

SOMERSWORTH ZONING BOARD OF ADJUSTMENTS
MINUTES OF MEETING
June 1, 2022

MEMBERS PRESENT: Richard Brooks, Keith Perkins, Ken Hilton – Alternate, Matt Keiser Chair, Anthony Jones, Brad Fredette, and Kenneth Vincent

EXCUSED MEMBERS: None

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

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

1) Approval of the minutes:

Brooks **MOVED** to accept the May 4, 2022 minutes.

Perkins seconded the motion.

The **MOTION CARRIED** 3-0-2 (Vincent and Fredette abstained).

2) OLD BUSINESS

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

3) NEW BUSINESS

A) **Diane and Bill Griffith are seeking a variance from Section 19.C to allow a pool within the 12' pool setback on a property located at 50 Myrtle Street in the Residential Single Family (R1) District, Assessor's Map 15 Lot 33, ZBA#08-2022 PUBLIC HEARING**

Keiser opened the public hearing.

Mears stated the applicant is proposing to add an above ground pool within the 12ft pool setback. The pool will be located 7 ft off the side property line. 1966 is when swimming pool language was added to the Zoning Ordinance which states the 12ft setback requirement. The applicant is proposing to fence in the swimming pool area. She noted that RSA 674:33, V states: V. Notwithstanding subparagraph I (a) (2), any zoning board of adjustment may grant a variance from the terms of a zoning ordinance without finding a hardship arising from the condition of a premises subject to the ordinance, when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that

- (a) Any variance granted under this paragraph shall be in harmony with the general purpose and intent of the zoning ordinance.
- (b) In granting any variance pursuant to this paragraph, the zoning board of adjustment may provide, in a finding included in the variance that the variance shall survive only so long as the particular person has a continuing need to use the premises.

Mears noted there is no historic record for this property applicable to this application.

Diane Griffith and Bill Griffith were in attendance to represent the application. Noted they reside at Grove Street but own this property on Myrtle.

D. Griffith thanked the Mayor and City Manager for directing her to staff and the Board for hearing the application. Explained the variance request is to install an above ground pool which would be for medical use. It would be for physical therapy to assist her 3-year-old granddaughter who was diagnosed with leukemia, whom is unable to walk due to the cancer. The best physical therapy is hydro-therapy but cannot go to a public water venue due to potential for infection from all the germs.

D. Griffith stated they are seeking a variance from Section 19.C to allow a 12' x 23' oval pool within the 12' setback. She stated her facts to support this request are that this is a residential property where homes are similar in style and primarily single-family homes. Other properties in the neighborhood have above ground pools and the addition of another would not 'alter' the essential character of the neighborhood and therefore property values would not be affected. Granting the variance would not be contrary to public interest because it would not 'alter the essential character of the neighborhood' and not 'injure the public rights of other's'. As this is a residential street and neighbors with above ground pools, neighborhood would not be negatively affected. Granting the variance would not threaten the public health, safety or welfare or community. She stated regarding the hardship criteria, the NH Supreme Court stated in *Simplex Technologies Inc v. Town of Newington*, 'more considerate of the constitutional right to enjoy property' and 'balance the use and enjoyment of property of some residents against the use and enjoyment of other resident's'. The lot is small .15 acres, the only location to put the temporary above ground pool where it complies with setbacks is where the existing house is situated. The proposed location of the pool is 7' off the property line, the total area of the pool is 276 SF, this will allow for 3' separation between the house and the pool. The proposed location is ideal because it allows for a fence that may be up to 8' in height in certain areas of the yard. Noted the side setbacks are 10' from the property line but it is unclear in the Zoning Ordinance why the pool setback is greater than the structure setback. Pool setback is more restrictive and this proposal includes fencing around the pool for safety and privacy, therefore it would not diminish the neighborhood because it will not be visible from the street or neighboring lots. The pool would not only be a reasonable use but it is also medically necessary, as noted before her 3-year-old granddaughter has recently been diagnosed with leukemia and has lost use of her legs due to that, due to her condition unable to go to a facility that provides PT or public water bodies, PT professionals have stated that swimming is the best physical therapy for her to regain the use of her legs. Regarding unnecessary hardship, having a pool in her granddaughter's backyard is a medical necessity for her since she must remain at home as much as possible and have a form of physical therapy. Under hardship criteria 'due to nature and features of the property, creates an insurmountable obstacle that prevents us from meeting the regulations' in other words due to available footage of property unable to meet the setback requirements. Literal interpretation of the ordinance would create a hardship and the proposed use is a reasonable one. Substantial justice would be done in granting the variance because it will not harm or negatively impact the abutters and have their full support. They will have fencing around the pool to provide privacy and a buffer. In the spirit of the ordinance the installation of a removable above ground pool would not 'alter essential character' nor 'injure the public rights of others' and believe the granting of the variance would not violate the basis of the ordinance as their property will remain similar in use as the entire residential neighborhood.

