

SOMERSWORTH ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
FEBRUARY 3, 2016

MEMBERS PRESENT: Paul Maskwa, Chair, Matt Keiser, Vice Chair, Roland Dumont, Donald Routhier, John Kennedy and Bill Griffith, Alternate.

MEMBERS ABSENT: None.

STAFF PRESENT: David E. Sharples, Director of Planning & Community Development and Tracy Gora, Planning Secretary.

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

1) APPROVAL OF THE MINUTES OF THE MEETING OF JANUARY 6, 2016.

Motion: Dumont moved to approve the minutes of the meeting of January 6, 2016.

Seconded by Kennedy. Motion carried with a 5-0 vote.

Maskwa welcomed the new Zoning Board Alternate member, Bill Griffith. Stated that he can take part in the discussions tonight but is not a voting member since all Board members are present tonight.

2) OLD BUSINESS

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

None.

3) NEW BUSINESS

A) MDHF, LLC is seeking a variance from Table 4.A.2.3 of the Zoning Ordinance for a Group Care Facility on property located at 472 High Street, in the Residential Commercial (RC) District, Assessor's Map 40, Lot 04 A, ZBA #12-2015.

Sharples reviewed his memo (see attached) and stated that the request is for a variance for a 32 bed group care facility. Stated that the same applicant was before the Board at their December ZBA meeting but that they are no longer pursuing the property on Grand Street and would like to be at 472 High Street. Stated that this is a corner lot and reviewed the features of the lot. Stated that the property is surrounded by mostly commercial strip development and is in the Residential Commercial (RC) District which prohibits the use. Read the purpose of the district from the Zoning Ordinance and stated that the building was recently converted to condos. Stated that this would be for Unit A. Stated that he reviewed all files and found that a variance was granted in 2004 to subdivide without adequate lot frontage. Stated that a variance and site plan were issued for an additional building but has not been built yet.

Public hearing opened 7:02 pm.

Attorney Sharon Cuddy Somers with Donahue, Tucker & Ciandella, PLLC represented the applicant and addressed the Board. Stated that the applicant, Bonfire, has reached out to the abutters to educate them on the proposal and what they do. Stated that they

want a 32 bed facility and explained the program. Passed out information from the Bonfire website (see attached) and read from it. Stated that it specifically speaks to the Dover facility but most of it will apply to the Somersworth facility. Stated that this program is not a first responder program and they only accept people after they have been through detox. Stated that it is voluntary and that residents pay for themselves. Stated that they do not administer medication and that there are no vehicles except for staff vehicle and a van. Stated that visitors are only allowed if approved by staff. Stated that there will be no using or selling and no violence in any way. Stated that they are not a methadone clinic, there are no doctors and they do not allow any sexual offenders or men convicted of a violent crime, including arson. Stated that men come here after detox and participate in the programs and counseling and hopefully transition back into society. Stated that programs involve case management and counseling but unlike Dover, this will not involve off site employment and residents will be at the property almost all the time. Stated that it will be a self-contained program with no coming and going and staff will be onsite 24 hours a day. Stated that there will be supervision when someone goes off site. Addressed the five variance criteria and stated that it will not diminish property values. Stated that it is an existing structure and there will be no changes except to add bathrooms. Stated that the all the surrounding uses are commercial except for an apartment complex in the back but it is physically segregated from the property. Stated that there will be no new commercial use here, no diminution of property values and there has been no detriment to the properties in Dover. Stated that the use will satisfy the spirit and intent of the ordinance. Stated that this is not contrary to the public interest because the district allowed for commercial development while protecting residential uses. Stated that the proposed use is residential in nature and character and they will not be altering that. Stated that the Somersworth Police Department was contacted and that they support the Bonfire program but not a specific location. Referred to the letter from the Dover Police Department and noted that the owners work with the community and there were no issues with them in Dover. Stated that at the December meeting there was an erroneous reference to numerous police calls in Dover but that is incorrect. Stated that there were only two or three calls and that they were minor and not for anything violent or an issue with the neighbors. Reviewed the hardship criteria and referred to the written materials that were submitted. Stated that the property is unique and in the commercial center. Stated that the site is well suited for the use and that there is no need for external changes. Stated that their parking needs are limited. Stated that the existing uses are protected from any impacts, which there will likely be none. Stated that this is a reasonable use and that it fits into the neighborhood. Stated that this just offers recovery from a recognized issue in New Hampshire. Stated that regarding the substantial justice criteria, the denial will prevent a recovery center to be established for where one is needed. Stated that denying the variance will deprive the community and Somersworth. Passed out surrounding property information and a packet of letters of support (see attached).

