

SOMERSWORTH ZONING BOARD OF ADJUSTMENTS
MINUTES OF MEETING
January 6, 2021

MEMBERS PRESENT: Matt Keiser Chair, Glenn Garvin-Alternate, Keith Perkins, Brad Fredette and Richard Brooks, Kenneth Vincent, Alternate, Coty Donohue

STAFF PRESENT: Michelle Mears, Director of Development Services, and Dana Crossley
Planning Secretary

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

Keiser stated due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically. The public has access to watch to this meeting through the Local Government Cable Access Ch. 22 (Comcast), and streamed live through the City's website at www.somersworth.com. Although this is a public meeting, the public is encouraged not to attend and instead to leave comments or concerns at the following phone number # 1-603-841-2936, by emailing ZBA@somersworth.com or by sending written comment to Zoning Board of Adjustment, 1 Government Way, Somersworth NH 03878. Comments must be received no later than 4pm the day of the meeting. The public can access the meeting and listen live by telephone and then adding the webinar I.D.

Roll call attendance was taken. **Perkins and Brooks** were in attendance in City Council Chambers. **Fredette, Keiser, Garvin, Vincent and Donohue** were in attendance remotely and alone. Director Mears was also in attendance remotely. Secretary Crossley were also in attendance in City Council Chambers.

1) Approval of the minutes:

Fredette **MOVED** to accept the December 2, 2020 minutes as presented.

Perkins seconded the motion.

The **MOTION CARRIED** by a 4-0-1 roll call vote.

2) OLD BUSINESS

No old business.

3) NEW BUSINESS

- A) Samsav Realty LLC, is seeking variances from Table 4.A.5 to allow professional business office, personal service establishment, trade craft establishment, medical dental services and artist studio for a property located at 215-217 High Street, in the Residential Duplex (R2) District, Assessor's Map 14 Lot 47, ZBA#11-2020 PUBLIC HEARING**

Keiser opened the public hearing at 7:04PM.

Mears stated this property received a variance in 1993 to allow a professional/business office. She stated at that time the applicant went through the site plan approval process with the Planning Board for a law office to operate. She stated there is currently two (2) residential units and one (1) commercial unit which is 1,000 sf. She stated the applicant has completed the application and the application is complete to begin the public hearing. She stated additional site plan review would be required for an approved use with the exception of the professional/business office because it has been approved previously.

Marc & Lisa Weinstein were in attendance remotely to represent the application for Samsav Realty LLC.

M. Weinstein stated the commercial unit was historically used as a law office and that tenant has vacated the space. He stated they are seeking flexibility in the allowed use for the small commercial space that is on the first floor of this building.

M. Weinstein stated on High St. in the local of this building there are multiple commercial spaces that house both offices and other professional services, such as salons or medical offices. He stated they are requesting an opportunity to put different types of tenancies in this building. He stated their request is not contrary to the public interest because there are similar spaces in local in both abutting properties and surrounding neighborhood. He stated without this variance it puts them, as the building owners, in a hardship to find a very specific tenant to fit the small space. He stated the types of tenancies they are requesting does not change the character of anything in the area. He stated it would do no harm to the general public but rather support it with this type of tenancy on High St. He stated they would not conflict with the existing character of the building or neighborhood based upon what the abutters and tenants are in the couple mile stretch of High St.

Public comment: Mears stated there were no public comments received via mail, email or phone.

Brooks asked if they have a potential renter for the space or just looking to offer more uses.

M. Weinstein stated at this time they have interest from a hair salon. He stated having a hair salon on the main street of Somersworth and adequate parking would be a great opportunity to house a hair salon on High St.

Brooks asked how the proposal is not contrary to the spirit of the ordinance. He clarified there is a purpose for the districts, this is an R2 district and the purpose of this district is to moderate density, single family detached units, home occupations are allowed where they have minimal impact to the character of the district. He asked how it is not contrary to that.

