

**SOMERSWORTH ZONING BOARD OF ADJUSTMENTS**  
**MINUTES OF MEETING**  
**May 1, 2019**

**MEMBERS PRESENT:** Matt Keiser Chair, Richard Brooks, Coty Donahue, Brad Fredette, Glenn Garvin, Christien DuBois  
**MEMBERS ABESENT:** Donald Routhier  
**STAFF PRESENT:** Shanna B. Saunders, Director of Development Services, Tim Metivier Code Enforcement Officer

The meeting was called to order at 7:00PM.

Keiser appointed Garvin as a full voting member for the meeting in place of Routhier.

Keiser welcomed the new Planning Secretary Dana Crossley.

**1) Approval of the minutes of the meeting of April 3, 2019.**

Brooks **MOVED** to accept the minutes. Donohue seconded the motion. The **MOTION CARRIED** 5-0.

**2) OLD BUSINESS**

A) Any old business that may come before the Board.

No Discussion

**3) NEW BUSINESS**

A) Zrimsek, David is seeking a variance from Table 5.A.1 of the Zoning Ordinance to construct an addition in the side and rear setbacks on a property located at 24 Rocky Hill Road, in the Residential Single Family (R1) District, Assessor's Map 26 Lot 2A ZBA#07-2019-PUBLIC HEARING:

Keiser opened the public hearing at 7:01 PM.

Saunders gave a summary of the request. Applicant is proposing 3 additions in either side or rear setbacks. The garage encroaches in the 20 ft., side setback by 2 feet, the bedroom encroaches in the 50 ft., rear setback by 5 feet or so (can ask applicant to clarify) and the game room encroaches in the 50 ft. rear setback by 12 feet.

David Zrimsek, 24 Rocky Hill Road applicant, stated he looked into putting on an addition, initially with the install of city water, so he would be able to meet the required setbacks. But when he inquired with City Staff about installing water, he was informed that Rocky Hill Road has a moratorium in effect till 2022. So he is not able to put in city water for 3 more years, therefore with the proposed addition he cannot meet the required setbacks so he is seeking a variance.

Zrimsek stated the properties boarding the rear of the property are a few hundred feet from his house with woods in between. He does not believe being a couple feet beyond the current setbacks would affect neighbors. The closest house is two to three hundred feet away, no public activity around his home. Enforcing the current setbacks would not allow him to build the size of addition he would like to build, it

would cause restrictions. City is saying there is a moratorium preventing him from installing city water until the fall of 2022. No safety concerns by building a few feet into the setback.

Keiser asked for abutter comments. No abutter comments.

Keiser asked for board questions:

Fredette questioned when the moratorium is up? Zrimsek replied fall of 2022. Fredette requested Saunders to speak to that if it was accurate? Saunders noted it is usually a five year moratorium, Rocky Hill was recently paved. Zrimsek stated he has an email from Scott of the City Water Department stating there is a moratorium.

Fredette has recently been through the area, concern is that in order to grant a variance applicant needs to demonstrate his property is unique from other properties in the area, needs more understanding what makes his lot unique.

Zrimsek stated his lot is unique because he cannot get City Water due to the moratorium. Fredette noted that all of the properties on Rocky Hill would be under that same moratorium. Questioned if given the opportunity to tie in when the road was done. Saunders noted she was not aware of that.

Brooks questioned how close the sewer is to this residence. Zrimsek clarified he was only looking to put in City water, which would change the setbacks. Brooks questioned if water runs by his house. Zrimsek replied that it does. Keiser noted how City water would change the setbacks. Zrimsek added that change in setbacks gives him what he is looking for.

Brooks questioned the hardship, noted the property is just over 2 acres. That gives the applicant a lot of room to expand in other directions, he has a hard time seeing the hardship there. Zrimsek replied that if he had to build off the front it would be more construction work for him and more renovations. He does not want to put his garage elsewhere, he wants to put it with his current garage, noted he could build it smaller at 22' but wants 24' to be able to fit his truck with plow and not worry about backing into vehicles.