D. Griffith stated she has a notarized letter from Timothy and Judith Turgeon who own adjacent properties 54 Myrtle Street and 51 Myrtle Street which states the following: *Timothy and Judith Turgeon are NOT opposed to it. We welcome the pool at 50 Myrtle Street while Diane and Bill Griffith own the property.*

D. Griffith reviewed the images provided in the packet of the property and sketch of the lot for the proposed pool location. Noted they are proposing an oval pool since it would be able to be more compliant than a round and located it closer to Myrtle St to pull it farther from the abutting property on Locke St. Are proposing to also construct a fence to enclose the pool area.

B. Griffith provided additional background information on the granddaughter's health condition. Expects to be in chemo for a couple of years.

Public Comment:

No comments received

D. Griffith explained the treatment requirements.

Fredette asked if the applicant checked with the Planning Department on fence height requirements.

D. Griffith stated yes, they are aware of the height requirements.

Fredette stated variances traditionally follow the land, but if they were to grant the variance with specific conditions that it was for the occupancy of the current tenants.

D. Griffith stated the pool will belong to her daughter and family who is the ones that live at the house, if they move, they pool would go with them. They would not want the pool if her daughter's family was not living at the property.

Vincent complimented the applicant on the presentation. Inquired if this is a rental property.

D. Griffith explained the history of how they came to purchase this home for her daughter to live in.

Vincent noted that with rental properties sometimes pools make things complicated, would not look to restrict anything.

Keiser asked how high of fence they intend to install.

D. Griffith stated not more than 6' on the back line and important to have a fence on the front of the property that would keep the pool from being visible from the road, want to maintain a nice looking neighborhood.

Keiser stated the front yard area fence would need to be 4' in height unless in line with the house.

D. Griffith stated she understood.

Keiser inquired if it would be a 6' fence along the retaining wall.

D. Griffith stated she was not certain on the fence height but does want to ensure the fence is high enough to keep kids from being able to jump the fence, stone wall likely 6' and front area 4'.

Keiser asked how tall the retaining wall is.

D. Griffith stated in the pool area about 1'.

Keiser asked what type of fence are they considering.

D. Griffith stated a vinyl fence that would match with the house.

Fredette inquired if the applicant had talked with insurance if there is a fence requirement for the pool.

D. Griffith stated she does not believe it is required, but has not checked.

Keiser asked where the back flush and filter would be located.

D. Griffith stated included in the Board's packet is a sketch of the house that will be with the building permit, there is a bump out area of the house, they would tuck in the back flush and filter equipment there.

Keiser asked the type of construction for the pool.

D. Griffith stated yes aluminum siding and working with a pool company out of Hampton.

D. Griffith stated she appreciates the Board's time and they have put a lot of thought in this. They feel very strongly this is something they need for the current circumstances with their granddaughter and hopes the Board agrees.

Keiser closed the public hearing.

Fredette stated with the right conditions he believes it is clear this is of a temporary nature for a specific set of circumstances. Including being specific about a fencing requirement he is in support of the request.

Vincent stated he is in support of the request, there is a hardship situation involved, is fine with conditions but most importantly feel it should be approved.

Brooks stated in review of the request does feel there is a medical need where there is an exception from the hardship criteria. Does not believe it will diminish the surrounding properties as long as it has a fence constructed around it. Noted they can legally put a fence in and based off testimony they want to. Does not see a reason to deny this.

Keiser stated he is sensitive to infringing upon the free space between two properties and know pools can potentially impact neighboring properties when close to the property line but think the fence combined with the retaining wall mitigates that concern. Applicant did a good job pushing the pool as close to the house as they could and limiting the infringement of the setback. Does not find that it is contrary to public interest and would not change the character of the neighborhood and substantial justice is done because the gain for the individual is greater than any loss from the public. Spirit of the ordinance, adding a pool would not change the character of the neighborhood and keeping the pool as close to the house and installing a fence that at a minimum is 4' and then 5' along the shared property line that is a solid fence would be important to note. Regarding the hardship criteria, the fact that the property is small does not create a hardship, it does not unfairly harm the property, would just not have enough room. But as noted, RSA 674:33V allows the Board the option to grant this without finding a hardship for this situation where someone has a physical hardship and suggested they add the condition that the pool can remain as long as the need from the person is there.

Regional Impact MOTION: Fredette stated I move that the variance request of Diane and Bill Griffith **DOES NOT HAVE POTENTIAL FOR REGIONAL IMPACT.**

The MOTION is SECONDED by Brooks. **The MOTION CARRIES 5-0.**

MOTION: Brooks 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, noting the hardship is waived per RSA 674:33 V due to physical disability and need for pool, and I move that the request of Diane and Bill Griffith for a variance from Section 19.C to allow a pool within the 12' pool setback **be GRANTED WITH THE FOLLOWING CONDITIONS:**

1. The pool shall be removed when pool is no longer needed by the current tenant;
2. There shall be a fence on the property line where the pool encroaches (Map 15 Lot 32) and the front yard area in front of the pool, the fence shall be at least 4' in height and shall be a solid fence.

The MOTION is SECONDED by Perkins.

Discussion: Fredette inquired if a 5' fence would make more sense to hide the pool better.

Keiser noted they are allowed 4' in the front yard area.

Vincent asked for information behind reason for fence condition.

