of the ordinance.

Mr. Boucher said that it would not negatively impact surrounding property values.

Mr. Boucher said that the request is within the public interest, and substantial justice is served.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 5-0.

5. David & Steven Linatsas, Trustee of the Linatsas Family Trust (Owner) Ali Bird (Applicant) 1 Hardy Street (Sheet 62 Lot 152) requesting use variance from Land Use Code Section 190-52 (A) for a fenced in area for outdoor use for a dog day care. LB Zone, Ward 4.

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Jay Minkarah
Efstathia Booras

Chad Branon, Fieldstone Land Consultants, 206 Elm Street, Milford, NH. Mr. Branon said that they are requesting a use variance to allow an outdoor area for dogs for the proposed dog day care. He said that the dog day care use is permitted in the LB zone, and said that the outdoor area is considered an essential use for the dog care.

Mr. Branon said that the lot is about 11,050 sq.ft of land, about one-quarter acre, and it is surrounded by residential use to the south and to the west. He said that it also is bounded by a cemetery on the other side of the street, and a restaurant on the east side of the parcel. He said that the former use of the property was a chiropractor professional office, there are three structures on the site, a carport and parking.

Mr. Branon said that they would like to occupy the 1,144 sq.ft commercial building for the dog day care, and an outside area for the dogs to occupy on the north side of the building, between the carport and the residential structure.

Mr. Branon said that the site is fenced with a stockade fence along the southern boundary, and the western and northern boundary, it will be maintained, and there is one break in the fencing along Amherst Terrace that would be closed in, and a stockade fence that would close off between the existing structures that would create a completely enclosed area for the dogs to utilize.

Mr. Branon said that the site improvements that they would be doing consists of the fencing, and the parking area would be re-stripped in the front of the building, one parking space is required per the Land Use Ordinance, and two spaces are proposed, so the site would satisfy all design criteria. He said that the section that they are seeking relief under is Section 190-52, Permanent Outdoor Storage Areas, and under Section (A), it states that outdoor display of retail goods, wares and merchandise is a permitted accessory use in the GB, D-1, D-3, HB districts, and is expressly permitted pursuant to a site plan. He said that this is not necessarily an outdoor storage area, the interpretation that they received from staff is that they would still need relief for the dogs to be located outside during the business hours. He said that their opinion is that this really isn't applicable, but that is the interpretation. He said that the points of law are addressed in the formal variance application.

Mr. Branon said that the use is permitted, and consider that any pet services would need the required outdoor area for pets to utilize, any veterinary clinic, and dog day care, dog sitting, grooming, any of those businesses always have an area outside. He said that the outdoor area is critical, and an essential part of the use that is permitted in the zone.

Mr. Branon said that for the public interest, the proposed use is allowed and the request is for an outdoor area for the dogs to utilize the outdoor space for bathroom reasons. He said that due to this, they do not believe that the request is contrary to the public interest, the outside area will be completely enclosed with fencing, and will not alter the essential character of the neighborhood, and will be utilizing the existing fence, and keeping the existing landscaping intact. He stated that they will not threaten the public health, safety or welfare or otherwise injure the public rights.

Mr. Branon said that the use will observe the spirit of the ordinance, as the outdoor space is a necessary component of the permitted use, it will be completely enclosed, utilizing the existing fencing.

Mr. Branon stated that substantial justice would be done to the owner by granting the variance, as it will allow for the sale and re-use of the property, and will allow a permitted use to occupy the site, and provide for a necessary component of the

permitted use. He said that the benefits to the owner will not be outweighed by any harm to the general public or anyone, and it will utilize existing space.

Mr. Branon said that the proposed use will not diminish the values of surrounding parcels, it will allow a permitted use to occupy the site and function appropriately, and it will not change visually, and the proposed fencing will control the outdoor pet area, and provide privacy and security, and will not have any negative impacts.

Mr. Branon said that for hardship, the proposed use is permitted in the zone as pet services, and providing an area on the lot for the pets to get outside is an essential part of the permitted use, the subject property is fenced, and additional fencing will be installed to enclose the area, and the outdoor area with the fencing is a fair and reasonable request, for neighbors and the public, as well as the proposed business, and to allow the use but not allow necessary components is not reasonable and presents special conditions of the property.

Mr. Boucher said that in the application, it said two employees, about 26 vehicle trips per day, and asked if that would be 13 dogs, or 26 dogs.

Mr. Branon said its employee's trips and the anticipated number of dogs, which is ten.

Mr. Boucher asked if someone would be outside with the dogs.

Mr. Branon said yes, they typically let out two or three at a time.

Mr. Boucher asked what would be going on with the front house.

Mr. Branon said it would be rented, used residentially.

Mr. Boucher pointed out the back building where the dogs would be, and asked why the fence would go all the way back there.