M. Weinstein stated the direct abutter next door is a medical office. He stated having this type of professional service occupancy is not contrary because it will support the spirit of having this type of occupancy on the street. He stated they feel it is not contrary because they have adequate onsite parking. He stated it would not create a nuisance for the abutters or on the street with on street parking. He stated they do not feel it would be contrary based on their observations of the street.

Brooks inquired if the hair salon operator would be a resident of the building.

M. Weinstein stated that no, they are not a current tenant of the building and would only be a commercial tenant. He stated the residential units are currently occupied.

Brooks asked if it would be a home occupation.

M. Weinstein stated no.

Vincent clarified this was previously a law office operating from the commercial unit.

M. Weinstein stated yes.

Vincent asked why he applied for another business to go in.

M. Weinstein stated he had not anticipated needing to applying for a variance because there was a law office that operated from the space.

Keiser stated he believes the variance for the previous business still stands.

Mears stated if another professional/business office was to go into the building it would not require additional relief. She stated a home occupation could operate if the person lived on site. She noted that there is a specific definition for personal service as established in 1993.

Vincent clarified if the attorney lived in the building and operated under a home occupation.

M. Weinstein stated the law office that operated there was the Donald Routhier Law office, who owned the building. He stated they purchased the building a year ago and in the acquisition the attorney was staying for 10 months and has now vacated the office.

Keiser stated there is an existing variance that was granted in the 90's. He questioned why in the application the professional/business office is being sought again.

M. Weinstein stated they were looking for options for commercial occupancy. He stated they did not want to be held to just a professional/business office because it limits the occupancy. He stated when they filed for the variance they identified the other uses that they felt would get good use out of the space. He stated it is a small space in the building and does not want to leave it vacant. He stated it is an older building that does not provide a lot of option for changing the space or building it out. He stated they wanted to have options for use.

Keiser questioned if the Board needed to re-affirm the professional/business office or if the applicant has full authority to continue that use.

Mears stated they have authority now but wanted clarification for the files that they continue to have that authority.

Fredette stated they have received applications in the past in this general corridor. He noted that the variance follows the land. He stated in those previous occasions the applicants come with the specific use and tenant that they were requesting for and the variance more pointed. He stated the goal of the Master Plan was always to keep all commercial space to the right of Blackwater Road (Walmart side) and left of Blackwater to remain the historic character as much as possible.

Donohue inquired if the application is specifically relating to the single unit that has historically been office space. He stated if so, he would like to mention that specifically to ensure it is not applied to the entire building. He stated his concern is a blanket approval being used on the additional units and the variance outlasting the current property owner.

M. Weinstein stated they are only seeking a variance for the small 1,000 sf commercial unit and the other two units will remain residential.

Keiser stated on the tax card there is a sketch of the building and the area that they deem the office area. He asked if Weinstein could clarify how the space is used and if the commercial space is separated from the residential.

M. Weinstein stated the commercial space is separated from the residential entrance, residential has its own access door that goes and there is hard wall ensuring a defined space.

Garvin stated he had been concerned about what was going on the building. Clarified there is a two residential units and one commercial.

M. Weinstein stated it is two occupied residential spaces and one vacant commercial space.

Brooks asked if they could revert the commercial space to residential.

M. Weinstein stated it was something they had explored. He stated they would have to build out the kitchen. He stated he would have to potentially install a sprinkler system because it would be a new multi-family building. He stated it was something they started to go down but did not go down.

Keiser noted they would have to seek a variance to allow a third unit because it is a R2 district.

Garvin stated his concern was the potential for impact on the residential units. He inquired if they have thought about how to protect them from the business.

M. Weinstein stated the uses they are looking to have allowed are all professional service with office type uses that would not be noise generating businesses. He stated they are businesses that would run on a standard business hours and the residents work and would be out of the building during the day. He stated from his understanding there were no issues with the law office. He stated they are not looking for a commercial tenant that would cause issues for their residential tenants.

M. Weinstein stated their hope is to be a good friend to the City. He stated it is a first building they own in Somersworth and want to contribute to the growing community. He stated he thinks with the Board approval they would be able to move a tenant in in short order.

