

**SOMERSWORTH ZONING BOARD OF ADJUSTMENT  
MINUTES OF MEETING  
OCTOBER 4, 2023**

**MEMBERS PRESENT:** Matt Keiser – Chair, Richard Brooks, Ken Hilton-Alternate, Ken Vincent, Anthony Jones, Brad Fredette

**EXCUSED MEMBERS:** Keith Perkins

**STAFF PRESENT:** Michelle Mears, Director of Planning & Community Development  
Dana Crossley, Planning Technician  
Anna Stockman, Planning Secretary

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

Keiser appointed Hilton as a full voting member.

**1) Approval of the minutes:**

Vincent MOVED to approve the September 6<sup>th</sup>, 2023 minutes.

The MOTION was SECONDED by Fredette.

The MOTION CARRIED 4-0-1, with Jones abstaining.

**2. OLD BUSINESS**

- a. Any old business that may come before the Board.  
None.

**3. NEW BUSINESS**

- a. **(Continuation from September 6<sup>th</sup>, 2023): 85 Elm Street Somersworth LLC and 20 Green Street Somersworth LLC are seeking an Appeal from an Administrative Decision of the Historic District Commission dated June 28<sup>th</sup>, 2023 to deny the change in proposed building material for a property located at 85 Elm Street and 20 Green Street in the Business with Historic Overlay (BH) District, Assessor's Map 10 Lots 177 and 176, ZBA#11-2023. PUBLIC HEARING**

Brooks recused himself from this agenda item as he is a member of the Historic District Commission. Jones was appointed to sit as a full voting member for this item.

Mears provided an overview of the conceptual reviews and Board meetings the proposal has had before the Historic District Commission (HDC) and Planning Board in 2022 and 2023. She stated the application went before the Planning Board on February 15<sup>th</sup>, 2023. The application was continued to the March 2023 meeting when it was approved with conditions. The applicant returned before the Planning Board in June 2023 to add residential units and make revisions to parking at 67 Elm Street including the removal of the underground parking garage. The application was denied by the Historic District Commission at their June meeting due to the change in material resulting in the absence of brick and that the removal of brick would not fit into the character of the area. The applicant withdrew their amendment to add the additional units in July 2023.

Vincent asked about the ground rules on the proposal. He asked for clarification on whether or not the Zoning Board's role is to either approve or disapprove of the HDC's recommendation.

Mears stated the proposal would have to return before the Planning Board for the additional units, parking, and the amendment to the site plan. She said that is under the Planning Board's purview.

Keiser stated the Board is acting as the HDC. The Zoning Board is considering whether we feel the brick is or is not in accordance with HDC regulations. He said if the Board may place conditions on the physical appearance of the building, as the HDC would.

**Rob Previti** and **Ben Stebbins** were in attendance to represent the application. Previti referenced the first slide of their presentation, which displayed the building design that was approved by the HDC in November 2022. He said after receiving project approval, they considered the project's feasibility. He said they determined the project would be more feasible if they added more units and removed underground parking and eliminated the use of brick. He said they were going to construct units on the first floor in lieu of where parking was previously proposed. He said they submitted different color options for the proposed clapboard siding. He noted the design was denied by the HDC specifically due to the lack of brick not being consistent with the appearance of the neighborhood. He said the applicant appealed that decision. He noted they have examples to show the ZBA that clapboard is consistent with the existing neighborhood, and referenced the legal framework for the appeal. He stated that legally, municipal board restrictions placed on property owners are judged by reasonableness. He said for Board members to keep in mind the public purpose that would be served through this project versus the restrictions the Board is considering. He noted the public purposes that would be served with this project, including the improvement of surrounding property values and meeting the area's housing needs. He noted further the Form-Based Code Overlay that should also be considered.

He walked the Board through pictures of the Historic District and asked members to consider whether or not the area appears as a Historic District. He pointed out many of the buildings are run down and many of the building materials used – aluminum, asbestos, vinyl, and stucco – within the District have been replaced with materials that do not contribute in the way they may have previously when the designation was first made. He pointed out the church located at 10 Green Street, which was retrofitted for apartments. He stated it may be better if one had the ability to replace a church that no longer serves a church use with a purpose-built apartment building or commercial building. He pointed out additional buildings within the Historic District and asked Board members to consider whether some of the buildings are worthy of historic preservation. He said it would probably be a benefit to the City if they were demolished. He said clapboard siding dominates in the Historic District and lots of building materials that aren't wood or brick are used. He referenced the U.S. Department of Interior's Historic Preservation Standards that historic districts experience a loss of character when they are noncontributing. He showed other siding options with different colors that they presented to the HDC, to show what the building could look like with clapboard siding. He stated the restriction of building material is an unreasonable restriction and a feasibility issue.