Brooks explained that the fence would be to protect the neighborhood, mitigates any potential for property values, applicant could have a 6' fence as long as it is not past the house in the front yard area.

Vincent clarified that is consistent to what the applicant proposed.

Keiser stated yes.

Fredette noted the fence will likely live longer than the pool.

The MOTION CARRIES 5-0.

B) Stephen MacKenzie for MacKenzie Ventures Inc. is seeking an Appeal of an Administrative Decision made by the Historic District Commission for a property located at 56 Winter Street, in the Residential Single Family/A with Historic Overlay (R1AH) District, Assessor's Map 11 Lot 173-4A, ZBA#06-2022 PUBLIC HEARING

Brooks stated as he is a member of the Historic District Commission, he would be recusing himself from the Board for this item.

Keiser appointed Hilton as a full voting member.

Keiser opened the public hearing.

Mears stated the applicant is appealing the Administrative Decision made by the Historic District Commission. Reviewed the history of the property.

Keiser noted the Board has the full power of the HDC for this request, to approve, deny or modify.

Stephen MacKenzie and Attorney Brian Barrington were in attendance to represent the application.

MacKenzie stated he had every intention to comply with the original conditions put forth by the HDC. Between the manufacturer, Pennsylvania factory, the rep in Tilton, himself and COVID things did not happen the way they were supposed to and he was not aware until they took the wrapping off the house the day it was set. Knew the mud board would have to be installed on site because the factory did not know what he was talking about. Thought the frieze board was there but it was not. He did spend a great deal of money to have the bottom of siding taken off to install the mud board, did put up a cape, installed wood grained siding, will have the wood painted within 6 months as all requested by the HDC. Had every intention to comply with all conditions, but it just did not happen and did go to be Board to see if they could waive some of the conditions. Those being for the windows that came in without the extra trim, the outside corner came in with 4" rather than 6", and it did not come in with a frieze board. Stated at this point to fully comply with the latest requirement from the Board would be to remove all of the siding from the house, to install different outside corner and trim to front door and windows and then try to re-install the siding trying to look as if this was not all added on. He stated as the house sits now feels it blends in reasonably with the neighborhood, the house looks reasonable. Provided a number of pictures of properties on the hill. No interest in diminishing property values but trying to build a house that a normal person can buy. Feels the house as it sits, though not to the original agreement, the end result is reasonable.

Barrington stated pursuant to Chapter 19 Section 14. F Standards for Review: *The Standards for Review shall articulate how and why a building should be similar to surrounding buildings. They will articulate the buildings form, scale, setback, materials, and other pertinent information, to properly blend a new, altered, or remodeled building into the existing historic streetscape or context.* This is a two-year saga, crimp on affordable housing. Noted the Board acts as the Board of Appeals for HDC decision and purpose is to guard against arbitrary and capricious decisions, to ensure the decisions of those they stand to review appeals upon are reasonable. He stated it is their position that the applicant was denied equal protection under the law. The NH constitution talks about equal protection, common sense and fairness, basically says similar people should be treated similar and not discriminated against. This new construction matches all the surrounding properties, the new house right next door is virtually identical. The green vinyl house next to it has no architectural features to it, behind the subject house is another new cape that was built that is virtually indistinguishable. He noted that previous Boards have recognized that this is the extreme outskirts of the District, on the backside of the hill, next to it is the woods and rail road trains, without immediate structures, this was at one point part of the pink mansion lot. Previous Boards have been more friendly to home owners. A previous Board approved the new construction next door, because they recognized this is not in the heart nor near the historic part of the hill. The preservation of the neighborhood and historic houses is huge, he himself has a historic home that he keeps in line with its historic

nature. But this lot is on the back side and they do not want to discourage the volunteers of the HDC and other Boards, do not mean this as criticism or discouragement to serve. This is an appeals Board that gives applicants the opportunity to appeal to a Board who can review the application with a boarder consideration. Asking this Board to say that what is built in fairness in light of what other Boards have allowed, that they should not discriminate against the applicant because a more rigorous standard is being applied. If that standard is not applied to everyone around then submit that the HDC would be acting in an arbitrary and capricious matter and request this Board to say that the applicant has worked hard and should be approved for how it is.

Public Comment:

Richard Brooks 18 Linden Street, Vice Chair of HDC: provided additional history of the lot, noted this lot and three others were all part of the pink house off Maple Street. The first two houses were built in 2007 and there was significant discussion around the City of how out of place those houses looked. Not many people were happy with the decision. Since then, believes there has been only one other new construction in the District, that being on Linden St. and it has more trim on it, which is one of the basic characteristics of the older houses, about 90% or so of the houses, almost all originally had 4” trim, large overhangs, wide corner boards about 12” wide, which gives the building character. Can construct a new building with some of those details without doing intricate details. When this application came before the HDC, it was requested the house have similar trim to the existing houses, applicant came back before them because a lot of the requirements did not happen. Noted the plans they were given had an address out of Tilton, it was not a plan showing the structure on the existing lot, a lot of things like retaining walls were not discussed. Sometimes the Board gets half the plans, the plans submitted when approved and then did not have the wider trim as requested, they had continued the item to allow time for the applicant to have a discussion with the manufacturer to see where the mistake was. When the applicant returned, he reported he did submit the order incorrectly. Board did discuss requiring the siding to be changed on only certain sides of the building to help mitigate the extra cost of changing it. The Board came up with a decision and the applicant did not meet that, did not require the wider trim on the back and the Board felt the applicant needed to complete certain items. Trying to help from keeping the houses from sticking out in the District.

