



CITY OF MANCHESTER

PLANNING AND COMMUNITY DEVELOPMENT

Planning & Land Use Management
Building Regulations
Community Improvement Program
Zoning Board of Adjustment

Leon L. LaFreniere, AICP
Director

Pamela H. Goucher, AICP
Deputy Director Planning & Zoning

Michael J. Landry, PE, Esq.
Deputy Director Building Regulations

MANCHESTER ZONING BOARD OF ADJUSTMENT VIRTUAL PUBLIC HEARING / BUSINESS MEETING MINUTES Thursday, June 11, 2020 – 6:00 p.m.

Board Members Present: Chairman Robert Breault, Vice Chairman Jose Lovell, Michael Simoneau, Alderman Jim Roy

Alternates Present: Alderman Keith Hirschmann, Guy Guerra, Anne Ketterer

Excused: Joe Prieto

City Staff Present: Michael Landry, Deputy Director of Building Regulations
Jonathan Golden, Senior Planner
Sheila McCarran, Administrative Assistant II

Note: PUBLIC COMMENTS may be submitted at any time up to the close of the public hearing for each case by email sent to ZBA@manchesternh.gov or a voice message called into (603) 792-6736. All comments must include your name and address and the case number.

I. The Chairman calls the meeting to order and introduces the Zoning Board Members and City Staff.

II. PUBLIC HEARING:

(Current Items)

Michael Landry said before he went to the first case, he had an announcement to make. He said case #ZBA2020-027 at 730 Mammoth Road and 482 Reservoir Street would not be heard this evening. The case will be re-noticed, so anyone interested in hearing that case, you will receive a new notice if you are an abutter.

1. **ZBA2020-030**

One City Hall Plaza, Manchester, New Hampshire 03101
Phone: (603) 624-6450 or (603) 624-6475 Fax: (603) 624-6529 or (603) 624-6324
E-Mail: pcd@manchesternh.gov
www.manchesternh.gov

445 Westwood Drive, R-1B Zoning District, Ward 8

Glen Ruggiero proposes to construct a 14'x16' deck resulting in lot coverage of 51.6% where 50% is allowed, maintain a second front yard parking space within the front yard setback and within 4' of the front lot line as well as maintain a shed in the rear yard within 4' of the side and rear lot lines and seeks a variance from sections **6.04** Lot Coverage, **10.09(B)** Parking Setbacks and **8.29(A)3** Accessory Structures and uses of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through May 5, 2020.

Glen Ruggiero said he is essentially just trying to build a deck. He said he started this process two years ago and he realized that he was going to go over the lot coverage by almost 2%. He said in the process of getting the land surveyed and all that, he realized that the parking space and the shed which existed when he purchased the house didn't have a variance so now everything is kind of getting lumped together with it. He said long story short, he is just trying to build a deck on his property.

Chairman Breault turned the hearing over to the Board.

Michael Simoneau said just to clarify, this was postponed from the May 28, 2020 meeting and the count 6.04 Lot Coverage was added and was not on the last letter. He asked if that was correct. Mr. Ruggiero said that was correct.

Guy Guerra said based on the proposed conditions plan, it looks like a 14'x16' deck and asked what is radiating out away from it. Are those stairs? Mr. Ruggiero said they are stairs and in the end, the stairs won't end up looking like that. He just wanted to make sure the stairs were represented in the lot coverage calculations. The stairs will be a smaller footprint than that in the end. Mr. Guerra said then what he is looking at is not what will be happening. Mr. Ruggiero said the 14'x16' deck is what is happening. It is just the location of the stairs was unknown at the time so they were just trying to make sure they included the entire possible footprint. Mr. Guerra said we are looking for a proposal for a 14'x16' deck and he sees another 6' or so on two sides of this thing coming out. He asked what it was they were looking to get proposed because like he said, he sees a 14'x16' deck and he is wondering if this should be an 18'x20' deck. Mr. Ruggiero said it won't be an 18'x20' deck. He said when he was talking to Glenn Gagne, he told him to make sure he included the stairs in the plot plan otherwise he might go over what lot coverage he would get out of this. Since he wasn't entirely sure what he was going to do with the stairs at the time, he just radiated it out from the entire deck. That works into this 51.6% lot coverage calculation, so that is the maximum it is going to be. It is going to be a 14'x16' deck with a smaller stair set.

Chairman Breault asked Mr. Ruggiero if the calculations include the stairs. Mr. Ruggiero said they do. They just wanted to make sure they included the maximum footprint so they don't go over when they actually build the deck. Chairman Breault said then there is actually a chance it will be somewhat less and the ratio will go down.

Vice Chairman Lovell said while we are talking about the details and dimensions, he was just

adding up the new coverage numbers here and it looks like 93 SF, 55 SF and 88 SF seem to add up to 236 SF. He asked if those numbers include the stairs and are they subtracting out the sidewalk or walkway. Mr. Ruggiero said he believes the sidewalk was subtracted from those covered areas. Chairman Breault said those coverages are a net increase in coverage over what is currently installed on your property. Mr. Ruggiero said yes. Vice Chairman Lovell asked if they were just looking at the three hatched areas with those three numbers. He said it doesn't look like those hatched areas cover the stairs. They cover part of the stairs. Mr. Ruggiero said the hatched areas are the new coverage where you see the 55 SF, 93 SF and the 88 SF. The sidewalk is already accounted for and that new coverage is independent of the new coverage. The new coverage is only what is being covered on grass or the mulch and all of that. Vice Chairman Lovell said he was just seeing that the stairs heading towards the pool that aren't hatched are on the concrete pool apron.

Chairman Breault turned the hearing over to the public and asked if there was any correspondence either in favor or in opposition to this application. Michael Landry said there have been no public comments submitted either in opposition or in favor. Chairman Breault turned the hearing back over to the Board.

Chairman Breault said one of the things he noticed is there are a few counts here, Parking Setbacks being one of them. As far as the coverage is concerned, it is minimal. The parking setbacks if you go through the neighborhood, he would venture to say, there are probably at least 50% of the homes with a similar situation with expanded driveways, too close to property lines. He doesn't see how this is going to affect anybody's values or affect the character of the neighborhood.

Jose Lovell made a motion to grant the following variance counts for case ZBA2020-030, 6.04 Lot Coverage, 10.09(B) Parking Setbacks and 8.29(A)3 Accessory Structures and uses which was seconded by Jim Roy.

Yeas: Breault, Lovell, Simoneau, Roy, Ketterer

Nays: None

Upon a unanimous vote, the variance was granted.

2. **ZBA2020-027**

730 Mammoth Road and 482 Reservoir Street, R-1B Zoning District, Ward 2

Andrew Sullivan, Esq. (Agent) proposes to subdivide the subject parcel to create one new buildable lot, where new proposed Lot 4A has buildable land area of 6,004 SF where 7,500 SF is required and with lot width of 75.0' not maintained for 100' of depth, and where Lot 4 will remain improved with a two-family dwelling and a retail shop on a lot with 13,872 SF of buildable land area where 15,000 SF is required, with lot frontage and width of 130.23' where 150' is required, with a side yard setback from the north lot line of 8.5' where 20' is required, maintain reconfigured parking spaces, including 6 new commercial parking spaces

in a residential district, without parking screening or bumpers, 6 undersized parking spaces and a reduced landscaped buffer at the proposed lot line, as well as relocate a dumpster to the front yard with an 8' fenced enclosure and seeks a variance from sections **6.01** Minimum Buildable Lot Area and **6.02** Minimum Lot Width at Lot 4A and **6.01** Minimum Buildable Lot Area, **6.02** Minimum Lot Frontage and Width (2 counts) **6.03(C)** Side Yard Setback, **10.06(A)** Parking Layout, **10.09(B)** Parking Setbacks, **10.07(K)4** Parking Screening, **10.07(K)1** Parking Bumpers, **10.02(F)** Business Parking in Residential District, **8.29(A)1** Accessory Structures and Uses, **8.27(B)** Fences Walls and **10.07(G)** Landscaping of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through May 19, 2020.

Michael Landry said this case will not be heard this evening. It will be re-noticed and if you are an abutter, you will receive new notice in the mail.

3. **ZBA2020-032**
200 Westland Avenue, R-2 Zoning District, Ward 9

Roy Tilsley, Esq. (Agent) proposes to maintain a fourth dwelling unit constructed above a detached garage, resulting in two principal structures on one lot which requires Planned Development approval from the Planning Board, on a lot with 15,000 SF where 16,500 SF is required, where the garage has a rear yard setback of 6.0' where 20' is required for a principal structure, with three front yard parking spaces, with five parking spaces within 4' of a building or lot line, where five parking spaces and the drive aisle are undersized and requiring backing out of angled parking spaces against the direction of travel and where there is less than the required 10' landscape perimeter and seeks a variance from sections **5.10(A)6** Multi-Family Dwelling, **5.08** Multiple Structures or Uses on a Single Lot, **6.01** Minimum Buildable Lot Area, **6.03(B)** Rear Yard Setback, **10.09(B)** Parking Setbacks, **10.07(K)1** Parking Bumpers, **10.06(A)** Parking Layout, **10.07(D)** Parking Maneuvering and **10.07(G)** Landscaping of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through May 7, 2020.

Attorney Roy Tilsley from Bernstein Shur said he was appearing on behalf of Eric Williams as Trustee of the Williams Family Revocable Trust. He said Eric was watching in cyber space and he did have him available if the Board needed his input for anything. Attorney Tilsley said the property is at 200 Westland Avenue in the R-2 district. It is Map 443, Lot 16 which is a 15,000 SF lot improved with a three-family home and a garage and the issue in this case is an accessory dwelling unit above the garage. That accessory unit is a one bedroom unit. It has been there for many, many years and is pretty unobtrusive which is probably why it took so long to get to the Board, as this is not one of those garages that you can tell was built with the idea of adding an apartment to it. It is a pretty standard looking garage from the outside.

Mr. Williams purchased the property in 2005 and this accessory dwelling unit was above the garage at the time. He said one of the reasons that Mr. Williams bought it was that he could have his father live there and his father is currently living in that particular unit. He said their understanding from the prior owner is that the unit above the garage probably has been

there for about ten years or so before Mr. Williams bought it. The prior owners built it for their son who unfortunately passed away in a ski accident and then the prior owners were basically snow birds and the leased out the three units in the main building. When they came back to New Hampshire when the good weather was here, they would stay above the garage until they sold it to Mr. Williams and his Dad moved in. As the result of a COC inspection by Jim Tierney of the three-family unit, Mr. Williams received a violation notice regarding the garage dwelling unit. At that point they moved forward to seek the variance for relief which brings them here today. Before that, Mr. Williams was unaware that there were any issues with the approval for that particular unit.

Attorney Tilsley said they are seeking relief under 5.10(A)6 and 5.08 to allow the dwelling unit above the garage to continue. They also need relief from minimum buildable lot area. The lot is 15,000 SF. The indication is that 16,500 SF are required because there are two buildings with dwellings on the property. The rear setback for the garage is 6' where 20' is required and there is a variety of parking issues. He said just for the record, the parking issues were not something that was called out by Mr. Tierney. He said he is not complaining about that but it is something that only came to their attention when they received the zoning review late last week. It is not something they had an opportunity to really consult with their surveyor on to brainstorm. What they can tell you on the parking is the parking situation is what has been present for the entire 15 years that Mr. Williams has owned the property. They are unaware of any problems or difficulties with people either accessing or leaving the property through the existing parking situation.