Mr. Branon said that the existing fence runs along the property line, and there is a door on the back side of the building, so it's really to capture the door as a means of access, to allow full access to the doors. He said that the door on the side of

the building wouldn't go into the fenced in area where the dogs would be.

Mr. Minkarah asked what the surface treatment would be within the enclosed area, grass, or some special treatment.

Mr. Branon said it would be grass, maintained as a lawn area for the whole section. He said that the fencing is relatively new, it's a nice wood stockade fence, and there is a lot of nice landscaping on the outside of the fence. He said it meets the "type B" buffering that the Planning Board would review.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Clayton Alexander, 1 Amherst Terrace, Nashua, NH. Mr. Alexander said it takes good neighbors to make a good neighborhood. He said that the prior owner was not a good neighbor, there were numerous problems with the chiropractic office, with traffic and parking, snow removal. He said that the number of cars and traffic, pickups and drop-offs are similar with the proposed dog day care. He said the dog care use will be a radical change, and will present immediate problems. He said that the dogs outside will be detrimental to quiet time and enjoyment of the homes, property values and the character of the neighborhood. He said that he didn't agree with the land use code section that they are applying for. He said that the LB zone allows minimal pet services.

Tim Taper, 7 Amherst Terrace, Nashua, NH. Mr. Taper said that this location has been a problem for this community for a long time. He said that there has been a problem with parking from the previous business, and can't see how this would be any different. He said that in the winter, the snow is a problem, it's pushed all over the place, in our driveways and yards. He said that the yard will turn into an outdoor toilet, and walking them all around the block. He said that there will be a lot of noise, and smell, and the parking is too much of an issue. He sees no benefit to this use being here and is not in support.

Judy Hogan, 71 Wason Street, Nashua, NH. Ms. Hogan said that they are highly opposed to this. She mentioned Mr. Falk's staff

report and how she disagrees with what was stated for the points of law.

Mr. Boucher indicated that the staff report just states what the applicant writes in their application, they are not Mr. Falk's thoughts or analysis.

Mrs. Hogan said that the LB zone offers many reasonable uses that could go here. She said it's not in the character of the neighborhood. She said that all the dog day care establishments they've visited are on the outskirts of the city, none are in residential areas that would bother the neighbors. She said it would be a big mistake to allow this in a residential neighborhood, by busy streets.

Alison Hogan, 7 Hardy Street, Nashua, NH. Mrs. Hogan said she is an abutter, and is highly opposed to this. She said that the welfare of the animals and the effect on the immediate community is difficult. She said this proposal will be a disservice to dogs, the lot size is not large enough for even two dogs, much less up to twenty dogs. She said that there is a fear that the dogs would get loose into the street. She said that there will be a large amount of dog waste, on par with an animal shelter, and only one or two employees. She said that this area is not the right spot for the proposed business. She said that the effect to the neighborhood will be detrimental, and there is too much noise from traffic and the dog waste.

Mike Burt, 3 Amherst Terrace, Nashua, NH. Mr. Burt said he agrees with some of the issues that have been raised so far. He said that parking is an issue, and sometimes it's hard to back out. He said that with all the concerns neighbors have raised, he believes his property values will decrease.

Marilyn Hogan, 51 Pine Hill Avenue, Nashua, NH. Mrs. Hogan said that no one has mentioned the smell from dogs. She asked what will happen to the grass after a while from dogs peeing, and the smell. She said that every time a fire engine goes by, the dogs will howl. She said that they hear dogs three streets down from their house. She said that she is against this request.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Branon said that they are not proposing to park on the side of the street. He said that the use is permitted. He said that

the request is only the outdoor component. He said that pet services is permitted, so it is in character with the neighborhood. He said that they will be utilizing an existing area that is already enclosed. He said that the existing fencing will keep the dogs in the area, and there would only be two to three out there at a time. He said that the employees will be maintaining the area. He said that the outdoor area is an essential part of the use that is already permitted in this zone. He said that the property has already been a commercial use. He said that the 217 West Hollis Street site for Chewies is also in the LB zone, and that location received the same variance request as this. He said that this use will not change the character of the neighborhood, the dogs will hear the traffic all day long, traffic will not be an issue for this use. He said that the design of this site presents a great location for this use. He said that they believe that they meet all the zoning criteria. He said that the customers are parking for such a short time to drop off or pick up, and they're gone. He said that they're looking for ten dogs, not twenty as someone mentioned. He said that a lot of the testimony in opposition was not correct, there were a lot of miss-statements.

Mr. Boucher asked if there are any limitations or restrictions as to leaving a certain number of dogs out at one time, such as a maximum of two dogs out at one time. He also asked about the waste management plan, to control it.

Mr. Minkarah asked how many doors are there for the building used for the day care and the fenced-in enclosure.

