

**SOMERSWORTH ZONING BOARD OF ADJUSTMENTS**  
**MINUTES OF MEETING**  
**March 2 2022**

**MEMBERS PRESENT:** Richard Brooks, Keith Perkins, Kenneth Vincent, Ken Hilton – Alternate, Brad Fredette

**EXCUSED MEMBERS:** Glenn Garvin-Alternate, Matt Keiser Chair

**STAFF PRESENT:** Michelle Mears, Director of Development Services, and Cyndi Harris – Building/Assessing Clerk

The meeting was called to order at 7:03PM.

Acting Chair Brooks appointed Hilton as a full voting member for the meeting.

**1) Approval of the minutes:**

Vincent **MOVED** to accept the February 2, 2022 as presented.

Perkins seconded the motion.

The **MOTION CARRIED** 4-0-1 (Fredette abstained)

**2) OLD BUSINESS**

A) Any old business that may come before the Board. - No other old business.

**3) NEW BUSINESS**

A) **Art Guadano on behalf of SOS Realty is seeking a variance from Table 5.A.1 to allow two (2) additions within the setbacks on a property located at 504 High Street, in the Residential/Commercial (RC) District, Assessor's Map 40 Lot 08, ZBA#01-2022 PUBLIC HEARING**

Brooks opened the public hearing.

**Art Guadano** of AG Architects and **Dr. Clarizio** were in attendance to represent the application.

Guadano stated this is an existing Dental practice at 504 High St, the lot is .24 acres, building built in 1970 and pre-dates current zoning. The first floor is about 1,311 SF and the property is located in the RC District and the medical dental use is a permitted use. The issue at hand is the setbacks under the current zoning prevent them from using the lot almost at all, there is a 50' front setback requirement, 30' side and rear setbacks. The proposal is to construct two small additions. He reviewed the overall neighborhood and lot with existing features. The additions being proposed is one to provide handicap accessibility, ramp and handicap bathroom to meet ADA standards. The second addition is 64SF to provide additional space for sterilizing equipment that produces no odors. Explained that with the 50' setback and 30' setbacks there is only a small area on the lot that would meet the setback requirements. This business has been located since 1988, there is a need to provide handicap accessibility for ADA compliance, they will also be doing interior renovations for ADA compliance. The additions would allow them to function in today's standards with the sterilization system. Due to the setback requirements they are seeking the variance.

Guadano addressed the five criteria:

1. Property values, the size and character of the addition will complement the surrounding properties, the accessibility and sterilization improves usability and adds value to the building. The size of the office helps buffer with the similar sized residential properties of Kelwyn Dr. It improves property values.
2. Public interest, permitted use and active medical dental use since 1988, as an office use it is similar to adjacent properties. The zoning restrictions make the lot unusable, additions will enhance the permitted use, which is in the public interest by addressing ADA compliance and function properly with additional space. The small additions maintain the scale of the property.
3. Hardship, first the public purpose, the zoning setbacks create an unusable lot, only 327SF usable that would meet setbacks, the zoning that came into effect after the structure was built, the additions would enhance the permitted use. Small additions that maintain the scale, no way to expand without encroaching into the setbacks. There is a critical need to expand to meet ADA compliance. In order to fit the ramp and bathroom they are about 20" closer than the existing footprint to front setback. In regards that the use is reasonable, a dental practice is an allowed use, improves quality care by allowing the expansion, compliance with ADA.
4. Substantial justice, the permitted medical dental use and the size of it complements the surrounding properties, small additions 240 SF and 64 SF. No impact to adjacent properties due to the location of additions. Not allowing the additions would harm the property owner.
5. Spirit of the ordinance, cannot apply the setback requirements to the small pre-existing lot, it is completely non-conforming, to do any addition would require a variance. The uses need to evolve with the medical profession and codes. To continue to serve the public properly and efficiently they need the variances to construct the additions.

Brooks opened for public comment.

No public comment received.

Closed public comment.

Brooks stated the setbacks would allow them just about 300SF of buildable space, essentially outlined nothing can be done without a variance. Clarified how much additional they were encroaching on the setbacks.

Guadano stated they would only be extending about 2' farther into the setbacks, otherwise are more conforming or in line with the existing structure.

Hilton inquired if any parking would be lost with the addition and how many are there currently.

Guadano stated yes, there are 10 marked spaces which is more than they need for patients and stack 6 spaces for employees, having 16 total on site.

Brooks closed public hearing.

Vincent stated he feels variances like this and of this size are almost a formality, very familiar with the property. If a square was drawn around the entire building, nothing changes and would not be more impactful to the setbacks than what is currently exists. Noted the property owner is a good business and the property is well kept. Will be voting in favor.