Madeline DeSantis of 36 Market Street addressed the Board and stated that she is in support of this project. Stated that she about this proposal last time and was nervous about it being on the hill and that she feels this is a better fit. Stated that she visited the Dover facility and that they do a great job. Stated that she is pleased with the proposed location on High Street and urged the Board to support this.

Mark Rideout with the First Parish Church on High Street addressed the Board and stated that he is also on the Mayor's Drug Task Force. Stated that they have talked about this need and that he supports its presence and this location. Asked that the

Board support this variance and stated that he feels it would be a great addition and asset for the need for drug recovery. Stated that this use fits in with what the community is trying to do and that with everything going on, this is the right thing to do. Stated that he is in support of this and has spoken with many other that are as well.

Dave Francoeur owner of the subject property and Somersworth resident addressed the Board and stated that he is excited to sell this building for a needed use. Stated that there is a need here and Bonfire are the people that want to help. Stated that no one is forced to come here but these people want to help and aren't going to cause trouble. Stated that the other building approved to be built on this site will be constructed this spring and will be nice. Stated that a sidewalk is going in and that everything is coming together.

Dave Witham of 10 Rouleau Drive and At-Large City Councilor addressed the Board and stated that he is also on the Planning Board and the Mayor's Drug Task Force. Stated that he has met with the members of Bonfire and that he finds them reputable and for a good cause. Stated that he does recognize that test for a variance is tougher than a special exception and that this is for a residential use in the commercial area. Stated that he supports this endeavor and that there is a need for this in the community. Stated that he feels that a reasonable condition of approval for this would be that it must go before the Planning Board for site plan review. Stated that this is an area on High Street that is dynamic with many new projects going in.

Joe Lovell of 63 Prospect addressed the Board and thanked the Board for their help at the last meeting and thanked the secretary for her help through this process. Stated that he looks like this will be a good place and a good fit and that he hopes it will be approved.

Alberto Rodriguez of 912 Tri City Road at Tara Meadows addressed the Board and stated that he enjoys Somersworth. Stated that there are a lot of families in Tara Meadows and asked if there is enough space for this facility. Stated that he feels they may need more area to be outside. Stated that some of the residents from Tara Meadows are concerned about this and that he hopes it is a good decision for the City.

Attorney Gerald Prunier with Prunier & Prolman, PA represented John J. Flatley, the owner of Tara Meadows at 1-9 Tri City Road. Stated that a lot of people that have spoken tonight don't live by the property and won't be affected. Stated that Flatley owns the residential complex behind the subject property and is against this use for this location. Stated that the use is a good use but that the variance runs with the property and my clients live there. Stated that the owner of the subject property is in support of this but doesn't live there. Stated that if this was a good fit then the City Council would have voted to have this use in this zone. Stated that his client has 270 apartments with 99 children and they are very concerned with the proposed use. Stated that this is for the commercial district, which is what the area should be, with no new residential uses. Stated that this does not meet the spirit and intent criteria because the Zoning Ordinance is clear that this area is not for new residential uses. Stated that it is out of character with the area. Stated that as far as the public interest, the public are the abutters. Stated that the danger to them will be outdone by what they could gain. Passed out a letter to the ZBA (see attached) and stated that his clients oppose this and feel the criteria are not met. Stated that it is probably a good program but that the Zoning Ordinance allows the use in other parts of the City.

Mike Hill, property owner, addressed the Board. Stated that it is zoned for residential because it was a rooming house when he bought it. Stated that he is in favor of the proposal.

Kerry Norton with Hope on Haven Hill, a non-profit group in Rochester addressed the Board and stated that he represents people in support of recovery. Stated that she is offended when people feel their children are at risk when near people in recovery. Stated that she is involved with many groups and Bonfire is the caliber on what other groups are based on. Stated that others want to be at their level. Stated that her father lived here when it was a group home and she would like to see recovery flourish here.

Kevin Walker with the John J. Flatley Company, owners of the Tara Meadows apartment complex addressed the Board. Stated that regarding the criteria for surrounding property values, this use would adversely affect our value. Stated that the location is not unique and there are plenty of other uses that could go there. Stated that this would be a loss to Tara Meadows. Stated that this is contrary to the spirit of the ordinance because there are other districts where the use is allowed and this is not one of them. Read letter from Tara Meadows resident Olga Spooner (see attached) and submitted a petition signed by Tara Meadows residents (see attached).

Amy Michaels, resident and teacher addressed the Board and stated that she takes offence to the idea that people in recovery are not safe. Stated that her concern is with people with active addictions and not those in recovery. Stated that she is not concerned for the kid's safety there.