Mr. Branon said that there would be two doors to the fenced-in area, an existing door, and perhaps a new door.

MOTION by Mr. Boucher to give Mr. Branon a few minutes to confer with his client.

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 5-0.

Mr. Branon said that they would be comfortable that no more than four dogs be out at any one time. He said that the waste would be immediately bagged, double-bagged, and would be kept in a sealed container, then disposed of properly. He said that they

don't want the dogs to traffic through the waste and bring it inside, so it'll be cleaned up right away.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Alison Hogan, 7 Hardy Street, Nashua, NH. Mrs. Hogan said that this request would significantly alter the character of the neighborhood. She said that the waste management plan is inadequate, you can't bag pee, as dogs are nervous, and their solids are loose, and cannot be scooped up. She said that there is strong evidence of public dis-interest in this request. She said that the parking is inadequate, it will not suffice, and there will be the same issues as the chiropractic office. She said that the existing fence is inadequate, as dogs can dig under it and escape. She said that the liability issues are a concern as well. She said that this is not the right place for this use.

Mr. Minkarah said that this is a permitted use, the only use before the Board is the outdoor area, and it is an essential use to the business. He said that it is a busy area, bounded by three streets, with a lot of noise.

Mr. Lionel said that it is a permitted use, and that the proposed outdoor area is a reasonable and essential use for pet services. He said that they must meet the five points of law. He said that the point about property values was brought up and there was substantial testimony that this would be a negative impact to the neighborhood, and can't find support this request.

Mr. Boucher said that it's a permitted use, and whether or not we believe it belongs in this part of Nashua. He said it's just not practical for the dogs to do their business inside for many reasons. He said that if the Board were to move forward with this, the Planning Board has all different criteria. He said that a lot of issues brought up are not for this Board. He said he is struggling with this, and the West Hollis Street case had an outside area much smaller than this one, and they had a special turf and a cleaning system in place. He asked if the impact would be less if something was more designed for this purpose. He said he would be more comfortable if something was designed where it may not be the whole yard area.

Mrs. MacKay said she's in the same place, it's a permitted use. She said that the outdoor use is necessary. She said that the

impact for the proposed business is unknown, there were a lot of assumptions raised. She said she would be amenable to tabling this to give the owner an opportunity to look into something more detailed about the outdoor area, which would respond to the neighbors' concerns about the odors and the idea of the aesthetics. She said that it's a permitted use, and the outdoor component is necessary.

Mr. Minkarah said the one on West Hollis Street had a pretty detailed plan to mitigate odor, and that's what he wanted to hear. He said he is concerned about the turf, it's not a very large grassy area, it will be difficult to keep it. He said he asked about the door to pull the fenced in area back away from the abutter to the rear. He said that issues as to the outdoor area, and how it's managed and functions is relevant to the Board's decision.

Mr. Boucher said that if this is approved, it would go to the Planning Board, and wants to give them clear direction. He said he doesn't want to just pass this on to the Planning Board. He asked if the Board should table this, and ask the applicant to come back and give more detail to re-visit the outdoor display area.

Mrs. MacKay said it's in everyone's best interest to make an informed and complete decision, and we should table this and allow more information to come forward so that the Board can make a good decision.

MOTION by Mr. Boucher to re-open the public hearing to ask the applicant about a date certain when they'd come back.

SECONDED by Mrs. MacKay

MOTION CARRIED UNANIMOUSLY 5-0.

Mr. Branon said that they'd like to come back with some additional details to address the concerns that have been raised, at the next agenda.

Mr. Boucher said it is September 24th.

Mr. Branon agreed.

Mr. Falk said that staff would need any new information by next Monday, to get it in time to send to the Board in their next package.

Mr. Boucher said that to be as fair as possible, the Board would like the information as soon as possible.

Mr. Branon said they'd do their best to get it in by next Monday.

MOTION by Mr. Boucher to table this request to a date certain of September 24, 2019 so that the applicant can get the Board more information.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 5-0.

6. William & Linda M. Porter (Owners) Ken Grant (Applicant) 30 Caron Avenue (Sheet 49 Lot 79) requesting variance from Land Use Code Section 190-16, Table 16-3, to encroach 8 feet into the 25 foot required front yard setback to construct an attached 8'x12' farmers porch. RA Zone, Ward 3.

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Jay Minkarah
Efstathia Booras

Ken Grant, Contractor. Mr. Grant said that they would like to put a farmer's porch on the front of the house. He said it would be 8 feet off the house, by 12 feet wide, and would have a roof on it. He said it would be centered on the front door.

Mr. Boucher said that there is a relatively large area of the City right-of-way. He said it is not enclosed.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Board members all expressed support for the application.

MOTION by Mr. Lionel to approve the application on behalf of the owner as advertised. He said that the Board believes that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, the Board discussed the closeness of the house to the front property line, and the benefit sought by the applicant cannot be achieved by some other means to pursue, other than the area variance.