Keiser opened for public comment:

**David Witham**, resident of 10 Rouleau Drive and City Councilor voiced his support for the project. He said he serves as the City Council representative on the Planning Board which approved the project in its initial conception. He said it is important to keep in mind that if the applicant were to move forward with the underground units and make revisions to parking, they would be required to return before the Planning Board. He referenced the June HDC meeting during which the applicant noted the element of cost feasibility related to building material. He said the HDC's point that they are not to consider the cost of a project is inaccurate. He highlighted different sections of the City's Zoning Ordinance which focus on economic prosperity. He said in his view, economic prosperity speaks to a cost element, and that it should be considered because of the City benefit from the project. He noted there is very little in the Ordinance regarding new construction, however the HDC's Standards of Review do reference new construction. He noted a past project regarding a retaining wall on a property, the owner of which indicated it would be cost prohibitive to replace with stone or granite. He stated the importance of weighing price as the HDC considers applications within the Historic District. He said he appreciates the work of the HDC but believes they erred in not granting the certificate of appropriateness to the applicant in this case.

**Matt Dinola**, 16 Green Street, an abutter to the property stated he is abutted directly on two sides by the subject property. He noted his concerns about the construction process, including ensuring minimal impact to his business, landscaping between his property and the subject property, dust, noise, and access to his property and Church Court. He noted the significant economic benefit and aesthetic improvements that will be made as part of the project.

Keiser clarified with Mears that Dinola should contact the Planning Office if he has any concerns during construction.

Vincent stated the abutter should attend the Planning Board meeting to share his concerns. He stated the Planning Board has more authority over those elements.

**Chris Horton**, a resident of 15 Francoeur Drive and Planning Board member, spoke in support of the project. He said he thinks the proposed changes are consistent with established structures in the area. He noted the public benefit of the project including housing, offsite improvements, rebuilding of Church Court, offsite lighting, and additional parking. He said he hopes the Zoning Board chooses in favor of allowing the applicant to move forward.

**Laura Barry**, Chair of the HDC, confirmed that Zoning Board members received the memorandum she submitted as a public comment. She stated it is not within the HDC's purview to consider cost. She said she understands that does come up, but the role of the HDC is to do what is right and what fits into the community, not what costs less. She said if the HDC is going to start considering cost, HDC regulations also need to be considered. She said that is not the case with this particular project so it should not be viewed as an excuse. She said when the project first came before the HDC, it was economical. However, other properties in the surrounding area were bought and that has made a financial impact on the project. She said she put forth to the applicant that they should have the reason why the cost plan changed. She referenced her memorandum and agreed that while clapboard is in the neighborhood, brick is also eminent in the neighborhood. She said the HDC considers the Historic District overall when hearing applications. She referenced the Queensbury Mill and noted that building has brick on it on the first floor. She said towards the beginning of the project, the HDC asked the applicant what they wanted to be at the end of the project, either a mill or a two-story apartment building. She noted the applicant chose to go the mill route, and that is how the HDC looked at the project. She referenced different mills in the area and noted that each of the mills are not all clapboard. She said if the Zoning Board decides to grant the appeal, the decision would be going against what the City regulations allow. She said she wants to make sure it is very clear the HDC did everything within their guidelines, and she hopes members take that into consideration. She said if the ZBA wants the proposed building to fit into other large-scale buildings in the area, they are not all clapboard, and this building would stick out from the others.

**Danielle Amero** of 279 Main Street stated she has been a resident of Somersworth for thirty years. She stated that she was a member of the former Main Street Committee when Somersworth was a Main Street Community. She said she walks through the neighborhood on a daily basis with her dog. She stated she can respect there is brick on some of the buildings in the area, but that anything would look better than what the area currently looks like. She said a vital part of the efforts of the Main Street Committee was to try to get people into the downtown, and this project would accomplish that. She said she respects the viewpoint that the City does not want something ugly in the downtown, but the building proposal she sees is not ugly. She said she does not have objections to clapboard, and that she lives in a clapboard house. She noted she wanted to give a resident's perspective of someone who walks in that area every day.

