

**SOMERSWORTH ZONING BOARD OF ADJUSTMENTS**  
**MINUTES OF MEETING**  
**September 4, 2019**

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

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

**1) Approval of the minutes of the meeting of August 7, 2019.**

Brooks **MOVED** to accept the minutes.  
Fredette seconded the motion.  
The **MOTION CARRIED** by a 5-0 vote.

**2) OLD BUSINESS**

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

No Discussion

**3) NEW BUSINESS**

**A) William McCarthy, is seeking a variance from Table 5.A.1 of the Zoning Ordinance to construct an addition within the front and side setbacks on a property located at 9 William Street, in the Residential Single Family (R1) District, Assessor's Map 21 Lot 78, ZBA#15-2019 PUBLIC HEARING**

Keiser opened the public hearing at 7:01.

Saunders stated the applicant is requesting to construct a 9' x 14' addition to the front of the garage. She stated it will encroach into the front and sides setbacks. She noted there is a plan in the board's packet that shows the encroachment.

Keiser stated that the plan shows that the existing house in the setbacks. He clarified that would make it a pre-existing nonconforming structure. Saunders stated that is correct.

Brooks asked if it would be further into the setbacks than the house currently is. Saunders stated she did not believe so, but if so, it would be marginally. She stated the construction plan shows that the addition will be in line with the existing home.

Brooks asked if that would make the structure more non-confirming. Saunders stated it would because it is additional structure within the setbacks.

Keiser stated that from the drawing it appears the addition would be slightly more into the setback because the house is not perfectly parallel to the property line.

Applicant Testimony: **William McCarthy**, 9 William Street, stated the addition will be built flush to the front of the house. He stated he is asking to build a 9' garage addition. He stated he will also be building out the breezeway to make an attic access.

McCarthy stated he has spent a lot of money internally on the home. He stated this addition would fix existing problems and allow him to gain access to the attic. He stated he is on a fixed income and is retired. He stated if he had received his housing assessment letter would not have submitted this request.

**Keiser asked for public comments.**

No public comments.

Board Questions:

Fredette asked what makes this house different that constructing a hatch with a ladder for attic access would not be adequate. McCarthy stated that the roof trusses are two foot on center and not connected to the inside wall and are only anchored to the outside wall. He stated they are floating and he wants to remedy that. He stated weight cannot necessarily be put on the trusses since they are floating. McCarthy stated the house is very small and simple, he explained the center line of the house is not attached to any part of the roof in trusses. He stated he has been reluctant to store things in the attic since he moved in. McCarthy explained that when he purchased the home he had experienced flooding and mold along with other structural damage issues. He stated he cannot use the attic because of the floating trusses.

Fredette asked what the applicant's end goal with the attic was. McCarthy stated it was for general storage.

Fredette asked if the roof supports snow loads. McCarthy stated yes, it is a 6' x 12' roof, it is shallow. Fredette asked how tall the roof is at the middle. McCarthy stated inside the attic it is between 5' – 6'.

Fredette asked what makes this property unique that it should be allowed to encroach farther into the setbacks. McCarthy asked for clarification if it was a uniqueness of the property or his circumstance. Fredette stated the property.

McCarthy stated he is only expert with his circumstance and could not validly compare his property to others. He stated in his experience his home would not have passed a building inspection when it was built. He stated there is a hardship in that this house is a lemon. McCarthy explained he had to replace exterior walls due to mold damage. He stated the house was an issue because of how it was built. He stated there was hardship that is unique to his circumstance.

Keiser asked if there would be stairs or pull down stairs to access the attic. McCarthy stated he will be constructing a small cupola that a person could fit in, in the breeze way area that will give him access to the small crawl-in door. He explained he had made a ladder already that he will use to access the attic.

Keiser asked why the applicant wanted to put the hatch in the breezeway rather than a different location in the house. McCarthy stated because he does not want to get into an attic that will not support him.