Mr. Lionel said that the Board feels that it is within the spirit and intent of the ordinance.

Mr. Lionel said that it would not negatively impact surrounding property values.

Mr. Lionel said that the request is within the public interest, and substantial justice is served.

SECONDED by Ms. Booras.

MOTION CARRIED UNANIMOUSLY 5-0.

7. Andre J. Quirion (Owner) 55-57 Williams Street (Sheet 21 Lot 66) requesting the following variances: 1) from Land Use Code Section 190-16, Table 16-3 for minimum open space, 35% required, 25% proposed; and, 2) from Land Use Code Section 190-193 for minimum parking space dimensions, 9'x20' required, 8'x18' proposed - both requests to construct a 6-space parking lot for an existing 3-family dwelling. RB Zone, Ward 7.

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Jay Minkarah
Efstathia Booras

Attorney David Campbell, 20 Trafalgar Square, Nashua, NH. Atty. Campbell said that his client just passed out a couple pictures to the Board. He said that it is an existing three-family

multi-family structure, built around 1930, and was built as a three unit building. He said that for a long time, parking was available between the subject lot and the abutting lot from a small parking area that the neighbor allowed parking in, however, due to a change in ownership, this parking area is no longer available to the tenants at 55-57 Williams Street.

Atty. Campbell said that the use requires six parking spaces. He pointed out the submitted pictures to the Board. He pointed out that tenant's park on the grassed area, and there are problems with that with the puddles and mud.

Atty. Campbell said that what they are proposing is to pave an area, highlighted in blue from the drawing, that would allow six parking spaces, 8'x18', side by side. He said that they will be adequate for just the three tenants. He said that 25% of the lot would remain as grassed open space.

Atty. Campbell said that the surrounding neighborhood consists of several multi-family dwellings on small lots, and will not diminish the essential character of the neighborhood and it will allow vehicles to get off the street. He said that public safety is enhanced.

Atty. Campbell said the spirit of the ordinance will be met, as it states that the site should have on-premise parking for the multi-family dwelling. He said that the use does require two spaces per unit.

Atty. Campbell said that the request will not negatively impact abutting property values, and getting cars off the street and on the premises will enhance the lot.

Atty. Campbell said that if they met the ordinance and only put in four parking spaces, it still would be inadequate. He said that the concrete driveway runs right along the side property line, and adding anything will cut into the open space percentage. He said that the lot as is contains right about 35% open space, the additional parking makes it go down to 25%. He said the request shows minimal impact, is reasonable, and will allow for required parking for the property.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Board members expressed support for the application.

MOTION by Mr. Minkarah to approve the application on behalf of the owner as advertised. He said that the Board believes that the variance is needed to enable the applicant's proposed use of the property, he said that in the testimony received, that by providing two parking spaces per unit it is certainly reasonable and arguably necessary in this area, and the special conditions of the property being the size of the property and the fact that the three-family was constructed prior to zoning, and the need for parking requirements, and the applicant has demonstrated that there really is no other reasonable way you can achieve the necessary parking on the site

Mr. Minkarah said that the Board feels that it is within the spirit and intent of the ordinance to provide off-street parking.

Mr. Minkarah said that it would not negatively impact surrounding property values.

Mr. Minkarah said that the request is within the public interest, and substantial justice is served.

SECONDED by Ms. Booras.

MOTION CARRIED UNANIMOUSLY 5-0.

MISCELLANEOUS:

REHEARING REQUESTS:

9 East Pearl Street:
Applicant: Laura Smith

Gabhaltais Teaghlaigh, LLC (Owner) Laura Smith (Applicant) 9 East Pearl Street (Sheet 34 Lot 20) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#135) to allow a tattoo parlor in a portion of an existing building. RC Zone, Ward 4. [REQUEST DENIED AT THE 7-23-19 MEETING]

Mr. Boucher asked if there is any procedural error.

All Board members said no.

Mr. Boucher asked if it was an illegal decision, in other words, did the Board fail to completely address each of the points of law required for the special exception or variance.

All Board members said no.

Mr. Boucher asked if the rehearing request contains any new information not presented or available to the Board at the original Public Hearing.

All Board members said no.

Mr. Boucher asked if there is anything which would/could cause the Board to make a different decision.

All Board members said no.

MOTION by Mr. Boucher to deny the rehearing request as advertised on behalf of the applicant.

SECONDED by Mr. Minkarah.

MOTION APPROVED UNANIMOUSLY 5-0.

REGIONAL IMPACT:

The Board did not find any cases of Regional Impact.

MINUTES:

None.

ADJOURNMENT:

Mr. Boucher called the meeting closed at 9:46 p.m.

Submitted by: Mrs. MacKay, Clerk.

CF - Taped Hearing