**Richard Brooks** of 18 Linden Street stated he is a member of the HDC and ZBA, and he is standing up as a citizen tonight. He stated there are several situations that have created a larger problem with regard to this proposal. Speaking as a resident, he said he does not believe any outcome from tonight will be a good scenario that is a win in the long term due to several failures of various groups involved with the entire project. He

provided a description of the project's review process that began with multiple conceptual reviews by the HDC. He noted by that point, there should have been a formal plan provided by the applicant. He stated in the HDC's review of the project, the HDC failed to limit the size of the building. He referenced HDC regulations where it lists building size and scale. He noted the Form-Based Codes Overlay District and stated that played a part by encouraging development that was inconsistent with HDC regulations. He said the Form-Based Codes Overlay District added another level of visual appearance regulations that were inconsistent with the Historic District, and over complicated the process as a result. He noted the parking ratio of 1.3 parking spaces per unit that were approved by the Planning Board and City Council. He said that would overwhelm the parking available on Main Street and noted he does not believe people are going to walk a block uphill and up flights of stairs to their apartment units. He stated that parking problems are easier to avoid than they are to fix. He referenced the applicants' purchase of 67 Elm Street and noted the requested demolition of the building on the property for safety reasons and the eliminate blight. He said the HDC did not receive a reuse plan, which is normally requested prior to any demolition, as the safety reasons seemed to be a more concerning aspect. He noted that after the applicant's purchase of 67 Elm Street, which would be utilized as additional parking, the applicant could have increased their parking ratio to two spaces per unit, but the 1.3 parking ratio had already received approval. He said the applicant's request to alter the exterior building material drastically changed the appearance of the building and resulted in the HDC's denial of the amendment request. He referenced the ZBA and stated he is unsure he would disagree whether the appeal should be granted. He noted his observation that the ZBA has made decisions at times based on their own opinion rather than on the criteria they use to consider applications. He said the building will be an overwhelming size compared to everything around it. He noted the average cost of market rate housing for one and two-bedroom units as \$1,800 per month and provided his projections for the revenue the building will create on a monthly and annual basis and noted his lack of understanding behind the reasoning why the applicant cannot afford to use brick. He said he would challenge the applicant to consider altering their plan to provide a building façade that is flat and mimics a mill building. He referenced the pictures of mills provided in Board packets and noted the uniformity of window design, window trim, and the flat façade they have in common. He compared the proposed building to one on Central Avenue in Dover and noted his observation that many community members are not favorable of the building. He referenced housing in Berwick as an example of what he would like to see occur in Somersworth. He stated that different City boards have not been on the same page in the review of the proposed project. He noted that many of the homes within the Historic District that have been rebuilt were completed prior to the designation of the Historic District. He said a lot of the buildings have the same physical structure of their original building footprint and could be restored easily at minimal cost. He stated there are always going to be mistakes made along the way but we strive to do better, and the whole project's review could have been done better. He said he is not against development; the City just needs development to be completed in a fitting fashion that is not overwhelming in size and out of character for the area in which it will be located. He noted that is what the HDC strived to do.

**Kimberly Shoen**, an attorney and resident of 125 High Street stated she owns a Victorian home with a slate roof that is located in the Historic District. She said she has been before the HDC many times, including two years ago, after which she was required to install a snow fence on her roof. She noted the added cost of that project given her location in the Historic District and the requirement to install a snow fence. She said that is an important factor to take into consideration. She said she joined the HDC because she feels it is important to preserve the history of Somersworth. She pointed ZBA towards the agent's house and encouraged members to consider the structure, as it is one of the best properties in the City. She likened the vision of the completed building to Paul Revere's home in Boston, which is a little house surrounded by modern development. She noted the site plan of the proposed project indicates the building's location at thirty feet from the door of the agent's house and the façade that would be flat and three-to-four stories tall. She said that is the reason behind the HDC's concern. She stated her support for housing as a defense and divorce attorney and said this housing would not be accessible to her clients given the projected cost of rent being at the market rate of \$1,800 dollars to \$2,500 dollars a unit. She said at the City's recent Housing Workshop, she learned the unit price that would be considered affordable to the Somersworth community is \$1,400 dollars a month. She noted the proposed