Attorney Tilsley said he knows that the Board has an abutter's email that came in earlier today concerning a tenant who alleges he was backing out of the space marked "A" onto Westland Avenue. He said they haven't had the chance to discuss that with the tenant to see what if anything happened. Certainly, space "A" is a space that you can easily go out head first and it's not too difficult of a turn and there is plenty of room to turn the vehicle around and drive out straight rather than back out. He said he is not sure why the tenant was backing out, but again, this is the historic parking situation on this property for many years and it has existed without incident.

Attorney Tilsley said in terms of the neighborhood, across the street there are two two-families and one three-family so they are not the only multi-family in the neighborhood. He said they about a two unit condominium at the northwest corner that two corners of the lots touch and in fact that is the abutter that emailed the comment earlier today. He said the garage is located to the rear of the property along that rear boundary. The abutting property owner has basically two retaining walls, a 3' wall and another 2' wall above and behind that as well as a 6' fence sitting on the 3' retaining wall. The property to the rear is obviously much higher and there is a natural buffer simply because of the topography of the area which is important particularly given that the garage is close to that particular boundary.

Attorney Tilsley said other than the abutter's complaint that was received today, they've never had any issues with anyone in the neighborhood regarding the occupancy of the garage as a one bedroom dwelling unit above the two garage stalls.

Attorney Tilsley said in terms of the zoning criteria, this is not contrary to the public interest. It is consistent with the spirit of the Ordinance. They will not be altering the essential character of the neighborhood as there are other multi-family uses and this unit has been in place for many, many years. There is no threat to public safety or welfare because this is an existing use. He said he pointed out and he misread the article when they did this, that there is a movement in the City to allow garage accessory dwelling units in certain areas. He said he misread an article and said that that has passed and it has not passed yet. He said he thinks it is under consideration by the Board of Mayor and Alderman. It has been through two committees unanimously, but looks like it is probably stuck in Covid limbo before actually getting passed. The point is that accessory dwelling units like this are good for the City and good for the housing stock. This is a very unobtrusive unit above the garage that again, has existed for many years without any problems with anybody.

Attorney Tilsley said the variance will result in substantial justice. The loss to his client is severe. He bought the property with the understanding that his father could live in this garage and has operated that way for fifteen years. The gain to the public is minimal given this use has been in place for probably about 25 years without issue. They will not diminish surrounding property values. He said the Board has an opinion from a realtor, Dana Ford at Lair Realty Partners that the property is an asset to the neighborhood, it is well maintained, it has good buffers and the garage apartment does not have a negative impact on abutting property values.

Attorney Tilsley said finally, unnecessary hardship. There are several special conditions of the property. The retaining walls and the grade between the property to the rear, creates a natural buffer plus the 6' fence on top of that provides even more separation such that the garage's location is not an issue. He said they are also well buffered to the west. The lot to the west of them is a vacant lot that another neighbor uses for a garden. There is about a 30' grade without Lot 6 below their lot so again, there is a real natural buffer on that lot as well in terms of an overcrowding perspective. There is no fair and substantial relationship between the Ordinance and this application to the property. The multi-family use on the property does not interfere with other lots due to these natural buffers and this use has been in place for many years. The use is reasonable. This is a residentially zoned area. ADU's on garages are something that people are beginning to look favorably on and it has existed for many years without incident.

Chairman Breault turned the hearing over to the Board.

Guy Guerra said Attorney Tilsley twice referred to the existing building as a three-family. He said he is looking at the plans and it says it is a two-family. He asked Attorney Tilsley if he could clarify that. Anne Ketterer said that was her question as well. Attorney Tilsley said it is a three-family and he is not sure why the surveyor put two-family, but it is a three-family. He said his understanding from Mr. Landry is that the City recognizes that as well.

Vice Chairman Lovell said Attorney Tilsley probably already mentioned this, but he asked

him if the snowbirds sold the house and had somebody been living in that second story garage apartment for some time now? He said Attorney Tilsley said nobody had an issue with it but has it been vacant or has somebody been living in it for a while. Attorney Tilsley said Mr. William's father lives there. He has been there for most of the fifteen years that Mr. Williams has owned the property. Attorney Tilsley said one thing he forgot to mention, when Mr. Tierney brought this to our attention, obviously it was not surprising to them the number of building code issues with the unit. This is the first step in the process. He said once they get approval to maintain the living unit above the garage, Mr. Williams knows and understands that he then needs to address the building code compliance things directly with Mr. Tierney.

Anne Ketterer said Attorney Tilsley mentioned that it is a hardship because the client didn't know when he bought it that the apartment above the garage was illegal. She said she just wanted to point out that ignorance is not a hardship for the record. Attorney Tilsley said he thinks his argument is that the economic expectations of the property owner are a factor that this Board can consider. They are not pleading ignorance but the fact is that he had an expectation that he would be able to use it. Ms. Ketterer said she is just noting that Attorney Tilsley's client not doing his homework and understanding the property that he is actually buying, is not the problem or the fault of the City of Manchester. Attorney Tilsley said no one is suggesting that it is.

Michael Simoneau said he was just going to note that the property has been a four-family for many, many years, yet the tax card reflects that it has always been a three-family. He said he wonders how much back taxes are missing.

Jim Roy said he had a couple of points to make. He said he agreed with Ms. Ketterer about the fact that that really isn't a hardship and as a matter of fact, he doesn't really see any hardship here. He said the hardship that was mentioned was about topography and he gets it, you can build a garage there, but certainly not a residence. He said he says that because of a couple of different things. He said density is what many of these Ordinances look at in an area because we don't want some areas of the City to become too dense. He said when the ADU was mentioned that it was in committee, it is but when we are talking about the ADU's, we are talking about garages that are attached to the house. This violates the two principal structures on one lot. He said he doesn't think it observes the spirit of the Ordinance either. He said that goes to public interest and we also are looking at the parking and maneuvering. The Board got the letter from the neighbor that there are some difficulties there.

Attorney Tilsley said as he understands, the proposed ADU that is currently pending would allow ADU's in unattached garages if that is the purpose behind it. Again, that's pending so he understands that it is not in the Ordinance yet but it is pending.

Michael Landry said he just wanted to weigh in and said when we talk about ADUs, the definition is that it is associated with a single-family dwelling. He said we are talking about four-dwelling units here. He said it was for the Board to decide whether they want to

consider it an ADU but we are considering it as just another unit. It is not an ADU. Anne Ketterer said then an ADU was not applicable here. Attorney Tilsley said his point is only to emphasize that the idea of having a unit above a garage to create additional housing stock is something that is at least being considered, so far favorably by the City.

Chairman Breault turned the hearing over to the public and asked if there was any correspondence either in favor or in opposition to this application.

Michael Landry said no other comments were received but he would like to read the letter from the abutter into record. He said this letter is from Robert Balquist of 165 Wolcott Street.

Dear Board:

I live at 165 Wolcott Street and I share a common rear boundary with the above referenced property owner who is seeking various variances to the City Zoning Ordinance for increased density. One of the primary purposes of the Ordinance is to prevent congestion and overcrowding and promote safety. The requested waivers achieve none of this. The neighborhood and this property in particular is already overcrowded. The applicant wishes to increase this density. This is a violation of the Life Safety Code. Furthermore, the parking situation is unsafe and dangerous. I have personal firsthand knowledge of this. One afternoon recently about 5:00 when I was returning home from work, I had a near collision with a resident of this property that drives a black Cadillac sedan. He backed into the street from an angled parking space against the direction of travel and didn't even see me as I approached (see attached photos). Your consideration for denial of the variance is strongly recommended. The applicant should have asked for permission first instead of begging for forgiveness afterwards.

***Respectfully Submitted
Robert Balquist
165 Wolcott Street***

Chairman Breault turned the hearing back over to the Board.

Guy Guerra said he understands everybody's argument moving forward on everything that was already spoken about and he agrees. He said the biggest thing that bugs him is the parking setup in front of the building specifically as they have mentioned already, there was an issue with space "A". In looking at the plan, he can see where this would be an issue. He said he doesn't know what can be done with it, but he thinks that while the Board has this in front of them, something should be done with it.

Attorney Tilsley said as he indicated, they haven't had a chance because this just came up last week to sit down with a sharp pencil and their surveyor and think about what they could do on the parking. They are certainly happy to do that if the Board wanted to table it, they could certainly see what they could do to improve that situation. Obviously, their position is

that it works and it has worked, but certainly on paper, he can understand the Board's concerns and they are happy to take a look and see if they can provide something better as part of this.

Chairman Breault said he visited this site and he knows the neighborhood. He said any changes to that parking area would be rather difficult because the edge of that pavement which would be to the east, there is a significant outcropping of ledge. It is going to be difficult at best to try to create any type of turning radius, backing radius or anything to get out of that driveway for some of those spots, particularly if all the spots are taken by tenants. He said it almost forces you to back in to the street.

Chairman Breault asked the Board Members if they wanted to give the applicant the opportunity to have this tabled and meet with their engineers to see if there could be some solution to this.

Alderman Roy said he doesn't feel the need to table this so they can look at the parking. He said he thinks because of the lack of hardship, because of the density that it is creating and because it is two principal structures on one lot, which is against the Ordinance, he doesn't need to go any further than that. He doesn't see the need to table it just to not look at it favorably at the next meeting.

Anne Ketterer said she is in agreement with Alderman Roy. She said she doesn't think that the Board needs to look at this again. She said she disagrees that there is a hardship here. She said she would move to actually deny.

Alderman Roy said he believes there is no hardship and it is not in the spirit of the Ordinance because the density is too much.

Anne Ketterer made a motion to deny the following variance counts for case ZBA2020-032, 5.10(A)6 Multi-Family Dwelling, 5.08 Multiple Structures or Uses on a Single Lot, which was seconded by Jim Roy.

Yeas: Breault, Lovell, Simoneau, Roy, Ketterer

Nays: None

Upon a unanimous vote, the variance was denied.

Vice Chairman Lovell said he had a couple of questions on the parking. He said he does see hardship with the parking with that huge ledge outcropping on the east side. He said just looking at the scale of the drawing as he didn't have a chance to visit the property, it looks like there is 30' plus by the time you get to that radius. He said he does see a way that a car can pretty easily back out the other way and get into the right of way headfirst.

Anne Ketterer made a motion to grant the following variance counts for case ZBA2020-

032, 10.09(B) Parking Setbacks, 10.07(K)1 Parking Bumpers, 10.06(A) Parking Layout, 10.07(D) Parking Maneuvering and 10.07(G) Landscaping, which was seconded by Jim Roy.

Yeas: Breault, Lovell, Simoneau, Roy, Ketterer

Nays: None

Upon a unanimous vote, the variance was granted.