Keiser clarified the applicant wants to put access outside of the trusses to allow him to store items on the trusses. McCarthy stated no, it is to allow him to incrementally build up the attic to support his weight. He stated to open the interior of the house to do the work is almost not worth it. He explained he has spent an enormous amount of time and investment in the house and to make the interior a semi construction site as long it would take him to do it doesn't make sense.

Keiser stated in the application that the plan shows he would like to extend the garage. He asked if that would make the old and new area a garage. McCarthy stated it would be all garage on one contiguous slab. McCarthy stated he had to rebuild the garage after he first purchased it by sistering joist rafters and studs. McCarthy

stated the garage addition would make the breezeway addition more visibly amendable. He stated it would allow more area for him to park his car inside the garage all the time.

Keiser asked if the front of the garage would be in line with the existing home. McCarthy stated yes they will be flush.

Routhier asked how much higher the roof line of the garage and breeze way would be. McCarthy stated the garage would have the same roof line, but the breezeway would be the same as the house which is higher than the garage. McCarthy stated the roof line will stagger, it will be a 5-6' ridgeline for the breezeway.

Routhier stated William Street is a residential area with similar homes. He asked if there were houses in the neighborhood that had similar additions.

McCarthy stated yes, every other house has had additions or work done. He stated it was not exactly like his though.

Keiser asked what the distance from his house to the property line. McCarthy stated 21.7' feet from the property line.

**Keiser closed the public hearing.**

Board Discussion:

Brooks stated it is a conforming use, but it is a nonconforming structure because it does not meet the setbacks. He stated if the applicant is expanding no further than the existing structure he is unsure about the need for a variance.

Keiser stated because the current setback is 25' and therefore any new construction needs to meet that setback and anything else would need a variance.

Brooks stated it would still be 21.7' from the setbacks.

Fredette stated in review of the supplied survey the house looks somewhat angled from William Street. He stated then because they are on an angled line the 9' addition would be farther into the setbacks. Fredette stated that the front setback area is a no-build zone and that the request is asking to add more structure into it. He stated he is struggling with finding a hardship for this application. He stated he does not see any unique criteria for this property.

Keiser reviewed the criteria for a variance in accordance with the application. He stated he has not heard any evidence that would indicate the proposal would affect property values.

Routhier stated that William Street is a street full of residences that are very similar to the applicant's home. He stated they are all smaller homes, one level, and small garages. He stated he is concerned with the architecture of the addition that would make this look very different than the other houses. He noted they were not supplied a building plan.

Keiser stated he does not see the addition would affect the public interest in any way. He stated he feels the proposal meets that specific criterion.

Donohue stated the only thing would be if it was contrary to the spirit of the ordinance but he does not think it is.

Keiser stated in this case it not a density issue but rather a dimensional issue of how close it will be to the front or side setback. He stated the increase is marginal and in his mind meets the ordinance.

Routhier stated if the building is at an angle it would be more than 21.7' closer to the road and feels it would not be in conformity with the ordinance.

Keiser stated substantial justice would be done by supplying the applicant what he needs.

Keiser stated as Routhier has noted, the properties in the area have conformity. He stated he is having difficulty finding uniqueness that causes a hardship for this property.

Fredette stated he does not find anything in this house. He stated he sympathizes but it is not the only house constructed in the area and he purchased the home.

Donohue stated it sounds possible to resolve the attic issue without encroaching on the setback. He noted that it appears to him it is for visual preference the request to encroach on the setbacks. He stated he sees some hardship in the quality of how the structure was built.

Donohue questioned if the state of the construction of the house could be considered in the hardship argument.

Fredette stated when he considers hardship he is looking at the land more than anything. He stated he looks for something that makes the property as a whole unique from the rest of the properties in the area.

Saunders stated that characteristics of the property can be taken into account when deciding on the hardship.