building would not provide accessible housing to community members in need of it, including those working at companies such as Walmart or Home Depot. She stated one of her issues with the proposal is the City is not requiring the applicant to provide affordable housing. She said it is her calculation the tax break the City will give them is the one million dollars the applicant is going to save by not using brick. She noted actions that she found to be disingenuous, including the purchase of the 85 Elm Street property, the sale of which she assisted the former property owner with. She stated the former property owner had not been aware of who was purchasing the property and that they are not in favor of the demolition of the agent's house. She said she disagreed with the HDC's decision to grant the applicant permission to tear the building down. She said she has been very vocal about her objection to the project, and it would be better situated on Route 108 or on Main Street instead of the proposed location. She stated the City deserves a project that fits into the area. She noted the brick on the buildings surrounding the project. She referenced the applicant's comment regarding the replacement of certain Historic District buildings with purposeful buildings. She noted her concern about the applicant's proposal to amend their use of siding material, install windows of lesser value, and to charge rent at market rate. She stated that granting the appeal would send a poor message to the community and other developers. She said if the applicant is required to use brick in their design, they may sell the project to another developer who would possibly develop the property differently. She reiterated the importance of the Historic District and of the HDC. She made the suggestion for the ZBA to put on a condition that the applicant must place a bigger buffer around the agent's house than the buffer presented in the current site plan. She reminded the Board of the use of brick on existing properties in the City and of the weight the Board's decision will carry.

Mears shared a letter submitted by David Baker of Somedowntown LLC. The letter indicated Baker's support for the project. Baker noted a list of City benefits related to the project, including that it would provide a boom to downtown businesses, benefit the tax revenue base, and invigorate the downtown.

Fredette asked whether the applicant would like to provide a rebuttal for any of the concerns brought forth by members of the public that chose to speak this evening.

Previti stated there were a lot of mischaracterizations about when they were buying the property. He said it sounded like they were in some sort of conspiracy, and it's not true. He clarified they didn't want to buy the property (67 Elm St) before they were looking for areas to put parking after receiving Planning Board approval. He said it made economic sense to seek space for additional parking. He said the neighborhood is in the eye of the beholder, if you are going by something that is a standard, looking at the Historic District neighborhood, clapboard prevails. He said to the extent that more modern building materials exist for building foundations, we should use them. He stated they did provide pictures of the agent's house and clarified that their building is not much taller than that building. He said they think that clapboard is a much more sensitive building material than brick, brick is a heavy material. It makes the building look more massive. He said he thinks taking the brick out of the design softens the appearance, and there is a point that we shouldn't necessarily put brick everywhere just because old mills had brick on them.

Vincent stated he has lived in Somersworth for his whole life, this is his home. He asked if the Appeal gets denied whether the applicant is going to put brick on the building.

Previti responded no and indicated they would probably appeal it further. He stated they don't think that the decision that the only appropriate building material they can use is brick is reasonable.

Vincent asked for clarification on the material of the agent's house. He stated he believes the building has rounded clapboards on it, not square clapboards.

Stebbins stated the building has vinyl on a fourth of it.

Fredette stated there has been some discussion about the Queensbury Mill. That building's first story is brick, and it seems to be somewhat consistent with the size and scale of this proposed project. He asked the applicant whether they have considered modifying their original plan to have brick included on the first story and then some sort of clapboard material to cover the rest.

Stebbins stated the brick on the Queensbury Mill is just on the very front area of the building and it is on a slant, it's not the full first story. He said the majority of the building is clapboard. He said they looked at options like that and it is not feasible.

Fredette stated there is some concern about the financial cost of the project. He asked the applicant if they could you parse that out more so the Board has a better understanding.

Previti stated he disagrees that the HDC is not allowed to consider economic feasibility. He said the decision needs to be based on reasonableness and the burden the HDC's restrictions place on a property owner inherently considers financial burden. He said since they began the project, constructions costs and interest rates have risen so making projects work is much harder now.

Stebbins stated it is about 2.5 times more expensive to use brick than it is to use clapboard.

Fredette asked whether there is truth to the statement that they modified the windows and other factors to the exterior facade or if all they are changing is the clapboard.

Previti stated there were lintels above the windows in the approved design which were removed when they removed brick from the proposal. He noted they changed the window color from black to white which is not within the HDC's purview.

Vincent stated Shoen brought up points about figures on what the apartments are going to rent as and the projected income it will generate. He asked the applicant what their projected figures are.

Stebbins stated if they used brick, they would need to charge Boston prices for rent. He noted the challenge they would present in finding tenants that would pay those prices.

Keiser asked about the target rent they are going to charge.

Stebbins responded they are going to charge market rent. He stated market rate for a one-bedroom unit with all utilities included is \$1,650-\$1,700 per month. He said the rent for a 2-bedroom unit may equal or exceed \$1,800 per month. He noted that Shoen's yearly projection for income doesn't include the cost to maintain the building.

Keiser stated that given the building's location in the Historic District, he asked about the characteristics of the building's new plan that make it historic or fit into the Historic District.

Previti stated that one of the things that is tough about this project within the Historic District is that the existing buildings within the Historic District by definitional nature, aren't very historic and they haven't been taken care of. He stated he think a lot of people would welcome anything that is nice and well built in that particular location.

