

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Tuesday, July 6, 2021

6:30 PM

Council Chambers

Members Present:

Joshua Gorman, Chair
Joseph Hoppock, Vice Chair
Jane Taylor
Michael Welsh

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk

Members Not Present:

Louise Zerba, Alternate
Arthur Gaudio

I) Introduction of Board Members

Chair Gorman called the meeting to order at 6:30 PM and explained the procedures of the meeting. Roll call was conducted.

II) Minutes of the Previous Meeting – June 7, 2021

Ms. Taylor made a motion to approve the meeting minutes of June 7, 2021. Mr. Hoppock seconded the motion, which passed by unanimous vote.

III) Unfinished Business

Mr. Rogers stated that staff has the language they need to bring back before the Board, regarding the submittal of additional documentation. He continued that they are still working on the draft. They would like to continue this until the next meeting. Chair Gorman agreed.

IV) Hearings

A) ZBA 21-12: Petitioner, Todd Bergeron of 4 West Hill Rd., Troy, NH, represented by Jim Phippard of Brickstone Land Use Consultants, 185 Winchester St., requests a Variance for property located at 26 Fairbanks St., Tax Map #116-032-000-000-000 that is in the High Density District. The Petitioner requests a Variance to permit a building lot containing 5,583 square feet in the High Density District where 6,000 square feet is required per Section 102-791, Basic Zoning Dimensional Requirements of the Zoning Ordinance

John Rogers, Zoning Administrator, stated that 26 Fairbanks St. is a property off lower Winchester St. He continued that it is a pocket of high density. This was a development or subdivision of land that occurred in 1926. Some of the lots were built on. Most of the lots seen are around the same size of 5,583 square feet for many of the lots that have been developed. Regarding other lots, people might have bought multiple lots, merged them, and built on that. This was one of the lots that went through an involuntary merger. From the assessing information, he determined that the involuntary merger probably happened around 1967. With the NH RSA that allows for any property that was involuntarily merged to be unmerged, they would create a second vacant lot that would not have the appropriate 6,000 square feet. That is why the applicant is before the Board tonight.

Mr. Welsh stated that as they are discussing two lots out of one, his question is whether they are looking at the boundary line that is precisely the old boundary line prior to the involuntary merger or a new boundary line that divides the merged property line in half.

Mr. Rogers replied that the property line would be put back in the exact same spot it was prior to [the involuntary merger]. He continued that that is what RSA 674:39-aa speaks to, saying that it needs to go back to its pre-existing condition. The line needs to go right back where it was.

Mr. Welsh stated that if they are dividing this property in two they have two lots that are under 6,000 square feet and therefore, they need a Variance in order to build on the second. He asked if the first one, that has a building on it, needs a Variance also.

Mr. Rogers replied that in his opinion as the Zoning Administrator, and the way the RSA is written, it goes back to its pre-existing condition. He continued that it does not solve the non-conformities. It would still be considered a non-conforming lot, but it would be in pre-existence. It already has a house and garage on it. The garage is non-conforming for setbacks, but it was built, as best as staff can tell, in about 1960. He does not know what the setbacks were then, especially for this subdivision if there were special conditions in place. His opinion is this lot has already had a residential use because of the structures that are there, built before the involuntary merger, and would not need a Variance. The new, vacant lot that would be created would need a Variance, hence, the applicant is before the Board tonight.

Mr. Welsh stated that he was concerned that what they were discussing was a new subdivision and the Planning Board might need to weigh in on this. He thought that the ZBA was either jumping the gun or the Planning Board had already done some work.

Mr. Rogers replied that the Restoration of Involuntary Merged Lot has its own section of the RSA, separate from the subdivision. He continued that that is what they are following.

Ms. Taylor asked Mr. Rogers if these lots have been unmerged. Mr. Rogers replied that it is his understanding that the Petitioner has applied to the City Assessor and the City Assessor has

approved the unmerging of the lots. Ms. Taylor replied that she asks because the RSA Mr. Rogers referred to requires that the request for unmerging be submitted to the governing body, not the Assessor. She did not know if the City Council had weighed in on this. Mr. Rogers replied that the City Council has not weighed in on this. He continued that it has been the practice of the Assessing Department for many years. He believes it was a practice put into play by the prior City Assessor. Since Ms. Taylor raised this question with him earlier, they have been in discussion with the City Attorney and the City Assessor, and they are looking into it more in depth. The Board has a couple options tonight, if they wish to discuss that part of the unmerging of the lots. He can go over that if the Board wants.

Ms. Taylor stated that she suspects that if it is a long-standing practice it was probably what was there before this statute was enacted. She continued that it became effective in 2011 then became amended in 2016. Her concern is that it is premature for the Board to consider this, if they cannot confirm that the lots have been properly unmerged. With this relatively new statute, the date for unmerging was extended to the end of this year, back in 2016. If it is supposed to go to the City Council and it has not, she is concerned that the Board is granting something they should not be granting, if they decide this would be appropriate to grant.

Chair Gorman asked if it would be appropriate for the Board to predicate the granting on the proper unmerging. He asked if they could put that as a contingency, in order to move forward. Ms. Taylor replied that she supposes that could be a condition. She continued that her only concern would be that if it does have to go to the City Council, how could someone then say no, if the Board has already granted it? She is not speaking to the merits or about whether it is a good or bad idea. She is just concerned that they do not have appropriate documentation that the original parcel has now been merged back to its original condition.

