



CITY OF MANCHESTER

PLANNING AND COMMUNITY DEVELOPMENT

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

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MANCHESTER ZONING BOARD OF ADJUSTMENT PUBLIC HEARING / LIMITED BUSINESS MEETING AGENDA

January 14, 2016 – 6:00 p.m.

City Hall, Third Floor – Aldermanic Chambers

Board Members Present: Chairman William Bevelacqua, Vice Chairman Michael Dupre, Raymond Clement, Allen Hendershot, Thomas Puthota

Alternate Present: Matt Routhier, Larry Gagne

City Staff Present: Michael Landry, Deputy Director of Building Regulations

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

II. **PUBLIC HEARING:**

1. **ZO-01-2016**

38 Jefferson Street, Ward 3

Irhad Kapidzija proposes to maintain existing parking spaces within 4 feet of the front and side lot lines and within 4 feet of the structure and also maintain deck within the side yard setback in the R-3 zoning district and seeks a **variance** from Sections 6.03 (C) Side Yard Setback and 10.09 (B) Parking Setbacks of the Zoning Ordinance, as per documents submitted through November 16, 2015.

(Per the request of the applicant on January 4, 2016, this application has been postponed until the February 11, 2016 hearing.)

Michael Landry announced to the public that case #ZO-01-2016 would be postponed until the February 11, 2016 ZBA Meeting per the request of the applicant.

2. **ZO-02-2016 (Subsequent Application)**

77 Brent Street, Ward 8

Frank Morris proposes to widen a driveway to create a third parking space in the R-1B Zoning District and seeks a **variance** from Section 10.09 (B) Parking Setbacks, as per documents submitted through December 1, 2015.

Chairman Bevelaqua made a motion to close the public hearing and open a limited business meeting which was seconded by Vice Chairman Dupre. (Upon a unanimous vote, the motion was carried.)

Yeas: Bevelaqua, Dupre, Clement, Hendershot, Puthota

Nays: None

Mr. Landry noted that the previous variance application was for an addition that was unrelated to the relief for parking sought in the current application. The Board voted to hear this subsequent application.

Upon a unanimous vote, the Board agreed to hear case #ZO-02-2016

Yeas: Bevelaqua, Dupre, Clement, Hendershot, Puthota

Nays: None

Chairman Bevelaqua made a motion to close the limited business meeting and re-open the public hearing which was seconded by Vice Chairman Dupre. (Upon a unanimous vote, the motion was carried.)

Yeas: Bevelaqua, Dupre, Clement, Hendershot, Puthota

Nays: None

Frank Morris of 77 Brent Street stated that he wants to expand his driveway to a third space. He said the reason he wanted to do this was because he has been at this house for about ten years and he and his wife are having problems, especially in the winter months, with parking. He said it depends on who comes home first or whoever takes the kids wherever, one of them has to back their car out so the other can get back in. For this reason, he is proposing to expand the driveway to a third space so they won't have that problem backing in and out with the busy life they have.

Chairman Bevelaqua turned the hearing over to the Board.

Vice Chairman Dupre said on the application, Mr. Morris showed an approximate additional proposed driveway location. He said he wanted Mr. Morris to get a little more specific when he is talking about this. Mr. Morris said it is actually just going to expand to the right. Mr. Dupre said the Board is trying to get a handle on how wide they are going to be and how close they are going to be to their property line. Mr. Morris said it is actually going to be a foot before the property line. He said it should show this on the diagram and the reason why this variance is being submitted is because there are stairs on his house and without those stairs, he would actually be in compliance. Because the stairs are considered a structure they actually put him over the amount of space that he needs.

Vice Chairman Dupre asked Mr. Morris if he was also planning on expanding his curb cut. Mr. Morris said he wasn't too sure on that. He said he thought he was just going to go straight out to the road. Chairman Bevelaqua referred to the plan and said it shows where Mr. Morris wants to put an extra parking space. Chairman Bevelaqua asked Mr. Morris if he is looking to expand the driveway right out to the street or is he looking to just add the parking space in the darkened area on the plan. Mr. Morris said he is planning on keeping the driveway entrance just the way it is and is not planning on expanding the curb cut.

Chairman Bevelaqua turned the hearing over to the public. No one came forward either in favor of or in opposition to this request. Chairman Bevelaqua turned the hearing back over to the Board.

Chairman Bevelaqua turned the hearing back over to the Board.

Allen Hendershot referred to the plan and said the plan showed the arrow going all the way over to the pin. He said the space right there looked to be about 10 feet. Chairman Bevelaqua said it was 9.8' to the lot line. Mr. Hendershot said it was 9.8' here, so it is approximately the same distance this way. Mr. Hendershot advised Mr. Morris that if the Board approved this, he could not make his driveway any wider at the street. Mr. Morris said he understood that.

There were no questions or comments from the Board and they proceeded to vote.

Yeas: Bevelaqua, Dupre, Clement, Hendershot, Puthota

Nays: None

Upon a unanimous vote the variance was granted.

3. **ZO-03-2016**

222 Glenwood Avenue, Ward 10

Richard Simmonds & Caroline Sico propose to maintain front yard parking that was to be removed in accordance with permit #3922-2002, which allowed the garage to be converted into living space in the R-1B zoning district and seeks a **variance** from Section 10.09 (B) Parking Setbacks, as per documents submitted through December 11, 2015.

Richard Simmonds of 222 Glenwood Avenue said he is trying to maintain the existing driveway. He said when they first purchased the house they were unaware of there being an existing permit from 2002. That was not disclosed to them. He said the issue arose when he went to pull a permit to expand his basement.