Keiser asked the applicant whether they would consider the property is in the historic district because of the two existing buildings on the property, maybe not their material but for their design characteristics.

Previti stated that from the beginning, we never had a proposal to demolish the agent's house. He said frankly, they thought it would be a benefit to the project to preserve the building. He stated they pushed back on the

HDC to take brick off of that side of the building because it was so heavy relative to the clapboard siding. He reiterated that the building at 85 Elm Street is proposed to be a big building, and to require that it is brick, when you look at the actual historic neighborhood, there is clapboard in the Historic District. He said they think it's very consistent.

Fredette asked whether the developer was aware when they purchased the property that it was in the Historic District.

Previti responded they were not aware of that.

Fredette stated his belief that if their realtor didn't inform them of that, they may be able to take legal action against their realtor.

Previti stated when they bought the building based on the agent's building, we didn't purchase it with redevelopment intentions. He said he thinks the Form-Based Code zoning had only recently been adopted. He said when they bought the land, they had this big empty parking lot which would have been a property tax burden on the site compared to if the land was fully developed. He stated they started looking at opportunities to make the neighborhood nicer. He said they didn't purchase the land with an eye towards development, they purchased it for the existing building.

Jones stated their argument has a focus on new construction and it is a betterment of what is existing on the lot. He stated his belief that the applicant is taking it a step too far in saying that the Historic District's regulations should apply less to new construction simply because the existing lacks cultural value. He said he doesn't feel that is what the HDC regulations aim to say.

Previti restated the notice of decision of the denial granted by the HDC in June. He stated he doesn't see how the requirement for any large building to have brick to be a valid argument for historical consistency.

Jones stated he appreciates that argument and he thinks it has merit. He said the problem the Board is having with the optics of this is the applicant has already been in front of the Board. He stated that the use of brick has been discussed, and it ended up being approved that way, now we're back again solely because of the cost. He said Fredette proposed to possibly just use brick on the lower level and the applicant doesn't even seem want to take that compromise.

Previti asked whether in that case, the brick would wrap around the building along Elm Street.

Jones stated brick would be on three sides of the building on the lower level, just like the other mill building that was mentioned. He said it seems like the path of least resistance is to find a compromise.

Stebbins stated they would like to find that compromise. He said he thinks the building would look funny with brick used in that way.

Jones stated the design would be similar to the Main Street building but it would be clapboard on top and brick on the bottom.

Previti stated he is not sure this Board can offer that compromise.

Mears stated she would like to remind the ZBA that the proposal still has to go back before the Planning Board under the site plan review regulations and the additional units. She noted that architectural review will be under the purview of the Planning Board as well, which the Planning Board does on a regular basis. She stated the Planning Board may have additional comments.

Keiser stated if the Board chooses to grant the appeal, this Board could put conditions on the approval just like the HDC could.

Hilton said it is his understanding that there are brick buildings and also clapboard within the Historic District. He said it seems like that's the issue. He said he believes both materials should be permitted for use as long that is what is existing in the Historic District.

Fredette asked if in the the change from the use of brick to no brick, whether they have costed out any other material alternatives that would appear as a compromise.

Previti stated they considered using concrete with a brick stamp overlay but it didn't work economically at least at the scale that we were considering. He said they also considered ethos which looks like a stamp but it is a fire hazard.

Fredette asked for clarification on whether the applicant will appeal the case further if the decision is found fully unfavorable.

Previti responded if fully unfavorable, yes.

Keiser asked if there is any hard number on how much more the brick is going to cost.

Previti said in their Appeal, they stated using brick would cost two times as much. He said they do not have a full construction drawing yet and they haven't priced out the bid. He said that is part of the issue.

Stebbins stated it is challenging to create a foundation plan if you don't know what you are doing above it. If they were to use brick, then a whole different foundation would have to support that weight. He said that would be accompanied by an additional cost. He said it is not just the brick that costs more, there are a lot more structural things that need to happen as well.

Previti stated he doesn't think they are willing to negotiate. He said if using brick only in select parts of the building along Elm Street is a fair compromise from the Board's view, that is the Board's prerogative and they will take further action as they see fit.

Keiser closed the public hearing.

**Regional Impact:**

**MOTION:** Hilton MOVED that the appeal of an administrative decision by 85 Elm Street Somersworth LLC and 20 Green Street Somersworth LLC **DOES NOT HAVE** POTENTIAL FOR REGIONAL IMPACT. The MOTION was SECONDED by Vincent. The MOTION CARRIES 5-0-0.