4. **ZBA2020-033**
220 Londonderry Turnpike, B-2 Zoning District, Ward 6

John Cronin Esq. (Agent) proposes to establish a construction equipment rental, sales, service and repair facility within the Lake Massabesic Overlay Protection District and seeks a variance from section **7.11(C)1** Prohibited Uses of Lake Massabesic Protection Overlay District of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through May 11, 2020.

Attorney John Cronin said he is an attorney with Cronin, Bisson and Zalinsky in Manchester and it is his privilege to represent ATS, the applicant in this particular case. Attorney Cronin said ATS is a well-established business. They are in the business of equipment sales and rental and they currently have a location over in Candia on route 27. They have been there for some time and have been a good civic citizen and they do a nice job there.

Attorney Cronin said the site that is before the Board tonight is the former Owen's Marine which has sat idle for many, many years and he thinks all that pass that way would agree that it is not very attractive and may rise to the level of an eyesore. The applicant placed the property under agreement subject to approvals with various timelines and the zone does provide and allow for this particular use. As proposed and as designed by Keach-Nordstrom, Matt Peterson is on the phone and he is pinch hitting for Paul Chisholm who started the work on this but his wife had a baby in the past few days so he is attending to other business. Matt is on the line but it is otherwise compliant.

Attorney Cronin said this meets lot coverage, it meets setbacks, it meets height and meets everything. He said as you can see from the plan, there was a specific effort to locate this building which is up in the northeast quadrant of the site. The variances being sought to allow this use to proceed with a variance from the provisions of the Lake Massabesic Overlay District which generally prohibits truck sales and service or any motor vehicle sales and service facilities. The issue of concern, he believes, for this particular application relates to a fuel tank which is an above ground tank which is shown on the plan that was proposed to be installed according to all federal, state and local standards. That is shown on the back of the plan. As this was being designed and proposed and getting prepared for the Planning Board, there was no indication there was a concern of the Manchester Water Works and in fact, Anderson Equipment has recently done a major addition of their site. They are much closer to the lake and within probably 30' to 50' of the tributary that feeds into Lake

Massabesic.

Attorney Cronin said they were prepared to present this plan tonight with the hope that they would get this variance approved and move on to the Planning Board so this site could be productively developed according to all modern standards and protections. Unfortunately, they did receive a letter and Mr. Landry was kind enough to forward it to them just before 5:00 this evening, from Manchester Water Works. He said the Board may have seen that letter before them and it is not very definitive. It doesn't outright say that they object. It basically says that they support prohibitions of any contamination in the drinking and water supply. He said he thinks that is something that we can all universally agree on that we all serve to protect the drinking supply.

Attorney Cronin said with respect to above ground storage tanks, Purdue University has done a study with respect to them and the Environmental Protection Agency has a bulletin. There are a number of different ways that above ground storage tanks can be constructed to protect not only the ground water but drinking supply. Of course it would be constructed on a concrete pad surrounded by bollards. The equipment would be above surface so any leaks would be noticed. There are other protections that can be made. Some of the suggestions both by Purdue and the EPA to create a concrete tub as a secondary containment in addition to the multi-level tanks that are far superior to anything that we have seen in prior years.

Attorney Cronin said when you look at this particular site, both to the east and the north, you have two filling stations that probably have anywhere from 30,000 to 50,000 gallons of underground storage tanks. Also, up to 2015 which is where the State has their most recent traffic data, between this site and Lake Massabesic you have 58,000 cars a day operating on Route 101 between that exit ramp and the interchange with route 293 and 28 Bypass in 2015 had 15,000 cars a day. He said he suspects that both of those counts have advanced greatly.

Attorney Cronin said he had the opportunity to speak to Mike Landry shortly before we went online here and he knows he was busy managing all the things that go along with these virtual hearings and his ordinary duties and he said preferably he would like to have these issues with Water Works resolved before they come into a hearing and to get one this late in the day is unusual and doesn't give them an opportunity to really sit down with them and see what containment or extra steps above and beyond the recommended practices they could do to get their support. He said he asked Mr. Landry initially what was the next date that they could get on the agenda and his understanding was that it wasn't until late July. Since that time, he said he has had an opportunity to look at the calendar and there is a July 9th date that the ZBA is meeting. His preference would be to continue this to the July 9th date so they can have ample opportunity to sit with Water Works, have them fully understand what they are proposing here and the limited scope of this tank, which will be only diesel fuel and to discuss with them any protections that they can make. Before going any further, he asked the Board if they would entertain that request and allow them to continue this case to July 9, 2020.

Chairman Breault turned the hearing over to the Board.

Alderman Roy thanked Attorney Cronin for that information and thanked him for offering to continue this case. He said before the Board decides whether to continue this case, he had a couple of issues that he would like the applicant to think about if it does get continued. He said not only was it the Water Works that was on his mind, he said Attorney Cronin cleared up a containment for him and the voluntary merger is great, but asked if there has been a site survey done on the property. He said he says that because knowing that Owen Marine was there working on all kinds of different vehicles and boats, there may be some contamination that has to be cleaned up. He said he didn't know if they had done that already.

Attorney Cronin said Keach-Nordstrom is the project engineer on this and there is some data that is available he thinks through the City and they have at least done a preliminary on that. He said as you all know, sellers want to sell and they want to close fast and when they negotiate these agreements, they often don't give a lot of time to get through the approval process. To get this started, you see the preliminary plan in front of you that basically shows the footprint of the building in the existing property lines. Since this was done, Paul and Matt and their team have really advanced the engineering on this so there is a lot more detail that they could provide before July 9th that will address those questions and he can get some exact feedback on the scope of their reconnaissance with environmental. He said he thinks Alderman Roy makes a germane point when he first met with the applicant in this case, his first concern is the auto auction site and that has been there for a long time. He said he knows they have a staffing business in that building but at the rear of that site, which would be closer in proximity to the tributary, they park cars that are available for auction, he believes, on the dirt out back with no pavement, concrete or any other of containment. He said he is not complaining about that, he trusts it is probably a prior non-conforming use of something that was approved many years ago. He thinks when you look at the global picture here, the importance of developing this corner and generating tax revenue if they can satisfy Manchester Water Works and if not them, then the Board, this is a tax positive project and there have been a lot of people that have come and gone to look at this site. If it is something that can't be developed, then Manchester Water Works ought to step up and maybe think about buying it because sitting the way that it is, is not good for anyone.

Attorney Cronin said that is their feeling. He said he has worked with Manchester Water Works for many years and he respects the folks there with Mr. Croasdale and his team. He said their goal would be to get an agreement with them for this is a non-issue for the Board.

Alderman Roy said he agrees with all those points. He said he just doesn't want them to be caught behind the eight ball because there is some contamination on the site that they would have to clean up first. That is why he was talking about a site survey. Attorney Cronin said the more that they know the better so that when they come back on the 9th they have all boxes checked and all questions answered. He said if any Board Member had anything that jumps out at them other than the storage tank, he would be happy to entertain it. Alderman Roy said with that said, he would be in favor of continuing or tabling this case.

Vice Chairman Lovell said he wanted to second Alderman Roy's comments about needing Manchester Water Work's approval because obviously this is our water supply and not developing a project is fine with him if it is not going to ruin our water supply because it is far away and all that. He said Manchester Water Works is really the authority on this. He said he himself would look for their approval before approving a project like this. He said he is also in favor of giving the applicant the time to work with Water Works on that.

Chairman Breault said he agreed with Vice Chairman Lovell. He said the one thing he saw missing in this application when he did his review was some kind of statement from Manchester Water Works.

Guy Guerra asked what the reclaimed pavement storage area was. Attorney Cronin said he was going to ask Matt Peterson or Stephen Connolly to take that question. Stephen Connolly from ATS Equipment said they rent construction equipment. Much of their construction equipment is on tracks, much like an excavator would be on tracks and it wouldn't work well on a pavement area, so what they have is reclaimed asphalt which allows for a better surface for their machines to sit on. Guy Guerra said that was not defining the storage area. He asked if the reclaimed asphalt is a surface that is going to go down. He said it is not like they are storing asphalt there. Mr. Connolly said that is correct. Attorney Cronin said he recently did a small project himself and the reclaimed asphalt is generally the stuff that comes up when they are resurfacing the road. They grind it up, they put it down and they compact it so it is a hard surface. It is something you can park on and rather have a clean finish surface like you might have a finished binder coat on a residential subdivision and when you put track equipment on it, it would scratch it up and dig it up. By putting it on a reclaimed asphalt you don't run into that aesthetic issue. He said he thinks it is pretty standard industry wide. He said they could get the Board a little bit more detail on that so they understand it. He said maybe they will supply some photographs. Mr. Guerra said he appreciates what Attorney Cronin is saying and he understands and agrees with having the reclaimed asphalt as a surface. When he sees something on a plan that says reclaimed asphalt storage area, he is picturing 40' to 50' high mountains of reclaimed asphalt. Attorney Cronin said point noted and it is a good point for them in the future to make sure they clarify that.

Michael Landry said he is noticing that we have lost our live connection with Channel 22 and this is a public meeting. He said to play it safe and to respect the right to know law, he would like the Chairman to take a break and allow us to contact MCTV and see if we can resolve this in a short period of time. Chairman Breault asked Mr. Landry if the Board should not continue. Mr. Landry said he didn't think we should go any further. He wanted to reach out to MCTV and see what the issue is. He said for everybody to just stay on the line.

Michael Landry said he just heard that we are live and he recapped the meeting from 6:35 pm to 6:47 pm approximately.

Michael Simoneau said he just wanted to comment that having lived on Wellington Road for

many, many years and he said he will say it for Attorney Cronin, that site is an eyesore and it does need attention. He said he supports Attorney Cronin's request to table this and move it to the July 9th meeting.

Jim Roy made a motion to table case ZBA2020-033, to the July 9, 2020 ZBA Meeting which was seconded by Michael Simoneau.

Yeas: Breault, Lovell, Simoneau, Roy, Ketterer

Nays: None

Upon a unanimous vote, the variance was tabled to the July 9, 2020 ZBA Meeting.

Michael Landry said there would be no further abutter notice for case ZBA2020-033 for 220 Londonderry Turnpike. This case will be heard on July 9, 2020 at 6:00 pm. It will be broadcast on channel 22 on Manchester Public Television.

5. **ZBA2020-034**
32 Debbie Street, R-1B Zoning District, Ward 12

Patrick Graham proposes to construct a 14'x30' shed in the front yard where not allowed and seeks a variance from section **8.29(A)1** Accessory Structures and Uses of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through May 14, 2020.

Patrick Graham said he would like to put a shed on his side yard but according the City, because it passes the front plain of the house, it is considered the front yard. The purpose of the shed is that for his boat storage, he has a difficult time trying to back his boat all the way up the driveway and into the field on the side. His proposal is so he can drive up the driveway with the boat, drive through the shed and drop the boat off and then drive around. Referring to the photos he submitted, Mr. Graham said where the little blue tool shed would be gone and he knows there are a couple of other things in the backyard, but those, because he is a nice guy, are other people's problems and hopefully those will be gone by the end of the month. The shed will be just to the right of the basketball hoop.

Chairman Breault turned the hearing over to the Board.

Chairman Breault said this is a peculiar shaped lot with very shallow frontage on Debbie Street.