Tim Metivier, 2 Curran Way, member of HDC: referenced RSA 677:3, disagrees that the Board has the same powers of the HDC, **677:3 Rehearing by Board of Adjustment, Board of Appeals, or Local Legislative Body.** –I. *A motion for rehearing made under RSA 677:2 shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.* Meaning that the HDC erred in their decision and did something illegal or the COA were unreasonable, the ZBA is here to hear the applicant’s application, not the one that was heard by the HDC. The question before the Board is if the HDC erred or gave unreasonable conditions. Stated he has no ill feelings towards the applicant and has respect for him, here to voice support of the HDC and their use of the law, following their guidelines and decisions. Trust the Board has read the appeal and the record, along with guidelines and rules of procedure in order to make a decision on this application. If the Board is not familiar with the history and guidelines the vote may have little merit.

Mears stated the **Chair of the HDC, Laura Barry**, provided written comment and read that into the record: *Please see note to the zoning board in regard to the 56 Winter street appeal.*

Good evening, I would like to speak to the 56 Winter street application for appeal. This application went through the hdc as a new construction building application. Upon review the board made our requirements very clear to the applicant that we required thick trim around all windows and doors so as not to need shutters on the house. We also made it clear the we required thick corner boards and a 6" minimum freeze board. These additional requirements were things that the manufacture of this home stated were easily added to any of their homes. The board met again on this home because it came with many other things that the board did not approve. We worked with the applicant on some of these items such as j-channel. However, since the applicant was aware of the requirements we expected the applicant to hold to the original approval. These items help this new construction home fit within the district without it standing out as a new construction addition. I ask that the board uphold the hdc decision on these remaining items. If the HDC cannot hold applicants to the original approvals without good reason as to why it wasn't met it will start a bad president for all future projects within the district.

Thank you and Sincerely, Laura Barry HDC Chair

Keiser noted that the Board would be able to ask HDC procedural questions to the HDC Vice Chair in attendance tonight. The applicant will be able to have the last closing statement prior to Board discussion.

Jones clarified the date of the original approval was in July 2020 with the conditions of: at least 6" mud board and freeze board shall be added, 3.5" trim around the window and doors, integrated J channels, wood shall be painted within 6 months and vinyl shall have a wood grain. Inquired if at such time if the applicant felt that was too much of an asked.

MacKenzie stated he agreed to it, he requested to not be restricted in that way but did agree to it in order to have the project move forward. At the time he thought that was what he had ordered. Explained he saw the building as soon as it was being set and then went back to the Board to explain what had happened. Noted that they signed off on the specs that the factory provided but they had not included the conditions from the HDC approval, but he signed off on it assuming it was included. He stated he did agree to the conditions but then they did not come through which creates a bigger problem because it is more than just pulling off some siding. Jones asked if the applicant appealed the decision when he received the first approval notice.

MacKenzie stated no.

Jones asked when the structure was ordered that was after the specs of the building were approved by the HDC. MacKenzie stated he thinks so.

Jones asked if in the original order the extras being required by the HDC were included in the order.

MacKenzie stated that he made it clear to his sales rep who was the one that made the order.

Jones stated given the evidence here, he does not think the applicant was unfairly treated.

Fredette acknowledged the difficulty in renovate or construct during COVID and understand it is more than just cutting a few boards. Inquired if the applicant has approached the HDC with alternate plans such as paint schemes, to make best of what is existing. What attempts have been made to reasonably address outstanding issues and if they were receptive.

MacKenzie stated he request to the HDC at the last meeting was to waive the requirements he had not complied with, they did not grant that.

Fredette clarified the applicant would need to spend from 20 to 50 thousand dollars to revise the structure, go through a legal battle or leave the house to sit.

MacKenzie that does summarize the options.

Vincent inquired upon if the applicant has experience with building and modulares.

MacKenzie noted he had done building before but had not done a modular in about 12-13 years, first in the Historic District.

Vincent noted his recent experience with modulares was that everything that was requested was not provided, and then having to go through renovations to fix it. Inquired if the house the applicant constructed fits in with the neighboring house.

MacKenzie stated he felt that it did.

Vincent stated he agreed as well. Noted he has respect for the HDC and feel they are needed. Thinks it is a negotiation device when building a new house, the homes that went there years ago, bear no resemblance of any Victorian home. Stated he thinks the majority of the building especially located next to the homes it is looks fine with exception of the foundation that shows too much.

MacKenzie explained his intention is to have a landscaper come in to plant something to cover the cement, and the foundation is the height it is due to topography.

Vincent noted all of the vinyl siding would have to be removed for installing the corner boards and noted the process for that.

Fredette noted that Victorian homes when built were with craft people who could do that with builders that could do that. Inquired if there was a separate approval required for the home to be a modular home.