Resident of 705 Tri City Road addressed the Board and stated that he and his wife walk this area and that won't be fit to walk anymore. Stated that he is concerned with the safety of the families that live there.

Denise Ambrose of 46 Otis Road addressed the Board and stated that she has lived here all her life. Stated that this is not a 12-step organization, does not charge insurance and families can visit. Stated that she understands how these families feel because the people on the hill feel the same way. Stated that the proposal was for the Grand Street property and there is a school and kids there. Stated that she understands that if a resident tests positive for alcohol or drugs they have 15 minutes to leave and then they are homeless. Asked why they haven't looked into going to 67 Elm Street. Stated that it is a commercial area, it is for sale; it's larger than this property, was approved for 15 residential apartments and has 79E zoning. Stated that she understands that woman's home on Malley Farm is zoned industrial and asked why they don't go there.

Resident of Tri City Road addressed the Board and stated that the program looks good but he is concerned with the families that live there, especially during the summer because the kids play area is near this building. Stated that he respects the program but would like them to find a better place for it.

Chris Wolsworth of Tri City Road addressed the Board and stated that their concerns are not discriminatory and that there is a need for this use in this community. Stated that his wife is a police officer in another community and every day they are called to playgrounds to pick up needles so he does understand the need. Asked why it needs to be in such close proximity to residential uses when there are industrial areas in the City.

Stated that he is concerned for the safety of the children. Stated that the entrance to the public areas on the property like the pool is behind the storage units. Stated that he would like the Board to take their concerns seriously.

Attorney John Bosen with Bosen & Associates, PLLC represented 470 High Street, LLC and stated that they are against this proposal and feel it is not a good area. Stated that he is sympathetic to the applicant and commends their service but that this has nothing to do with the work they do but does have to do with land use laws. Stated that the applicant has the burden to prove they meet all five criteria and that he feels they do not meet them. Stated that there are no special conditions of this property and there are already many permitted uses. Stated that they indicated that there will be 24 hour supervision but to him that is a red flag. Asked how they can be assured that they can supply that and stated that he is concerned if they actually need it. Asked what this does to the health, safety and welfare of the public. Stated that this doesn't meet the substantial justice test because the district provides for commercial uses and not new residential uses. Stated that the City has already accommodated this owner many times with various variances for other uses. Stated that they Board should deny this request because they don't meet the criteria.

Two residents of Tri City Road addressed the Board. Stated that they have concerns with this location and the safety of the residents on Tri City Road. Stated that they oppose with location.

Linda Thibodeau addressed the Board and stated that a lot of people say they are fearful for safety but that the residents of Bonfire are people who have chosen to live a sober life. Stated that the fear should be with the addicts on the street. Stated that these residents want to recover and aren't people to fear.

Resident of Tara Meadows addressed the Board and stated that he has been living in this area for over ten years. Stated that there are many families from different countries and don't have cars so they commute by walking. Stated that he doesn't think it would be safe to walk by this corner and that people need to feel safe living here.

Sandy Coyle stated that she has been in long term recovery for 11 years. Stated that when she was struggling she was able to get help in New Hampshire and follow up with sober housing and now works in the recovery and public health field. Stated that this is a crisis and that there is a lot of heroin and a lot of people that are untreated. Stated that one in five people misuse prescription medication and without access to recovery it would be left untreated. Stated that this has a social and economic impact and that this is an opportunity for change. Stated that zoning and community planning need to change with time and make the community a better place. Stated that the way they have been operating is not working and needs to change. Stated that she taught yoga at the Dover facility and that it was a pleasure to work with these men dedicated to enriching their lives in many ways. Stated that their staff is great and to see their motivation and commitment to recovery is a real gift. Stated that she would rather her kids see people helping people than push them out of the community.

Eleven residents of Tara Meadows addressed the Board. These residents explained that they are concerned with safety and the families and children in the area. Explained that many of the residents don't have cars and walk everywhere and are worried about safety.

Nancie Cameron of 350 Old Rochester Road, Unit 1 and At-Large City Councilor addressed the Board and stated that she has listened to the concerns of both sides but that the time to act is now. Stated that the residents of this facility are people who want to be there and recover. Stated that not everyone always knows their neighbors and that you can walk down any street and be attacked by someone.

Tracy Velazquez, Property Manager for Tara Meadows addressed the Board and agreed that Somersworth needs a place like Bonfire but that many residents fear the unknown and she doesn't blame them for that. Stated that she will lose 37% of her residents and that is detrimental to them. Stated that there are other locations better suited for this need.

Chaz Gagnon, a resident of Bonfire in Dover addressed the Board and stated that he has listened to the concerns about this plan. Stated that he joined the house ten months ago and didn't know how much it would help communities. Stated that this is an opportunity that needs to be taken advantage of.