Guy Guerra asked Mr. Graham if anyone else had a garage in their front yard in that neighborhood. Mr. Graham said he didn't think so. He said there is a garage in the abutting parcel and there is a garage that abuts the fence line where his would be going.

Vice Chairman Lovell said he had a question on the material of the shed. Mr. Graham said it

is going to be a shed that he bought from Reeds Ferry. It will be wood with asphalt shingles and his plan is to pour a concrete pad so that it will be structurally sound for a long time. Vice Chairman Lovell said he was glad that Mr. Graham didn't say vinyl or something like that or one of those pop up sheds. He asked Mr. Graham what the visibility would be like from his neighboring property, over to his property across that east property line, just across that fence on the right of the photo we are looking at. Mr. Graham said that is their other garage that is there and alongside is the parking area for the three-family located at the end of Debbie Street.

Chairman Breault asked Mr. Graham if his garage is opposite the blue garage on the other side of the fence. Mr. Graham asked the Chairman if he meant the proposed one. Chairman Breault said yes. Mr. Graham said right where it says "new shed" is where the three-family garage is.

Chairman Breault turned the hearing over to the public and asked staff if there was any correspondence either in favor or in opposition to this application.

Michael Landry said he did have one email from a Joshua Zylak at 25 Debbie Street. He read the email into record.

To Whom It May Concern,

I am writing to show my support regarding the case listed in the subject line. I would have no problems with the build of this structure. The Grahams have shown a willingness to maintain their structures and grounds. The extra storage space would better help them house some bigger items which might be considered unsightly to some.

Thank you very much.

***Joshua Zylak
25 Debbie Street
Manchester, NH 03102***

Michael Landry said that is all he is seeing. Chairman Breault asked where 25 Debbie Street was in relation to this property. Mr. Graham said it is directly across the street from his driveway.

Chairman Breault turned the hearing back over to the Board.

Vice Chairman Lovell asked Mr. Graham if he approached his neighbor just across the fence about this. Mr. Graham said yes, he has. He said he believes they live in Massachusetts and he spoke with them about putting it up and they didn't have a problem but apparently they didn't want to email or call the Board.

Vice Chairman Lovell said his first thought when he saw this was that that is the biggest shed

he has ever heard of and putting it in the front yard like that didn't sound great, but the more you look at this, the more you see that it is really not visible from the street. He said Mr. Graham has located it so that it is across from a similar type structure across the fence. It is not going to be in that neighbor's way and it sounds like the materials they are going to use to construct it are going to be tasteful. He said he does see the hardship here and he doesn't think it is going negative for the neighborhood and it is hidden so he doesn't see it affecting the neighborhood. Mr. Graham said he believes Vice Chairman Lovell was the one who asked the question about the vinyl shed where he believes there is vinyl siding that is going to be on the shed, but it is going to match the house. He said he didn't know if that was the question he was asking. Vice Chairman Lovell said he didn't really use the appropriate term there. He said he was thinking about one of those flexible membrane sheds that just has a rigid middle skeleton or whatever. He said Mr. Graham is talking about a wood structure with asphalt shingles, concrete foundation and that all sounds good for the neighborhood. He said it sounds like a benefit.

Jose Lovell made a motion to grant the following variance count for case ZBA2020-034, 8.29(A)1 Accessory Structures and Uses which was seconded by Anne Ketterer.

Yeas: Breault, Lovell, Simoneau, Roy, Ketterer

Nays: None

Upon a unanimous vote, the variance was granted.

6. **ZBA2020-039**
180-200 Woodbury Street, B-2 Zoning District, Ward 10

Brian Pratt (Agent) proposes to increase the multifamily use by 15 dwelling units from 108 to 123 units in the B-2 zone and maintain building height of 88.3' where 84' has been granted by variance case 103-ZO-1986 and seeks a variance from sections **5.10(A)6** Multifamily Dwelling and **6.05** Height in Feet of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through May 19, 2020.

Brian Pratt said he is a Civil Engineer from Fuss and O'Neill. He said he is here representing the application to expand the existing non-conforming use at the Carisbrook Apartments at 180-200 Woodbury Street. As Mr. Landry said, this property is located in the B-2 zone and it previously received variances to allow multi-family use. He said what he has up on the screen is the tax map and he will scroll through a couple of other exhibits as he goes through the presentation. Mr. Pratt said here is the aerial photo which kind of shows the property line, the building, the parking areas and some detached garages. This is the bird's eye view of the property to show kind of what the building looks like.

Mr. Pratt said what they are proposing here is to add some additional residential multi-family units within the existing footprint of the building. What he has shown here in green is an existing kind of underutilized space. It is the former pool location which has been closed

for probably a decade. There is some conference space and then there is a large area that is used as storage, maintenance and workshop type stuff. It is really just underutilized. The application is to convert those spaces into additional units. The existing facility has 108 units right now and they are proposing to add up to fifteen but maybe a little more than what actually goes in there because they haven't completed architectural and structural design to find out exactly how many. It may be thirteen, fourteen or fifteen units. They are requesting the maximum that they think they would be able to fit in there.

Mr. Pratt said as part of the application, there would be almost no physical changes to the site. The only changes would be internally and then as you can see, the façade would have to be changed to basically match what the façade looks like for the additional units. They would have some windows and some patios and whatnot that they are kind of adding to the outside of the facility. Right now it is just basically a blank brick wall so it would kind of look a lot like what they have shown as what exists today.

Mr. Pratt said they have reviewed the parking on site and the property actually has one more parking space than it needs to meet the requirements for the additional fifteen units so they are not proposing to add any parking. As far as traffic, these units only generate two to three additional trips per day so the actual total volume of traffic is really minimal. It is only one or two an hour throughout the day. There is going to be no adverse impact due to traffic. He said this is a pretty simple application. He said he has the plan set here that they prepared that shows in plan view and this red area is where they are going to be making the changes. Some of it is one-story and some of it is two-stories. As you can tell by here, this is the one-story section and this is the two-story section.

Mr. Pratt said it is fairly simple. They show some additional potential patios out here which will probably be smaller than what they show, but they won't know exactly where those are located until the architectural designs are completed. He said they didn't want to proceed with architectural designs because they had to come before this Board for a use variance. He said the height variance was also mentioned. He said he wasn't aware of that but it does exceed the height. They are not changing the height of the building whatsoever. They are only making the changes to what they have here and the height is already exceeded and they are changing it that that makes sense that they would have to bring in that variance.

Chairman Breault turned the hearing over to the Board.

Chairman Breault said he is somewhat familiar with this property. He said he is aware that area in fact being as Brian Pratt represented and it is under a different ownership now than when he was involved with it and it is definitely underutilized space. He said it would obviously be beneficial to the owners to create more residences and it is something that is badly needed in this City. He said there is ample green space and open space on this property and it has the huge wetlands just to the west of it. He said he didn't see any issue with this application.

Chairman Breault turned the hearing over to the public and asked staff if there was any

correspondence either in favor or in opposition to this application. Michael Landry said there had been no correspondence on this case.

Brian Pratt said he did receive questions from an abutter, Mike Lopez. Mr. Pratt said Mr. Lopez just wanted to get a little clarification on what they were proposing. He said he sent him over the plan set and gave him an explanation and chatted with him and he responded back that he had no issue with the application. Mr. Pratt said he could forward that email to staff if they would like. Chairman Breault said he believes that Mr. Lopez owns the dwelling just northwest of the entrance to the property. Brian Pratt said he thinks that is correct. Chairman Breault said he is a direct abutter.

Chairman Breault turned the hearing back over to the Board.

Vice Chairman Lovell said just to clarify, the footprint does not change and Mr. Pratt is also saying that the general shape of the structures that are going to be retrofitted are not changing as well so no height changes or anything. Mr. Pratt said it is his understanding that the roofline is staying the same and they are just retrofitting the interior of the facility to add interior walls and windows and patios out on the exterior. Vice Chairman Lovell said so then we don't see any change to the surrounding public at all from something like this and it sounds like a benefit.

Anne Ketterer said seeing that this doesn't change the exterior footprint at all, the envelope, and seeing that it doesn't adversely affect the parking and the excess of building height is minimal, she does think that there is a hardship here and it is not against the public interest to grant relief.

Anne Ketterer made a motion to grant the following variance counts for case ZBA2020-039, 5.10(A)6 Multifamily Dwelling and 6.05 Height in Feet which was seconded by Jim Roy.

Yeas: Breault, Lovell, Simoneau, Roy, Ketterer

Nays: None

Upon a unanimous vote, the variance was granted.

7. **ZBA2020-035**
655 S. Willow Street, B-2 Zoning District, Ward 9

Brian Pratt (Agent) proposes to construct an accessory structure ATM with a canopy located in the front yard where the proposed stacking spaces for the ATM are located within the required parking aisle dimension and erect four wall signs where two comprise 12.8% of the wall area and the other two comprise 13.5% of the wall area where 10% is allowed and seeks a variance from sections **8.29(B)** Accessory Structures and Uses, **10.06(A)** Parking Layout and **9.09(D)** Signs of the Zoning Ordinance of the City of Manchester, New

Hampshire, as per documents submitted through May 19, 2020.

Brian Pratt from Fuss and O'Neill said he was here representing People's United Bank and the property owner, Brady Sullivan. He said the application in front of the Board is for 655 South Willow Street which was formerly the Osram Sylvania facility which was within the last few years converted to a retail plaza. He said what he has on the screen is a current Google street view showing what it looks like from South Willow Street near the corner of Driving Park Road. Referring to the plan, he said this is the big pylon sign, this is looking into the parking lot and this is the existing building. He said the People's Bank is planning to go here in the corner. Due to the current pandemic, the need for social distancing, the need for remote banking and that sort of service, what they submitted to the Board is an application to provide a remote banking kiosk and ATM. It will be a combination that does both out in the parking area.

Mr. Pratt said the place that they think it fits the best is basically right in this landscaped corner. He said there is a really wide landscaped corner and the plan is to install a concrete pad with the ATM with a canopy above and add some additional pavement which would be the area which he is highlighting. That would allow for three cars to pull off and be entirely out of the drive aisle and if that queuing does back up, they do provide a stripe to provide the five required parking spaces. In order to accomplish this, they need to seek a variance to reduce the building setback from 20 feet down to 19 feet. That is the setback from the property line on South Willow Street to the corner of the canopy. The other variance that they are seeking is that the City Ordinance requires that any banking facilities provide five queuing spaces. The reason that they have these five queuing spaces with only three off of pavement here and the other two coming out of the existing drive aisles is because they wanted to preserve some landscaping here and not encroach on the 10 foot requirement. That is the reason why it comes this way. By doing that, what they do is cut off the 22 foot drive aisle required for these few parking spaces here.

Mr. Pratt said what they are requesting is basically to allow these few parking spaces to share this drive aisle. The feeling is that this queuing isn't really going to back up all the time. It is going to be sporadically backed up to this point so the odds of a car backing out while there is somebody sitting at the ATM are pretty slim. That is what they are requesting, the drive aisle as basically still the 22 feet, they are just requesting to share it for these four parking spaces, to share these last two queuing spaces.

