

**SOMERSWORTH ZONING BOARD OF ADJUSTMENTS**  
**MINUTES OF MEETING**  
**June 5, 2019**

**MEMBERS PRESENT:** Matt Keiser Chair, Richard Brooks,  
Brad Fredette, Glenn Garvin, Donald Routhier  
**MEMBERS ABESENT:** Coty Donohue, Christien DuBois  
**STAFF PRESENT:** Shanna B. Saunders, Director of Planning and  
Community Development, Dana Crossley Planning Secretary

The meeting was called to order at 7:0PM.

Keiser appointed Garvin to the board for excused member Donohue.

**1) Approval of the minutes of the meeting of May 1, 2019.**

Brooks **MOVED** to accept the minutes. Fredette seconded the motion. The **MOTION CARRIED** 4-0-1 (Routhier abstained).

**2) OLD BUSINESS**

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

No Discussion

**3) NEW BUSINESS**

**A)** Somersworth Housing Authority is seeking a variance from Table 5.A.1 of the Zoning Ordinance to place a dumpster and concrete pad with fencing in the rear setbacks on a property located at 28 Franklin Street, in the Residential Multi-Family (R3) District, Assessor's Map 09 Lot 102, ZBA#09-2019 – **PUBLIC HEARING**

Public hearing opened at 7:01pm.

Saunders stated the applicant is proposing a 12' x 20' 8 yard dumpster with pad in the rear setbacks. The dumpster and pad encroaches in the 30 ft. rear setback. The dumpster will be screened on all sides.

**Applicant, Deborah Evans of Somersworth Housing Authority** explained to the board how their application meets the 5 criteria. She stated there is a trash chute inside the building that goes from the top floor to a room on the bottom floor. Historically they have used the trash chute for the 49 units. She stated that recently they have deemed this to be unsanitary. Evans stated the request is to install the dumpster. She stated it would be dumped twice a week. Evans noted that the property does not have a lot of room in the back of it. She stated they are also currently out to bid on paving.

Keiser asked for public comments. No public comments.

**Board questions:** Routhier asked for clarification on where the dumpster will be placed and if there is a dumpster currently on the property. Evans stated there is a temporary dumpster in the back parking lot. She explained the proposed location of the dumpster. For access Shipyard (dumpster company) would come in from Franklin St. and back into the dumpster.

Routhier questioned the height of the fencing. Evans stated there is an 8 ft. stockade fence that follows the property boundaries. She added, if approved they would enclose around the dumpster with 6 ft. chain link fence with privacy slats.

Routhier questioned the size of the dumpster. Evans stated it would be an 8 yard dumpster. She also noted that they were asking for a larger pad size to allow the garbage trucks to back onto it. This would help to save the new pavement.

Routhier questioned how trash is dealt with currently. Evans stated the trash is going into the temporary dumpster. Routhier questioned how long the temporary dumpster had been there and what was the process prior to the temporary dumpster. Evans stated the temporary dumpster had been there for about 2 weeks. She explained that prior to that they used the trash chute. Evans explained employees would remove the trash manually daily and put into a 4 yard roll out dumpster that was dumped twice a week.

Fredette questioned why they chose the location. Evans stated it was chosen for proximity to laundry and kitchen room doors. She stated after consultation with Shipyard this was the best spot for service. Fredette commented that the trash chute room is gross.

Brooks asked if it is one way around the building. Evans stated it is two way traffic. She added that this location of dumpster would not impede snow removal.

Routhier asked if there is a location where they could put the dumpster to meet set back. Evans did not believe so because they are very limited to space.

Garvin questioned if the abutters were notified. Saunders stated yes, explained the GIS abutters list. Garvin questioned if the abutter that is 10 ft. from the dumpster location was notified. Saunders stated yes they were and the owner lives in Berwick. Garvin expressed concern for the public and having the dumpster being so close to other properties.