Kathleen Beede addressed the Board and stated that she has two kids and a husband in recovery from alcoholism. Stated that she takes offense that people think anyone would be in danger from this.

Nathan Mack addressed the Board and stated that he was a resident at Bonfire but he is now a case manager there and certified recovery coach. Stated that when someone is released or discharged from Bonfire they have procedure for getting the resident in a shelter or detox. Stated that they are not just pushed out onto the street but sent to a shelter or treatment facility. Stated that saying people in recovery are dangerous is offensive to him. Stated that he has a child and has never harmed anyone or broken in somewhere. Stated that there is no police involvement and nothing violent happens at the house. Stated that the concern should be with people actively using.

Matthew Bitterman, current resident of Bonfire in Dover addressed the Board and stated that he is thankful for getting the help he needed. Stated that he was able to meet all these great people and work to help the community. Stated that people have trusted him with their house and asked him to watch their children. Stated that he is trusted in society. Stated that Bonfire helps him become the man his mother wanted him to be. Stated that this is a great opportunity and that it should be passed.

Zachary O'Brien, current resident of Bonfire in Dover addressed the Board and stated that he was discharged from the program but he was not left out and they helped him through everything. Stated that he takes offense when people think they are harmful because the program is about support and helping people.

Resident of 708 Tri City Road addressed the Board and stated that there is a need for Bonfire in Somersworth but that Tara Meadows is a large community in itself. Stated that although it is needed, it doesn't need to be in this area. Stated that zoning should prevent this from happening.

Pam Kelly, mother of Bonfire co-founder John Eldridge addressed the Board and stated that she is familiar with the facility in Dover. Stated that she has learned that many of the residents of the apartment complex have been misinformed that Bonfire is a

methadone clinic. Stated that this is not a methadone clinic and wants to make sure people know that.

Two residents of Tara Meadows addressed the Board. Indicated that they feel it is a needed facility but they are worried about safety for the residents at Tara Meadows.

Dave Witham stated that there are a couple of things at play here and one of them is the notion of danger and safety. Stated that the applicant's attorney spoke about this and read a letter from the Dover Police indicating that there have been almost no issues with their facility in Dover. Stated that the Planning Board recently worked with the owner of Tara Meadows regarding safety and the need for sidewalks on Tri City Road. Stated that although they will construct the sidewalk, it was difficult to get them to agree to do that. Stated that the City Council recently approved a 20 year for women's group care facility on Malley Farm and there are softball fields within 100 feet but no one brought up safety concerns for that.

Denise Ambrose stated that she has seen recovery and that she congratulates those who accomplish it. Stated that she has seen them become great people and members of society. Stated that these people are trying real hard to stop drinking and doing drugs. Stated that the use shouldn't be put in a residential area.

Dave Francoeur stated that he is a real estate agent and owns a lot of property in Somersworth including other properties right near this one. Stated that he supports this and that it won't diminish property values. Stated that value is based on square footage, amenities, lot size, etc. and that people's perception of Somersworth has a lot to do with value. Stated that if Somersworth stands up to this epidemic it will be perceived in a good light.

John Bosen stated that he has heard people tonight saying that the time to act is now and that there is a need for this in the community. Stated that he doesn't deny that but that has nothing to do with the variance. Stated that it is not a permitted use and the City Council would need to make a zoning change. Stated that the criteria have not been met and that there are many uses that are allowed here.

Somers stated that she has heard a lot of testimony about safety and safety concerns but there was nothing specific articulated. Stated that she said at the start of her presentation that efforts are taken to ensure that no resident of the facility is a sex offender, felon or arsonist. Stated that the best evidence for a lack of a safety concern is the letter from the Dover Police Department. Stated that there is a great volume of safety concerns but they don't have any substance, they are just speculation. Stated that people have said that Bonfire needs to go somewhere else but that was said at the last proposed location also. Stated that there were comments made in opposition by other attorneys but they were without merit. Stated that she did present a letter that there would be no diminution of property values. Stated that the evidence that she has provided is fact specific and concrete opinion should take precedence and weight should be given on the intimate familiarity of the area from Francoeur. Stated that there was talk of not meeting the criteria for public interest but that the use will not alter the area or safety. Stated that it was said that the use will alter the character of the area but that they do not pose a threat to that. Stated that the purpose of this district is to recognize this transitional area that allows for residential and commercial uses and that there is nothing about this proposal that will threaten residential or commercial uses. Stated that

this is a reasonable use. Stated that regarding a special condition of the property, this is a unique location and it is clear that its use was residential. Stated that it stands in contrast to the area around it. Stated that they satisfy the variance criteria and that the program is a good one.