Chairman Bevelaqua asked what the initial permit was for. Mr. Simmonds said the permit was to convert a garage to living space with a condition that the existing driveway was to be moved to the opposite side of the house. He said the issue with that is the relocated driveway would be so close to the abutters driveway and he thinks that was overlooked. He said that would create multiple issues such as run-off issues, snow removal issues, etc. Mr. Simmonds referred to the plan and said where it is located right on the curve, there is a drain and if they were to put in a driveway there he isn't sure how that would factor into this.

Chairman Bevelaqua turned the hearing over to the public and invited those in favor of this application to come forward.

Scott Winslow of 206 Glenwood Avenue said he is the next door neighbor to Mr. Simmonds. He said he is here in support of this proposal. He said he did know the neighbor prior to Mr. Simmonds and he said he was unaware of the permit issue. He said he is in full support of leaving the driveway where it is.

Chairman Bevelaqua then invited those in opposition of this application to come forward. No one came forward to this request.

There were no further questions or comments from the Board and they proceeded to vote.

Yeas: Bevelaqua, Dupre, Clement, Hendershot, Puthota

Nays: None

Upon a unanimous vote the variance was granted.

4. **ZO-04-2016**

468 Pepsi Road, Ward 6

Deah Owens (Agent) proposes to expand existing parking lot of 23 spaces by creating a gravel parking area for an additional 43 spaces in an area approved by SP-17-1988 as 17 future "paved" parking spaces in the IND zoning district and seeks a **variance** from Section 10.07 (E) Parking Paving, as per documents submitted through December 18, 2015.

Tucker McCarthy, Engineer with T.F. Moran appeared on behalf of Solar City along with Jason Eardley and Brian Colsier. He said Deah Owens was unfortunately unable to attend the meeting due to illness. Mr. McCarthy said as Mike Landry stated, this application is to seek a variance to construct a gravel parking lot for the facility.

The facility is located at 468 Pepsi Road and Solar City is currently leasing this location. He said they have entered into a short term lease on the property and they have a need for additional parking. When they were doing their due diligence and looking for a facility, they looked at various places in New Hampshire. This is their main place of operation in New Hampshire. He said they like this facility and they knew they were going to have a need for additional parking. They did not realize that they were not allowed to park on the grass and they also thought they would be able to construct a gravel parking lot as they were not aware that non-paved surfaces were not allowed in the City of Manchester.

Mr. McCarthy said they just started operating out of this facility and getting their New Hampshire operations up and running. They do not want to pay for the additional cost to pave as they do not know how long they will be in this facility.

Chairman Bevelaqua said he is concerned that while looking at the initial plans, he noticed they weren't stamped. Mr. McCarthy said they would need to do a full boundary on the property and would need to do some topography on the property. He said they would need to do a site plan through the Planning Department and everything else to follow.

Ray Clement said as stated before, Manchester does not allow what is typically a gravel parking area. He said it doesn't meet the criteria as it cannot be marked and he believes they will have trouble in the spring with the snow melting and trying to keep up with the rest of the facility as far as the landscaping goes. He said he is not in favor of letting them not pave this. Mr. Clement asked if they checked into what it would cost to pave the area. Mr. McCarthy said they have spoken with some contractors, but it is hard to price a project before you have a site plan in front of you to price off of. Mr. McCarthy said he has done some preliminary cost estimates for them and it is in the range of 40% to 50% more just to pave this surface than it would be to construct a gravel parking lot based on his estimations. Ray Clement said they understand that, but the Board has been enforcing this rule for a long time and he doesn't think they are just not going to enforce it for this particular project here because of their particular needs. Mr. Clement said the Board can understand their needs and everything, but it is something they do require when there is a parking area of this

magnitude on their site. He said this is his opinion and the rest of the Board might not agree with that, but that is how he feels.

Tucker McCarthy said he completely understands and said this is in an industrial zone and there are offices and industrial uses surrounding it. He said it is very buffered from all the different sides of the building and then there is existing vegetation and trees surrounding it. This parking lot will come off of their existing paved parking lot on their site so it doesn't directly enter onto the street. They have the full intention of maintaining this parking lot and using some type of material that wouldn't deteriorate and they would upkeep this property as much as they possibly could.

Vice Chairman Mike Dupre said he appreciates what they are saying with the aesthetics but he also agrees with Ray Clement. He said they are talking about safety issues and environmental issues here. By constructing the parking lot with gravel, you can't even plow it, you cannot stripe it and you can't control traffic through it. You also have the potential for a leak or a spill and have something draining into the ground water there. He said this is very close to Lake Massabesic which is the City of Manchester's water supply. Vice-Chairman Dupre said the Board has enforced this sort of stuff on residential homes too, in smaller areas. It is more than just the dust you speak of, it is safety.

Allen Hendershot said he agreed with the other two Board Members. He said this is the big City, not northern New Hampshire. Manchester has safety issues, landscaping issues, spillage issues and this should be paved.

Chairman Bevelaqua said the board has actually denied permits for people who wanted to park snow mobiles and trailers on gravel areas in the past. He said he knows it would cost a lot to pave as he has been running some numbers in his head. He said there are select materials that have to go under the pavement to support it and all that stuff. They would also need site plan approval with drainage, underwater retention and things of that nature. He said to approve this right here based on economics is not the hardship. They are creating their own hardship by asking for this.

Chairman Bevelaqua turned the hearing over to the public. No one came forward either in favor of or in opposition to this request. The Chairman turned the hearing back over to the Board.

There were no further questions or comments from the Board and they proceeded to vote.