Keiser stated one of the criteria is that it is a reasonable one. He stated the zoning ordinance allows structures that are 120sq. ft. or less do not need to meet setbacks and would not need a variance. He questioned what the applicants intent was for the enclosure. Evans stated they intend to enclose all around the pad. She stated this would provide enough room for the truck to pull up on the pad and to make sure it is not unsightly. Evans stated the goal is to make sure there is no trash (like larger items) left outside of the enclosure.

Fredette questioned if they could pour the pad and then only enclose the dumpster and if that would still require a variance. Saunders stated she thinks they would for the pad and would need to look for precedent.

Routhier stated he was confused by the conversation, his understanding now if they did a pad that was within 120sq. ft. they would not need a variance but because it is larger are required to get a variance. Keiser read pg. 117 note 2 of the Zoning Ordinance. Routhier questioned why they wanted something different than what is allowed by the Zoning Ordinance. Evans stated the reason they put it in their plans was to be able to have the truck on the pad. She added that she spoke with the Code Enforcement Officer and was told they needed a variance since they did not meet the setback.

Routhier questioned what special circumstances exist at this property that requires a larger pad. Evans stated none really, she said if she had known a 10'x12' was allowed would have just done that.

Saunders stated that the idea of having an enclosed area for furniture drops is one that the department favorable to. She explained the code officer struggles with furniture being left piled next to dumpsters and on sidewalks. Saunders stated the fact that the applicant came in with a proposal to allow extra space to have that screened in area for an apartment building of 49 unit was appealing to the department. She added that having the smaller enclosure increases the risk of not meeting property maintenance code if large items are being dumped outside of the dumpster.

Routhier stated the applicant has the burden of proof. He felt there has been no testimony of it being an issue or evidence that meets the five criteria.

Brooks questioned the procedure for dealing with bulky trash. Evans stated curb side is not offered by the City for this property, they are responsible for removing the trash. She continued the Housing Authority practices a similar procedure to the City with purchasing a sticker from their office.

Keiser closed the public hearing.

**Board Discussion:**

Criteria 1: Fredette stated this creates a location to put large pieces of garbage, concrete over asphalt will keep the property looking better long term and does not think it would diminish property values.

Garvin questioned if there was an issue of location of dumpster in the setbacks. Keiser stated the primary issue is putting the dumpster in the allowable setbacks. He continued that the ordinance would allow a structure within the setbacks if it meets the size restrictions.

Saunders clarified that a concrete pad is considered a structure, more so than asphalt due to the footings required; it is viewed like a foundation. She continued the pad is part of the enclosure, along with the fence and dumpster.

Routhier stated there has not been evidence that it will not diminish property values. He stated the larger the dump area and closer it is to buildings the more likely it will harm property values.

Fredette stated they can legally put the dumpster in one way or another. He stated his thought the biggest potential decrease to property values would be the dumpster and anything left outside of it.

Brooks agrees with Routhier on this matter, tough to say it would not but cannot be sure on that either.

Criteria 2: Brooks stated it is contrary because it does encroach closely to the other neighbors, especially being a dumpster which can be unsightly.

Criteria 3: Routhier stated it is a bit different, but no evidence presented that what is allowed by the zoning ordinance would not fit their needs. He does not see the hardship.  
Brooks agreed with Routhier.

Criteria 4: Keiser stated the benefit to the applicant is that there is an area to store larger items and not destroy paving. He stated he does not see negative effect to the public with larger enclosure and felt the criteria was met. Fredette agreed.

Criteria 5: Routhier stated given the size of the dumpster allowed by the Ordinance it does not meet spirit of the ordinance. He also felt it does not do substantial benefit to grant something larger than permitted.

Routhier, after review of the application, the file and all the information presented to the Board, I MOTION the application of Somersworth Housing Authority for a Variance from Table 5.A.1 of the Zoning Ordinance DENIED based on the board discussion regarding the 5 criteria.

Brooks seconded the motion.