MacKenzie stated no.

Fredette clarified there was nothing in the Ordinance that bars modular homes in the Historic District.

Keiser stated no, he did not believe so.

Keiser clarified to comply the applicant installed a mud board and there was a j-channel above the mud board
MacKenzie stated yes.

Keiser inquired if around the windows is j-channel.

MacKenzie stated no, that it integrated.

Keiser clarified if it was 3.5"

MacKenzie stated it is about 2"

Keiser asked if there is j-channel around the door, or the eaves.

MacKenzie stated not around the door but could be around the eaves harder to tell due to the trim.

Keiser inquired if the neighboring house has a frieze board.

MacKenzie stated he believes it does.

Vincent added it does.

Keiser asked if the applicant was under the assumption, he was only going to be required to fix one side at the last meeting.

MacKenzie stated the discussion as the meeting prior was if the applicant could live with putting the wider trim around the windows and front door, just front, his fear is that it will end up looking like an add on rather than new construction. He went to the meeting to see if the Board could live with the structure as is, expecting that perhaps they may try to hold him to changing the front. He noted there was a motion and second to change the front but during discussion it got altered substantially.

Keiser noted the corner boards are 4" rather than 6", do they have j-channel or is it integrated.

MacKenzie stated no j-channel they are integrated.

Fredette verified the applicant approached the HDC about trying to paint the corner boards, change shutters, or modify foundation view, to reach a happy medium that would not require stripping the house.

MacKenzie stated no.

Fredette clarified that the modular comes done rather than stick build.

MacKenzie stated it comes done and then a contractor is hired to do an exterior and interior button up.

Fredette inquired if the applicant has any legal recourse against the modular company if the mistake is on their end.

MacKenzie stated no because he believes they would be able to provide documentation it was not their mistake.

Keiser inquired if the applicant has a ball park idea of how much it would cost to meet the remaining criteria.

MacKenzie stated between 25 to 30 thousand dollars estimated.

Hilton asked if that would be just to modify the front of the building, to update frieze board, trim etc.

MacKenzie stated no, entire building. The frieze board is a big if because he is unclear how it would be added since this is not a stick-built foundation house.

Keiser asked if the HDC Vice-Chair Richard Brooks could answer questions regarding HDC procedures.

Noted the applicant will have the opportunity to respond after their questions to the Vice Chair.

Fredette asked what the HDC feels is the path to cure this problem.

Brooks stated he feels the Board did compromise, did not ask the applicant to remove all of the j-channel which is everywhere that siding ends, most of these are integrated. Did compromise by not asking for the back side to be revised as well.

Fredette inquired how familiar Brooks is with vinyl siding and how it works.

Brooks stated fairly familiar has done some work with it.

Keiser stated Brooks is before the Board to answer questions on how the HDC operates, not necessarily how they came to all of the conclusions and decisions. Questions on how the Board would come to decisions.

Keiser clarified the original requirement was for 3.5" trim around windows and doors, but the last meeting there was discussion of 4" reveal. Could Brooks elaborate.

Brooks explained it is the nominal opposed to the actual measurement, 4” would be 3.5” or 4” but not 2”. What you would actually see is the reveal. Siding has a 4” reveal or cedar shakes could have a larger reveal.

Keiser stated the HDC specifies a lot of criteria on items such as trim, corner boards, frieze boards, what does that come from.

Brooks stated it is about appearance, does not regulate how it is required to be constructed, strictly looking at the appearance of the structure, appearance here is to make it look like it belongs in the HDC. Noted a lot of modular companies will provide some of the fancier trims you see in the historic districts in their brochures, maybe additional cost. The Board is reviewing to how it can blend into the neighborhood. Noted the oldest house in Somersworth is behind 45 Market St on Prospect St. it is a simple one-story cape. This is almost a similar shape to that, the oldest house has 4” trim, corner boards, overhangs only in the front and backs not the ends, there is give and take on all of this. Feels that the Board did work with the applicant to try to make the new construction fit in, the first two houses constructed in 2007 they received a lot of negative feedback because they did not look like historic houses. Noted that just wider trim will sometimes be able to tie the home into the district.

Keiser asked what the HDC uses for comparisons when new construction comes before the Board.

Brooks stated it should be compared to the ones around it, size, scale, so that houses are consistent in sizing for established character, situation on the property to have consistent setbacks. It is trying to look like what is around it and belong. It is a subjective balancing act, try to be fair, have 7 members on the Board to allow for more input.

Fredette inquired if there were any abutters that spoke out regarding the application.

Brooks stated not that he recalls.

Keiser inquired if he was a new board member, how would he learn what to look at.

Brooks stated they would advise members to look at old building styles to see details they have. Noted that modulars can be very different and it ends up being about appearance.

Vincent clarified Brooks is representing the HDC.

Brooks stated yes.

Vincent asked who has the voice of the HDC, is it the chair or just members that are allowed to speak.

Brooks stated the entire Board, the applicant comes before the Board with a proposal all members are able to ask questions and raise specific concerns and make recommendations. Then a motion is made for a decision and the Board votes, the chair runs the meeting.