Mr. Pratt said another reason why they located this ATM and drive-up kiosk is because they do need utilities including a pneumatic tube. The proposed route for the pneumatic tube has to come into this backside of the bank and by installing it under the landscaping it has very little impact to the actual property. For a utility route, this location is really ideal. The other reason that it is located here is because of the proximity to the bank. As vehicles make it in, they have signage here that alerts people for drive-up banking to turn right. Referring to the overhead plan, Mr. Pratt said there is a sign right here that says go forward so people that are coming to the bank to go to the drive-thru come up, they hit this, they come in and then they go there. Then they can leave however they choose. They can leave off of any of these

drive aisles to get back out. He said it creates nice circulation. The drivers are on the correct side of the vehicle to access the ATM and the remote teller. It flows nice, it is close utility wise, it is close functionality wise and circulation wise so they really think this makes all the sense in the world.

Mr. Pratt said they do have some striping to basically convert this little corner here to one way because obviously you don't want people conflicting and driving the wrong way. They are adding a number of striping arrows and a little bit of do not enter. It really shouldn't have much impact because people coming in this way would normally be driving up that aisle anyway.

Mr. Pratt said they also have a variance for signs and the reason for that is that the signage area is based on the total area of the building face. The total area of the building face for this canopy is really small. It is only this little narrow strip so by Ordinance, they are allowed 10%. They tried to fit it at 10% and the letters were just really too small to be legible. They are requesting to increase that to 12.7% which is just a slight increase on the short side and 13.5% on the long side. He said you can see from here that they are not massive signs. They are quite small actually. They are only 5 feet by just over 1 foot on the long side and then 3½ feet by 9 inches on the short side. They really are minimized but it is just the fact that the building wall is so small. If this had been a full building that went all the way to the ground, they would be at 2% of the signage area instead of 12%.

Mr. Pratt said he thinks that is it. He said they need three variances, one for the front setback, one for the aisle width and circulation and one for the signage.

Chairman Breault turned the hearing over to the Board.

Alderman Roy said as Mr. Pratt would probably remember, he was a member of the Planning Board when this came through for the first time. He said they had many issues that they needed to discuss including radioactive waste that was stored on the site. He said it is now ok there. One of the things he distinctly remembers was back and forth about how it is going to look from South Willow Street. He said they had long discussions about where the entrance was going to be and it ended up on the north end of the property which is great. They have done a great job with that strip right there, it really looks good. However, with this plan, now you are going to take away from that curb appeal if you will. He said he recalls that there were an excess number of parking spaces. He remembers because 117 or 170 extra parking spaces with this building, which they built a really nice building by the way. He said Mr. Pratt talked about circulation and how it is going to be good and he doesn't know. He said he could be driving up the parking field and all of a sudden there is a line that says do not enter. That doesn't make any sense to him. The backing out traffic in those two spaces, because you don't have the width there doesn't make any sense to him either. That is because of the buffer that the Planning Board wanted on South Willow Street. He said he has to believe that there is another area on this site, close to that bank that you could put this ATM and drive up kiosk and maybe not even need any variances at all.

Referring to the plan, Brian Pratt said they could eliminate the variance for the circulation if

they extended into the landscaped area here. He said instead of having the cars bump out here, they could extend the five here and they would enter here. He said what they would end up with is a 6 foot landscape strip here instead of the 10 feet. That would require a variance from 10.07(G) to reduce from 10 feet. Alderman Roy asked Mr. Pratt is he looked at any areas away from the South Willow Street side because he is not in favor of any of that being diminished. Mr. Pratt said they did receive some feedback from some Planning Staff and they asked if they explored the option of putting it down in this area. The problem with that is they would lose thirteen to fifteen parking spaces. These spaces are extremely valuable. There are a number of tenants in this area. There are all these smaller tenants and smaller restaurants and they really don't have a ton of parking right in front of their users so this parking lot is going to be extremely full and then this parking lot is also going to get a lot of use as well. Losing any spaces in this area is a significant detriment to the facility.

Mr. Pratt said if they did push it over here, basically they would have to make all of this one way circulation because you have to have cars coming in the right direction. You really don't want cars conflicting and hitting each other. He said he thinks it would make the circulation in this area a lot more awkward. He said he has seen this done plenty of times and he doesn't have an issue with it. Usually, you put a left turn arrow here so that as cars come up they know to take a left turn. This is a significantly preferred option because it doesn't lose any parking spaces, the utility connection can be made correctly, it doesn't lose fifteen extremely valuable parking spaces and the utility connection, had they put it over here, it would have to go straight through the parking lot. You would have a trench right through the handicap spaces and you would have a much more intrusive demolition on the existing handicap ramp here and you would have more demolition under the building. It was explored and it is really not a feasible option.

Alderman Roy asked how many extra spaces they had on that site. Brian Pratt said it is tough to tell because the site is not fully built out. They get an interim parking calculation based on what was currently there and assuming that the rest of it is retail. Once those fill up, that parking calculation is going to get a lot closer, especially if there are restaurants. Restaurants use a significant number of parking spaces. He said Golden Coral for instance, had 334 seats. They require 150 parking spaces alone, just for them. Referring to the plan, Mr. Pratt said if it was further back, there is maybe an abundance of parking out in this area that is not necessarily going to be used because some of these tenants don't require as much parking. The parking in this area is extremely valuable because you have California Burrito and Firehouse Subs and all these users that are going to use a lot of parking. He said this lot is going to fill up and this lot it going to be kind of the lot that is used for a lot of these uses because it is close and the handicap access is right there. Alderman Roy asked Mr. Pratt if he remembered the number of extra spaces when it was at the Planning Board. Mr. Pratt said he didn't, but he did an updated calculation based on what was there as part of the site plan application. Based on the current occupancy, they are required 477 spaces and what they have on site in 589. There are 112 spaces over.

Alderman Roy said having been on that Planning Board and knowing how the Board really protected the South Willow Street side, and they have areas that they can put this

obviously, besides there, he doesn't see the hardship.

Guy Guerra said he also was on the Planning Board when this project was put together. He said they fought real hard to get a lot of green space up against South Willow Street because it is desperately needed. He said his heart sank when he saw the big trees that were there because there were some beautiful trees there. He said the applicant is coming here tonight telling him they want to carve up some more. He said it is not sitting real well with him. He said where that is going to be, if you are coming up south of South Willow looking up at the sign that they took a lot of time and a lot of expense to place there, if you come into that green space area, you are going to be blocking part of that sign. He said it is real tough to swallow on that one as well. Mr. Guerra said the area that Mr. Pratt mentioned along Driving Park Road will probably be the most unused parking spaces in this lot because of the distance away from the buildings themselves. He said they are looking to hamper parking in an area that is closest to the bank. He said they know it is a remote operation and they don't need to be close to the bank and that is the whole idea behind it. He said they drew a line right through handicap parking spaces and handicap entrances and that kind of thing and they managed to put a curb up in the very top one. His venture to guess that they can put a curb in the bottom one too, to clear some of these areas to get it into the bank where it needs to be.

Mr. Guerra said the green space is real tough for him. He has a hard time putting anything in that green space. It looks great now. The organization that put together this whole project together did an awesome job. He said he has a hard time on infringing on the closer parking spaces. He has a hard time with the green space and he has a hard time interrupting the signage. He said he knows they are talking about it's an ATM and they aren't going to have a whole lot of cars pulling up there, but visit South Willow Street at Christmas and tell him how many cars are lined up in parking spaces at ATM's. He said he also believes that if you went around the curve and put it where the second site was going to be, he believes they are also going to be in a situation where they probably don't need any variances there. He said he believes it would go through a lot easier. He said he thinks the location of this particular one at this particular time is just wrong.

Vice Chairman Lovell said he had a lot of the same comments as Alderman Roy and Guy Guerra so he won't repeat them. He said he does have a question along the lines of what Mr. Guerra was asking about. He referred to the plan labeled C-2 showing the pneumatic tube that goes from the bank, wraps around through the proposed ATM now, if there were a wrap-around that corner again like Mr. Guerra said, Mr. Pratt said the alternative was a non-starter with the pneumatic tube going up through the asphalt. Of course that is a lot more expensive, but could it be wrapped around one more 90° sweep like Mr. Guerra had suggested.

Mr. Pratt said he would have to check with the manufacturer. He said he knows they try to limit the number of curves. He said he knows one curve is fine but he is not sure if they came up and did curves like that if it would be too many. Vice Chairman Lovell said he was not suggesting going through the asphalt like that. He said another long sweeping curve that

goes down by Driving Park Road, so continuing the pneumatic tube alignment that you have there right past the ATM and then sweeping left on the page again, just all through the landscaped area, not the parking. He said he asked that thinking he knew the answer. He said in a former life, he had the pleasure of inspecting a pneumatic tube system for a bank in New York City and there was a dozen turns. He said he has to assume that it is feasible. Vice Chairman Lovell said had one more comment on the two parking spaces that were mentioned that are going to be kind of hampered by the back-up parking in the ATM line. He said it really looks more like five spaces that are going to be hampered. He said you start there, then you've got a fourth car and every third car in New Hampshire is a truck. Referring to the plan, Mr. Pratt said it would basically be these ones. Once you get to this point, it is really wide enough to have no problem, so it is pretty much those five spaces adjacent to these two. Vice Chairman Lovell said it may be even six spaces when that sixth space is trying to back up so he or she can go down through the one way traffic. With the parking that is down on Driving Park Road, he didn't see a big issue losing that parking as Mr. Guerra said. That parking is really not a lot further away from the parking in front of Golden Coral or something like that. With the timing of their opening he thinks they are going to need zero spaces.

Bob Peterson said he was the Vice President of Facilities for People's United Bank. He said for his part, he thinks the Board knows that the drive-up ATM and tube system facilities these days are a lot more critical than they were six months ago and for us to make this a viable site, they absolutely have to have this functionality at the site. He said he would be happy to work with their tube system vendors to find out what the maximum range is for their systems and they are happy to do whatever they need to do to make this happen, but it is a critical piece of infrastructure for their site and obviously they are working with their landlord, Brady Sullivan, to make sure that they do whatever they need to do to make it happen and obviously expect the same from them. He said he just wanted to chime in and let the Board know that they are committed to the site and want to make sure they do whatever they can to make this happen. He said they would be happy to consider any other opportunities to plant more trees or shrubs or increase green space somewhere else. They are just happy to consider any opportunities that they've got to make this happen.

Chairman Breault turned the hearing over to the public and asked if there was any correspondence either in favor or in opposition to this application. Mr. Landry said there was no correspondence regarding this case. Chairman Breault turned the hearing back over to the Board.

Alderman Roy asked Mr. Pratt if it would be in the best interest if he and the bank to go back to the drawing board and see if there is another spot like he mentioned over on Driving Park Road that they could do this. He said he certainly didn't want them to put the kibosh on this. As it is right now, he wouldn't be in favor of it but he is certainly not opposed to having this ATM somewhere in that parking lot. He certainly doesn't want it on South Willow Street. He asked Mr. Pratt if it would be a good thing for the Board to continue this to the next meeting in July so that they could come up with another plan or would he prefer not to do that. Mr. Pratt said he thinks if they did come up with another plan, he doesn't think any variances

would be required. Referring to the plan, he said the alternate location proposed by Planning Staff puts it over here and that wouldn't require any variances. Again, he doesn't think that is going to be a feasible alternative so he thinks the only option that is acceptable to the bank and the landlord would be to put it here. Alderman Roy asked Mr. Pratt if he is saying that he would rather the Board possibly vote it down tonight than give them a chance to tell the Board that they are going to be ok someplace else. He asked if that is what they would rather the Board do. Mr. Pratt said he guesses they would want the vote and if it is denied, then they would either have to come in with an alternate solution or the project is dead.