Keiser asked if the hair salon interested in the space is a one person or more operation.

M. Weinstein stated it is a one chair (person) operation.

Keiser closed the public hearing for Board deliberation.

Fredette stated he is a big advocate of finding the tenant/use before coming to this Board. He stated this request seems like a very sweeping breath of opportunities. He stated to his knowledge the Master Plan has tried to limit the business space on the downtown side of CVS.

Brooks stated he has the same concern and is afraid to allow all of these would create a spot zoning area. He stated he would be far more comfortable with focusing on one request. He stated he can only think of 4 businesses from the Commercial Node up High Street. He stated he is hesitant to approve without more knowledge of what is going in specifically.

Donohue stated he agrees with the comments of Fredette and Brooks. He stated he had similar thoughts and feels this is a bit of spot zoning because it is granting a variance for several types of uses. He stated he does not see the qualities or unique qualities that would warrant that. He stated he hears the business side of the request and economic development importance but that is a small part of the criteria they look at. He stated his question is how they would move forward tonight. He questioned if they denied the request if the applicant could come back with a specific request.

Keiser stated they would be able to come back before the Board if they had substantially different information being presented.

Donohue stated for public interest, this is a beautifully maintained historic building in the neighborhood though not under the purview of the Historic District Commission. He stated one of his fears of approving a large number of uses is that the building evolves out of its historic nature in the future. He stated the concern is the use of the building and how it affects the outside of the building long term.

Vincent stated he sees things differently, that area of High St. to Washington is filled with multiple businesses, there is a restaurant, Cumberland Farms and multiple rental properties with very few single family homes. He stated since the 90's it has housed an attorney office and thinks at least should be able to have the salon go in. He stated he is in favor of the request and this corridor is the new Main St into the City. He stated he felt a one person hair salon would have a similar impact as the law office.

Fredette stated to his understanding if the current owner wanted to continue the office use they would be allowed to.

Keiser stated yes, they are re-validating the current use business/professional use and vote on the other uses.

Fredette noted that most of the surrounding commercial uses pre-date zoning. He stated the medical office next door was a dental office for about 50 years and the restaurant had historically been a hair salon. He stated the City is not stopping a continuation of the professional/business office. He stated he would be interested in more information on the hair salon before voting.

Keiser stated they have had many applicants come before them to allow residential where only business is allowed on Main St. He stated High St. is the corridor but the section between Blackwater and Washington is R2. He stated in the 1993 variance request there is discussion in regards to how City Council was not willing to change the zoning of that area because of driveways and access and the limited width of the roadway. He stated there was concern of traffic in that area and it has not changed in the past 30 years. He stated in review of the uses being asked for, professional/business office he does not find any issue with, personal service (hair dresser), trade craft is hard to know undefined, medical/dental services could be as much as a hospital and he clearly cannot support and artist studio is undefined until more detail is provided. He stated depending on the use that goes in it could definitely have an effect on the neighboring properties, such as a hospital, that would affect property values. He stated he does not think an office space or a one chair hair salon would affect the surrounding property values. He stated he does not think a professional/business office or personal service establishment would be contrary to the public interest. He stated in regards to the uniqueness and hardship case, this building has a specific area designated as office space. He stated it has two complete residential units and could not make a third unit out of the space, it would become dead space if they could not rent it out as commercial. He stated it is unique with the space and it cannot be used otherwise. He stated substantial justice would be done if they granted two of the uses because it would give the applicant an avenue to use the space they have and not affect the neighborhood. He stated with a limited to one chair hair salon or business office would not change the character of the office and keep it within the same flavor. He stated he would be in favor of the professional/business office and personal service (hair salon one chair). He stated he would not be in favor of the remaining use requests without having more specific details of the use being asked for.

Fredette stated this is a fairly large parcel of land and theoretically the more variances granted nothing would stop someone from redeveloping the land with the variances.

Donohue stated he would support, with Keiser's logic, the professional/business office and personal service with a condition that it remain a one chair hair salon.