Vincent stated his questions is, that a newly elected member comes here and speaks about what should happen and what is not supposedly legal for this Board, shouldn't that be the Chair or Vice Chair bringing that forward. Brooks stated he believes that a resident of Somersworth is able to speak, the Chair wanted to be here but due to work conflicts was unable to attend.

Vincent stated feels that the other Board member brought an opinion but not one from the entire HDC Board, not something that was voted on by the HDC.

Brooks stated the committee did not vote on that.

Vincent clarified it would be a matter of opinion then.

Brooks stated it would be his interpretation of the law.

Keiser thanked Brooks for providing information regarding the HDC process.

Barrington stated their presentation is based on equal protection and treating people similar. He stated this is a micro neighborhood on the back side of the hill with pre-construction that this is consistent with. The Linden Street property is a perfect example of a rare vacant lot that is surrounded by historical buildings and a high standard was applied to him. There is precedent and it is that the surrounding houses are built the exact same way.

MacKenzie added that when he lived in an 1870 Victorian it was important to maintain that integrity. This is 2022 new construction; it will not look like 1870. He had intended it to have different trim than it does now but true belief is that as it exists now fits just as well in the neighborhood than if he was to add on additional features. Concerned that any additional modification would look like an add on, concern of damaging the integrity of the building and the warranty of the building. Not trying to propose something that would damage the looks, integrity or aesthetics of the Hill which is part of Somersworth's identity. It would be an incredible burden to remove the siding from all four sides and reconstruct it and re-trim windows that currently exist, believe what exists blends in nicely with the neighborhood.

Fredette asked as part of the HDC process, did they require a signed copy of what the constructed building was going to look like prior to being granted a building permit.

MacKenzie stated they had the stamped plans.

Fredette asked if the HDC requires a sign off for the visual look is going to be prior to building permit.

Jones stated he would argue that the Board set a set of conditions and then would fall to the building inspector to ensure compliance.

Fredette stated he wants to understand if some rendition of what this was supposed to look like as approved by the Board exists somewhere and this is what they were supposed to go back to the company with.

Keiser stated there may have been a plan, but then there were a specific set of conditions set forth by the HDC in the minutes that the applicant agreed to comply with, if it was on the plan or not, the minutes are the legal document.

Mears noted the plan set that would have been received by the HDC and then the plan set that was submitted with building permit, both were included in the Board's packet.

MacKenzie stated he would reiterate that he would like to see this project move forward without having to re-do everything that is done.

Keiser closed the public hearing.

Vincent noted the applicant has lived in the City for a long time, been an employee of the City, constructed other buildings, stand up person and this situation is a mistake, understands the frustration with dealing with a modular home as they never come out, the way you want. Can understand a mistake that is a like a pink elephant in the neighborhood, but the homes surrounding this one is consistent with it. No disrespect to the HDC, but thinks the HDC has a difficult time when a new home is being constructed, it feels like a negotiation process. He will be in support of the applicant. If this was an easier cheaper fix but it would take a complete overall of the exterior of the building, if it was a pink elephant eye sore situation it would be different to him, but it is not a mess. It is comparable to what is there.

Fredette stated he would be in support of the applicant as well. In consideration of this for the cost to fix the outstanding conditions versus the public benefit, does not see the benefit compared to the cost to the applicant. Not only is there the construction cost but the labor availability. Suggested that the HDC consider not allowing modular houses in the HDC to allow for more control during construction. There is some wrong on behalf of the applicant and not sure the wrong is righted by making the applicant do some much work.

Perkins stated he is in support of the applicant. In review of the email from the chair of the HDC there is statement that they required the thicker trim around the windows so as not to require shutters, but there are shutters. In his mind that is appeased. For the other two items, feels this is similar to an equitable waiver being granted, for the minimum benefit does not see the value of the cost.

Vincent noted the applicant referenced affordable housing and thinks that is important, tough to put into the Historic District and provides good merit.

Fredette appreciates the note of an equitable waiver, noted another applicant that was granted an equitable waiver.

Keiser stated building in a Historic District adds complications and a modular is a risk. As an HDC member he looked at the Standards for Review to see what standards are to be used for approving new construction. Which states, *New construction should reflect the theme of nearby existing buildings, but should not be compared or similar to any nonconforming buildings nearby.* Reviewed the site, street view, asked the Planner to provide survey and inventory for Historic properties that was provided via email, and in review of the Standards of Review there is no specifics for details, you would have to go view the historic survey for surrounding properties. The only hard standard is that no j-channel is to be used. Understands the Board is trying to meet the flavor of the neighborhood, but as pointed out by many the flavor of the neighborhood is not very historic, there are three old buildings in that area. One of those buildings now has vinyl siding and j-channel looks nonconforming. One has ornate trim maintained but has vinyl siding. Noted the applicant did put on the mud boards, building sits significantly up on the hill away from the road. Trying to understand if there is anything on the list, the trim though not up to size eliminates the j-channel, the 6” corner boards would eliminate j-channel but they are only 4”, the mud board was installed but has j-channel and no frieze boards. As per discussion it sounds it would be appropriate to required additional modifications and feels it already meets the standards.

Fredette inquired if this Board to remand it back to the HDC for the applicant and HDC with knowledge the house would not be resided.