Yeas: None

Nays: Bevelaqua, Dupre, Clement, Hendershot, Puthota

Upon a unanimous vote the variance was denied.

5. **ZO-05-2016**

655 South Willow Street, Ward 9

Ken Rhodes (Agent) proposes to subdivide out a portion of lot to isolate existing restricted area in the IND zoning district (B-2 pending BMA approval) and seeks a **variance** from Sections 6.03 (A) Street Yard Setback, 10.07 (G) Landscaping and 10.09 (A) Parking Setbacks at Lot 2 and 6.04 Lot Coverage, 10.03 (D) Accessible Spaces, 10.07 (G) Landscaping and 10.09 (A) Parking Setbacks at Lot 2A as per documents submitted through December 15, 2015.

Michael Landry advised the Board Members that this property is currently zoned IND and the applicant is concurrently seeking re-zoning from the BMA to go to the B-2 zone. He said the zoning review is based on the B-2 zone and he said he believes it would be appropriate for the Board to condition any action on the applicant getting the B-2 zoning. Mr. Landry said it is anticipated the zone will go to B-2 but it should be a condition.

Ken Rhodes, of CLD Consulting Engineers said they were the agent/applicant for the Developer, Mr. Dick Aganost, who was also present. He said what they were there for this evening is a subdivision or a precursor to the re-development of the former Osram Sylvania property.

Dick Aganost said this property has been purchased by a partnership owned by Aganost Companies and Brady Sullivan. It is approximately 300,000 SF and is zoned IND. He said they have applied for and have gone through the first two portions of the re-zoning with the BMA and on Tuesday night, a final vote will be held in order to re-zone it from IND to B-2. Mr. Aganost said South Willow Street as we know it has given up most of its industrial land anyway and this is one of the last pieces that is still industrially zoned along the street. He said they have received a favorable response from the Aldermen for the first two votes and they anticipate a favorable response on Tuesday.

Dick Aganost said the second major challenge after re-zoning is the fact that, if you will note on the plan in the subdivision square, that restricted area containing contamination. It has been fully encapsulated in accordance with the standards and has been approved by the State and approved by the government, but it needs to remain in place. It is currently in the chain of title of the property. As a result of it being in the chain of title, the property is not financeable. This area will ultimately be utilized as parking with a parking easement for the larger redevelopment project which is a site plan and the portion of the building you see to the right that says "restricted area" is all going to be torn down. Mr. Aganost referred to the proposed plan and said "the ultimate finished building would look something like this". Mr. Aganost said as a result of the subdivision of the lot and the demolition of the building, it requires the need for three variances. He asked Ken Rhodes to explain what those are.

Ken Rhodes said again, as outlined in the documents and as Mike Landry introduced, the proposed back lot line is just past that point of the restricted area, rectangular lot. One of the first variances is because that line is drawn in that position and this will be the final outside wall, technically, both sides of that new line require setback. The requirement is 20 feet and that wall is about 15 feet away.

Ken Rhodes said secondly, because you are creating a new lot out of these two pieces, you have to conform to the coverage standards of the district. The coverage standards of the district are 75%. The current lot, even with green up front is about 85%, but also, because this entire parcel is paved or roof right now, it doesn't meet the lot coverage standards to move forward in subdivision and in the future as this becomes part of the larger parking lot that will wrap around, relief is needed from that lot coverage.

Regarding parking setbacks, Ken Rhodes referenced the plan and showed where parking spaces currently exist and he showed where there will also be parking spaces in the final development plan. He said Leclerc Circle that goes around to Wendy's will be the main entrance into the facility by site plan. The parking field will come up where there are requirements which they will be working on. He said you need to have a parking space ten feet from any lot line and internally, that is not possible to achieve if we have a continuous parking field through here. Mr. Rhodes said that they need the relief the Board can grant in order to go to the Planning Board for a public hearing to get this and then they will be able to continue on.

Ken Rhodes noted that the zoning review identified a count for accessible spaces. He said Mike Landry could probably fill them in but it is probably due to the fact that there are no accessible spaces in that lot. Mike Landry said one is required. Dick Aganost said that you could probably meet. He asked Mr. Rhodes if he had the proposed preliminary site that they began working on so they could show the Board what it will look like after the lot is subdivided. Ken Rhodes said he did. Mr. Aganost said once they have gone for subdivision, they will be going back to the Planning Board for complete site plan approval and the site plan approval will include the green space and parking as shown on the layout. Once the lot is created, it is parking and will continue to be parking and it will look as shown as a much larger site plan when it is completed. Mr. Aganost addressed Mike Landry and said if one handicapped space needs to be placed in one of those spaces, they can make one of those spaces handicapped.

Ken Rhodes addressed Chairman Bevelacqua and said a lot of what the Board sees here are their preliminary drawings to just kind of get the ideas going. Referencing the plans, Mr. Rhodes said elements in this area are going to be a drive, parking up to this area and all of those issues are going to be in play but if they can have relief on those items, they can continue this process along.

Chairman Bevelaqua asked who was going to own the separate lot. Dick Aganost said the owner would remain 655 South Willow Street, LLC. Chairman Bevelaqua confirmed with Mr. Aganost that 655 South Willow Street, LLC owns the current property so the chain of title will always go with the property. Dick Aganost said it just won't be financed. That little piece of property will be exclusive of the financing.