Fredette stated a one chair hair salon would allow the applicant to work with the potential tenant he is working with and would be reasonable.

Brooks clarified if they grant the professional/business office and personal service there would be two variances, so should they only grant the hair salon request.

Keiser stated they already have one variance, this vote would just clarify any professional/business office is allowed not just a law office. He stated the second one in discussion is allowing a hair salon.

Brooks stated he thinks it would be foolish to grant too many variances for one property.

MOTION: Donohue 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 as discussed and I move that the request of Samsav Realty LLC for variance from Table 4.A.5 to allow professional and business office be **GRANTED**.

The MOTION is SECONDED by Perkins.

Discussion: Fredette inquired if all of the uses would require additional Planning Board site plan review.

Mears stated not the business/professional office because it has already gotten site plan approval.

The MOTION CARRIES by a 3-2 roll call vote, (Fredette and Brooks voting in the negative) (Keiser, Donohue and Perkins voting in the affirmative)

MOTION: Donohue 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 as discussed and I move that the request of Samsav Realty LLC for a variance from Table 4.A.5, to allow a personal service establishment of a one (1) chair salon be **GRANTED WITH THE FOLLOWING CONDITIONS:**

- 1. The personal service establishment shall be limited to a one (1) chair hair salon.**

The MOTION is SECONDED by Fredette.

The MOTION CARRIES by a 5-0 roll call vote.

MOTION: Donohue stated, after review of the application, the file and all the information presented to the Board, I feel that the hardship, spirit of the ordinance and surrounding property values criteria of the five criteria have **NOT** been satisfied and I move that the request of Samsav Realty LLC for a variance from Table 4.A.5 to allow a trade and craft establishment be **DENIED**.

The MOTION is SECONDED by Fredette.

The MOTION CARRIES by a 5-0 roll call vote.

MOTION: Brooks stated, after review of the application, the file and all the information presented to the Board, I feel that the hardship, spirit of the ordinance and surrounding property values criteria of the five criteria have **NOT** been satisfied and I move that the request of Samsav Realty LLC for a variance from Table 4.A.5 to allow medical/dental services and related facilities, including hospitals and nursing homes be **DENIED**.

The MOTION is SECONDED by Donohue.

The MOTION CARRIES by a 5-0 roll call vote.

MOTION: Donohue stated, after review of the application, the file and all the information presented to the Board, I feel that the hardship, spirit of the ordinance and surrounding property values criteria of the five criteria have **NOT** been satisfied and I move that the request of Samsav Realty LLC for a variance from Table 4.A.5 to allow an artist studio be **DENIED**.

The MOTION is SECONDED by Fredette.

The MOTION CARRIES by a 5-0 roll call vote.

K. Vincent stated he would be recusing himself from the upcoming item as the applicant is his brother. He chose to leave the meeting at 7:58 PM.

Brooks stated he would be recusing himself as well from the upcoming item as he is a direct abutter. He asked for clarification if he could speak during the public comment session of the public hearing.

The Board held a brief discussion regarding the requirement to submit comments by 4pm in writing and the Governor's order.

MOTION: Fredette stated after discussion, he moved to not accept comments after the 4PM published agenda.

The MOTION is SECONDED by Perkins.

Keiser noted that Garvin is a voting member.

The MOTION CARRIES by a 5-0 roll call vote.

B) Daniel Vincent & Assiah Russell are seeking a variance from Section 19.6.C.1a to allow the expansion of a non-conforming structure on a property located at 21 Linden Street, in the Residential Single Family/A (RIAH) District, Assessor's Map 11 Lot 118, ZBA#12-2020 PUBLIC HEARING .

Keiser opened the public hearing at 8:08 PM.

Mears stated the applicant is proposing to construct a 466 sf. addition to an existing detached carriage house. She stated the carriage house is a legal non-conforming use. She stated at the time of construction, detached second dwellings were allowed and it received a dimensional variance for inadequate frontage for a second dwelling in 2000. She noted that the property received a variance in 2010 for an additional dwelling unit in the main home but was never constructed. She stated the applicant withdrew the application to construct a 900sf. addition in December 2020. She stated the request before the Board today is for a legally non-conforming second unit, to be expanded, the expansion would meet the required setbacks. She stated they have submitted a complete application and the Board can move forward with the public hearing.