Vincent stated the Board has heard from the public on both sides on what they want the Board to decide, some were for and some were against. He provided an overview of the points Brooks and Shoen raised in their statements. He stated he understands the need for housing and the subject area of the Historic District is very run down, but he doesn't want the proposed building to be an eyesore. He stated that not just anything would be better.

Fredette provided his observations including the history of the property. He stated it is a reasonable argument to raise the issue of the housing crisis, however the crisis needs a regional lens. He noted the area of the subject property has been blighted for a significant amount of time. He said the Somersworth hotel was condemned by the Fire Chief nearly twenty years ago, and some attempts have been made over that time but none of them



were started. He said this is the first time he has seen anything of coherence proposed for that space. He said there have been changes in cost but to think they had no reasonable knowledge of the cost from the beginning is unreasonable. He said he would like to see a compromise. He noted the project has many positive aspects. He said he thinks it would improve the City but the compromise should respect the developer's first proposal.

Jones stated what makes the project a challenge to review is the breadth of the argument the Board has to consider. He noted the Appeal and the minutes from the HDC meeting which both discuss siding. He further noted Brooks' points regarding problems along the review process that go further than that. He asked about the reason behind why the waiver of the parking calculations did not require a variance.

Mears stated that is in the Site Plan Regulations and under the Planning Board's purview.

Jones stated the argument for the siding does appear to be economic cost and the purpose of the HDC does cite economic cost. He said no figures were provided at all citing that economic cost being an issue. He said he feels that if the Board were provided with a cost estimate for different alterations of the siding, that would have been easier for them to determine whether brick is cost prohibitive and they could possibly provide some relief.

Vincent pointed out Brooks' point regarding the five criteria that the Board does not always follow. He noted that the Zoning Ordinance would benefit from being updated.

Jones stated the Board only has a few paths in front of them. He said they either agree with clapboard, agree with brick, agree with a compromise, or they continue the application to request more information.

Keiser asked for clarification on what would occur if the Board denied the application.

Mears stated if the application gets denied, the applicant could go back to the Historic District Commission or they can go to court.

Hilton stated if both brick and clapboard are materials used on buildings in the area, he doesn't see a reason why the application should be denied.

Keiser stated he is a supporter of housing and development. He said in his belief, the project is in the Historic District because of the two existing buildings on property. He noted the only people that can make changes to the Historic District is the City Council. He said the proposed building is large, at five stories tall, and there are no other buildings in the area that are like that. He reiterated the thought process of the HDC was that if the project were a smaller building it would be more like some of the other buildings in the area that are clapboard, and if it is a larger building, it would be more like a mill building in the Historic District. He said therefore, the HDC thought the typical construction material for a mill building was brick. He said that is the reasoning behind the HDC's conclusion that the building should have not all brick, but some. He said when he asked what made the existing building fit into the Historic District, he didn't get a clear answer. He said the building the applicant proposed doesn't have any historic features to it, it could be anywhere. He said if we are going to keep the Historic District, we should require new buildings to have some feature that make them in character with the rest of the neighborhood.

Vincent noted the difficulty in coming to a decision on the application, as several individuals made valid points.

Fredette stated that generally speaking, the governed are subjected to the choice of those who govern to their short-term detriment. He said the Board needs to consider the downfalls of the project against what it is going to do for the City. He stated the one and most compelling argument the developer makes is the greater good that would result from the development of the subject property. Ultimately, we have to come to some compromise that is economically feasible under modern circumstances or the project doesn't happen. He noted

the possibility that the site could continue to sit empty or something else happens with it. He said there are very few parcels that large in the City that would allow for this caliber of development, unlike the City of Dover. He stated the City Council should consider whether to invest in the Historic District. He said in some way or somehow, we're going to create a District that is economically prosperous for the residents. He made the suggestion to the City Council to look at the meaning and different sections of the Historic District and consider the greater good to be served. He noted his attempt to determine the economic burden on the applicant and that he did not receive an answer. He said the development has to be financially sustainable and emphasized the desire for quality over quantity. He encouraged other Board members to come up with a compromise with the applicant rather than going to court. He said ultimately, he would like to see the project happen in a way that is beneficial to everyone.

Jones stated the issue at hand here is clapboard versus brick or both. He noted the building has been approved, and the developer could build the originally approved plan without any changes tomorrow. He stated the building size has already been determined, the only issue is the aesthetic appearance of the façade. He posed a question to other Board members on whether they feel that brick is more reasonable in this area of the City or whether they feel that clapboard is better in this area of the City or whether they feel that a mix of both is appropriate.