John Eldridge, co-founder of Bonfire addressed the Board and thanked everyone for being here tonight. Stated that most people that are in opposition tonight have indicated that safety is a huge factor but that he is not sure how they feel unsafe. Stated that several Bonfire residents have come out tonight and explained what Bonfire has given them. Stated that he is a person in recovery and care for a child. Stated that they are not scary people and that there is a difference between recovery and active addiction. Stated that anyone around you could be in recovery but you wouldn't know that. Stated that this isn't a fear of the unknown but fear of a made up scenario. Stated that they can look at their history in Dover and that the Dover Police supplied a letter of support. Stated that the call history to the Dover Police has initiated from us and not for criminal activity. Stated that the Somersworth Police Chief supports us and he doesn't think he would if he thought there would be safety concerns. Stated that someone mentioned that having 24 hour supervision was a red flag but the supervision is for the residents and not because of a concern for the safety of the general public. Stated that they listened to the opposition from the people on the hill and have now found another location. Stated that this is a better fit and it shows their good faith in working with the community. Stated that there is no recovery presence in Somersworth and the only solution to addiction is recovery.

Gerald Prunier stated that Bonfire is not the issue but the property and the variance is. Stated that there is nothing to show that this property is unique or has a hardship and the spirit of the Zoning Ordinance is not met. Stated that all five criteria have to be met.

Emmitt Soldati, business owner and Somersworth resident addressed the Board and stated that he is actively involved in the community and he understands how things are changing. Stated that one of the best Somersworth moments in recent history was the beginning of the Drug Task Force to address addiction. Stated that finally the City recognized what is happening and they we can be a source of recovery and rebuilding. Stated that he is entirely in support of this proposal and that they can say that Somersworth is a leading figure in solving this problem. Stated that Somersworth is changing and they can't always know what is going on but that they can accomplish recovery in this community. Stated that Bonfire can handle this and that the City needs to give them this space. Stated that this is a moment where there is something that fits and can represent a piece of what Somersworth wants.

Kennedy stated that Mr. Hill mentioned that the property was used as a boarding house and asked if anything grandfathers this use.

Sharples replied no, not in his position.

Keiser asked if it is zoning for a boarding house.

Sharples replied yes.

Keiser confirmed that a boarding house is allowed by a group care facility is not.

Routhier stated that this building consists of two condo units and asked if they are owned separately. Asked who owns this unit.

Somers replied yes and stated MDHF, LLC owns it.

Routhier asked how it is being used now.

Francoeur stated that it is not used by ReMax but is an office with Counselors.

Routhier asked if there is a purchase and sales agreement that is contingent on this approval.

Francoeur replied yes.

Routhier stated that the other attorneys that spoke tonight raise some great concerns and bring up the five criteria. Asked the applicant if they feel there is a hardship because the purpose of the Zoning Ordinance allows for transitional housing and that group care should not be left out.

Somers stated that special conditions of the property are that it has a history of being a boarding house and has the appearance of a residential structure which makes it different from surrounding properties. Stated that the purpose is to allow commercial development while protecting existing residential uses. Stated that a group care facility won't impair the transitional character of this neighborhood.

Routhier stated that Mr. Witham mentioned sending this to the Planning Board for review.

Somers stated that they are working with the City to determine if this application would be an exception from site plan review. Stated that if site plan review is required then they will go through that process but if it is not required then they won't. Stated that there will be no site changes and no additional parking.

Routhier asked if it is within the ZBA's purview to send it to the Planning Board.

Somers stated that the question is what the regulations require.

Routhier asked about the variance being allowed only if Bonfire owns the building. Asked if the ZBA has that authority.

Somers stated that she would have to check with her client and stated that it may not be appropriate. Suggested that the condition could be tied to this type of program.

Routhier stated that there were a lot of concerns with safety raised tonight. Asked what percentage of residents would be from Strafford County.

Somers stated that she understands that most residents come from this area but she doesn't know the percentage.

Andrew West, co-founder of Bonfire addressed the Board and stated that 90% of their residents at the Dover facility are from New Hampshire and about 90% of those coming from Strafford County.

Routhier asked what will guarantee that will be the care here.

West stated that it is expected to be the same.

Routhier confirmed that resident's acceptance into the facility depends on the ability to pay to go there.

West stated that they have a scholarship program and that they have flexibility as a private business.

Routhier stated that he understands that people that don't conform are released from the program but he got the idea that the people are just left roaming on the street.