Vote 4-1 motion is carried and the application has been denied.

- B) Rollins, Eric is seeking a variance from Section 18.B of the Zoning Ordinance to construct a 6' fence in the front yard on a property located at 3 Morrison Street, in the Residential Single Family (R1) District, Assessor's Map 21 Lot 106, ZBA# 8-2019 -**PUBLIC HEARING**

Keiser opened the public hearing at 7:31pm

Saunders stated the applicant is proposing to construct a 6' fence in the front yard area of the property where a 4' fence is allowed. She explained to the board that this lot is a through and corner lot, meaning it has frontage on 3 streets. She read from the ordinance the definition of front lot line.

Garvin asked if it was or could be three lots. Saunders stated in the R1 district, assuming the lots have water and sewer, each lot must be 15,000sq. ft. and this property is 0.5 of an acre. She stated it would be possible to be two lots by the ordinance.

Routhier questioned why the board is not considering Section 19.18.C regarding corner lots. Saunders stated that this does apply here and recommended the board speak with the applicant to find out if he is willing to pull the fence back 20 ft. as per the regulations. She stated Public Works could be asked to weigh in as well as has been done in the past.

**Eric Rollins of 3 Morrison St. Applicant** stated that his case is to build a 6 ft. in what is essentially the front yard but is the back of his house. He stated they own a German Shepard and want to provide a place for her to run around. He stated he has heard the claims of the corner lot and requiring a 20 ft. setback. He asked if it would be just at the corner that would need to be 20 ft. in or everywhere on the lot. Rollins stated that as far as substantial justice, his lot is a corner lot and a through lot which is from his understanding a unique situation in the City. He felt the ordinance may not have considered lots like this when it was written. He stated for the value of surrounding properties having a cedar fence surrounding the area would look better than a chain link fence. He stated it would also contain an energetic dog, which may be of some benefit there.

Public Comment:

**Ron LeHoullier 43 Davis St. Abutter:** stated this case came before the Zoning Board around 25 years ago. He explained it was for the request to combine the lots in order to build in the back on Emmons Street. For the possibility of building more there it may require further research.

**Josh Sorrell, 1 Morrison Abutter:** stated the applicant's back yard is in his back yard with a fence between the two properties. He stated when the previous owners lived there; he made an attempt to purchase part of the back property. He stated his research into the property showed the back portion of the applicant's lot could not be a new house lot.

Board Questions:

Routhier questioned the placement of the 6 foot fence. Rollins explained the fence would start at the outcrop on the right side of the building, run to fence on Lot 21-105 that would be about 3 ft. away from that fence. He stated it would then run parallel to the existing fence to Emmons St. he stated depending on the agreed upon setbacks the fence would run parallel to Emmons St. and around the corner. The fence would then go to the corner of lot 21-07 and then close off behind their garage.

Routhier questioned if the fence on Morrison would not be 6 foot. Rollins stated all of the fence is behind the house. Routhier stated that the abutters had not commented their approval or disapproval. Rollins stated he had previously spoken with Sorrell about sharing the fence that is behind his lot.

**LeHoullier** stated he did not have a problem with the fence, only concern would be if it creates a traffic problem on Davis St.

Keiser reviewed the proposed location of the fence with the applicant. Rollins stated his intention was to build the new fence in the same location of the chain link fence. Keiser clarified that the variance is for the front portions along Davis and Emmons St. which is shown to be approximately 8.5ft. from the pavement. Rollins stated that was correct except for around the corner it gets as close as 6.5ft.

Fredette questioned if there is a reason the applicant could not meet the 20' corner setbacks. Rollins stated he had not previously considered his lot to be a corner lot and would like clarification on the 20 ft. setback.

Saunders stated that it would be from the corner of Emmons and Davis 20 linear feet from Davis and 20 linear feet from Emmons would have to be free and clear to allow for site distance. Rollins questioned if it would be permissible to have the fence start 20 ft. back from Davis and 20 ft. back from Emmons and meet at an angle. Saunders stated that would be permissible as long as it was 20 ft. back from the intersection. Rollins stated that was acceptable.