Keiser stated the size of the building should be taken into consideration. He said if they went strictly by the standards, this building would have never been allowed, it is too large for that area.

Jones clarified that the HDC's compromise was to require brick so the building looks like a mill such that it fits in the District better rather than clapboard.

Keiser responded correct; he thinks that was the thought process of the Historic District.

Jones stated if they want to uphold the Historic District, then they would need to vote for the brick. He said if the brick is what allowed the Historic District to bend their rules to allow a structure this large in this area, then he thinks that was a compromise worth doing in the pursuit of housing. To bend regulations further is too much.

Vincent stated he is in agreement.

Hilton noted with the rising of interest rates and the cost of construction to the customer, last year especially. He stated the challenge of creating affordable housing as there's a large increase in labor and building materials.

Fredette stated at some level, the proposal does appear like the applicant took the most cost-efficient method possible. He noted he sees the point where there were a lot of compromises and concessions made, including tax breaks. He said his reasoning behind the suggestion of a compromise is the Board needs to make sure they respect the Historic District at whatever level they can.

Keiser stated if the Zoning Board were to deny the application, the applicant can still go back to the HDC with a compromise if they choose or take it court, or sell the property. He said it is their choice.

**MOTION:** After review of the application, the file and all the information presented to the Board, Jones MOVED that the request of 85 Elm Street Somersworth LLC & 20 Green Street Somersworth LLC for an appeal of the 6/28/2023 HDC Decision be **DENIED** FOR THE FOLLOWING REASON:

1. The Historic District did not error in their decision, due to the size and scale the brick was the choice because it is consistent with surrounding mill buildings.

The MOTION was SECONDED by Fredette.  
The MOTION CARRIES 5-0-0.

- a. **PJ Land Development, LLC is seeking a Special Exception from Table 4.A.5 to allow a Motor Vehicle Service (Car Wash) on a property located at 459 High Street, in the Residential/Commercial District, Assessor's Map 40 Lot 60, ZBA#13-2023. PUBLIC HEARING**

Keiser opened the public hearing.

Crossley provided an overview of the application. She stated the applicant is seeking a special exception to allow a car wash on the property. She stated there is an existing residence on the property with 507 feet of street frontage on High Street. She noted that if the special exception is granted, site plan review will be required. She referenced two historic files for the property, including a veterinary animal hospital use within the existing structure and approval to keep and treat horses on the property. She stated the application is ready for the Board to take action.

**Drew Garvin of Bohler Engineering** was in attendance to represent the application. He stated PJ Land Development is purchasing the 3.6-acre property and splitting it into two lots. He said the half of the lot that is 2.2 acres is going to be for the carwash use. He said the other side of the property which has a residence will not be maintained as a residence, it's going to be a commercial use to be determined. He stated the proposed use is consistent with other uses in the neighborhood. He provided an overview of the seven criteria. He said most of their responses to the criteria speak to the consistency of the use within the neighborhood, the minimal impact on utilities, and the benefit to the City in terms of tax revenue. He noted they filed for site plan review tonight in which landscaping is addressed and will provide additional screening to the neighboring residential use.

There were no public comments or correspondence.

Brooks asked the applicant about the amount of water they are able to recycle through their reclamation system.

Garvin stated he can't speak to the amount, but the water reclamation rate is approximately seventy-five percent.

Keiser stated the rear of the property buffers the Willand Pond area. He said he assumes they will plant trees along that buffer.

Garvin referenced a rendering and stated there is landscaping proposed around the perimeter and some on the interior. He stated they are located away from the pond. He noted that is addressed in their site plan.

Keiser stated there are other car washes being constructed in the area. He asked whether there will be enough business to support this carwash.

Garvin stated the car wash company, Tidal Wave, does that type of research, and they would not have pursued this area if they didn't anticipate a customer base.

Keiser closed the public hearing.

**Regional Impact:**

**MOTION:** Brooks MOVED that the special exception request of PJ Land Development, LLC **DOES NOT HAVE POTENTIAL FOR REGIONAL IMPACT.**

The MOTION was SECONDED by Vincent.  
The MOTION CARRIES 5-0-0.

Vincent pointed out that there is another car wash located three hundred yards from the subject property. He asked whether the other car wash is permitted in that location due to different zoning.

Crossley responded no; the other car wash received a special exception from the ZBA. She stated the Site Review Technical Committee will review the site plan as staff and provide comments but the Planning Board will be the board that takes action on the application.