Attorney Sharon Cuddy Somers of Donohue, Tucker & Ciandella was in attendance remotely to represent the applicants **Daniel Vincent and Assiah Russell**.

Somers stated this began over the summer where the Board entertained an appeal of an administrative decision which was denied by this Board. She stated that was in turn not appealed. She stated she was brought on board to seek a variance to expand an existing non-conforming carriage house. She stated the original proposal before the Board was for 916sf and it has been reduced significantly to 466 sf.

Somers stated the applicants are available to comment if the Board has questions. She stated they are seeking approval of the development as presented. She stated included in their application is a copy of the tax map, the survey plan and a footprint sketch to show the existing conditions and proposed addition with layout. She stated the carriage house was a product of a variance granted in 2000, when the property was previously zoned as Residential Multifamily (R3). She stated that variance was for the frontage requirement to build the stand alone carriage house second dwelling. She stated it was then re-zoned to Residential Single Family/ A with the Historic Overlay and that is when the nonconformity rose for the inability to have a second dwelling unit.

Somers stated the existing footprint is on a concrete slab and consists of a 1 bedroom, combo dining/living room, 1 bathroom and some space for mechanical along with storage. She stated they are proposing to

construct with the addition a 10x18' kitchen, living room 13x22' and in the existing footprint would contain the bedroom, closet, handicap bathroom, 10x10' mechanical room and storage. She stated they have also shown attached to the kitchen for informational purposes a 10x18' shed. She noted that will not be living space and is on the plan for informational purposes only. She stated originally they had noted live in care on the floor plan and clarified they do not intend to have live in care because there is not enough room and asked the Board to disregard. She stated the 10x10' space will be for mechanical and storage along with a 1/2 bath.

Somers stated the property itself is very large, is and nominally for a city block being a little over an acre. She stated of the direct abutters surrounding the lot, 3 are within the Historic Moderate Density District, the rest of the abutters are in the R1AH. She stated the surrounding neighborhood consists of a combination of single family and 6 multifamily buildings per the City tax cards. She stated the multifamily buildings range from 2-4 units. The character of the neighborhood is one of a mixed nature.

Somers stated this proposal is for an addition to an existing carriage house. She stated the carriage house itself has been utilized as a dwelling unit since 2000. She stated the proposed addition will not change the residential character but rather add a modest amount of living space. She stated the appearance or function of the lot will not be changed, the addition will not have a negative impact to surrounding property values.

Somers stated the essential character of the neighborhood is of a mixed nature, single family and multifamily. She stated this proposal went through the Historic District approval process and they were supportive of the proposal. She stated there was no indication from the HDC that it would have any negative impact to the essential character of the property. She stated proposed addition will keep with the essential character and not alter it because where the proposed addition is sited; it will not be very visible from the street or abutting properties. She stated there was a supportive letter submitted by immediate abutters who expressed that they had no objection to the addition.

Somers stated there is no threat to public health, safety or welfare. She stated the floor plan indicates a 1 bedroom unit. She stated they are not looking to add to the number of occupants on site. She stated it will remain a slightly larger version of what is existing.

Somers stated the property is enormous by city standards. She stated it has a carriage house that has been occupied for 20 years as a residential dwelling unit. She stated the proposal only calls for taking up a small additional area of the large lot. She stated the siting of the addition will not be very visible from street or abutters. She stated because of the size of the lot it would be possible for the property owners to construct an addition to the principal dwelling. She stated they do not wish to do that because that structure is a multi-floor structure. She stated if they were to do that they could construct a large addition and inadvertently take much more of the lot up. She stated the size of the lot is unique and should be taken into account. Somers stated the proposal is reasonable and the reason behind the addition is to be able to age in place. She stated they have medical issues, looking to retire on this site, possibility that they may need to use a wheelchair. She stated the design of the proposed addition on the house is for a presence of a wheel chair. She stated the size of the proposed addition is consistent and proportional to the need and is not excessive. She stated it is designed to meet the needs of 1 bedroom occupancy with accommodations for a wheelchair.