Garvin questioned why City water changes the setback. Saunders replied she would have to do research to know the stated purpose, but it is clear in the ordinance the different setbacks with water, and than with water and sewer, she can only assume it takes into consideration DES setbacks for wells and septic systems.

Garvin questioned the status of the applicants well. Zrimsek replied it is in the front of the house, 150'-200' away from the house no potential harm to the well with the proposed addition.

Keiser questioned if they have an existing 2 car garage? Zrimsek replied yes. Keiser clarified applicant wants to put on the addition to make it a four car garage. Zrimsek agreed. Keiser questioned where the septic is located. Zrimsek stated it is on the left when looking at house, towards the larger part of the lot, actual tank is 20' away, and leach field is 50' away, other concern for distance from foundation to leach field. Keiser questioned why the game room is located where it is. Zrimsek replied he has a current game room now with office, wants to make it bigger. He has game room to back left of house looking to expand, there is a deck on the left side of the house, bedroom would be a new addition that is 20x20' a bedroom/bathroom/closet. Keiser reviewed with the applicant why he has chosen the particular layout that he is asking for. Zrimsek stated that wants to put the bedroom behind existing garage, additions off the front requires major work, proposal is simpler, won't bother anyone and can't be seen from the road.

Garvin asked what the intended setback was for the bedroom? Zrimsek replied he would be infringing 5-10' at most, stated when he built the house, he put it as close possible to the property lines to be far from the road.

Keiser clarified that the applicant built the home and if he owned the abutting front property. Zrimsek replied yes to both.

Garvin questioned the size of the bedroom? Zrimsek stated he has not designed the room, currently could be built 21' deep without a variance, and wants an additional 3', but cost will have a factor on how big he does the addition.

Keiser clarified with the applicant the sketch provided by the applicant to the assessor's sketch on the tax card.

Dubois asked the applicant to explain further his thoughts behind his answer to criteria #3 in the application and how he came up with "reasonable". Zrimsek explained that to suit his needs he would like a 24' garage, could build a 22' but a 24' would suit his needs better. He could go back 7' on the back and stay within the setbacks, but he would like to get the additional 3-4' for the extra space.

Fredette questioned when the applicant built the house. Zrimsek replied 1996. Fredette questioned if there was the option for City Water at the time. Zrimsek replied yes, but chose not to put it in due to an existing well and he likes well water. Fredette questioned if he has plans to install City Water when the moratorium is lifted and has he explored the cost to that. He is not seeing the uniqueness to the property. Zrimsek stated he was planning on installing water as he had the City Water staff to his property, the cost was going to be \$1,800 for service and would need to dig to hook up to the existing well which is less than 100'.

Brooks questioned the property behind the applicant. Zrimsek stated the property to the side is 5 acres and behind him are two houses on Francoeur Drive.

Fredette discussed the right of way shown with applicant. Zrimsek stated it was not on his property.

Closed public hearing at 7:24pm.

Board discussion:

Dubois would like to start discussion of "uniqueness" of the property. The property sits on a well, this is very unique in Somersworth as it is single digit percentage of homes in Somersworth that sit on a well.

Fredette expressed that he felt they need to be careful to not be a back door route to what City Council has not done. Stated that being on a well is unique but he does not see the effect on building and that the applicant has expressed he has other options that he could do to get what he wants.

Brooks stated that plays into the hardship since there are other options for the addition, even with the consideration of City Water not able to install until 2022.

Fredette agrees with Brooks, noted that the applicant built the house; he designed the house on the lot, did not buy someone else's project, and questioned what the setbacks were in 1996? Saunders replied would have to do research before answering that.

Donohue agrees they should not be a back door City Council and the Ordinance but is their job to grant what meets the criteria. Feels that if there is City Water on the road and abutting homes have it, but that it does not makes it unique. Would like to hear board consensus if it is unique because it is on City Water, if not does not see the hardship, if so does.