Fredette stated he would echo the comments of Vincent, the use has been there since 1988, High Street has become more commercial than less. There is a challenge to fill a small lot in a commercial corridor, would create a hardship by not working with the property owner. Changes need to be allowed to allow for changes in technology. Will be in support.

Brooks stated he agrees with the statements made. Textbook example to why variances are needed, with the required setbacks there is only about a 300 SF buildable area, leaves almost no options for usable space to use, feels it meets the hardship and all other criteria.

**MOTION:** Fredette 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 and I move that the request of Art Guadano on behalf of SOS Realty for a variance from Table 5.A.1 to allow two (2) additions within the setbacks **be GRANTED.**

The MOTION is SECONDED by Perkins.

Discussion: Fredette clarified the application would go through site plan review. Mears stated yes.

The MOTION CARRIES 5-0.

**B) Fontaine Memorial, LLC is seeking variances from Table 5.A.1 to create a lot that has less than the minimum lot area and frontage requirement and Section 21.A.2 to allow parking to be arranged where it would need to back out into the street for a property located at 16 Portland Street, in the Residential Multi-Family (R3) District, Assessor's Map 09 Lot 101 ZBA#02-2022**  
**PUBLIC HEARING**

Brooks opened the public hearing.

**Jeffery Christensen** was in attendance to represent the applicant Fontaine Memorial, LLC. Noted the property owner is Pelkey Land Holdings. **Benjamin Lewis** was also in attendance.

Christensen stated this proposal relates to properties, the first 49 South St owned by Fontaine Memorial with a funeral home located on it and the second being 16 Portland St owned by Pelkey Land Holdings, which has a single family dwelling. The issue revolves around a parking lot that is used by the funeral home but located on the single family homes lot. Until recently the two lots were owned by the same owner, common ownership prevented any real issue. Recently Fontaine Memorial purchased the funeral home lot and not the single family lot. There is an easement currently that allows the funeral home to use the lot, but they are going to be seeking a lot line adjustment to move the parking lot to the funeral home lot. No physical change to the property. This will simplify the ownership, maintenance and improvement, tax assessment. Provided aerial photos to the Board. The lot line adjustment would require a couple variances for the single family lot (16 Portland). Since the parking lot is going to change ownership the total lot size is being reduced for 16 Portland, it is currently 5,757 SF to 3,271 SF, neither is conforming but would be reduced. The frontage would be reduced from 86' to 35.82'. This is a result of the property line moving but no physical change to the property. The second issue is related to the parking, have shown a red outline of the parking area for 16 Portland St as shown on the documents handed out. That will stay the same, because the zoning ordinance section 21.A.2 has a requirement that parking be designed so that it does not back out into the street, there is a question of the parking lot the residential use cannot use needs a variance because it will no longer be part of the property. Stated the parking lot at 16 Portland St. cannot be used by the residential lot and proposal removes it from the lot. The parking does not change but there is a questions if it does require a variance, wants the Board to find either no variance is required for parking requirements because no use is changing or if it feels it is required for it to be granted.

Christensen stated all 5 criteria for the dimensional variance and parking variance have been addressed in the application provided for the Board. Reviewed the highlights of those criteria. Overall this is a result of the boundary line adjustment that makes 16 Portland St. more non-conforming but allows 49 South St to be more conforming. The funeral home lot increases frontage and lot size. Overall purpose is to make the legal reality match the practical reality, the parking lot is used and maintained by the funeral home and should be owned by the funeral home. The owner of 16 Portland St should not be burdened by a parking lot that they cannot use. Practically there is no impact other than to the two property owners, no changes to configuration of properties, layout, use, or externalities such as traffic, no increase in density or impact to surrounding properties. No harms that the zoning ordinance is designed to prevent is here, there is no negative impact on anyone. There are several positive impacts, simplifies ownership of the parking lot, allows the funeral

home to maintain the lot without having to seek permissions. Which will make it easier to maintain and improve, easier to use, safer to use and positive impacts to the neighborhood. Denial would create a hardship without benefit or purpose.

Mears stated Map 9 Lot 67 is located in the R3 district, legal pre-existing non-conforming use. Stated the applicant is proposing a 2,371 sq. ft. lot (.05 acres) where 15,000 sq. ft. is required. The applicant Map 9 Lot 101 driveway configuration (two car) single car driveway would not comply with section 19.21.A.2 because vehicles would need to back out into the street. The proposed configuration complies with the side setbacks 12.2 ft. Map 9 Lot 101 is currently a non-conforming lot for minimum lot area (approx. 5,662 sq. ft.) and frontage 86 ft.

Vincent asked for clarification on the requirement regarding backing out on the street.

Mears stated Section 21.A.2 states 'Parking shall be located and arranged so that vehicles will not need to back out into the street.' This is for residential properties.

Christensen stated this is a non-conforming lot, the driveway is non-conforming, most of the driveways in the area are designed that way.