Chairman Bevelaqua asked what material was underneath there. Dick Aganost said it was thorium which is a radioactive material which was used in the manufacture of the light bulb by Sylvania. Chairman Bevelaqua said he heard that was out there and he guesses it is true. Mr. Aganost said thorium has a 100 year half-life and they are 55 years through the half-life right now. Chairman Bevelaqua said he doesn't want that one little piece to all of a sudden become a separate entity and then they stop paying the taxes and the next thing you know, the City has to take it back and now the City owns it. Dick Aganost said the problem with that is it is located at the main entrance to the other property so it would be very difficult to give up the main entrance with no access to the larger property.

Chairman Bevelaqua turned the hearing over to the public. No one came forward either in favor of or in opposition to this request. The Chairman turned the hearing back over to the Board.

There were no further questions or comments from the Board and they proceeded to vote.

Yeas: Bevelaqua, Dupre, Clement, Hendershot, Puthota
Nays: None

Upon a unanimous vote the variance was granted

6. **ZO-06-2015**

50 Marston Street, Ward 10

Kevin Bilodeau (Agent) proposes to remove an existing metal awning over the front entrance and replace with new gabled wood awning in the R-1B zoning district and seeks a **variance** from Section 6.03 Front Yard Setback of the Zoning Ordinance, as per documents submitted through December 21, 2015.

Kevin Bilodeau of 46 South Taylor Street said he was representing Virginia Doherty who lives at 50 Marston Street. He said the request is to remove a metal awning over the front stairs and landing and build a wood gabled roof system to try to divert the water and ice to the sides of the stairs instead of on top of and in front of it.

Chairman Bevelaqua turned the hearing over to the public. No one came forward either in favor of or in opposition to this request. The Chairman turned the hearing back over to the Board.

There were no questions or comments from the Board and they proceeded to vote.

Yeas: Bevelaqua, Dupre, Clement, Hendershot, Puthota
Nays: None

Upon a unanimous vote the variance was granted

7. **ZO-07-2016**

800 Second Street, Ward 10

Katherine Basso (Agent) proposes to maintain 79.2% lot coverage where 75% maximum is allowed, which is the result of paving landscape and snow storage areas as approved by SP-24-2011 without the required approvals, also maintain 6 parking spaces within 10 feet of the building without required bumpers as shown on the plan approved by SP-24-2011 in the B-2 zoning district and seeks a **variance** from Sections 6.04 Lot Coverage and 10.07 (K)1 Parking Bumpers of the Zoning Ordinance, as per documents submitted through December 21, 2015.

Attorney John Kuzinevich of Duxbury, Massachusetts appeared on behalf of the owners of the property. Jeff Merritt, Project Engineer and Bob Royer, representative of the Dealership appeared also.

Jeff Merritt said the applicant owns the Manchester Subaru facility at 764 Second Street. That is the property north of the one that is subject of this application. He also owns the one, obviously, that is subject of this application at 800 Second Street which is the Subaru pre-owned center. In November of 2015, Mr. Merritt said his office in conjunction with the applicant submitted plans to make significant improvements to the Subaru Dealership that included tearing down the majority of the building and re-constructing a sizable addition of about 32,000 SF of net floor area including valet parking underneath it. The access associated with that addition, in other words, getting to that addition from Second Street would necessarily travel through the 800 Second Street property. When they submitted plans and applications for the main Manchester Subaru facility, they necessarily had to prepare and submit plans and applications for a site plan for the 800 Second Street property. In doing so, staff reviewed those project plans and found that additional pavement had been added since 2011 when the original site plan was approved for that project. Mr. Merritt said the district here is B-2 which allows maximum lot coverage of 75% and the coverage today is 79.2%.

Jeff Merritt said the review also found one other thing. To the rear of the pre-owned building are six parking spaces. Those six spaces are located within ten feet of the building and they do not have wheel stops. Those were the two zoning violations that were found as part of that submittal for the larger project which is the 764 building for Manchester Subaru.

Chairman Bevelaqua asked if the applicant had a site plan approved back in 2011 which the applicant did not adhere to such as removing landscape areas and curbing for snow removal

and things of that nature. Attorney Kuzinevich said the applicant originally adhered to the site plan and they constructed it according to the site plan but then they removed it and that is why Bob Royer is here to talk about the whole process. Chairman Bevelaqua said the Board knows the process, they understand that and that is not an issue. Chairman Bevelaqua said his concern is that they adhered to it and originally did it but then they altered it by removing landscaping, curbing and adding pavement.

Chairman Bevelaqua confirmed with Attorney Kuzinevich that they are now going back in front of the Planning Board with another application on another site but they don't want to restore the original site. Attorney Kuzinevich said they are looking for a variance on the lot coverage and the bumpers but they are doing so within the spirit of the ordinance because on lot coverage, it deals with impervious surface by the definitions within the zoning ordinance and they did ask that as a condition to the variance, the Board would require they put in pervious pavement so they have the same functionality for environmental concerns and totally meeting within the spirit of the ordinance.

Chairman Bevelaqua asked if this went in front of the Planning Board. Jeff Merritt said it did. Chairman Bevelaqua asked if it got denied. Jeff Merritt said it did not get denied, it got deferred or tabled to resolve this matter. He said he wanted to point out to the Board that there is a plan that should be in their packets called "Zoning Board of Adjustment Plan". He said there is an area on the plan which should be in red and that is the area that Attorney Kuzinevich was talking about. He said they would be proposing the installation of about 4,800 feet of pervious pavement in order to try to meet the spirit of the lot coverage requirement out here.