Donohue stated he would entertain approving the request with a condition that the garage could not be increased past the front setback. He stated the angle of the property and structure the addition of the garage would be less in the side setback than the existing. Donohue expressed concern of the house staying in a state that does not meet code if the variance is not granted.

Brooks stated they are reviewing for a variance rather than the aesthetics and does not think aesthetics should play into the decision as much. He stated he does not see the hardship but he feels it does meet the remaining criteria.

Routhier stated he is sympathetic to the applicant as it appears there are some issues. He stated he is bothered that he does not know what the house will look like. He questioned why the garage needs to be expanded and why access cannot be gained through just the breezeway. He stated he is concerned with how the house will look and feels he cannot vote until he has those answers.

Fredette stated that Brooks raised a good point. He stated they have to consider impact to property values and how it fits into the neighborhood.

Routhier MOTION to TABLE to allow the applicant to provide a plan of what the addition will look like.

Donohue SECONDS the motion.

Discussion: Routhier stated he wants to give the applicant every opportunity to present his full argument.

Fredette stated he does not feel tabling the application for design will change the thoughts on hardship which is what the board has been wrestling with.

Routhier stated he does not think the hardship vote is unanimous currently.

Keiser stated he is not going to support the motion to table, does not feel there is anything special to the property to warrant the variance.

The MOTION FAILS by a 2-3 vote.

Brooks stated after review of the application, the file and all the information presented to the Board, I feel that the hardship criteria of the five criteria has **NOT** been satisfied and I move that the request of William McCarthy for a variance to construct an addition within the front and side setbacks be DENIED.

Fredette SECONDS

Discussion: Keiser stated he thinks the plan is valid and has no issue with the plan. He stated unfortunately they have to vote based on the criteria for the variance.

The MOTION CARRIES by a 3-1-1 vote.

Keiser called a recess 7:43pm

Keiser called the meeting back to order at 7:47pm

**B) Piccadilly Properties LLC, is seeking a variance from Table 4.A.1 superscript 3c of the Zoning Ordinance to allow an 8 unit multi-unit dwelling without the required lot area on a property located at 97 High St and 10 Highland St, in the Residential/Business (R/BH) District, Assessor's Map 11 Lots 37 & 39, ZBA#16-2019- PUBLIC HEARING**

Keiser opened the public hearing.

Saunders stated the applicant is requesting a variance from the lot size requirements to convert the first floor and basement of a multi-unit dwelling into residential space. The applicant was approved by the ZBA for a six unit building with residential on the second and third floor in December, 2018. She stated the applicant received site plan approval from the Planning Board in April, 2019 for 5 residential units and 2 office spaces. Saunders clarified that it was the applicant's choice to move forward with 5 units and not the Planning Board's request.

Keiser clarified that in the Residential/Business District allows residential on the first floor. Saunders stated that is correct. Keiser stated it is a variance for the square footage allowance of the lot. Saunders stated that is correct.

Applicant Statement: **Paul Delisle, of Piccadilly Properties** stated he started this project last year and he met all of the criteria for 6 units. He stated they have enough parking for 8 units in the lot behind the building. He stated he put the building on the market for commercial space rental and did not find a good fit tenant for the commercial space. Delisle stated they started the process of fixing up the approved residential units and have received the Certificate of Occupancy for 2 of the residential units.

Delisle stated the request for 5 units to the Planning Board was because he could not fit 6 units into those two floors. He stated at this time he would like to add two units on the first floor and one in the basement. He stated there would be no code issue and all of the units approved have been rented. Delisle stated the demand for residential units has been higher than commercial.

Delisle stated that a hardship of the building and lot is that for direct access into the first floor is through the front door. He explained that the parking for the building is in the back on the 2<sup>nd</sup> floor. He stated the back door access requires the commercial tenants to come through the residential unit areas. He stated that makes it more undesirable to the commercial tenants.

Delisle referenced an article on the shortage of housing in NH from NHPR. The article summarized that there is a greater need for affordable housing than there is for commercial space.