Somers stated in this case if the variance is denied, it would deprive the applicant of being able to use the carriage house for the means they wish to use it for. She stated there is not possible gain to the public in doing this. She stated the ordinance itself it geared toward preventing multiple dwellings on one lot. She stated they are not seeking to have another structure or dwelling added to this lot. She stated they are seeking an addition to a previously approved second dwelling unit. She the addition reflects the added space needs for a property with no built in storage and need for added space to accommodate ADA accessibility. She stated the loss to the applicant would be great where the public would not gain anything from the request being denied.

Somers stated the spirit of the ordinance criteria is the same as public interest. She stated she would revert to the earlier comments.

Public Comment:

Keiser stated a letter was submitted stating the following:

RE: 21 Linden St

Somersworth NH

500 + addition to existing structure located 100' ft from roadside on the right side property line were an existing 1 bed 1 bath 1 kitchen exist. This addition does not create any additional bedrooms, remains 1 bed 1 bath handicap 1 kitchen and a half bath. This addition is to provide for more space for disability use.

Please sign in support of this project.

Sincerely Dan Vincent.

The letter was signed by the following property owners, **17 Linden, 26 Linden St, 23 Linden St, 15 Maple Street, 13 Linden St, and 19 Maple St.**

Keiser stated there were no other comments received via mail, email or phone.

Somers stated floor plan states the addition is 466 sf. and would ask if Dan Vincent could confirm if that is the correct information that she has given the Board.

Keiser noted that he appears to be online but is muted.

Somers stated she would attempt to reach him via text.

Donohue clarified for the decision making criteria for the expansion of a non-conforming use, are they looking solely at the 5 criteria for a variance or is there a legal test for expansion.

Keiser stated they are beyond the case law of minor expansion is allowed without a variance. He stated they are too the point the applicant needs to meet the 5 criteria to be granted a variance.

Keiser stated this is a nonconforming use, unique being two buildings making the non conforming use of two dwellings. He stated NH law has ruled that any expansion of nonconforming use requires a variance. He stated there is a shed included in the plan and the applicant has spoken to expansion of the main dwelling would be okay without a variance, inquired if she is implying that is not an expansion of a non-conforming use.

Somers stated the shed is not living space and would be able to be subject to just a building permit as an accessory structure. She stated the principal, main building, is the original building. She stated the carriage house received permission to be constructed in 2000 with a dimensional variance for required frontage. She stated the carriage house is the non-conforming structure and the principal house is permitted as a right. She stated she understands there was permission to grant an in-law apartment within the main house but that was not constructed. She stated it is her understanding the non-conformity is the carriage house, by virtue of the variance for a second dwelling. She stated the first dwelling is the first dwelling and could put an expansion on.

Keiser stated he would disagree, it is the two structures together that make it a non-conforming use.

Somers stated the variance criteria that she just outlined relative to the addition for the carriage house are the parameters the Board are making its decision. She stated she had made a comment regarding an addition to the principal house for context but what is before this Board is a discussion of if the proposed addition in fact meets the criteria for a variance.

Keiser stated he does not disagree but that the points could be argued. He questioned if Somers would say it is unique and rare to have two buildings on one lot basically a 'detached duplex'.

Somers stated she would not characterize this as a detached duplex. She stated she would focus on the uniqueness of the property being the size of the lot. She stated she would say based upon the tax information of the surrounding properties, those include single family and multifamily, there may not be other lots surrounding with multiple structures on them. She stated she would agree to that but the principal fact that makes this property unique is simply the size of the lot in comparison to the surrounding.

Keiser questioned if the lot creates a hardship.

Somers stated no, the size of the lot makes it unique.

Keiser questioned what the hardship is then.