Allen Hendershot said he really objected to the comment that this conforms to the spirit of the ordinance. He said the spirit of the ordinance does not call for them to completely ignore what the site plan was. He said they were given a plan and it was approved and then they turned around and completely ignored it. That has nothing to do with the spirit of the ordinance by any stretch of the imagination. You were given a plan and you ignored it. Everybody has got to get a building permit and everybody is supposed to go by the rules unless you come before this Board and ask for a variance. You did not ask for a variance, you just went out and did what you wanted to do. Mr. Hendershot said that is not the spirit of the ordinance the way I see it.

Attorney Kuzinevich said he agreed with Allen Hendershot on that count and said they were here contrite about it. He said Mr. Berkowitz could not be here tonight. He said Mr. Berkowitz was being a typical business man when all of a sudden the car carriers weren't able to unload on the property efficiently. Allen Hendershot asked Attorney Kuzinevich how that was being a typical businessman? Mr. Hendershot said he is a businessman, he is a builder and he doesn't just ignore the rules just because they aren't convenient for him. He has to go before the Building Department and he has to go before the Zoning Board and he has to get a variance and he said they just completely ignored that process. Attorney

Kuzinevich said they are trying to correct that by appearing before the Board right now asking to look at the merits here.

Vice Chairman Mike Dupre asked when the changes to the property were made to the site plan that was approved. Bob Royer said he was pretty sure it was the following spring. Mr. Dupre asked which month in 2011 this was approved. Mr. Dupre said he wanted a month or a season. Mr. Royer said he couldn't recall when it was approved. He said there is a reference to SP-24-2011 and he can't say when it was done in 2011. Vice Chairman Dupre said then they can assume maybe within 6 months they said "oh, this isn't working, let's just do this extra stuff". Mr. Royer said it was sometime in the following year. Mr. Dupre said, so, within a year after the site plan, after they went before the Board, went back and forth, agreed on something, got a site plan, did what they were supposed to do and then they said "Oh, I don't like this". So on the way they just decided to do what they thought would make it work. Mr. Royer said they were trying to make the parking lot work. Vice Chairman Dupre said they were trying to make the parking lot work, but that was after they went through site plan and they didn't want to back through site plan again, they just wanted to do it. Mr. Royer said he wasn't involved in any of that and he hadn't been to any of the hearings in the past. He said he just knows that they had parking issues, cars trying to get in and out and wreckers trying to get in and out and they couldn't get around those curbing, especially come plowing time. It was turning the place into just like a war zone.

Vice Chairman Dupre said so, let's throw 6 more parking spaces next to the building and not put parking bumpers in because that affected people driving in? Mr. Royer said it was trying to get around that curbing that was there. Vice Chairman Dupre said those six parking places were on the back side of the building, aren't they? Jeff Merritt said he could answer that question. He said they were on the back side of the building. He said those were there as part of the approved site plan. What has been removed are the wheel stops. Vice Chairman Dupre said "so, the wheel stops were removed". Jeff Merritt said that was correct. He said the original plan called for wheel stops in that location. Mr. Dupre said they called for them and asked if they were ever installed. Mr. Merritt said there was a C.O. issued so probably staff could answer that better as they didn't do a final inspection on it.

Mike Landry said the date the site plan was approved in 2011 was August 17th. He said he didn't have the records for the inspection, but he is fairly confident to assume that the Planning Department did go out there to confirm that the construction did conform with the approved plan. He said that is a reasonable assumption, something may have come up to change that, but that is a regular practice.

Ray Clement referenced the plan and said to get down to the red area where it says "pernicious" pavement, what exactly is meant by that, what type of pavement will they be using there. Jeff Merritt said it is "pervious" pavement and it is a pavement that allows water to infiltrate through it. He said it is used on a number of site plans that his office has done and UNH has studied it quite extensively. He said the DOT uses it on their shoulders,

actually. It is porous and then it has a variety of different layers under its sub-base there so it is used for infiltration in ground water recharge as well as storm water treatment. It is a DES approved method of storm water treatment.

Attorney Kuzinevich said the City of Manchester has not taken a formal position as far as they could tell, on how pervious pavement interrelates with open space. He said he has searched it throughout New Hampshire and a lot of other municipalities. Some give 100% credit and call pervious pavement equal to foot for foot open space. Some have a 50% credit and some are dependent upon design issues. He said New Hampshire DES gives 100% credit for pervious pavement and does not count it as pavement.

Raymond Clement asked what type of upkeep the pervious pavement takes to keep it working at 100% efficiency. Attorney Kuzinevich said it is actually better for snow melt and snow removal and it is recommended that it be vacuumed once or twice a year just so sand doesn't clog up the pores, but there is no extreme maintenance required with it. Chairman Bevelaqua said you shouldn't use sealant on it.

Ray Clement said he thinks Public Service put some in at one of their parking lots down in the Millyard. He said he wasn't sure if it is the same type of material. Attorney Kuzinevich said it has a lot of good uses and car dealerships and new car dealerships tend to be one of the environmentally best uses of pervious pavement because you typically have new cars that are in inventory and they aren't leaking oil or other fluids so there is far less chance of any contamination as opposed to if it were at some general mall, for example. The other thing is, at car dealerships, you could put the pervious pavement in lower traffic areas because the one criticism of pervious is it won't hold up to heavy, heavy truck traffic, so you would still have to design truck aisles but for use in the car dealership here, it is almost an ideal material.