Garvin agrees with Donohue, he can see some uniqueness and some hardship, see the City and tax payer benefit, sees no harm to the public, is all set with everything.

Dubois stated that 3A spells out if the property is unique the use needs to be reasonable and hardship only needs to be established if the property is not unique. If the board agrees it is unique, he does not need to establish a hardship. Keiser replied that the uniqueness needs to be causing the hardship, a conclusion between the two. Brooks stated that he does not think the houses themselves are unique enough to justify granting a variance.

Fredette stated this house could have had water put in, thinks it will cost more than \$1,800 to install, concerned of future cases and arguments that cost to install water is their hardship. His thought process on the setbacks is that Zoning Ordinances were written so that water and sewer were in places of more densely populated areas, to be less costly to get water to more people. And in less dense areas the City wanted more space. Keiser noted that cost is not a hardship as per case law.

Fredette stated that the applicant has noted that there are other ways to expand, but it would cost too much. He does not see the uniqueness for this property that would make him vote to grant.

Brooks stated that the applicant has said he hasn't planned out the addition, so cost is not an aspect anyway.

Dubois questioned if the members had hang ups on specific criteria, his hang up is on criteria 3.

Donohue reviewed the criteria, criteria 1) does not see that surrounding properties would be diminished, 2) if the purpose of the ordinance is to keep density low or protect around a well, he does not see it to be contrary to public interest, 3) viewing this as not having water, keeping in mind they would have city water if there was no moratorium, 4) Does not see any harm to the public, applicant would be benefited 5) Spirit of the ordinance talked to in 2 and 3. Would be in favor of voting for this, but first would like to hear from the board what setbacks they would be comfortable with.

Keiser felt that the criteria 3 has not been met, enforcing the ordinance would not create unnecessary hardship and the property is not unique. The other owners on wells are subject to the same setbacks, yes the use is reasonable but it does not meet the criteria for #3.

Fredette made a motion: after review of the application, the file and all the information presented to the Board, I feel that criteria #3 has not been satisfied and I **MOVE** that the request from David Zrimsek for a variance from Table 5.A.1 of the Zoning Ordinance to build 3 additions be **DENIED** based on the board discussion. Brooks seconds the motion.

Garvin and Donohue opposed. The **MOTION CARRIED** by 3-2 vote.

Garvin recused himself from the next item on the agenda due to being a direct abutter.  
Keiser appointed Dubois as a full voting member in place of Garvin.

B) Neale A. Hubbard, Trustee of the 204 Route 108 Somersworth Realty Trust is seeking an appeal from an Administrative Decision on property located at 204 Route 108 in the Commercial/Industrial (CI) District, Assessor's Map 62 Lot 09 ZBA #06-2019 PUBLIC HEARING

Keiser opened the Public Hearing at 7:41 pm.

Saunders gave a brief overview of the appeal. The applicant is appealing the decision of the Building Inspector who denied the applicant's building permit due to the position that the construction enlarged or

increased a non-conforming, single-family use. The Building Inspector has written an explanatory memo of his position that is in the board's packet. Tim Metivier Code Enforcement Officer (CEO) present.

Fredette questioned if the City has gone for legal advice to debunk or agree with the constitutionality argument. Keiser stated that the constitutionality claim was made to the ZBA, it would need to be the board's decision to seek legal advice, not the City.