Somers stated looking at the fair and substantial purpose of the ordinance, to prevent multiple dwelling structures on a lot, this proposal does not violate that. She stated they are not creating a new structure but rather adding square footage to an existing non-conforming structure. She stated it does not do anything that will contravene the purpose of the ordinance to prevent multiple dwelling units on one lot.

Keiser stated the existing structure is 36' x 20', which is a small building for a single story building living space.

Somers agreed.

Keiser stated therefore the expansion being sought because the size of the structure as it exists, it would be a hardship to make that structure handicap accessible.

Somers stated yes and thinks the size of the structure makes it difficult for them to be a proper residence for their particular needs.

Keiser stated this structure is significantly smaller than the structures in the surrounding neighborhood being that most of them are old Victorian houses.

Somers stated has not looked at that closely but yes, it is a carriage house.

Fredette stated his understanding this is a R1A district, which means it is zoned for single family use. He stated he is confused about the non-conformity, he stated it is not the structure that is the problem, it is that there are two living units. He stated the structure itself does not violate dimensional requirements, if the living unit was removed and it became a garage it would be a conforming property. He stated what he understands it is a nonconforming use of the structure as a second residential unit and they are seeking to expand it.

Somers stated that is a correct description.

Fredette clarified they are not being asked to construct a second building; they are asking to expand a non-conforming use.

Keiser stated they are here because they are physically expanding the size of the property that has a non-conforming use on it. They are allowed to have the two structures and they are seeking to physically expand the building where a non-conforming use is house, where the Board has previously determined that they could not physically expand without a variance.

Somers agreed. She requested to contact her client via phone, as Dan Vincent was having technical issues with his microphone, to clarify the size of the addition being requested.

Keiser stated based on the plan the addition is 466 sf.

Somers stated they are going with 466 sf. which is stated on the submitted floor plan. She stated she wanted to ensure the Board is aware that the immediate abutters have indicated they have no objection and support the proposal.

Garvin asked if all of the abutters signed the letter.

Somers stated it was the immediate direct abutters.

Somers stated given the variance criteria, they are past the discussion of an expansion of a non-conforming use. She stated this is a non-conforming use and the question before the Board is if the proposed expansion of the nonconforming use meets the criteria of the variance. She stated they believe that because of the fact that this modest addition to the existing carriage house would not alter the existing character, impact property values, meets the hardship criteria and most importantly denying this application would hurt the applicant and not benefit the general public. She stated they believe the variance should be granted as presented and if it assists with the Board, they would be willing to have a condition imposed with a limitation that this remain a one bedroom.

Keiser closed the public hearing at 8:43 PM.

Garvin stated he is in favor of this request. He feels it meets all of the criteria.

Fredette stated his hang up is the spirit of the ordinance because of this being an R1 district. He stated generally it is the job of Zoning Board's is to bring non-conforming uses closer to conformance than farther.

Garvin stated he agrees it is the point to bring it closer to conformance but questions how they do that. He stated he is for conformance but unsure how they are expecting to get there. He stated in this case, it is a win-win, does not bother anyone and is a positive for the City.

Fredette stated it would be difficult to conform in current circumstance but would be to bring it to conformance or not expand the non-conformance. He stated the Calef's situation they did not expand the footprint of the structure but went up. He stated in this instance they are expanding the footprint. He stated he understands where the applicants are coming from. He noted they are not being asked to add a handicap ramp but rather an expansion of footprint.

Keiser stated he does not feel this request would affect the surrounding property values. He stated the surrounding properties have huge buildings and this is a second building on a large lot and the addition would not affect the surrounding property values. He stated he is not finding, outside of compliance with the Zoning Ordinance, that the addition would be contrary to the public interest. He stated it does not have an effect on public health, safety or welfare. He stated the hardship criteria is the tough one, he stated the lot is large and that is unique for this area but there are not a lot of cases where there are two separate structures on one lot (detached duplex). He stated this non-conforming use is grandfathered but the building itself is causing a hardship because the building compared to others is very small at 20'x36'. He stated most cases there would be a second floor, but this has neither second floor nor basement. He stated that is causing them a hardship for expansion to allow handicap modifications. He stated the 466 sf. request is a reasonable request, it is not doubling in size. He stated the floor plan being proposed is also reasonable, giving them enough room to move around but not extravagant. He stated it would do substantial justice to allow them to age in place. He stated they do not want to expand non-conformities but the spirit of the ordinance is to not change environment of the neighborhood.