Ray Clement asked what the estimated life of something like this was. Attorney Kuzinevich said the same as normal asphalt. Mr. Clement stated that Mr. Kuzinevich just said it doesn't hold up to heavy use. Attorney Kuzinevich said it doesn't hold up to heavy truck use on it and that is why you have to be judicious in where you place it. Jeff Merritt said what they wouldn't do is place it in the travel aisles. It would be in the display area where vehicles sit. He said you wouldn't want it in an aisle where a semi was making a maneuver on a daily basis or something like that. There tends to be a reduced life in those areas, so they try to concentrate it to the stalls only. Chairman Bevelaqua said it has been around for quite a while. Ray Clement said he knew that but just hasn't seen too much of it around here and wasn't sure if winter conditions would affect it. Chairman Bevelaqua said there is quite a bit of it down in Massachusetts.

Vice Chairman Mike Dupre asked if the 800 Second Street property for pre-owned vehicles or just for new vehicles. Attorney Kuzinevich said 800 Second Street was just for pre-owned. Mr. Dupre asked why they would put this pervious pavement down and put pre-owned

vehicles on top of it when he just said it was ideal for new cars which don't tend to leak. Bob Royer said they will be storing new cars over there. Jeff Merritt said there is a cross access easement and a cross display easement so the 764 property has the right to display vehicles on the 800 Second Street property in those areas. He said there is an existing easement there today and with the re-configured site plan there would be a proposed easement there as well.

Vice Chairman Dupre asked if the site plan was for both of these pieces of property together or were they individual site plans. Jeff Merritt said he doesn't believe that 764 Second Street, the main Subaru Dealership, has had a site plan application before. He said that was originally purchased by the applicant and the 800 Second Street properties were purchased by the applicant and that is the site plan they are talking about, but the most recent time there are two applications.

Chairman Bevelaqua turned the hearing over to the public and invited those in favor of this application to come forward. No one came forward in favor of this application.

The Chairman invited those in opposition to this application to come forward.

Tracy Foster of 372 Hill Street said he has lived there for the last 27 years. He said he has been to numerous meetings and hearings including hearings on re-zoning and before the Planning Board. He said he has been in favor of Subaru's pleas, as far as changes and conditions that were put in place for them to operate and change what they have done to that property until now. He said he was in attendance tonight to voice opposition to the proposal and variance. He said he does not see any hardship other than the hardship this applicant has brought onto himself for the following reasons, the removal of the curbing and the paving after the Planning Board approved the drawings. Last month they removed curbing on Master Street. Then on the east side residential area, they took down the fence, removed curb, cut down trees and excavated dirt. Mr. Foster said the applicant hasn't been a very good neighbor lately. He said he has been a neighbor for a very long time and he has approved of everything. He stated there are also issues with overflow because they have overgrown their area so loading and unloading of vehicles does not comply with the approved site plan. For these reasons, he doesn't approve of the variance.

Attorney Kuninevich said first, they are trying to correct things and obviously by the property owners hiring an attorney to watch over and monitor this kind of stuff is a step in the right direction. Secondly, one of the key aspects of the new project before the Planning Board is to have a basement area where there will be valet parking and storage of cars instead of trying to overflow the site. He thinks right now, this is holding up perhaps a solution to help the site by a very creative way of dealing with the excess cars. He said they are trying.

Bill Barry of 69 Pasture Drive said he is the Alderman in Ward 10. He said he is not in

opposition of this actual plan, but he has been receiving complaints and the frustration from not only Mr. Foster, but other residents and businesses around the area. He said he has had a chance to talk with Mr. Berkowicz in reference to it because the police have to go over there when they load and unload on Second Street. Alderman Barry said it is an ongoing problem. He said he hasn't heard any other complaints since probably back in December, but he doesn't know if that is because people are frustrated because they don't think he is doing anything about it. He said he is doing something about it as he spoke with Mr. Berkowicz and the Police Department. One thing he really wants is for them to stop doing that because unfortunately, it is really busy on Second Street sometimes and people are trying to go by the big trucks and tractor trailers and Mr. Berkowicz said well, we have nowhere else to go but they shouldn't take it out on the pedestrians. Even people walking across the street say they have a hard time because they have to ease out there and try to get across the street. He said he is not actually in opposition of the actual plan, but just frustrated with the loading and unloading of cars.

There were no further comments from the public and Chairman Bevelaqua returned the hearing to the Board.

Chairman Bevelaqua said his belief is that the applicant has no hardship. He said everything the Board has in front of them is that the applicant has knowingly gone against the design that was approved. He stated that they did it rather quickly, also. It wasn't like they did it 15 years later, it happened months later. Chairman Bevelaqua said if they had a problem with the plan that was approved, they should have come back to the Planning Board or the Zoning Board at that time and filed an application saying this isn't working. Instead, what they did was just go in and make their own changes as they saw fit and now they are coming to the Zoning Board after they have done this, looking for relief. Chairman Bevelaqua said he is sorry, but his opinion is that they have to go back to the Planning Board and come up with a plan that works. To ask for relief after removing curbing, after removing landscaping, after removing fencing that was approved by the Planning Board is unacceptable for him.

Allen Hendershot said he thought this was the classic case of it is easier to beg forgiveness than to ask permission and he finds it completely unacceptable that they had a perfectly approved plan which they completely ignored and there you go. He said he is totally against this proposal.

Mike Landry addressed Chairman Bevelaqua and said he could kind of see where the Board was going but asked if the Board could further articulate its reason for denial in terms of the five variance criteria. Allen Hendershot said there is no hardship, they presented their own hardship.

There were no further questions or comments from the Board and they proceeded to vote.

There were no further questions or comments from the Board and they proceeded to vote.

Yeas: None

Nays: Bevelaqua, Dupre, Clement, Hendershot, Puthota

Upon a unanimous vote the variance was denied.