Kevin Baum, Attorney of Hoefle, Phoenix, Gormley & Roberts, representing applicant/owner Neal Hubbard of 204 Route 108 Realty Trust (not present) gave an overview of their appeal. He stated that this is an appeal of administrative decision of the Code Enforcement Officer to deny a building permit for renovations to the existing residential building, primarily for dormers. Stated that the original denial was for the additional head space for the dormers, in the memo from the CEO there is additional reasoning provided that is not addressed in the documents filed but thinks the arguments apply. He gave the board background information of the property, clarified that this residential building and auto dealership are pre-existing non-conforming uses, but appeal is only in reference to the residential building. no proposed changes to the auto dealership. Building Permit proposal is to make renovations to the existing residential building to add front and back dormers primarily and other 'fit up'. Property photos have been provided in the packet. The building is old and is in disrepair and in need of improvements. The goal is to make it a more livable space with no additional bedrooms or bathrooms being proposed only additional head space for dormers and as noted in the memo a drive under garage that does not change living space or overall square footage or footprint. He stated that case law and section 19.6.C1 of the Somersworth Zoning Ordinance (SZO) allows prior non-conforming uses, like this, to continue provided the non-conforming use is not enlarged or increased or extended to occupy a greater amount of land; he stated what has been proposed in the building permit meets that requirement. The proposed dormers do not increase the residential use, the building will remain residential. No increase of overall square footage, only headspace, no extension of land being occupied, the drive in garage will decrease the residential space. He stated that the denial confuses expansion of non-conforming use and structure, referenced the denial letter talks about the proposed dormer expanding the structure, would agree if it was a non-conforming structure but it is dimensionally conforming. For that reason thinks the denial should be overturned and permit granted because the use is not changing. He stated an alternate argument if the board feels the dormers are an expansion would argue this is a permitted natural expansion under NH law that allows property owners to continue to use their land pre-zoning. State there is no change in use, no impact to neighborhood except to take a building that is in disrepair and make more aesthetically pleasing and more habitable for the residents. He summarized that this is a minor expansion that does not change the existing use, allows the building to be made more inhabitable, reasonable application and outcome.

Mike Hillard, 7 Adams Court, stated a brief history of Calef Auto's Planning projects and issues with the lack of substantial buffer. Stated that there was a previous site plan proposal that reflected wanting to expand the structure. He noted it could be re-roofed without a variance if it needs to be replaced. Stated he agrees with the Code Enforcement Officer's decision and feels the ordinance is straightforward that it is not allowed.

Joseph Miller, 3 Adams Court, agrees with Mr. Hilliard. Expressed concern of potential office use at the house with the expansion plan shown previously, concern of seeking more variances to use the structures as part of the dealership. Requested the board to remember the expansion request was an issue for them.

Peter Klevitch, 4 Adams Court, stated that the property is in view from his home, along with sound. The site plan was to expand it to office space, concerned with intent of the property which was previously to make it office but now saying it is going to remain residential. Also they have not maintained the buffer required in the approved site plan. 2<sup>nd</sup> issue is of the ruling by the building inspector.

Melanie Ashcroft, 6 Adams court, agreed with the other abutters. She is very disappointed and concerned in regards to the things that have not been taken care of that could be taken care of with fence, such as noise, light pollution, people being past 10 pm, cars being displayed on grass and mulch. She has concerns for the environment, the water runoff, would like proper drains put in as well as the fence. Value of their houses is impacted from Calif Auto, the expansion of the house would open up more issues.

Glenn Garvin, 8 Adams Court, direct abutter, agrees with neighbor's statements, feels that an increase is an increase and does not feel this is a natural increase. He feels the property affects the neighbors. Stated that the site plan conditions are not being up to standard.

Baum, recognized that there have been issues with the property, his client has owned it since 2018 many of the issues predate. He is not here in regards to Auto Dealership. Hubbard did seek expansion of the Auto Dealership and to convert the first floor of residential building to an office, the cost of the project and off site improvement fees did not make the plans sustainable and they withdrew. They are trying to make do with what he has, cannot get the plan he previously wanted. He has the legal right to make do with. He is proposing to put drive in garage would preclude an office, is way to take existing residential building and make use of it. He does plan to live there some day. It is his right and would be a benefit to everyone, not a non-conforming structure, is a non-conforming use, the question is does adding dormers expand a non-conforming use. He understands neighbors' concerns and comments of history but the board's task is to interpret the administrative decision to the building permit re: adding dormers and upgrades to existing residence.