Keiser stated when looking at the neighborhood there are multifamily houses and is a highly dense area. He stated they are not increasing the density on this lot and not expanding the amount of people who will be living there. He stated it will remain a one bedroom house. He stated the applicant has stated they are not

expanding the use by bedrooms or kitchens. He stated it is a reasonable request. He stated he has some concern with the shed, he understands it is an allowed use, but being attached to the structure concerns him. He stated if they move to approve the application he feels they should clarify that the shed will remain non-living space. He stated he is in favor of approval for this request.

Garvin stated in regards to the Calef case, the judge's ruling indicated that some expansions can be ok.

Donohue stated he agrees and in general wanted to support this. He stated he was hung up on the spirit of the ordinance but agrees with the logic provided by Keiser. He stated the uniqueness lies in that the structure is small. He stated in regards to the spirit of the ordinance, it is one that he struggles with and feels it can be subjective, the Zoning Ordinance in general has several purposes, promoting public health and safety, convenience and general welfare. He stated this variance is to produce a home that allows for ADA compliance within the home is a good thing to have in the community and thus meets the spirit of the ordinance. He stated he is in favor of the request.

Fredette stated with the request being 466 sf. he appreciates Keiser's comments and supports the request.

Perkins stated he is in support of the request and feels they should include a condition that limits the structure to a one bedroom unit to keep the existing density.

Keiser stated there has been discussion in of limiting the structure to a one bedroom unit, 466 sf. as presented expansion and the shed shall remain non-living space.

Fredette stated he agrees it should be the plan presented with a cap as a one bedroom.

MOTION: Donohue 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 as discussed and I move that the request of Daniel Vincent & Assiah Russell for a variance from Section 19.6.C.1a to allow an expansion of a non-conforming structure by 466 sf. as presented **be GRANTED WITH THE FOLLOWING CONDITIONS:**

1. The addition shall be no more than 466 sf. as presented;
2. The shed shall not be living space; and
3. The structure shall be limited to a one (1) bedroom unit.

The MOTION is SECONDED by Fredette.

Discussion: Garvin inquired if the bedroom restriction is too much.

Keiser stated he is very sure because in his mind it keeps from expanding the non-conforming use.

Fredette stated he agrees and thinks it is was brought up by the applicant, a one bedroom keeps the tenants limited to 1-2 people adding another bedroom increases the potential of increasing the density.

The MOTION CARRIES by a 5-0 roll call vote.

Brooks came back to the Board as a voting member, Garvin stepped down to an alternate member.

C) Mark Harrington is seeking a variance from Table 4.A.5 to allow a moving & storage business on a property located at Enterprise Drive, in the Commercial/Industrial (CI) District, Assessor's Map 48 Lots 24D & 24H, ZBA#13-2020 PUBLIC HEARING

Keiser stated they have received communication from the applicant that they are requesting to continue their application to the next meeting.

Mears stated she had no information to provide.

Keiser noted one public comment was received for this application and they will keep that on file to be read at the hearing.

MOTION: Brooks stated, I move the request of Mark Harrington for a variance from Table 4.A.5 to allow a moving and storage business be **TABLED to the February 3, 2021 ZBA meeting** as requested by the applicant.

The MOTION is SECONDED by Fredette.

The MOTION CARRIES by a 5-0 roll call vote.

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

Mears stated she had no new business.

Brooks **MOVED** to **ADJOURN** the meeting.

Donohue seconded the Motion.

The **MOTION CARRIED** 5-0 by a roll call vote and the meeting **ADJOURNED** at 9:02 PM.

Respectfully Submitted,

Dana Crossley, Planning Secretary