Keiser stated no.

Vincent stated he does not think that would be a good move.

Perkins stated if they were to require anything to require the applicant to do additional landscaping and possibly shutters.

Keiser stated he does not think the foundation is under discussion at this time.

Mears noted the applicant would need to go back before the HDC for stairs since she did not see that in the original approval. Just looking at what is before the Board tonight.

Keiser noted those items included.

Jones clarified the applicant is asking to appeal all conditions from the April 27 NOD. In the spirit of the HDC’s decision the Board should try to uphold whatever is reasonable short of residing all of the house. Inquired if there is a compromise between the HDC’s decision and what the applicant has done.

Fredette stated there are things the applicant could do to add to the building without addressing the specific conditions put forth. Hopes it is a lesson to the HDC if they have specific carpentry wishes to make sure the buildings they allow partake in that process. Thinks the process should be tailored more as to not have arbitrary and subjective conditions.

Keiser stated he does not think they are arbitrary but they are subjective. The HDC has the knowledge of what a historic building looks like and trying to meet that standard.

Fredette noted the difficulty to make new construction look like an old house.

Jones inquired if the board is limited to architectural standards of the District. The requirements are a little subjective but the applicant agreed to them.

MOTION: Vincent stated after review of the application, the file and all the information presented to the Board, I feel that the appeal should be granted and I move that the request of Stephen MacKenzie for MacKenzie Ventures Inc. for an Appeal of an Administrative Decision made by the Historic District Commission **be GRANTED.**

The MOTION is SECONDED by Hilton.

Discussion: Fredette stated he would like to see conditions for shutters and light, think those are simple things that can be done for compliance.

Keiser inquired where the shutters came from.

Perkins stated they were referenced in the letter provided by the HDC Chair, saying the thick trim was required in lieu of shutters.

Vincent stated that was why he was going to have a condition for shutters for the windows.

Keiser noted the shutters are located on the windows.

Vincent stated he does not want to see them at the door.

The MOTION CARRIES 5-0.

Brooks came back to the Board as full voting member. Hilton stepped down to alternate member.

C) Somer High, LLC is seeking a variance from Table 4.A.1 to allow the existing barn to be converted into two residential units to create a multi-family site on a property located at 207-209 High Street, in the Residential/Duplex (R2) District, Assessor's Map 14 Lot 49, ZBA#07-2022 PUBLIC HEARING

Keiser opened the public hearing.

Mears stated this parcel is approximately .79 acres within the R2 Zoning District with municipal water and sewer. This property currently has a duplex on it. The lot has approximately 182 ft of frontage. The variance is to add an additional 2 units on the property. If this request was approved it will require a Site Plan Approval from the Planning Board.

Sarah Shire (Shire), Scott Shire (S. Shire) and Mike Casavant were in attendance to represent the application.

Shire stated the intent is to repurpose the existing barn located at 207-209 High Street. Understand appreciate the purpose of zoning ordinances in place to protect and improve health and safety of people living in communities and enhance cities. Stated the existing barn has broken windows, fading paint, non-functional doors, roof and soffit rot, and narrow out of code stairways. If the problems are not addressed the current conditions will continue to deteriorate and detract from look and feel of mixed use neighborhood and a risk to public and residents. In addition the tenants and others at the property must contend with a very short driveway that offers no way to turn a vehicle around. Major maintenance or remediation without increased utility does not make sense for them financially. While the barn is old and in need of repair it is structurally sound. Noted the improvements to the barn that would be part of this project and an expanded parking area. Approval of the variance request will allow them to further invest in their property and improve, provide much needed housing units, tax revenue for the City, contribute to visual appeal to the neighborhood and bring more residents in to support a thriving downtown.

Public comment:

No comments received.

Vincent inquired if they lived at the location.

S. Shire stated no, this is an investment property.

Vincent asked for clarification on what the variance is being sought.

Mears stated to add two additional units to the barn. This property is located in the R2 where duplexes are allowed but there are existing 2 units in the house, therefore this would be a multi-family site which is not a permitted use.

Brief discussion of surrounding properties.

Fredette asked what makes this property unique in a way that creates a hardship.

S. Shire stated the main issue is maintenance, the fact that to maintain a barn that has no other use than storage it would cost them substantial amount of money to do that without increase in value as just storage space. Secondly because there is a safety issue with vehicles backing out of a very short driveway, would be able to remediate by adding the necessary parking spots per the Zoning Ord. with a parking lot in the back yard area. Create a less of a safety hazard for all. Other conditions that would make this acceptable, across the street the zone changes to allow for multifamily, they have the required frontage and SF for more units.

Fredette inquired if they have considered tearing the barn down.

S. Shire stated they have and that is expensive and would be sad since it is a nice-looking barn and secure. Understand the need for affordable housing is great, by adding a couple small units would be a benefit and offer low risk. Took great note of the previous conversation regarding historic structures and want to retain this barn as something useful.

Fredette asked if the barn would be relocated as part of the renovation or is the space to make the revised driveway there.

S. Shire stated no they would not the space is there already.

Brooks asked if the doors would remain to still look like a barn.