Brooks opened the public hearing.

No public comment received.

Fredette confirmed the revised lot would be 3,200 Sf.

Christensen stated a little over 3,300 SF.

Fredette questioned how much of the lot is taken up by the house.

Christensen stated the 3,300 is the area of the parking lot subject to the boundary adjustment. The lot would become 2,300 Sf lot.

Fredette stated so about 1,000 SF of that would be taken up by the house, question is these lots have been owned in unison for about 50 years, where is snow storage for the residential lot going to be.

Christensen stated snow would be handled the same way. Everything would function the same way and snow and plowing is part of the easement and can be easily handled, there is no separation that prevents plowing through driveway and parking lot, the land itself is not changing, keep putting snow.

Fredette noted that all along they were owned by the same party, 16 Portland is now going to be owned separately, could be rented or sold etc, then would have to worry about where snow storage is going to be.

Christensen stated the photo shows there is space behind the parking lot to store snow, there is an existing easement and the contract would carry over.

Fredette stated for non-conforming uses of land, which a use of funeral home is non-conforming use of land, 19.6.C.1.a states 'No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance.' If the lot line adjustment is granted, they would be adding SF of commercial land and would increase a non-conforming use.

Christensen stated the use itself is not being increased, there are two components for each lot, dimensional and use. None of the use of the property is being intensified, the parking lot will continue to be used for the funeral home as it has always been used, the only change is a property line.

Fredette stated by moving the line they would be changing the lot by creating a larger commercial lot, in an area where they are not allowed.

Christensen stated the language speaks to expanding or intensifying the use.

Vincent clarified the existing lot lines and new proposed property line. This was done that way because the property was previously both owned by the same person.

Christensen reviewed the proposed lot lines and explained the ownership of the lots.

Vincent stated he understands Fredette's point, but this property has been like this since about 1964.

Brooks closed public hearing.

Vincent stated this eases the process for the property, agrees in regards to expanding the commercial lot, does not think applies in this situation, the parking lot has been used as part of the funeral home use. Is in favor of the variances.

Fredette stated he will not be in favor of this request. Feels the commercial lot is being expanded and creating a smaller less conforming lot, creating a lot that will be very hard to put snow on. Driveway will at best fit only two cars will impact property values. Inquired if there driveway length. Mears stated that under Public Works.

Brooks stated he does not think they are expanding the zoning of the lot since it is zoned for R3, the lot has a grandfathered use for the funeral home and is grandfathered. Not in favor of making some less conforming, but neither conforms as it is, does make one more conforming. Can see the complications it runs into and creates a hardship with all of the agreements. Feels he is in favor.

Vincent stated Fredette has a good point for the distance going into the driveway but there is a concrete edge that separates the lots. The lot has been bigger in theory because they have been using the lot as a parking lot. It is a line on a piece of paper and the use has existed for a long time. No one wins if they deny it, they would still use it with the easements.

Perkins stated he is in favor of the request, feels the hardship is from not owning property that the business depends on, not having the parking in the lot would impact surrounding property values more.

Brooks stated he agrees with Perkins comments on this application. The backing out of the driveway aspect is interesting requirement.

There was a brief discussion of the parking requirement.

Mears noted that this application would have to go before the Planning Board for a lot line adjustment advised they could require a condition of approval that there be an easement for snow storage.

Fredette stated he felt that would make it clearer for them to understand.

Hilton asked for more information on the snow ordinance issue.  
Mears stated it would because of the small size of the lot.  
Hilton stated to him they would just push the snow onto the grass.

Fredette explained that with all of the existing coverage with structure and cars there is not enough space for the snow.

There was continued discussion of snow storage.

Mears noted that if the Board did not need to add that requirement but an easement for snow storage would be her suggestion to the Planning Board regardless.

**MOTION:** Perkins 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 and I move that the request of Fontaine Memorial, LLC for variances from Table 5.A.1 to create a lot that has less than the minimum lot area and frontage requirement be GRANTED.

The MOTION is SECONDED by Hilton. The MOTION CARRIES 4-1.

**MOTION:** Perkins 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 and I move that the request of Fontaine Memorial, LLC for variances from Section 21.A.2 to allow parking to be arranged where it would need to back out into the street for a property located at 16 Portland Street be GRANTED.

The MOTION is SECONDED by Vincent. The MOTION CARRIES 4-1.

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

Mears noted the Spring Planning and Zoning conference is April 30<sup>th</sup> and May 7<sup>th</sup>, an email regarding that should have gone out to the Board. The sessions would be recorded and shared.

Perkins **MOVED** to **ADJOURN** the meeting.

Hilton seconded the Motion.

The **MOTION CARRIED** 5-0 7:58PM.

Respectfully Submitted,  
Dana Crossley, Planning Secretary