**Keiser asked for public comment.**

No public comment.

Board Questions:

Keiser asked for clarification on the required lot square footage to have 8 units and what the applicant has.

Saunders stated the requirement is according to Table 4.A.1, the property owner has to have a certain amount of square footage per unit. She stated it is about 1,500 sq. feet per unit and for 8 would require 12,000 sq. feet.

Keiser asked how much land the applicant has. He stated his calculation, if the applicant agrees, is that the High Street property has about 8,700 sq. feet.

Delisle stated that is likely correct. He stated the Highland Street lot is connected to the High Street lot by the pedestrian bridge. He stated adding both of the lots together it exceeds the requirement.

Keiser stated the Highland Street property is 5,662 sq. ft. which makes the total of the two lots 14,374 which is greater than the required. He stated the City and the Ordinance does not recognize the lots as contiguous since they are only connected by the foot bridge and takes consideration only the lot the structure is on. He clarified that the applicant is requesting the board to consider the total square footage of both of the lots to grant the variance to allow 8 units.

Delisle stated that is correct.

Routhier asked if there was an easement that connects the High St. property to the Highland property. Delisle stated yes, it was required by the Somersworth Housing Authority but that language has expired. Routhier asked if there was a separate deed for the Highland property. Delisle stated he purchased both of the properties because they have to be purchased together. Delisle stated the deed says the Highland property has to go with the High St. Property.

Routhier discussed with the applicant the connection of the properties through the deeds.

Delisle stated he purchased the lots as two properties.

Routhier asked how many parking spaces the applicant has. Delisle stated there are 18 on the Highland property and 2 available behind the GAR building on High St.

Fredette stated the applicant claims in the application that there is not a market for commercial in Somersworth. He asked what the applicant has done for advertising of the commercial space. Delisle stated that he has advertised on Facebook and Craigslist, which is where he rents all of his properties. He stated that he is a realtor. He stated his real hardship is the non-contiguous lots.

Brooks asked if the applicant had advertised in other ways besides Facebook and Craigslist. Delisle stated other than the sign in front of the property, no. Delisle stated he has done several properties like this but has found there is not a strong market for offices.

Fredette stated what the applicant had submitted in his application as the argument for 3B. He questioned how they are to know there is no demand for commercial based on how the marketing of the property has been explained. He stated for a property in the R/B District, Somersworth wants to see a mix of residential and businesses in that area.

Keiser asked for the applicant to explain the building set up. Delisle stated the bridge that accesses the parking lot comes into the second level of the building. He stated the second level has three apartments on it

and therefore people would need to walk through the residential area to get to the commercial offices on the first floor. Keiser stated the application talks about the stairs; he asked if there is street parking in the front. Delisle stated there is no on street parking in the front (High Street). Keiser asked how the entrance is not conducive to business. Delisle stated the public would have to park in the back and would have to walk through the residential hallway down the stairs to the front of the building.

Keiser asked the applicant, as a realtor, if he thought that the property is prime space to be used as a business. Delisle stated that he thinks it a good fit for high end condos or residential units. Delisle stated that a lot of the tenants that would use these units for commercial space do not want a space with stairs.

Keiser asked if the apartments that are in are squeezed in or is the building the right size for the amount of units being requested. Delisle stated that the reason he did not go for 6 units on 2 floors because he did not want to squeeze units in. He explained that they did not take down a lot of the walls. Delisle stated the first floor would have 2 units.

Keiser asked if 8 is the right number of apartments for the building. Delisle stated he thinks it would be perfect, most units would be 2 bedroom units and leaves an area for common usage.

Saunders stated the board could do a site walk if they desired, as well.

Fredette asked what is the square footage of the units that have been put in and for the proposed units. Delisle stated that the 1 bedroom unit is 800 sq. ft. and the 2 bedroom is a 1,000 sq. ft. for the units of the top floor. The second floor units the two 2 bedroom units are about 1,000 sq. ft. and a loft unit which is 800 sq. ft. Delisle stated the units proposed for the first floor would be 1,250 sq. ft. each.