S. Shire stated no, those would be removed for structural purposes.

Jones stated he is not sure that standard maintenance of a structure in disrepair really meets the unnecessary hardship that is different from other buildings, is there any other hardship item of this lot.

S. Shire stated yes the safety concerns is the biggest ones, the inability to turn the car around and having to back out onto High Street creates a safety concern. He noted it is not just the look or disrepair of the barn, but also critters are getting into the structure, with the holes in the building hard to stop that from happening.

Jones noted that is not unique to just a barn here.

Vincent noted there is a property maintenance code for the City of Somersworth, that any disrepair property needs to be addressed. It comes down to that there is not to be peeling paint on a house.

Jones stated using a business venture as a hardship in wanting to repair the barn does not address 3a in this context. Asked again if there is any special features of the property, location, etc. that would allow for a multifamily at this site where only 2 are allowed.

Casavant stated they are seeking approval to have a total of 4 units. Noted they are at the cusp of the R2 / R3 zone, there are houses directly across from them that are multifamily sites, that is part of it that area though right in the R2 but there are visually R3 within sight of this property. This site is walkable to downtown and reduces the need for cars to get in/out of town. If they have an existing structure that is structurally sound, even with the disrepair it is shorter time to build two units than a new structure. Provides more housing quickly in a less obtrusive manner.

Jones noted the multi family across the street helps.

Brooks inquired if they have considered subdividing the property. S. Shire stated no. The distance between the two structures is fairly narrow not sure that would be compliant. There are utilities as well to consider. This is not a traditional neighborhood, mixed with residential and commercial, direct neighbor is very supportive. The fact that this is so close to downtown and other businesses adds to overall economic development of the City. Noted the surrounding commercial buildings.

There was a brief discussion of types of subdivisions available in Somersworth.

Brooks noted that he is having a hard time see the hardship in this circumstance but would love to see the barn saved.

S. Shire inquired when there are variances granted around them if that precedent provides a benefit. Noted there are commercial next to them and across the street the zoning allows for multifamily.

Brooks noted a lot are grandfathered. Precedent goes both ways as well.

Keiser stated each of the variance criteria need to be met for each individual property and request.

Fredette noted the historic information for surrounding properties.

Casavant thanked the Board for their time. Understand the comments and questions, in their view the proposal is a good solution to maintain a valuable asset of the City and provide additional housing for the area in a way that maintains the quality and characteristics of the City. They are trying to maintain the integrity of the housing stock in the City.

Regional Impact MOTION: Perkins stated I move that the variance request of Somer High LLC DOES NOT HAVE POTENTIAL FOR REGIONAL IMPACT.

The MOTION is SECONDED by Vincent

The motion carries 5-0.

Vincent noted he owns property that is located in an R2 district as well that has a garage and he would like to convert as well for additional units. If this variance is granted there would be more that came in immediately for the same request. Unless the zoning is changed does not feel the criteria has been met. Variances can be granted if there is a hardship or unusual condition but does not see it in this case. Noted this is a corridor for the City and has been a spokes person to change the zoning for this corridor.

Fredette stated he appreciates that there is a need for housing but the reason behind zoning is because they do not want the City to be all affordable housing. There needs to be a mix and if there are specific properties that don't fit then variances can be granted. Concerned of getting into spot zoning which is out of the purview of this Board. Wants to grant the variance because the applicant appears to have great intentions, but there is no defined hardship to grant the variance.

Brooks stated he knows the intention is good and there is a need for affordable housing. But does not see how this meets the criteria to be able to grant the variance.

Keiser reviewed the criteria. He noted he is on the line in regards to how the proposal would not diminish surrounding property values, does not think the surrounding properties would be valued less if this was a multifamily site since there is multifamily across the street. That the variance is not contrary to the public interest, if taking the character of the neighborhood (R2 neighborhood) and does think there would be an affect to the R2 neighborhood and therefore contrary to public interest. Literal enforcement, hardship, special

conditions of the property, cannot use that it is a large barn, there are other large lots and cannot see how that creates a hardship with the application of zoning, none of the items such as upkeep, affordable housing do not fit in the equation and does not feel there are any special conditions of the property. Does not think they would have enough space to subdivide. Substantial justice, traffic would be increased some but not to the extreme in comparison to the commercial use next door. Spirit of the ordinance, would follow with the character of the neighborhood, which would be changed by allowing for multifamily in the R2 and does not feel it is met. Based off criteria 2. Contrary to public interest and 3 hardship he is not in favor of this request.

MOTION: Fredette stated after review of the application, the file and all the information presented to the Board, I feel that the hardship and spirit of the ordinance criteria of the five criteria have **NOT** been satisfied and I move that the request of Somer High, LLC for a variance from Table 4.A.1 to allow the existing barn to be converted into two residential units to create a multi-family site **be DENIED.**

The MOTION is SECONDED by Vincent.

The MOTION CARRIES 5-0.

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

None

Hilton **MOVED** to **ADJOURN** the meeting.

Perkins seconded the Motion.

The **MOTION CARRIED** 5-0 at 9:42PM.

Respectfully Submitted,
Dana Crossley, Planning Secretary