Routhier questioned the type of fence. Rollins stated stained cedar fence. Routhier stated that fence has to be in theme with the architecture.

Keiser questioned why the 4' fence was not adequate. Rollins stated that his dog can currently put its feet on the 4' fence and easily jump over. Keiser stated the property is approximately 179 ft. from street to street (Morrison to Emmons). He felt that a 20 ft. setback would cut it down some amount but not considerable. Keiser stated the other thing to look at is the property and how that will look to the abutters.

Saunders clarified the applicant will be able to run the fence down the 179 ft. along Emmons up until 20 ft. from the intersection and cut across at an angle, 20 ft. from the intersection needs to be free and clear but could be close to the frontage. Keiser stated he interprets the Zoning Ordinance that it is required to be 20ft. back from the street. Saunders stated the street line intersection is where two streets intersect. The board discussed the interpretation of street line intersections.

Garvin clarified that the variance is being asked for essentially to allow a higher than 4ft fence in what is being considered a front yard. Saunders stated that is correct.

Rollins stated if the through lot section was separate from the corner lot section, that section would not be restricted by the 20 ft.

Fredette clarified that the applicant's property was all one lot. Rollins stated that is correct.

Keiser closed the public hearing.

**Board Discussion:** Garvin stated he understands the board has to go by the five criteria. He stated the reason for the ordinance restriction is because they do not want the neighborhood to have 6 ft. high fences in the front yard. He stated that would not be good for the neighborhood or public.

Fredette stated he agrees with Garvin, feels it is not good for the neighborhood since it would not create an inviting neighborhood.

Keiser stated since it is a through lot it is a unique lot. He stated he would not want a 6' fence right on the property line. Keiser stated he has considered the setback for buildings and does think it would be unreasonable to allow the fence with a 25 ft. setback.

Fredette stated he is concerned with the style of the fence and felt a different style would be more inviting.

Routhier stated the design of the fence is under the purview of the DDS office. Saunders stated that was correct. Routhier stated having a corner lot is not unique, but this property is unique since it is a corner on three streets. He noted that there is a house on Davis Street that has an 8 ft. fence around the rear property if this applicant was in normal situations he would not be before this board today.

Routhier referenced a previously approved variance for an 8ft. fence on Indigo Hill Rd. and his mind frame is that if granted for one should be granted again.

Fredette stated he would like to hear the legal rational to Routhier's comment. He questioned what the legal stand point is in that situation.

Routhier replied it affects how he reviews applications.

Keiser stated each application needs to meet the five criteria on their own merit. He stated this lot is unique because it is a through and corner lot. Keiser posed the question if there was a way to grant some relief and not impose on surrounding property values.

Brooks stated he sees a lot of similarities of this case and the case that was reviewed on Indigo Hill Rd. He stated this one is more unique since it is a corner and through lot.

Keiser stated the actual ordinance makes the hardship since it does not recognize the through lots. He stated he is not in favor of putting the fence 8.5' from the road because it will affect the streetscape and does not support the spirit of the ordinance. He proposed a 25 ft. setback for the fence.

Brooks stated he agrees with Keiser's thought.

Routhier stated it is a hazard and do not want to block people's views for traffic in the corner. He stated there are different options for the fence plan. He agrees with the 25 ft. setback. Routhier expressed concern of the material being used for the fence.

Garvin stated the hardship is one of the criteria and if approved are saying that his hardship is that his dog can jump higher than 4ft. He questioned if that was all that was being found for a hardship.

Keiser replied no, the hardship is that the zoning ordinance creates a hardship because it does not recognize the condition of a through lot. The ordinance does not allow for a backyard in this properties situation.

Garvin stated that it allows him to have a 4ft. fence.

Fredette stated the ordinance prohibits him from a 6' fence not a fence in total.