West stated that they never just discharge people onto the street. Stated that less than 10% of their residents leave but when they do Bonfire helps them get into another facility. Stated that he spoke with Somersworth Police Captain Kretschmar and he supports this and so doesn't State Senator Kelly Ayotte.

Routhier asked if there have been any incidents in the past with violence to neighbors.

West replied no.

Maskwa asked if the Dover facility will stay open.

West stated that the Dover facility will stay open. Stated that they are currently at 27 people, which is average.

Maskwa asked if they expect the same for the Somersworth facility.

West replied yes and stated that the demand is huge.

Maskwa asked if they do any outside recreation.

West stated that they expect to do day trips.

Maskwa stated that there is a supermarket by this property and asked if residents will be supervised by someone when going there.

West replied yes and stated that residents will have someone with them if they go offsite or outside for recreation time. Stated that they have staff to keep an eye on everyone and any temptation to use drugs. Stated that the staff presence is not because they are worried someone else will be harmed.

Maskwa stated that when this was proposed for the other location parking was a concern and they were assured that residents won't have cars. Asked how many staff members there will be.

West stated that there will be about five staff members and there is plenty of parking.

Kennedy stated that the drug epidemic is a big problem and asked what the guarantee will be Somersworth residents getting in there. Stated that he feels that Somersworth residents should take precedence.

West stated that he has three kids and that he brings them with him to Bonfire and has never had an issue. Stated that he is a family man and really cares about the community and that they are an abstinence based program.

Kennedy asked if they have worked with the Somersworth Drug Task Force.

West replied yes.

Routhier asked if a variance was required for their facility in Dover.

West replied no.

Public hearing closed 9:28 pm.

The Board took a five minutes recess.

Motion made by Routhier: After review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied and I move that the request of MDHF, LLC for a variance from Table 4.A.2.3 of the Zoning Ordinance for a Group Care Facility be **GRANTED WITH THE FOLLOWING CONDITIONS**: the use can continue as long as it remains a treatment facility and that 75% of the residents of the facility must be Strafford County residents.

Seconded by Kennedy.

Keiser asked if this would go to the Planning Board because there are a lot of details that haven't been worked out.

Maskwa stated that he would like to make it a condition of approval that they go to the Planning Board. Stated that there have recently been two other projects on Tri City Road and there will be more walking traffic. Stated that he feels this would be wise for a condition of approval and that he wants to fairly treat the new projects.

Keiser stated that it was alluded to earlier that they need to separate the social issue from the land use issue. Stated that if they grant this variance it runs with the land forever and that he is not sure how to keep it a recovery facility. Stated that Bonfire may have an exceptional program but it could be a new owner or different user next year. Stated that property has a valid use and that he doesn't see the hardship. Stated that he doesn't see how a variance for a group care facility meets the hardship criteria. Stated that he doesn't see how it can't be used for the other allowed uses. Stated that he doesn't think granting the variance would be the right thing to do. Stated that he doesn't disagree with the social issue but that he doesn't think the City's rules allow for it.

Routhier stated that he thinks Ms. Cameron said it well when she indicated that there is a mandate to deal with this and that they are blessed to have so many people working

on this. Stated that the Board has to do their part and stated that he doesn't know if his suggested condition for it being limited to Bonfire is proper or legally binding but they have to do their part. Stated that he wants this to service people in this community and that he saw people grimace when he mentioned that 75% of the people must be residents of Strafford County. Stated that this is a reasonable use of the property and that he feels that all five conditions have been met and that this is a good thing for Somersworth.

Maskwa asked Director Sharples is they are allowed to put those restrictions on.

Sharples stated that the ZBA has the authority to impose reasonable conditions and that it is up to them to decide what that is.

Routhier stated that he would like conditions that the use can continue as long as it remains a treatment facility for drug and opioid use and that 75% of the residents of the facility must be Strafford County residents.

Griffith stated that he would like to see the numbers on how many people are from Strafford County.

Maskwa asked if there can be an amendment to the motion that it includes a condition of approval that it goes to the Planning Board for approval.

Routhier and Kennedy approved of the amendment to the motion.

Keiser stated that they are a land use board.

Dumont stated that this is micro managing.

Sharples suggested that there could be discrimination on who gets treatment and who doesn't because of where they live.

Routhier stated that he wants to keep that suggested condition to show that it is our problem and we are addressing it.

Maskwa asked if the Planning Board could impose that condition of approval.

Sharples stated that it has nothing to do with the Site Plan Review Regulations.

Routhier stated the suggested conditions of approval as follows:

1. This variance is only valid for the use of opioid and alcohol treatment;
2. 75% of the residents of the facility must be from Strafford County, NH; and,
3. The applicant shall seek site plan approval from the Planning Board.