Fredette questioned when the house was built, applicant narrative says 1980 and tax card says 1940. He questioned how practical it would be put a drive under garage in such a house how will it be done. He stated he felt they are changing the use and the structure from a 1.5 story house to a full two story building.

Baum stated the issue is if they are expanding residential use. They are making changes to the building but not increasing the residential use to the building. Dormers will add light and head space making it a more functional property but not an expansion of use. Stated that as residential property owner it is his right to do it and in best interest of everyone, owner and municipality. There will be no impact to surrounding properties.

Fredette questioned how they are not expanding residential use, if going from a residence with living level on the lower story. Baum stated that the lower level to his understanding is basement space now and is changing to drive in garage so is not living space. Fredette stated that when he drove past the property it looked like there was a front door with five steps going up to, which looks like based on the layout of the property, that when built, the first level was living space. Baum replied that this is based on his discussions with the owner, even if it was living space they would be taking living space and reducing it, so it would be a diminishment of living space, will reduce the use.

Fredette clarified they are going from a residence to a residence with a garage. Baum stated that was correct, but that people have a right to the use of the property but cannot increase the use which is the

impact. He would argue that the garage has no impact there and could reduce the use since cars would be inside; it is not more people causing more traffic and noise.

Fredette stated in part B. the argument is made of constitutionality 'a town may not unreasonably require the discontinuance of a non-conforming use.' He asked the applicant to explain how the City is discontinuing a use in this situation. Baum stated that he would go to the next section and the point of that is that it is permitted and allowed to continue, clear under ordinance and law. Not to suggest that dormers are needed to continue the use. The issue is if it is an expansion of the use and if it is a natural expansion, supreme court has ruled that natural expansion has to be allowed. If it is a different manner than the nonconforming use, in this case it is not, if it will have a substantial impact on the neighborhood. He fails to see how the dormers and garage will have a different impact on the neighborhood. Fredette stated that in February when he received his board packet for that meeting there was an application from Baum's client to make alterations to the residential structure in that comparison to what is being presented now, it looks similar. Baum stated he was not surprised and likely kept the plans as close as possible to be able the use the plans already made, if his client wants to change the use in the future would need to come before the board.

Dubois, clarified they are not ruling on a variance they are ruling on an appeal of administrative decision, strictly if Code Enforcement's denial was correct. Keiser replied they are ruling based on the facts presented to the board to make the conclusion if the building permit can be issued or not, not if the decision was reasonable, making decision as if they are the code officer.

Dubois asked the applicant to explain how he came to the conclusion that 'both uses predate relevant zoning provisions' where there is no citation for that statement. Baum stated it was based off of the tax card and prior discussion with the Planning Department.

Brooks stated he is still trying to understand the garage and how it plays in, a crawl space has been mentioned under the first floor, and there is a second floor with the sloped ceilings. Questioned if the crawl space is becoming the garage or the first floor and all living on the second floor? Baum stated he was actually unaware of the first floor garage since it is hand written on the drawings and not in original letter. His understanding is that it will be the first level but not sure if the entire first level. The first floor would be converted to a drive under garage and based on the size of the building would be most of the first floor and living area on the second floor.

Keiser made the deduction that the garage would be the size of the house.

Brooks stated that if it was the crawl space being converted and leaving the first and second floor would definitely agree it was an expansion. Baum stated it would have to get into first floor living space, it would not be an underground garage.

Keiser questioned that the New London case speaks to natural expansion. He asked Baum: natural expansion of what, use, size or area. Baum stated use, this is use and not area, meaning relating only to use and the use is expanding naturally. His argument is this is a residential use adding headspace for vertical living area. Use is natural to the general use, improvement, and life of the residence. Keiser stated that response conflicts him because when think of natural expansion of use, for example putting in the garage could be a natural expansion of the use because it is still residential but it was said expansion of use by square footage or volume. Baum stated he does not think this is a natural expansion thinks it is a continuation of existing use, arguing as an alternative only, thinks the garage is the same thing. The extent the use is changed is allowing