Garvin added that Morrison Street is dense and Emmons is less dense. He would be ok with the fence halfway down the lot. He questioned what would happen if the other lot is developed and expressed concern of another house being developed there.

Keiser stated this property is one lot and to be more than on it would have to be subdivided and if that was done would nullify this variance.

Garvin stated he felt his point of concern still stands.

Routhier stated after review of the application, the file and all the information presented to the board I feel that all five criteria have been satisfied by the discussion ensued here today and I **MOTION** that the request of Eric Rollins for a variance from Section 18.B of the Zoning Ordinance to build a 6ft fence in the front yard area be **GRANTED WITH THE FOLLOWING CONDITION:**

1. The fence shall be no closer than 25ft from any street frontage.

Fredette **SECONDS** the motion.

Board Discussion: Garvin asked for clarification of the motion. Keiser explained that it is the goal to keep streetscape along the frontage in line with the homes on the street.

**Board Vote: 4-1** motion carries and the application is granted with one condition of approval.

- C) Motion for Rehearing: Zrimsek, David is seeking a rehearing of the application denied on May 1, 2019 for 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

Keiser stated there is no public hearing for this item.

Saunders explained to the board that this is a two-step process. The first step is for the applicant to request a rehearing per RSA 677:2. Per case law the rehearing shall be to correct any errors the ZBA may have made in the first hearing, if correction necessary and to consider new evidence provided by the applicant. If the board grants a rehearing, they would schedule the hearing within 30 days with proper notification to abutters and public notice.

Saunders stated the applicant is requesting a rehearing of the application to construct an addition in the setbacks. The applicant has proposed new information to scale two of the three additions to fit within the current setbacks. She stated the applicant has provided a new map that is included in the board's packet.

**Board discussion:** Brooks questioned if alteration of a plan make new evidence. Saunders stated she would consider this new evidence since in the original application the addition and distance to setbacks was not clear or given.

Fredette stated he sees new information, but does not see any new information that changes his position of the application. He felt the applicant has just modified a plan that the board has already said he could not do. Saunders clarified the plan does show the distance from well and leach field. Fredette stated the encroachment is on the side that does not have a leach field or well.

Brooks stated the well and leach field did come up in discussion but it may be more clear measurements.

Keiser stated previously when the applicant came before the board the proposal was cloudy and asking for a variance from three different setbacks. He continued the board voted on all three of those and now he has withdrawn two of those. Keiser expressed that a board member may have voted the application down due to one specific setback encroachment but be fine with an alternate one. He noted that the wheel chair access information is new information as well.

Fredette stated his understanding was that the hardship is that the property has City water at the street but is on a well. He would want to know how many other properties in the City have a well and are not tied into city water.

Brooks stated he remembered discussion to the size of the lot and felt there was a lack of hardship there.

Fredette questioned if the applicant could come back with a new application. Saunders stated the threshold for that is it has to have 'substantial change'. She stated the proposal has changed but not sure she would classify it as 'substantial'. Saunders also added that if the board has questions, granting a rehearing allows the applicant to provide answers to those questions.

Fredette stated he does not see the bar of new information has been met.

Routhier stated he was not there for the meeting but he has reviewed the application, the video of the meeting and the request for rehearing. He concurs with the chairman that there is new information and thinks they should allow another public hearing.

Garvin stated they have been previously instructed to view applications as a whole and told not to break it apart. He would like to try to not send a message that applicants can try again if they take something out.

Fredette stated after review of the request and all the information presented to the Board, I feel that there is not new substantial information and I **MOTION** that the request of David Zrimsek, for rehearing of ZBA#07-2019 be **DENIED**. Brooks **SECONDS** the motion.

**Discussion:** Keiser stated he feels there is new information and the applicant should be granted a rehearing. He thinks someone could have said no based on the encroachment in the back and been fine with the side encroachment.

Garvin voted no to the rejection but is having trouble now.