Sharples stated that he doesn't see how the City could enforce it and asked how they would determine residency.

Routhier stated that it may not be reasonable or enforceable but that he is taking a stand on public policy. Stated that he doesn't want this to support people in New York but to treat this City's residents.

Sharples stated that he understands but that this Board is to determine if they meet the five criteria.

Routhier stated that reasonable conditions are allowed.

Sharples agreed but stated that they should connect to the five criteria.

Motion carried with a 3-2 vote with Maskwa and Keiser opposed.

- B) Edwin & Aida Aviles are seeking a variance from Table 5.A.1 of the Zoning Ordinance for a commercial use without required frontage or lot area on property located at 500 High Street, in the Residential Commercial (RC) District, Assessor's Map 40, Lot 07, ZBA #01-2016.

Sharples reviewed his memo (see attached) and stated that the applicant is seeking relief from the minimum lot area and frontage for a retail facility. Stated that the use is allowed in this district but the lot doesn't meet the area or frontage requirements. Reviewed the features of the lot and stated that the area is surrounded by commercial uses and some residential uses. Stated that if this is approved, site plan approval will be required. Stated that he reviewed all files for the property and that he found that a variance was granted in 1997 to convert the residential structure to a professional office building but that the approval was limited so a new variance is needed.

Public hearing opened 9:52 pm.

Greg Patterson with The Patterson Companies, LLC represented the applicant and addressed the Board. Stated that he is of the understanding that the prior variance doesn't go with this proposed use. Stated that there will only be 1400 square feet of retail use for an auto parts business. Passed out a copy of the proposed building elevations and stated that there will be a buffer between the different uses.

Joseph Fortier of 62 Kelwyn addressed the Board and stated that this is for an auto parts store and asked how many the City needs. Stated that there is one right across the street and more in Dover. Stated that Kelwyn Drive is unique and you don't even really know it is there. Stated that he lives directly across the street from here and that this will devalue his property. Stated that he doesn't have a great view now but he really doesn't want to be looking at the back of an auto parts store. Stated that he is concerned with noise and that the buffer is just a fence, which will become decrepit over time. Stated that he already has to listen to the noise on High Street but now he is concerned with noisy delivery trucks. Stated that trying to come out of Kelwyn Drive is like a racetrack. Stated that this use doesn't fit with the neighborhood. Stated that the businesses that are already there are quiet and low key and that he feels the variance should be denied based on the character of the neighborhood. Stated that he has new neighbors who said they wouldn't have bought the house if they knew an auto parts store was going in. Stated that trash blows around and it is a non-stop problem. Asked the Board to deny the application.

Mike Smith of 61 Kelwyn Drive addressed the Board and stated that he is against this proposal and that the traffic alone is so hard to deal with. Stated that the traffic is awful and that there are a lot of near-miss accidents. Stated that he agrees with Fortier that a

six foot fence won't do anything for the residents. Stated that he would like to see a berm with evergreen trees.

Ashly Orellana of 60 Kelwyn Drive addressed the Board and stated that she is opposed to the proposal and that she wouldn't have bought her house if she knew this was going in.

Patterson stated that he understands the concerns and that they will put up a berm but they will put a landscape buffer in front of the fence. Stated that truck deliveries will be limited and won't even be once a day. Stated that the existing house is vacant and will be more and more unsightly. Stated that this is the solution to that. Stated that this will add minimal traffic. Stated that there are already businesses in town that generate the need for this location.

Public hearing closed 10:07 pm.

Sharples stated that this will go to the Planning Board if the variance gets approved.

Maskwa stated that most of these specific concerns regarding lighting and noise will be addressed at the Planning Board but the ZBA has to review frontage and lot area.

Keiser stated that the commercial strip is for commercial development. Stated that based on the provided aerial photo, none of the properties down from this one would meet the requirement for a commercial use. Asked if this would set precedence for others moving down the street. Stated that he is concerned because they are actually looking for two variances; one for frontage and one for area. Stated that is a concern for him.

Maskwa stated that the 1997 variance was for the structure that exists but because they are putting in a new one they need to meet the requirements.

Sharples stated that is part of it but also that the variance was limited and there was a condition that it was for an insurance office or other compatible uses. Stated that this proposed use is retail, not professional office. Stated that they would be putting up a new building.

Griffith stated that he feels this use would diminish property values in the neighborhood.

Keiser stated that this area is zoned commercial and so that use is expected. Stated that they are not changing zoning.

Dumont stated that the original variance had a condition that they didn't want anything other than an office use. Stated that this area of High Street is commercial and asked if they should deny the opportunity to continue development on High Street.