Chairman Breault asked Mr. Peterson if he had any comment. Mr. Peterson said he is good. He said he is disappointed if they can't locate the facility where it is but he needs that facility to make the branch work so if that is the decision, he respects the Board and they are just going to have to come up with a different solution, apparently.

Brian Pratt asked the Board if what he was showing on the screen was a possible alternative, getting these two spaces out of the drive aisle so that makes it so that these spaces have no issue, they don't need the variance there. The only thing they would need is a variance to reduce the ten foot green space down to six feet. He said he knows it is a little bit less but they wouldn't lose any trees, they would just move the trees so they would still be there. They would just be between the edge of curb for this drive aisle and the back of the sidewalk there. He said they could even add a couple of trees if that would help make this location better. They could put some screening or maybe some shrubs or something to kind of help screen that a little bit better. He said that takes away the variance for the parking spaces but then it adds a variance for not providing a ten foot landscape buffer. He said they may be able to reduce the canopy a little bit. It would be substandard from what their typical is but maybe they could do that so that that would be a little bit further away. Referring to the plan he said they may be able to do that with just the one variance to change this right here. It is a miniscule little area that would be six feet. They would still have almost twenty feet here and still have plenty of green space everywhere else. He said he didn't know how the Board would feel about that.

Guy Guerra said Mr. Pratt was talking about taking away more green space. He said he finds it hard to believe that this would kill the entire project simply by moving it around the corner. He said it sounds almost like what they are trying to tell this Board is that the location, instead of being against South Willow Street, eating up green space that was fought for dearly, having a building or structure there that is going to block the sign, by simply moving it around the corner is going to break the entire deal. He said he has a hard time believing that that is going to be the case. He said there were a lot of people that fought real hard for green space there because of the size of the project. He said he is not voting this evening so it doesn't matter, but anything that is going to attack some of that green space up there is going to be a real tough act.

Chairman Breault addressed Mr. Pratt and said he was asked some questions and he thinks some of the solutions he is offering are significant changes to this drawing and he didn't

know if the Board is prepared to make decisions off the cuff on changes that could impact other people's opinions of this case.

Alderman Roy said he asked Mr. Pratt point blank if he would like to have some more opportunity to try to make this work around the corner and he said no, he would rather have the Board vote it down so he is willing to make a motion to deny right now if that is what he would like.

Chairman Breault said he would give Mr. Pratt one more opportunity to table this case or would he like the Board to vote on it right away. Mr. Pratt said it sounds like it is going to get denied so he said maybe tabling it and letting them maybe come up with some different ideas and if those ideas don't involve coming back to the Zoning Board they could always withdraw. Bob Peterson said it sounds to him like that is the prudent move at this point. He said rather than this application getting denied, why don't they try to circle back through and see if they can come up with something else, because it sounds like another option may not require them to come back to the Zoning Board for a variance. Again, if they can figure that out but it seems like tabling it or deferring it would be wise at this point.

Jim Roy made a motion to table case ZBA2020-035, to the July 9, 2020 ZBA Meeting which was seconded by Jose Lovell.

Yeas: Breault, Lovell, Simoneau, Roy, Ketterer

Nays: None

Upon a unanimous vote, the variance was tabled to the July 9, 2020 ZBA Meeting.

Michael Landry said there would be no further abutter notice for case ZBA2020-035 for 655 South Willow Street. This case will be heard on July 9, 2020 at 6:00 pm. It will be broadcast on channel 22 on Manchester Public Television.

8. **ZBA2020-037**
166 Hickory Street, R-1B Zoning District, Ward 8

Ryan DeCinto proposes to maintain a parking space in the side yard within 4' of the house and shed where 4' is required and maintain an 8'x12' shed within the required side yard setback 5.3' from the lot line where 10' is required and seeks a variance from sections **10.09(B)** Parking Setbacks and **8.29(A)** Accessory Structures and Uses of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through May 18, 2020.

Ryan DeCinto of 166 Hickory Street said he was joined by Erinn Madden who also lives at the property. Mr. DeCinto said they purchased the house last November and all of these structures came with the house. He said the only reason this came into question is because they actually submitted a permit to put a fence in the back yard for their dog. The permit got

denied because of the issues brought to the Board's attention. He said they recently got a new plot plan drawn to include everything the original plot plan did not have the accurate information. He said now you can see the shed and the parking structure.

Mr. DeCinto said in doing some research and pulling the pictures that they could find off of Google, it looks like the driveway and the shed were all done prior to 2011 as this is when they were photographed. He said on the tax card he thinks they are both also shown which he believes was also in 2011. He said they are in a very big neighborhood with 100-150 houses and a lot of the house have sheds right on the property line or within a foot or two of a fence that that owner put up and that fence is on the property line. There are also a good amount of houses that have driveways that go up through the side of the house. Obviously, when they bought it, they weren't aware of the issues and the previous owner wasn't aware of the issues as he only lived there for a year. He said he tried to do the right thing in pulling the permit to put in a fence and it opened up a can of worms that has already cost them a lot of money just trying to fence in the yard for their dog to be able to go outside. They are just asking to keep the shed and parking as is so they can move forward with their fence permit.

Mr. DeCinto said they have two neighbors, one behind them and one to the right. He said the one to the right is vacant, and from what they have been told by neighbors, it has been vacant for quite some time. He said they spoke to the neighbor behind them this evening and he doesn't have any issues with the structures that they currently have in place. He is actually looking forward to them putting in a fence because he just got a dog himself and he has little kids and by blocking off that side, he feels ok with having his dog and kids out.

Chairman Breault turned the hearing over to the Board. There were no questions or comments from the Board and the Chairman turned the hearing over to the public. He asked staff if there was any correspondence either in favor or in opposition to this application. Mr. Landry said there was no correspondence regarding this case. Chairman Breault turned the hearing back over to the Board.

Michael Simoneau said he has been to the property and he knows the area and he doesn't see this as contrary to public interest. He does believe that it meets the spirit of the Ordinance and it is always tough on a corner lot like this and having a pet himself, he understands their goal and the neighbor's goal. He said he is in support of this application.

Chairman Breault said he would add that they have had repeated cases come before them from this neighborhood with many similar situations. He said parking is a premium and Brent Street is a busy street. He said you want to get your parking on your property. He said he doesn't think that this is an unreasonable request. He said they have had many before them with sheds and decks and so on.

Michael Simoneau made a motion to grant the following variance counts for case ZBA2020-037, 10.09(B) Parking Setbacks and 8.29(A) Accessory Structures and Uses was seconded by Bob Breault.

Yeas: Breault, Lovell, Simoneau, Roy, Ketterer

Nays: None

Upon a unanimous vote, the variance was granted.

9. **ZBA2020-040**
33 Maiden Lane, R-1A Zoning District, Ward 8

Mary Bobotas proposes construct a 12'x32' above ground pool with a side yard setback of 10' where 20' is required, resulting in lot coverage of 47% where 40% is allowed and replace a 4' wood fence with a 6' vinyl fence in the front yard where 4' is allowed and seeks a variance from sections **8.29(A)2** Accessory Structures and Uses, **6.04** Lot Coverage and **8.27(B)** Fences Walls of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through May 28, 2020

Mary Bobotas said she wants to put in a 12'x32' above soft ground pool on their side yard and to replace their 4' wood fence with a 6' vinyl fence.

Chairman Breault turned the hearing over to the Board.

Vice Chairman Lovell said he had a question about the neighbor closest to the pool. He asked Mrs. Bobotas if she had discussed this with him. Mrs. Bobotas said yes, she said she spoke to the neighbors where the pool would be and they think it is a good idea. Vice Chairman Lovell asked Mrs. Bobotas if that is who they have the letters from. Mrs. Bobotas said yes.

Chairman Breault turned the hearing over to the public. He said the Board had received three correspondences from abutters and he asked Michael Landry if there were others and if he wanted to read each of these into record and state who they are all from. Mr. Landry said he was having trouble finding them. Chairman Breault said he had them in front of him so he would read them into record. He said two of them are identical letters.

To Whom I May Concern,

My name is Lena Rogler. I live at 27 Arbutus Lane and my property line abuts the side-yard to 33 Maiden Lane. I am aware that 33 Maiden Lane is in an R-1A zoning district requiring a 20 foot side yard setback for a swimming pool.

I have no objections to the pool being 10 feet from my property line (fence). I give permission to Matthew and Mary Bobotas to put up an inflatable soft pool in that location.

Thank You.

Lena Rogler

Chairman Breault said the other abutter at 37 Arbutus Lane, **William Rogler**, basically provided the same letter.

Chairman Breault read the last letter into record.

My name is Mary Ellen King. I live at 25 Maiden Lane. My property line abuts the backyard to 33 Maiden Lane. I am aware that 33 Maiden Lane is in an R-1A zoning district requiring a 20' side yard setback for a swimming pool. Although their side yard where the pool is going to go does not abut my property line, I give permission to Matthew and Mary Bobotas to put up a soft pool

Sincerely,

Mary Ellen King

Chairman Breault said those are the three letters. Chairman Breault turned the hearing back over to the Board.

Vice Chairman Lovell said the second letter looks like it was from a different address. Mrs. Bobotas said that was his son. That is why they have a different address. Chairman Breault said there are three abutters with three different addresses who have commented.

Chairman Breault said he is somewhat familiar with this neighborhood and he knows some other people that live in this neighborhood and he has been through that neighborhood several times and this is the old camp lots. These are tight lots that go back to the park at Crystal Lake back in the early 1900's. They were all 50'x100' lots. This particular lot appears to be two 40'x70' lots that were combined. They are tight and many people have come before the Board for variances and he really doesn't see much of an issue with this variance request. He said this is not contrary to public interest, is in the spirit of the Ordinances, it is not going to affect any surrounding property values and based on how small these lots are, it does create some level of a hardship.

Bob Breault made a motion to grant the following variance counts for case ZBA2020-040, 8.29(A)2 Accessory Structures and Uses, 6.04 Lot Coverage and 8.27(B) Fences Walls which was seconded by Jim Roy.

Yeas: Breault, Lovell, Simoneau, Roy, Ketterer

Nays: None

Upon a unanimous vote, the variance was granted.

Michael Landry announced that case ZBA2020-042 would be heard before case ZBA2020-041 per the request of Todd Cote, Agent for case ZBA2020-041.