8. **ZO-08-2015**

470 Pine Street, Ward 3

Tom DeBlois (Agent) proposes to change use of four (4) classrooms on second floor of a vacant private junior high school to offices for physical and occupational rehabilitation in the C-1 zoning district and seeks a **variance** from Section 5.10 (H-2)6 Physical and Occupational Rehabilitation Center of the Zoning Ordinance, as per documents submitted through December 23, 2015.

Tom DeBlois of 824 South Mammoth Road said he recently purchased what was formerly known as the St. Joseph's Junior High School. He said his intention for the building is similar to what he is here for a variance tonight. He wishes to change the building into professional and business uses. This is his first tenant, Neuro Developmental Institute and they have rehabilitation and occupational training for individuals that are in need. He said he thinks this is a perfect use for this type of building. It is not overbearing in the neighborhood and is a very compatible use with the doctor's office next door and the lawyer's office next door. He thinks a professional use is quite compatible with what is in the neighborhood now.

Vice Chairman Dupre asked Mr. DeBlois if there were any plans to put signage up front. Tom DeBlois said he was considering having a marquee to announce all of the tenants that would come into the building. Mr. Dupre advised Mr. DeBlois to make a point of speaking with the Planning Department before he puts something up. Mr. DeBlois said absolutely, he is not a novice at developing. He said he developed 97 Eddy Road and 660 Gold Street which you probably know is Sunbelt Rentals. He said he also developed 60 Rogers Street. Vice Chairman Dupre said he just wanted to make sure Mr. DeBlois knew the drill. Mr. DeBlois said he was.

Raymond Clement if there were any concerns about parking issues. He said he didn't know how big of a staff they were going to have or how many patients would be treated in the course of a day. Mr. DeBlois said parking is always an issue downtown. He said within a block of this building is about 125 parking meters, the majority of which are underutilized at

this time, so the City would certainly get some extra revenue from the use of those meters. The Hartnett Parking Lot is a block from this building and the Pearl Street Parking Lot is also a block from this building.

Mr. DeBlois said he has been talking with some of the neighbors in the neighborhood, trying to buy a piece of property to turn it into a parking lot. He said the Planning Board was not too happy with a couple of the proposed lots he presented to them. Mr. Clement said he is in favor of what Mr. DeBlois is doing and said parking is always going to be an issue, but it is going to be a great addition if they can get that building up and running. Mr. DeBlois said parking is a problem downtown everywhere, so he understands there is a problem. He said he would try to solve it compatibly with the City. Mr. Clement said he didn't think parking is an issue there. Chairman Bevelacqua said it is an existing structure there anyway, what else is it going to be used for.

Allen Hendershot said he is not against the proposal and he didn't know how the rest of the Board felt, but he has a little bit of a problem. He said this is obviously an important building in downtown Manchester and the parking really doesn't bother him that much as it is downtown and it is what it is. He asked Mr. DeBlois if he would be coming in front of the Zoning Board every single time he had a tenant with the absence of some kind of overall plan for the whole building. Mr. DeBlois said that is something he hopes doesn't happen. In talking with the Planning Board, there are plans to extend the CBD zoning from Chestnut Street to Pine Street which would incorporate this building. He said he can't do that on his own because he can't commit other property owners to accept the CBD Zoning change. He said he spoke with the Alderman and he is in favor of spearheading that action. Mr. Hendershot said the Board understood the expansion of the CBD.

Allen Hendershot said he thought Mr. DeBlois would have an easier chance, not that he was going to have a terribly bad chance, because like he said, he is not looking unfavorably on this plan, but he thinks Mr. DeBlois really needs to develop some kind of a vision that might tie it all together on how he is going to use this building. That would eliminate Mr. DeBlois from appearing before the Board like 20 times or something with different proposals. Mr. Hendershot said he thought it would be easier for Mr. DeBlois in the long run and would certainly be easier for the Board. He said he guesses there is really no alternative. Mr. DeBlois said if Mr. Hendershot would show him the direction on how to accomplish that, he would more than happy to do it. Mr. Hendershot said he is sure Mr. DeBlois would as he has one tenant with 4 rooms in this big building.

Mr. DeBlois said he is talking with 2 other tenants as well, but the C-1 zone doesn't allow an abundance of uses, so yes, without the CBD extension of zoning, he will be back in front of the Board often, he hopes. He said he will try to get as many tenants as quickly as he can, but under the current regulations, yes the Board will probably see a lot of him.

Allen Hendershot said one of the things Mr. DeBlois could do very soon, is Vice Chairman

Dupre's concern. He said Mr. DeBlois should develop some kind of signage proposal that would encompass a multiple, let's say there are ten tenants, or whatever. Mr. DeBlois said that is something he will be working with the Planning Board on. Mr. Hendershot said that is going to be a whole nightmare for him and he really thinks he should develop some kind of signage proposal and think of how many potential tenants he may have. Mr. Hendershot said Mr. DeBlois would be before the Board every time for a new sign, too. Mr. DeBlois said that is why he suggested a marquee because when he did the development at 97 Eddy Road, that was the exact same type of thing. It was 200,000 SF in three different buildings with access off of Eddy Road where you came through the old Coca Cola place around back to get there. At the curb cut, he worked with the Planning Board to put up a marquee there that did announce all of the tenants in the building sufficiently. He said he would do the same thing with this building.

Chairman Bevelaqua turned the hearing over to the public. No one came forward either in favor of or in opposition to this request. The Chairman turned the hearing back over to the Board.

There were no further questions or comments from the Board and they proceeded to vote.