Vincent stated he would urge other ZBA members to vote for the application because there is no difference between this application and the other car wash that was approved.

Brooks stated he agrees, it is the same zoning, and a similar application. He stated his only concern is regarding having a significant number of businesses of the same type in the City and their anticipated closures due to competition.

Fredette stated his concern is once two-thirds of the land on the property is developed, there is still a house located on the property. He said the this would be one of the last few houses in that area that isn't going to be as reasonably developable.

Keiser stated looking at the criteria, the application meets all of the regulations. The proposal is not out of character for the District, it is going to recycle water, it has an adequate buffer, and pedestrian and vehicle traffic have been addressed to make sure egress is sufficient.

**MOTION:** Vincent MOVED that the request of PJ Land Development LLC for a Special Exception from Table 4.A.5 to allow a Motor Vehicle Service (Car Wash) on a property located at 459 High Street be **GRANTED**.

The MOTION was SECONDED by Hilton.  
The MOTION CARRIES 5-0-0.

- b. **Cort Mendez is seeking a Special Exception from Table 4.A.2 to allow a veterinary hospital use (urgent/primary care facility for dogs and cats) on a property located at 10 Andrews Road in the Residential/Commercial (R/C) District, Assessor's Map 42 Lot 33, ZBA#14-2023. PUBLIC HEARING**

Keiser opened the public hearing.

Crossley provided an overview of the application. She stated the business will use 2,000 square feet of the 6,000 square foot building. The business is a walk-in primary care facility for dogs and cats. She said the application received minor site plan approval from the Site Review Technical Committee contingent upon the decision of the Zoning Board. She said the property has two historic files, one for an Auto parts store and the other for a coffee shop use granted in 2007. She stated the application is ready for the Board to take action.

Vincent inquired about the location of the business.

Crossley responded, in front of Target, next to Aroma Joe's.

**Cort Mendez** of PetWellClinic was in attendance. He stated PetWellClinic is an urgent/primary care clinic for dogs and cats. He said there is no appointment required to come in and be seen. He said the business hours are Monday through Friday, 11am-7pm. He noted the business does not provide overnight services for any of

the patients. He noted the only changes to the building will be interior with the exception of signage. He said there will be a staff of three people including a licensed veterinarian. He said they anticipate having two-to-three patients at a time so parking is minimal. He said this would be the second business location, the first one is located in Manchester.

Keiser asked the applicant to provide an overview of their responses to the special exception criteria.

Mendez stated the business will generate minimal waste and have a low impact on parking and utilities. He noted the existing pedestrian and vehicular access will meet their business needs.

**Bill Staples of 9 Cora Drive** spoke in support of the clinic. He said the clinic provides outstanding service and he takes his pets to be treated there. He stated the business would be a wonderful addition to the community.

**David Witham**, resident of 10 Rouleau Drive stated the minimal impact of the proposed use as it would be located in an existing building and the use would be a bit lighter than the former automotive use.

**Mark Rideout of 138 Rocky Hill Road** stated he thinks this is a wonderful use of a vacant space and the business would be a quality addition to the community.

Keiser asked the applicant whether they anticipate generating any medical or biological waste.

Mendez responded they use needles and syringes, which they dispose of in a small sharps box. Mendez. He said they work with a medical waste company that visits the business once a month. He stated they draw blood for a lab that gets sent out and does not get returned to the business.

Keiser closed the public hearing.

#### **Regional Impact:**

**MOTION:** Brooks MOVED that the special exception request of Cort Mendez **DOES NOT HAVE POTENTIAL FOR REGIONAL IMPACT**.

The MOTION was SECONDED by Fredette.

The MOTION CARRIES 5-0-0.

#### **Discussion**

Vincent stated he thinks this is a great idea and would be a good thing for the City.

**MOTION:** Vincent MOVED that the request of Cort Mendez for a Special Exception from Table 4.A.2 to allow a veterinary hospital use (urgent/primary care facility for dogs and cats) on a property located at 10 Andrews Road be **GRANTED**.

The MOTION was SECONDED by Brooks.

The MOTION CARRIES 5-0-0.

#### **c. Any other new business that may come before the Board.**

Mears stated that Planning staff are looking for Zoning Board members to serve on the housing audit. She said they are probably going to have a meeting in November.

Brooks and Fredette expressed interest in joining.

**MOTION:** Vincent MOVED to ADJOURN the meeting.

The MOTION was SECONDED by Fredette.

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The MOTION CARRIES 5-0-0.

The meeting was adjourned at 9:30pm.

Respectfully submitted,

Anna Stockman  
Planning Secretary