Routhier reviewed the layout of the building and the walkway. He asked if there will be any improvements done to the walkway. Delisle stated they are currently painting it, may change the lighting and some of the wood work.

Keiser closed the public hearing at 8:12pm

#### Board Discussion:

Routhier stated he remembers the last time the applicant was in front of the board. He stated he cannot remember the conversation about the deeds and wished he had a copy of the deed before him. He stated if the lots cannot be sold separately he would be inclined to agree with this application request. Routhier stated he understands that commercial space is hard to rent and add the parking issue with steps to get into buildings, including the ADA requirements he is inclined to agree with the applicant. He stated he also agrees there is a need for housing.

Keiser noted that for the previous approval the board put the condition on the approval that the properties must stay in joint ownership for use of the parking lot.

Routhier asked if that would continue into this application or if it should be restated.

Saunders stated they should restate the condition.

Fredette stated that he feels the variance would be contrary to the spirit of the ordinance since it would be taking business out of the R/B District. He stated his hang up is still the same advertising could have been done more for his hardship.

Brooks stated he feels that the hardship and uniqueness remains the same as it did at the last time the application was before the board. He stated that he is disappointed the applicant has not advertised more than just Facebook and Craigslist. He stated it is the applicant's business, he may know these are the best

avenues. He stated the applicant knows his business. He stated he would be in favor of this request but feels the properties must stay together.

Donohue stated he is in favor of this request similar to Brooks' and Routhier's statements. He noted that during the December meeting Routhier and Fredette were in favor of allowing more than 6 units on the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> floors. He stated having it as an R/B District it does not require the mix of residential and commercial, but allows both. He stated just because this property had business does not see why they have to keep it.

Keiser stated he does not see anything in this request that is contrary to the public interest. He stated he believes the spirit of the ordinance is observed because the required square footage of the combined lots meets the requirements. He stated it is a unique special condition that these lots are separated by another lot but both used for one lot. Fredette stated he thinks Routhier makes a valid point that it would be nice to look at the deed before making the decision.

Keiser stated using the area of both properties does not affect the public to make a negative impact to surrounding properties in any way. He stated he does not see how the request would affect the value of surrounding properties.

Keiser stated that the request is to go from 6 residential units with 2 offices to 8 residential units building. He stated the applicant has adequate parking and would have adequate lot square footage with this variance approval. He stated there has been discussion of the board reviewing the deed or a tour.

Routhier stated that the discussion of reviewing the deed was prior to being reminded of the condition of approval the board instilled on the last application. He stated requiring to have the properties stay in the same ownership as a condition of approval would satisfy his concerns.

Brooks stated he agrees there is not a need to see the deed if they tie in the requirement for the properties to stay in common ownership.

Fredette questioned the enforceability of the variance and conditions. Saunders stated that a variance and conditions are absolutely enforceable.

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 because of the discussion and I move that the request of Piccadilly Properties LLC for a variance from Table 4.A.1 superscript 3c of the Zoning Ordinance to allow an 8 unit multi-unit dwelling without the required lot area on a property located at 97 High St and 10 Highland St. be GRANTED WITH THE FOLLOWING CONDITIONS:

1. 97 High Street and 10 Highland Street must remain in common ownership at all times.

Fredette SECONDS the motion.

Discussion: Brooks requested they put the condition to limit the apartments to 8 units.

Routhier stated he would make the AMENDMENT to limit the property to 8 units.

Fredette stated he will SECOND the amended motion.

The MOTION CARRIES with a 5-0 vote.

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

- a. No other business before the board.

Fredette **MOVED** to **ADJOURN** the meeting. Brooks seconded the Motion. The **MOTION CARRIED** 5-0 and the meeting **ADJOURNED** at 8:25 PM.

Respectfully Submitted,

Dana Crossley, Planning Secretary