more light and is the same as garage change of how the existing residence is occupied. Keiser referenced the Somersworth Zoning Ordinance, the nonconforming use of land 19.6.C.1.a. Everyone understands the expansion of land. He questioned how the applicant would interpret no such nonconforming use shall be enlarged or increased. Baum replied his interpretation is you could not increase the amount of residential use. Keiser asked him to define that use. Baum stated the use is living in the building as single family home. Here is a slight expansion of the structure, dimensionally conforming. The question is the change of use and if it is an expansion of the single family use, not an additional apartment. Baum stated his example of an expansion of a nonconforming use (i.e. adding an additional unit) change of intensity of the use not location. Keiser questioned if he had been in the building. Baum stated no, but has driven by, would not be able to explain if there is a knee wall. Keiser questioned if he thought they were changing the square footage of residential area. Baum stated he would not give that opinion because he did not know he if he could, does not know how square footage is applied by assessor, overall use is not changing from legal perspective the overall use is not expanding, same number of people and impact to area. Keiser questioned if the applicant thought the Code Enforcement Officer interpreted different than them. Baum stated he does disagree, thinks the decision is based on a change of the structure rather than use. He thinks use is remaining the same. Keiser questioned if under the applicant's argument if he could put a third story on the building. Baum stated likely not but it depends, expansion of head space is not changing the use.

Brooks, questioned to Ms. Saunders when the city evaluates properties base if crawl space get taxed differently than basement and partial story with sloped roof than a full story. Saunders replied that it is a question for the assessor and would need to ask her opinion of that before answering. She does feel strongly that a crawl space and basement are different and would be valued differently, but unsure about the half story.

Brooks questioned if this qualifies as a nonconforming structure. Saunders replied no, it does not because it meets the setbacks. Brooks clarified they are looking at the use of the structure. Keiser noted it is also about the size. Saunders clarified it is not about the dimensional size but about the enlarged or increased size of the use.

Dubois stated a half story is assessed very differently than full second story, and garage is different than first story living space.

Baum stated it is about the increased use or enlarged area.

Fredette stated that reading construction plans looks like they will raise the structure as well. The ridge will be higher than it is now, correct? Baum replied it is unknown, but it will be a conforming structure, still meeting dimensional requirements. Fredette clarified that the first floor is currently living space and is one and half stories of living space. Baum stated that the overall living space is not increasing since the garage will become the first floor, but important if the area is increasing or intensity.

Fredette questioned Ms. Saunders, how does the City view drive under garages in comparison to attached/detached garages in taxation; motivation for the question is the building code requirements, would a drive under need to be more finished than a detached. Keiser stated a garage that is attached to a house the walls would have to have fire code sheetrock. Code Enforcement Officer Metivier stated the code would require certain coverings for the walls of an attached garage, half inch drywall, 5/8<sup>ths</sup> on the ceiling.



Brooks asked if he was supposed to interpret this literally, as written, and not as a set of variances. Keiser and Saunders replied that was correct. Brooks stated that they are not covering more land. Board will discuss further in debate section.

Baum finalized it was a minor increase, no increase in residential intensity and overall upgrade to property.

Keiser closed public hearing 8:37.

Brooks stated he is skeptical that there is not more land being covered.

Metivier stated he came to the conclusion based on the ordinance that no such non-conforming use shall be enlarged or increased. He felt the use was an enlargement or increasing since the drive under garage is residentially used. It does not change the residential use of the first floor, the upper level is residential and by adding the dormers and raising the roof it increased the residential use by about 175 sq. feet and he came to the conclusion that it increases the residential use. Also he reviews applications 3 dimensionally, not just area of land but area of space, adding the walls and roof increases the volume of the residential use and overall square footage of residential use, adding or removing knee walls to extend the walls and increase the roof to improve the upstairs area to allow full use of the upstairs when previously it was restricted, which is how he came to the conclusion and denied the application.