10. **ZBA2020-042**
42 Medford Street, R-1B Zoning District, Ward 7

John Cronin, Esq. (Agent) proposes reconstruct a 16'x22' non-conforming garage with a side yard setback of 6.3' where 10' is required and seeks a variance from section **11.05(A)** Non-Conforming Structures of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through June 2, 2020

Alderman Jim Roy said before Attorney Cronin started to speak, he wanted to say that after reading this application, he wanted to ask Staff why this case was in front of the Board. He said it looks to him like someone is trying to repair an existing garage. He said unless you tear the whole thing down, you are able to put it back in the same footprint so why is this in front of the Board. He asked if he was missing something.

Michael Landry addressed Alderman Roy and said Attorney Cronin was before the Board a couple of meetings ago and he wanted to tear down wood framed portions of Genest Bakery. The Ordinance says if you are going to reconstruct something, it is essentially reconstructed and you need to do so in conformance with the Ordinance. He said we are looking it up as article 11 and we are recognizing that it does have a non-existing, non-conforming status, however, it is not repairs. You can repair something no problem. You can't rebuild it. They are going to the extent of demoing the foundation and putting in a brand new foundation. He said he respects and understands Attorney Cronin's position however this is the way that the Ordinance is applied.

Mr. Landry said this is the reason why Mr. Cote requested to go after this case because he has a very similar case. There are some non-conforming structures that probably don't deserve to remain and there are some that should remain. He said he thinks you know them when you see them. He said this is a garage that has been there for a long time. It has had a serviceable life and this is probably a very good thing. He said he thinks this needs to be before the Board. He said there are cases such as the Buford Funeral Home that has a carport at 110 Bridge Street. That carport had been there forever. It was dilapidated and the Ordinance covers damaged, non-conforming structures, which allows you to build by right when something is damaged by casualty. The Ordinance is clear about if the damage did not happen by some other reason other than neglect, like by fire, you are allowed to rebuild it, but if it is not damaged, the Ordinance requires rebuilding and maybe it is unfortunate here, but we apply it consistently and that is why they are before the Board.

Attorney John Cronin from Cronin, Bisson and Zalinsky said he was representing the applicant in this particular case. He said as was mentioned, this is 42 Medford Street in the R-1B zoning district over in the area of Mammoth Road and Candia Road. The neighborhood is a well-established neighborhood. People over there generally take really good care of

their homes and they are proud of the neighborhood. He said the applicants in this case, Scott and Kathryn Beleski, grew up in that particular area and they live at the home next door. They also have parents and other relatives that live in the area and they do a lot for that particular neighborhood and the people that live there.

Attorney Cronin said the property at 42 Medford Street was occupied by an elder gentleman for many years and as he fell in ill health, the property continued to deteriorate due to lack of maintenance. He said this neighborhood is very consistent and a lot of these are post war buildings that were constructed without regard to setbacks and if you go down there, you will see many of the structures are the same but they are turned in different directions.

Attorney Cronin said when this property came up on the market for sale, the Beleskis, rather than complain about it, took action and said we want to take an opportunity to try and buy this, which was a great sacrifice to them to try and buy something to beautify it, not only to help their own property, but to help the neighborhood. Both Kathryn and her husband, Scott, have unique talents both in construction and design and everything they touch they beautify and transform. He said he has been appearing before this Board for many years and he thinks he usually does a pretty good job about keeping his cool, but this is a case that really ticks him off. He said there is no need to be here. This is a complete over reach and the answer that we make everyone do this is not good enough for him.

Attorney Cronin said he would like the Aldermanic Members at this Board to pay particular attention to this case because ten or fifteen years ago, he was asked to sit on a board with the community to see what they could do to help streamline issues in Building and Planning. This is one of those issues that was talked about, that people have over technical reads on things, forget about common sense and put people through paces that are very, very expensive by people that are trying to get by and do the right thing. In this case, the Beleskis take this dilapidated structure and start making improvements. They do the right thing and go and apply for a building permit. They do everything they are supposed to do. This isn't just a garage. This is a house with an existing attached garage. One side of the garage, when they looked at it, the framing members were rotted. They looked at that and said we would like to replace it. They spoke to the building official and said, we want to take this wall down and we want to reframe it and get rid of these rotten timbers. The response was you can't do that, you have to leave the rotten timbers there and affix it to them which makes absolutely no sense whatsoever. They then started talking about how they could do that and the response was to go back 10 feet or reduce the garage to 12 feet so you meet the setback line which is equally ridiculous.

Attorney Cronin said as they started to look at it, the Belinskis gave him a call and said what should we do here? We really are in the middle of this and we want to make it nice. How do we deal with it? They said they knew he did a lot of zoning work. He said he went over there and he told them they didn't need a variance for this. He told them they are building on the exact same footprint, there is no duty to abandon and he is going to repeat that. There is no duty to abandon. This is a repair of a home with an attached garage on the exact same footprint. The setback is not going to change one iota. That wall in the garage will go up a

foot and the reason it will go up a foot is to allow the roofing timbers, joists, to be zoning compliant and allow the garage door to function properly. Currently if you look at that garage timber on the joist, someone took a handsaw or skill saw and cut out some notches to allow the rails of the garage to go up and down. This is totally inappropriate.

Attorney Cronin said as they are looking at that process, they are saying that they have a carpenter here that they waited weeks to get. He is someone that they know, someone that they trust and someone that is priced fairly. They want to keep him on the job so he can finish and get this done so they can take care of it. They've got a mortgage with the due date of June 1st. They are technically in default of that mortgage. They are trying to get this done and the carpenter says he can't sit around here while they go and get a variance. He had to go get another job. He had to feed his family and he couldn't sit and wait. So they lose a contractor, they pay money to him and money for an application. He said if he did it right, it would be a \$900.00 application because he should have done an administrative appeal and only an administrative appeal and then the variance. Due to the cost, he said he was going to make a Bartlett vs. Brookside argument first and he would put the variance in second which cuts the cost in half. It is still \$400.00 for fees that are unnecessary and his costs are totally unnecessary.

Attorney Cronin said when you look at the law of non-conforming use, and the non-conforming use protections in the Zoning Ordinance, that is not in there by mistake. It is in there because both the Federal and State Constitutions say that if you have a prior non-conforming use, you can continue to maintain it, you can repair it and you can even expand it reasonably if you wish. You can expand it. That is in there to provide people with protections that had buildings and structures that were erected prior to the adoption of zoning. That is exactly what the case is here. For some reason, and it is not Mr. Landry, who is always cooperative, but he knows Mr. Landry is in an awkward spot here. There are people that look at this, and he doesn't want to make it personal because they are not trained as lawyers, they are technical people and they do a good job and they are supposed to do their jobs. When someone calls something out and says, hey, this isn't consistent with the law. This is a prior non-conforming use and it is not being abandoned.

Attorney Cronin said he thinks it would be right if Mr. and Mrs. Beleski said they wanted to take this down and rebuild it three years from now like they had on the Harvard Street case. That is not what's going on here. This is simply a repair of a prior non-conforming structure. He said he was going to leave it at that because he thinks he made his point that this should not be necessary. He said he was going to ask the Board first to decide under Bartlett vs. Brookside, whether they even need a variance for this. He said he thinks it is important that the Board send a message to the people that are making these decisions that it is really not fair to the people like the Beleskis who have to delay a project, get a default of a mortgage and pay him good money for no valid reason to come and get a variance. He said if the Board finds that the variance is required, this is one case that he is not even going to address the five criteria beyond what is in his papers because this one knocks every single one of them out of the park. He said he would just note that they do have an opinion of value from a broker that says it will not diminish the value of surrounding properties and if you will look

in the record, there are letters from every abutter applauding what is being done here. He said he is hopeful after tonight that the Beleskis can beg their carpenter to come back and talk to the mortgage holder and try and make sure that they don't get called on a default.

Chairman Breault turned the hearing over to the Board.

Alderman Roy said he knows Chairman Breault is in construction as he is and when he read this, he thought this was a repair, but after hearing from both sides, he would have to agree with Attorney Cronin.

Vice Chairman Lovell said he was just looking at the definition of repair here and he said he would read it. The definition of repair is any construction which replaces materials but does not change the height, number of stories, size, use or location of a structure. He said at face value that sounds like what we are talking about here. He said he could be missing something.

Chairman Breault said he would venture to say the only thing being affected is height based on need of constructing the structure with code appropriate rafters. Anne Ketterer said she thinks it was well said by the other Members of the Board.

Attorney Cronin said the height of the structure is not increasing. This is one structure with the garage attached. The high point of the structure is in the dwelling section. They are not increasing the height of the structure. There is a one foot elevation change in a portion, one wall and the exterior wall of the structure and that is it. Chairman Breault said that is what he was referring to. It is more for constructability to satisfy code. He said he wasn't alluding to the fact that they were raising the structure significantly. It is more to have an overhead door that can clear the structure.

Alderman Hirschmann said Attorney Cronin's plea was pretty passionate but that was within the law. He said he would define this completely as a repair and if he was the homeowner, he would be horrified. He said his role here is as a Zoning Board Member and not as an Alderman but certainly going forward, he is wondering why this is even in front of everybody. He said he would say that this is a repair.

Chairman Breault turned the hearing over to the public and said the Board has received several correspondences from abutters and an opinion of value. He asked Michael Landry if he would like to read these into the record. Mr. Landry read the letters into record. He said the letters from the abutters are pretty much a form letter so he will read the body in full and then he will just go through the names.

Dear Board:

I live at 55 Medford Street in Manchester, New Hampshire. I am in favor of everything Scott and Kathryn are doing to improve the neighborhood at 42 Medford Street.

We support their application and request that you approve the request for variances.

Thank You Very Much,

Shane R. Dumont, 55 Medford Street

James Malin, 33 Medford Street

Barbara Fournier, 65 Medford Street

Pauline April, 66 Medford Street

Debbie Phelan, 177 Melrose Street

Theresa Skersey, 165 Melrose Street

Chairman Breault read the letter of opinion into record. He said the letter was from Bill Sheehan of KW Metropolitan Fine Homes Group.

The applicant requested that I review the variance application and render my opinion, as a real estate professional, whether the value of surrounding properties will be diminished if the variance is granted.

I am familiar with the neighborhood, the condition of the property prior to ongoing renovations and the current state of renovation. Prior to renovation, the property was in poor condition suffering from years of neglect. The floor plan was outdated and the structure did not meet current building codes in many respects. The renovation is tremendous and will transform this section of the neighborhood. I expect the value of the subject property will be increased dramatically and the value of all surrounding properties will benefit from the transformation.

In closing, it is my opinion that the values of surrounding properties will not be diminished if the variance is granted.

Respectfully,

William Sheehan

Chairman Breault said that is all the correspondence we received from the public and he turned the hearing back over to the Board.

Alderman Roy said in all his years on these different Boards, this is the first time he has seen something like this. He said this request for Bartlett vs. Brookside, how does the Board handle this. He said he is a firm believer that this shouldn't be in front of the Board, so how are we going to handle this? Attorney Cronin said he could make a suggestion. He said for purposes to help other people out that have had to go through this same process and maybe not have had access to a lawyer, his preference would be that the Board make a motion that a variance is not required because this is a reasonable repair of a prior non-conforming use. To make sure all bases are covered, he would suggest that maybe a motion to say that under Bartlett vs. Brookside, the Board believes that a variance is not required

because this is a repair of a prior non-conforming use. Otherwise, the variance prongs have been satisfied. That way you get both of them covered and the record is clear.