Keiser asked what kind precedence they would set for other lots that don't have enough area and frontage and want to develop.

Sharples stated that this property has to be distinguished from other properties. Stated that this could set precedence if the Board feels all the lots in this area are the same. Stated that there needs to be something unique about the property.

Griffith asked if there is any professional opinion on the changing of those property values.

Maskwa stated that if they had that it would have gone out in the packets.

Griffith stated that the application indicates that it won't change property values but they don't offer any evidence.

Dumont stated that he feels it would diminish property values and that the home owners would be less likely to sell their property.

Maskwa stated that he feels this lot is unusual because it abuts High Street but also Kelwyn Drive. Stated that this is the biggest lot in this area.

Kennedy mentioned the existing Title Loan business that is right there.

Maskwa stated that they got a variance a few years ago.

Motion: Keiser stated that he doesn't feel that this property is different from others and that he doesn't see a hardship and moved that the request of Edwin & Aida Aviles for a variance from Table 5.A.1 of the Zoning Ordinance for a commercial use without required frontage or lot area be **DENIED**.

Seconded by Routhier. Motion carried with a 5-0 vote.

- C) Michael Davis is seeking a variance from Table 5.A.1 of the Zoning Ordinance for a building within side setbacks on property located at 433 Route 108, in the Commercial Industrial (CI) District, Assessor's Map 56, Lot 3B, ZBA #02-2016.

Sharples reviewed his memo (see attached) and stated that the request is for a variance to build an addition in side setbacks. Reviewed the features of the lot and stated that they are seeking an addition to the existing smaller structure. Stated that the property is in the Commercial Industrial (CI) District and is surrounded by commercial strip development and a golf course. Stated that the proposed location of the addition is dictated by the existing building and will be about five feet from the property line. Stated that if the variance gets approved the proposal will need site plan approval. Stated that the access from Hideaway Place will be removed, which was not a required access anyway. Stated that he reviewed all property files and although there are several site plan approvals, there was nothing relevant to this request.

Public hearing opened 10:24 pm.

Geoff Aleva with Civil Consultants represented the applicant and addressed the Board. Showed the plans and stated that this proposal is for an addition at the rear of the property. Stated that the need for the addition is to support expanded printing operations with the storage of raw materials and finished product. Showed the property line on the plans and stated that there is a wetland so it cannot be developed in the future. Stated that they will have to look at drainage and that the proposal will have to go to the Planning Board. Stated that the development won't impact surrounding

properties and won't even be seen from Route 108. Asked that the Board help support this local business that is thriving in the City.

Keiser asked if this is the only place the addition can go.

Aleva stated that there are printing operations in both buildings but this building has a higher production rate. Stated that they need the addition here for store the materials and for tractor trailer access. Stated that they use heavy rolls of paper so they cannot use a second floor. Stated that this will allow for additional work flow.

Keiser asked why the addition needs to be this size.

Aleva stated that his client wanted more area but this is what the decided on because of truck traffic and the loading bay. Stated that they couldn't squeeze in what they need without a variance.

Keiser asked if there was any thought put into purchasing land from Somersworth, which is the abutter on that side.

Aleva stated that it was discussed but there would be many things in the way and they wanted to try the variance route.

Routhier stated that he is confused about discontinuing the access on Hideaway Place.

Aleva showed on the plans and stated that they would just be discontinuing a driveway at the back of the property that connects to Hideaway Place. Stated that trucks would exit the property onto Route 108 and not from Hideaway Place.

Public hearing closed 10:32 pm.

Keiser stated that he is concerned that they are cutting the setback in so far. Stated that he understands that the neighbors can't use that area of their property but it is cutting it close and 30 feet is required.

Motion made by Routhier: After review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied and I move that the request of Michael Davis for a variance from Table 5.A.1 of the Zoning Ordinance for a building within side setbacks be **GRANTED**.

Seconded by Kennedy.

Routhier stated that he feels that Keiser raises a good concern with their only being five feet but considering where it is, the wetlands and that it can never be developed, he feels it meets all the criteria.

Motion carried with a 4-1 vote with Keiser opposed.

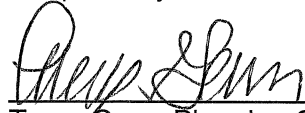
D) Any other new business that may come before the Board.

Motion: Keiser moved to adjourn the meeting.

Seconded by Kennedy. Motion carried with a 5-0 vote.

Meeting adjourned at 10:35 pm.

Respectfully submitted:

A handwritten signature in cursive script, appearing to read "Tracy Gora", is written over a horizontal line.

Tracy Gora, Planning Secretary
Somersworth Zoning Board of Adjustment