Keiser questioned it was being stated to be increased by 175 square feet, meaning there are existing knee walls that are not outside the first floor walls. Metivier replied that is correct, there is not to his knowledge a way for a house built in 1940 to be constructed with living space upstairs to not have the knee walls and shallow area. This is cape style construction 1940s vintage almost all built the same way, narrow upstairs, low head room, knee walls, sloped ceilings, building width of 23 feet, entire flat ceiling area probably 8 feet. The dormers increase the flat ceiling area to the full width of that building the entire 23 feet. Keiser questioned if Metivier had been in the building. Metivier replied he has not.

Brooks asked for clarification of construction. Brooks questioned if it would be increasing floor space. Metivier replied that is correct, from the edge of the knee wall to exterior of the building his estimate based on the assessor's records, which lists the three quarter story as 584 sq. ft. but the first floor is 759 sq. ft. therefor the increasing of the roof and extending the walls up would match the lower level, therefore increasing the difference of 175 sq. ft.

Donohue stated that the ordinance does use words of physicality. To him more evidence that the ordinance is trying to limit dimensions and locations, agrees with interpretation of the Code Enforcement Officer and would draw the same conclusion.

Dubois stated what he heard is that the CEO is fairly confident it would add square footage but not 100% since he has not been inside. Metivier replied that based on using the assessor's dimensional finished space of the upper floor does not match the first level floor and the difference is the increase. He is 100% sure it would add sq. footage.

Fredette stated that the applicant makes a constitutional argument. Would legal advice change their minds?

Dubois does not think it would be necessary based on CEO testimony.

Fredette would come to same conclusion as the Code Enforcement Officer.

Keiser stated that the way 19.6.c.1 is written that the second part speaks to dimensional requirement 'not to occupy a greater area' natural carry through of that language 'no such nonconforming use shall be enlarged or increased' based on the second part of land area the enlarged or increased also talks about physical dimension. The New London case is speaking of use and natural expansion of use, but based on the Somersworth ZBA rules would draw the conclusion that this a physical expansion based on the volume usable space for the second floor being used. He would debate that the garage, is a residential use and does not change the physical parameters or size of building, would think that would be the same as changing a living room to dining room.

Donohue stated that with all the case law presented did not see any evidence a municipality could not impose physical or dimensional requirements on a nonconforming use. He is prepared to make a motion.

Fredette is willing to second the motion.

Brooks stated 19.6.A.C.1 reading further sees it is a use that would be enlarged and increased. Is coming to the same conclusion as the Code Enforcement Officer

Keiser questioned if the denial of the building permit was for the dormers or also include the garage. Metivier stated it included the garage in his interpretation, not sure if his letter reiterated that correctly. The dormers alone, even if the garage was not in play, increased it in three dimensions, not just the footprint on the ground.

Keiser questioned if the garage would be approved without the dormers portion of the permit. Saunders stated she would caution the board to not pick apart the building permit. Review it as it is submitted.

**MOTION:** Donohue stated after review of the application, the file and all the information presented to the Board, I feel that the appeal should be **DENIED** as the application would be an enlargement or increase as prohibited by Zoning Ordinance and I **MOVE** that the request of Neale A. Hubbard, Trustee of the 204 Route 108 Somersworth Realty Trust for an appeal of the building inspectors decision to deny a building permit be **DENIED**. Dubois seconded the motion.

Discussion: Fredette clarified that Dubois was appointed and the language was correct. Keiser stated yes he was appointed and Saunders explained that the language was correct.

The **motion CARRIED 5-0.**

### **C) Any other new business that may come before the Board.**

Saunders noted that she passed out fliers from NHDOT for a listening session for Route 108. She encouraged attendance.

Keiser reminded the board that they will be having elections in June.

Brooks **MOVED** to **ADJOURN** the meeting. Fredette seconded the Motion. The **MOTION CARRIED 5-0** and the meeting **ADJOURNED** at 8:52 PM.

Respectfully Submitted,

Dana Crossley, Planning Secretary