Chairman Breault said from the sounds of it, there is definitely a legal argument, but without being a lawyer, he is somewhat hesitant to make a judgment call. He said he feels similar to Alderman Roy and Alderman Hirschmann and other Board Members may feel the same that this probably doesn't require a variance. He said he would entertain a motion stating that this doesn't require a variance but he doesn't know if the Board wants to stipulate a legal matter or a legal case.

Jim Roy made a motion that a variance is not required for case ZBA2020-042, because this is a repair of a previously non-conforming use which was seconded by Jose Lovell.

Yeas: Breault, Lovell, Simoneau, Roy, Ketterer

Nays: None

Upon a unanimous vote, the variance was not required.

11. **ZBA2020-041**
286 Coolidge Avenue, R-1B Zoning District, Ward 11

Todd Cote (Agent) proposes to rebuild the front porch and carport with an 11' front yard setback and a 1' side yard setback where 20' is required, maintain a garage with a 0' rear yard setback where 30' is required and a 1' side yard setback where 20' is required due to the connecting structure constructed between the house and garage and maintain 3 parking spaces within 4' of the building or lot line where 4' minimum is required and seeks a variance from sections **6.03(A)** Front Yard Setback, **6.03(C)** Side Yard Setback, **6.03(B)** Rear Yard Setback and **10.09(B)** Parking Setbacks of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through May 29, 2020.

Michael Landry said he was going to tee this up the same as he did for Attorney Cronin's case. He said the porch and carport will fall under count 11.05(A) Non-Conforming Structures and then the parking issue is 10.09(B) Parking Setbacks. He said he would also like to add that in the previous case, they have replaced the foundation and built it from the ground up and that was called a repair. In this case, Mr. Cote is leaving the foundation in place for his porch and carport.

Chairman Breault asked Mr. Landry if we could go back to the actual sections that are applicable here. Mr. Landry said 11.05(A) and 10.09(B) are the only counts we are looking at. He said he thinks he knows which way this is going.

Todd Cote said he applied for a permit back in February and like it has been stated, he is trying to repair the front porch and the case is very similar to what we just heard. The house is a 140 year old house that had an existing porch built on granite blocks with granite steps.

It had a carport also on granite blocks to the side with the setbacks that were stated. He said originally, he tried to get a repair permit through the advice of the Building Inspector, Don Veilleux. He said through scheduling issues with his sub-contractor in trying to get this under way, they did get started on the demo side prior to having the permit with the understanding that the permit was supposed to be coming in an email when he talked with the ladies at the front desk.

Mr. Cote said they stopped work and Jim Tierney got involved as a code officer for violations and he tried to be compliant with all the violations that were cited. He said he is not in compliance with all of those violations, the biggest one being this carport. He said he would have originally appealed the decision but he wasn't aware of how the Zoning Ordinance law was written. Through the months that followed, in corresponding with Jim Tierney, he realized much of what Attorney Cronin was just talking about in the previous case. Basically, his situation is coming down to a definition of terms and these terms are defined in the Zoning Ordinance. He said Vice Chairman Lovell earlier mentioned repair and the other one is obviously alteration. Regarding the non-conforming structures of 11.05(A), (B) and (C), we have to figure out which one is the most applicable. He tried to make the argument prior to coming to the variance that (B), the repair and maintenance is what they fall under so that they could repair the structure there, leave the granite blocks and rebuild the roof and because they weren't changing the size, use or location of the existing structure, they didn't fall under the definition of alteration.

Mr. Cote said as Attorney Cronin was trying to say in the case before, it would be really helpful, because this cost him thousands of dollars and months delays in this project, if the language could be done in such a way to prevent this from happening to other people. He said they are truly under the repair clause and they could obtain a building permit legally under the repair without having to go through the variance process, because like he said, this has cost him a lot of time and a lot of money to help with engineered drawings and a certified plot plan which isn't in front of the Board. He said he asked Jim Tierney prior if he needed one and he didn't respond so he went ahead with a certified plot plan as well because he thought it might be required.

Mr. Cote said all they are really looking to do is to rebuild the same structure in like kind with what is there because the roof had a lot of sag in it from being 140 years old and the deck was in really bad repair with sections of it you actually could fall through. This is a condo unit and one of the owners who lives there had a family member that fell through the deck so they are trying to fix that up and keep the aesthetics of the granite blocks, but they got thrown a lot of curve balls on this one trying to go back and forth with the engineer. He said Mr. Landry was very helpful with that and his engineers were very helpful, but a lot of this could have been avoided if they were just under the repair permit from the very beginning.

Mr. Cote said the language is just ambiguous in the definitions of the repair versus the alteration where it seems the spirit of the Ordinance is trying to guard against changes in use or size or location or the stories. He said if you are just changing the structure, because

obviously, if you are doing repair, the repair definition says it allows any construction, so you are obviously changing structural materials if you are changing construction materials and that is why we have those definitions. He said there is section (A) and section (B) so that the town can differentiate between which permit is applicable to move forward. Obviously, he feels like they are well within all of the five criteria for the variance with this, because they are keeping within the spirit of the project and the use of the structure.

Mr. Cote said this is the beauty of the home. It is a really beautiful wrap around porch with a carport and they are not diminishing any values. If possible, he would like for this to be approved in the same way so that it is approved under a repair and not under variance. He feels that will help future situations where precedent isn't set against them and it will mitigate a lot of cost and a lot of time trying to be in compliance with everything.

Chairman Breault turned the hearing over to the Board.

Chairman Breault said he sees this as having some distinct similarities as the previous case. He said this case also has count 10.09(B) Parking Setbacks. Mr. Cote said he understands what Chairman Breault is saying, but if this was under the repair permit, the other additional count wouldn't have even come into play because he would have gotten approved on what he was doing and he wouldn't have to go before a zoning review for what was on site. Chairman Breault said that was possible.

Vice Chairman Lovell said he had a response to the applicant's comment just now that going for the permit under the repair definition wouldn't have popped up these other violations. He said he believes it would have. He said when you apply for a permit without a variance, these violations would have surfaced, unless he is mistaken.

Alderman Roy said he agrees with Vice Chairman Lovell. He said that was the exact point he was going to make. He said these violations would have popped up.

Chairman Breault turned the hearing over to the public and asked if there was any correspondence either in favor or in opposition to this application. Michael Landry said there have been no public comments submitted either in opposition or in favor. Chairman Breault turned the hearing back over to the Board.

Vice Chairman Lovell said he just wanted to confirm with Mr. Cote that everything they are doing is within the same footprint, isn't altering the dimensions, height, materials or anything like that. Mr. Cote said that is correct. He said they are building on the existing granite blocks in the existing locations where they are. As far as changing materials, the only anticipated change in materials was there is a wood decking that is currently on there and they were looking to use a composite decking instead of that for a change of the decking material. It is still a wood structure built in the same exact footprint to the same exact height. They are limited to the height the way the windows are so they can't go above that anyways. There is a second floor above the first story of that porch.

Chairman Breault said obviously he is probably using pressure treated materials and more

recent materials than what were available 140 years ago. Mr. Cote said that was correct. Chairman Breault said the dwelling has a lot of character and is a beautiful structure. He said it is unfortunate Mr. Cote had to be delayed but he thinks that the parking case would have required him to come here before the Board.

Vice Chairman Lovell said he is hung up on the materials. He said they are kind of looking at the letter of the Ordinance here and without getting into the spirit, he would like to open up a discussion on the materials that we are talking about here. He said the definition of repair does say change in materials. Vice Chairman Lovell looked again at the definition in the Ordinance and said it does not say change in materials. He thought it said materials but it says does not change the height, number of stories, size, use, or location of a structure.

Chairman Breault said he thinks it is a reasonable expectation that people would not use common lumber and or materials that are going to deteriorate with the weather like they have over the years and try to make it more resistant to the elements. He said he doesn't think that is something that would impact the Board's decision making.

Todd Cote said it is in the weeds and it is for future things and he didn't know if the Board was interested in it, but the two definitions between alteration and repair, the first part reads for alteration, any construction resulting in a change in the structural parts and repair says any construction which replaces materials. Essentially, those are the same things just worded differently because what is in view and the rest of the definition is one is when you change the material of a structure and it also changes the height, stories, the size or the use. The other one allows the same change of materials of the structure but does not change the height, stories, the size or the use. He said he wishes the first part of that sentence would be identical between an alteration and a repair so that the Zoning Board could focus on what is in view which seems to be the change in height, stories, size or use of whatever those changes to the structural materials are. That would seem to clear up a whole lot of this confusion. Chairman Breault said unfortunately, this Board has no jurisdiction over what the Ordinance states or how it is written. He said the Board has to work with what they have. He asked if there should there be some language clarifications or revisions. Possibly. Any type of Ordinance that is written will have some holes in it at some point. He said he didn't think that was a matter that this Board could get into this evening.

Anne Ketterer said she wanted to note that criticism of the text really is not the point of this evening, so let's move past that. She said it is what it is and we are here to talk about how it is written and Mr. Cote has presented his case and the Board Members have all reviewed the file and Vice Chairman Lovell made some good points and Chairman Breault clarified some things.

Anne Ketterer made a motion to grant the following variance counts for case ZBA2020-041, 10.09(B) Parking Setbacks which was seconded by Michael Simoneau.

Yeas: Breault, Lovell, Simoneau, Roy, Ketterer

Nays: None

Upon a unanimous vote, the variance was granted.

Jim Roy made a motion that a variance is not required for count 11.05(A) Non-Conforming Use for case ZBA2020-041, because this is a repair of a previously non-conforming use which was seconded by Michael Simoneau.

Yeas: Breault, Lovell, Simoneau, Roy, Ketterer

Nays: None

Upon a unanimous vote, the variance was not required.

Michael Landry said that concluded the cases for this evening and the Board would move on to the Business Meeting.

III. BUSINESS MEETING:

1. ADMINISTRATIVE MATTERS:

1. **Review and approval of the ZBA Minutes of May 7, 2020.**

Michael Simoneau made a motion to approve the Minutes of the May 7, 2020 ZBA Meeting which was seconded by Jose Lovell.

Yeas: Breault, Lovell, Simoneau, Roy, Ketterer

Nays: None

Upon a unanimous vote, the minutes of the May 7, 2020 ZBA Meeting were approved.

2. **Any other business items from the ZBA staff or Board Members.**

No new business was brought up.

Jose Lovell made a motion to adjourn the ZBA Meeting of June 11, 2020 which was seconded by Jim Roy.

Yeas: Breault, Lovell, Simoneau, Roy, Ketterer

Nays: None

Upon a unanimous vote, the ZBA Meeting of June 11, 2020 was adjourned.

Each case file is available on-line at <http://www.manchesternh.gov/Departments/Planning-and-Comm-Dev/Zoning-Board/Project-Applications>. Or search for "Manchester NH ZBA Project Applications".

The order of the agenda is subject to change on the call of the Chairman.

Attest:



Robert G. Breault Chairman
Manchester Zoning Board of Adjustment

APPROVED BY THE ZONING BOARD OF ADJUSTMENT: August 13, 2020

- Without Amendment**
 With Amendment