Yeas: Bevelaqua, Dupre, Clement, Hendershot, Puthota

Nays: None

Upon a unanimous vote the variance was granted

Chairman Bevelaqua made a motion to close the public hearing, which was seconded by Mr. Hendershot. (Motion Carried - unanimous)

Yeas: Bevelaqua, Dupre, Clement, Hendershot, Puthota

Nays: None

III. BUSINESS MEETING:

1 ADMINISTRATIVE MATTERS:

Review and approval of the Zoning Board of Adjustment Minutes of December 10, 2015.

Ray Clement made a motion to approve the Minutes of December 10, 2015 with amendments, which was seconded by Vice Chairman Dupre.

Yeas: Bevelaqua, Dupre, Clement, Hendershot, Puthota

Nays: None

2 **REGULATORY MATTERS:**

ZO-167-2015 (Request for Rehearing)

312 Mystic Street, Ward 9

Attorney Andrew Sullivan (Agent) proposes to re-hear case #ZO-167-2015, appealing the decision of the Zoning Board of Adjustment granting Zoning relief required to subdivide parcel into two lots, where the existing two-family dwelling will be maintained on Lot 8, which will have a lot area of 10,016 SF where 15,000 SF is required, and maintain parking as shown. New Lot 8A is a proposed new buildable lot for a single family dwelling with 21.87' of lot frontage where 75' is required in the R-1B zoning district.

Mike Landry addressed the Board and said they have all seen the material submitted by Attorney Andy Sullivan, but also before the meeting he distributed materials from Attorney Dan Muller in opposition. The issues Attorney Muller raises are standing and then just the elements of the criteria that he feels were not satisfied. Mr. Landry told the Board it is their decision and they could give this document as much weight or as little weight as they want. He said he didn't think as a right they have a right to chime in on it, but they did.

Chairman Bevelaqua said after reading the minutes and after reading the appeal application, his opinion would be to deny the appeal application.

Chairman Bevelaqua made a motion to deny the request for rehearing application on case #ZO-167-2015, submitted by Attorney Andrew Sullivan which was seconded by Ray Clement. (upon a unanimous vote, the motion was carried)

Yeas: Bevelaqua, Dupre, Clement, Hendershot, Puthota

Nays: None

Vice Chairman Dupre said before the Board went on, he wanted to comment that there was a call out of himself as the acting Chairman. He said Attorney Muller made a call out on ZO-167-2015 about him and he said that was actually not that case. He said that was a different case in which he made that comment regarding abutters' rights to appeal and that comment was just a general statement because not everybody was there at the beginning of the meeting. He just wanted to make a point that Attorney Muller made that accusation.

ZO-168-2015 (Request for Rehearing)

336 Mystic Street, Ward 9

Attorney Andrew Sullivan (Agent) proposes to re-hear case #ZO-168-2015, appealing the decision of the Zoning Board of Adjustment granting Zoning relief to subdivide Lot 7 of Tax Map 696 into two lots. The subdivided Lot 7 will be a conforming lot with an existing single family dwelling, with a new parking space within 4' of the dwelling structure and lot line. Proposed new Lot 7A will be a new buildable lot for a single family dwelling with 40' of frontage where 75' is required in the R-1B zoning district.

Chairman Bevelaqua said again, after reading the minutes of the meeting and reading the application that was put in front of the Board, he would like to make a motion to deny the appeal application.

Chairman Bevelaqua made a motion to deny the request for rehearing application on case #ZO-168-2015, submitted by Attorney Andrew Sullivan which was seconded by Allen Hendershot. (upon a unanimous vote, the motion was carried)

Yeas: Bevelaqua, Dupre, Clement, Hendershot, Puthota

Nays: None

Mike Landry addressed Chairman Bevelaqua and said the Zoning Board By-Laws are in need of an update. They refer to old cases, they refer to the wrong day for the ZBA meetings and a lot of little things like that. Chairman Bevelaqua said even the dates of when people are supposed to expire are all wrong. Mike Landry said he noticed a number of those things and he really wanted to come here tonight and hand the Board hard copies so that we could meet and then discuss it and in February, go back and make the changes and present a final copy for the annual meeting in March. Chairman Bevelaqua said he wouldn't be here. Mike Landry said the proposed draft would be e-mailed to the Board Members over the next couple of weeks and hopefully they will have a couple of weeks before the February meeting to look at it and at the end of the February meeting give a quick look at it and then while doing business in March the Board can hopefully approve it.

Vice Chairman Dupre said he had 2 requests with that. Number one, could a calendar of the meetings for 2016 be sent out to the Board Members. Mike Landry said he would get the calendar to the Board Members. Secondly, Mr. Dupre asked Mike Landry if he was looking for a report changing the fees. Mike Landry said that hasn't come up. Mr. Landry asked Mr. Dupre if he thought the fees were too high or too low. Mr. Dupre said he didn't think the Board should be the ones to touch that. Chairman Bevelaqua said the Board already approved basically double or triple the fees last year. Mr. Dupre said he wanted to make sure that the Board doesn't see that again because that should not have come before the Board. He said the Board doesn't set fees. Mike Landry said it wasn't on his radar.

***Chairman Bevelaqua made a motion to adjourn, which was seconded by Mr. Hendershot.
(Motion Carried)***

**Yeas: Bevelaqua, Dupre, Clement, Hendershot, Puthota
Nays: None**

Attest: _____
Michael Dupre, Vice Chairman
Manchester Zoning Board of Adjustment

APPROVED BY THE ZONING BOARD OF ADJUSTMENT: FEBRUARY 11, 2016
WITH AMENDMENT

Full text of the agenda items is on file for review in the Planning & Community Development Department.
The order of the agenda is subject to change on the call of the Chairman.