Vote: **3-2 MOTION CARRIES.** Rehearing denied.

**Saunders requested a five minute recess.**

**Board granted a five minute recess.**

**Meeting called back to order.**

- D) Motion for Rehearing: Neale A. Hubbard, Trustee of the 204 Route 108 Somersworth Realty Trust is seeking a rehearing of the application denied on May 1, 2019 for 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

Garvin recused himself from this item and stepped down from the board.

Keiser stated this is a not a public hearing item.

Saunders reiterated the rehearing process. She stated the applicant is requesting a rehearing of the application to appeal the Building Inspector's decision to deny the building permit to construct dormers and drive under garage. Applicant has proposed the Zoning Board's denial was unlawful or unreasonable and based upon a misunderstanding or misapplication of fact and law.

Saunders stated she reached out to the applicants Attorney to inform them that it would be a short board tonight. She checked her email and voicemail during the recess and has not heard from them.

Fredette questioned the time of when reached out to the applicant. Saunders stated between 4:30-5pm today.

Keiser questioned if it was the wish of the board to continue. No board members objected to continuing.

**Board Discussion:** Fredette stated that one of the arguments made by the applicant is that he was not given access to Metivier's memo further outlining the denial. He questioned if the information provided in the board's packet is available to the applicant. Saunders replied it is all public record. She stated that when the document was issued it was also forwarded to the applicant. The applicant had access to the memo prior to the hearing but not prior to filing and that is the argument he is making.

Keiser notes from the applicants submission that date that the applicant received the memo 4/23/19.

Brooks stated that the applicant makes the argument that Metivier spoke after the public hearing and had no chance to rebut. He questioned if that was the proper procedure. Saunders stated that as she is advisory staff and sits with the board the building inspector is also advisory staff and that is why he sat with the board as well. He was there to simply answer any question the Board may have.

Keiser stated they did question the Code Officer, but feels it is no different than the board questioning the Planning Director during board deliberations. He stated at the point of questioning Metivier the board was seeking information that had already been asked of the applicant and not received. The Code Officer was able to provide the information based on the Tax Records. Keiser noted that the applicant did not dispute the statements made by Metivier in his request for rehearing. He would expect that if Metivier spoke of misinformation in regards to the property that the applicant would address that in his rehearing request. Keiser stated the applicant is correct that he did not have the opportunity to rebut Metivier's comments, but when the board deliberates no applicant has the chance to dispute those comments.

Fredette stated the applicant makes the argument that Metivier did not visit the property but neither did the applicants representative. He stated he reviewed the New London case that is heavily cited in the rehearing request. Fredette explained the decision was based on the raising of the ridge and viewed it as raising height. He noted the

RSA (674.16) referenced in the appeal addresses ‘...height, number of stories, height of building...’ and height is considered as an expansion. He does question the validity of the RSA, but if there is a problem with the RSA would be a question for the court.

Keiser stated a key factor here is in 19.6.C.1.a. He does not think there was discussion or belief that this proposal expanded the area and was agreed to by all parties. He stated what comes into discussion is that there is several ways to interpret the requirements, if the enlargement or increase is a physical size (such as putting a second floor on) increasing the same use (adding a bathroom or bedroom) or adding another use (natural expansion vhs to dvd store). Keiser noted that the applicant is making the argument that there can be no increase such as bedroom or bathroom. But the board viewed it to be enlargement as physical enlargement of the structure (more footage or structure).

Keiser stated he reviewed several legal cases in regards to the matter. He stated the board did not use the New London criteria because it was not a change of type of use. That case clearly states that if the applicant had decided to enlarge the motel then it would require a variance. The applicant makes the constitutional right argument and he found the court documents to make several references to this. He elaborated that when it is nonconforming the constitutional right is to be able to continue to use your property as it was when the zoning ordinance changed. He added that the courts also address that ZBA rules by nature restrict what a person can do and does not deny applicants their constitutional right when a board denies them from doing something. He thinks the constitutional argument is invalid and did not err in his rights.

Keiser continued that when reviewing RSA 674 paragraph 3 the idea is to reduce nonconforming uses and strive for compliance with the zoning ordinance. He reviewed the case Devaney vs. Town of Windham, court stated ‘increased volume shall be considered expansion of a nonconformity use and would require a variance’. In Hurley vs. Town of Hollis and Grey Rocks Land Trust vs Town of Hebron ‘never permitted the expansion of a nonconformance that involved more than internal expansion of a pre-existing structure.’

Keiser stated that after review of what was presented and documents reviewed he found nothing that indicates the board erred in the decision. His one question is did the board err in the process. He pointed out the first page of the applicant’s request it is never stated that new information is provided.

Fredette questioned if this could be tabled and ask for legal counsel. Saunders stated yes if that is the wish of the board.

Routhier stated he viewed the meeting video, reviewed the application and this motion for rehearing. He thinks they are stating there are two basic issues. One that error was made in Metivier’s actions, that being the memo and the testimony given after public hearing being closed. Second if the board reached the proper decision in regards to the nonconforming use. Routhier stated in regards to Metivier, there was a March 7 decision that was appealed and though he did not have the memo when filing he had it prior to his public hearing. The memo states additional reasons to why the building permit was denied, one of which is that the proposal increases the volume. This subject was elaborated on by Metivier after the public hearing was closed. The applicant does not challenge the information that Metivier stated in his rehearing request, is not challenging the accuracy. He stated the bottom line was that he knew the reason the building permit was denied was there was an increase in volume of the building which is contrary to the ordinance.

Routhier stated the second nonconformity is a confusing area of law and no consistency from cases that come through the courts. He believes the applicant is saying the standard employed in the New London case is the accurate standard. The argument is that the board used the incorrect standard. He noted that the New London standard (that should be used) says that, land owners with nonconforming use can make some changes to the property as long as it does not make certain changes. He argues that after review of the tape that standard was looked at. Routhier stated that if look you at all the cases that come through the court in regards to nonconforming use of land, they have never granted a case for an increased volume of the non-conforming building even without difference of footprint or building. He stated the he believes the board made the correct decision and should not waste the City Attorney’s time or citizen’s money. He felt the request should be denied.

Brooks stated he is sure he cited the correct ordinance and does not feel they made the wrong choice.

Fredette stated the applicant could have asked for more clarification from the Code Enforcement Officer and does not see evidence they have done that.

Brooks stated after review of the request and all the information presented to the Board, I feel there is not new substantial information nor did the board err in the decision making process and I MOTION that the request of Neale A. Hubbard, Trustee of 204 Route 108 Somersworth Realty Trust for rehearing of ZBA #06-2019 be DENIED.

Fredette SECONDS the motion.

4-0 motion carried.

Garvin stepped back to the board.

- E) Election of Chairman and Vice-Chairman: Fredette nominates Keiser for chairman. Routhier seconds the nomination. Board Vote: 5-0 in favor, nomination carries.

Routhier nominates Brooks for vice chair. Fredette seconds the nomination. Board Vote: 4-1 in favor, the nomination carries.

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

Saunders stated that the City Council's Economic Development Committees has presented the Form Based Code project. She explained the basis of Form Based Code versus the current Zoning. Informed the board that there is a Visual Preference Survey available on the website and in front of the Development Services Offices and encouraged the board members to take the survey.

The board discussed the different aspects of Form Based Code.

Keiser stated the next meeting is July 2<sup>nd</sup> and questioned if this created a conflict to any of the members. Saunders noted that meeting is also on a Tuesday. No conflicts stated.

Fredette **MOVED** to **ADJOURN** the meeting. Brooks seconded the Motion. The **MOTION CARRIED** 5-0 and the meeting **ADJOURNED** at 9:01 PM.

Respectfully Submitted,

Dana Crossley, Planning Secretary