Mr. Rogers stated that regarding Ms. Taylor's concern that someone would be unable to say no, the RSA states that the municipality "shall" unmerge the lots. He continued that a request to unmerge a lot [can be denied] if there is evidence - which the municipality has the burden to show - that what started as an involuntary merger became a voluntary merger due to the way the property owner is using the property. For example, regarding this property, if the owner built the garage *after* the involuntary merger very close to the old property line, that could indicate that the owner accepted the merger and it would become a voluntary merger at that point. It is the burden of the municipality to prove. That is what the Assessor has been doing, looking at the records and realizing that the garage (which is non-conforming today to the rear setback, because this lot goes from Fairbanks St. to Wetmore St. and has frontage on both streets) pre-dates the involuntary merger. You could make the case [against unmerging] if they built the garage after the fact, but that is not the case, and his understanding is that this is what the Assessor had looked at before granting that part of it. The City Council would not be having a public hearing. It is just put to the City Council, and unless evidence was granted showing that it could be considered a voluntary merger due to some sort of action from the property owner, it "shall be granted," is how the RSA is worded.

Ms. Taylor stated that her purpose in raising the point was not to say whether it should or not should be merged or unmerged or whether the Variance has merit or does not have merit. She continued that her only concern was procedural, regarding whether or not they should move forward with an application when they do not have confirmation that the parcels have been properly unmerged. That is the sole point she is raising.

Mr. Welsh replied that that makes sense to him. He continued that for example, the hardship criterion is predicated on the conditions of the property and if the Board does not know the precise conditions of the property, including its dimensions, then it is harder for them to make that judgment. He thinks that if they have an approval that has a condition attached to it that might do the trick.

Mr. Hoppock stated that hopefully Mr. Phippard can speak to these issues, if he has any information to share that might help the Board process this easier.

Chair Gorman asked to hear from Mr. Phippard. Jim Phippard stated that he is here on behalf of Todd Bergeron. Chair Gorman asked if they are moving on to the presentation now, because he first has a question for staff. Mr. Rogers replied that that is up to the Chair.

Mr. Phippard stated that he wanted to comment on what has been said so far, and will not get into the merits of the Variance request right now. He continued that he talked with Mr. Rogers and City Assessor Dan Langille about the unmerger of the properties, and Mr. Langille said that the City Attorney expressed a concern that it might have to go before the City Council. He (Mr. Langille) said he would continue to discuss it with staff and make a decision. He wanted a written request from him (Mr. Phippard) and Mr. Bergeron. They filed a written request. He also filed the Variance application. Halfway through the background paragraph he (Mr. Phippard) stated that the applicant is “seeking to unmerge the lots and build a single-family home.” When he wrote this, the lots were not unmerged. It was his understanding, under the statute, that whether it went to the City Council or not they could unmerge the properties, because they were merged by the City’s action, not the landowner’s action. They would like to proceed and have the Variance heard. If the Board decides it can be approved, he asks that they grant it with a condition of approval subject to the lots being unmerged successfully. Whether that involves the City Council or not, he and Mr. Bergeron are comfortable with that, and they would like permission to proceed.

Mr. Hoppock stated that that is what he wanted to hear from the applicant’s representative. He continued that it sounds great.

Chair Gorman asked Ms. Taylor if she agrees that the Board can hear this. Ms. Taylor replied that she would prefer to have the unmerger completed before they hear it, but she is one voice of the Board and there are three other voices, and the majority rules. If they want to move forward with this, she thinks they definitely should have a condition attached to it. Chair Gorman stated

that they will move forward this evening, then, and they will be attaching that condition of it being properly unmerged.

Chair Gorman stated that he sees a picture with the house on it and then another picture with four or more vehicles. He continued that one appears dismantled. He asked if that is a picture of the proposed second lot. Mr. Rogers replied yes, the picture in the upper left is from 26 Fairbanks St. and the second picture is from the Wetmore St. side. If this becomes unmerged, if the Variance is granted, those vehicles would need to be removed. There might also be a shed on that property that would also need to be removed, because right now, they would be considered “accessory uses” to the primary single-family home. If the unmerger and Variance were granted it should become a vacant lot, which has no primary use at the moment.

Chair Gorman asked if there were any further questions from the Board for staff. Hearing none, he welcomed Mr. Phippard to speak.

Mr. Phippard showed a map of the lower Winchester St. area and explained the property’s location. He stated that this side of Winchester St. is a subdivision that was laid out in 1926 and there were 172 lots. He continued that back then, they tended to lay out residential lots in narrow strips. People could buy strips, put them together, and end up with a reasonable-sized area to build their homes on. This is another example of that. Over the years, many homes were built. This area is serviced by City water and City sewer. It is entirely within the 100-year floodplain, thus, there are issues with building here that relate to that. If there is an approval and a new home is to be built, they would have to obtain a flood permit from the City and comply with the flood regulations. Not all of Fairbanks St. or Wetmore St. as they were laid out were built. Today a gravel connector loops around and connects Fairbanks St. and Wetmore St. [There is a portion that was never built. The lots are all recorded in the Registry of Deeds. They all exist. They do not have access from a public right-of-way. Today it is swampy/wetlands/floodplain and probably will never be built on in our lifetime. The plan is a copy from the City Assessor’s database and in the areas that were built he highlighted the lots that are non-conforming under today’s high density regulations for lot size. They are all undersized at .12 acres.

Mr. Phippard showed the property in question, 26 Fairbanks St. He continued that there is an existing home and a garage located off Fairbanks St. In the backyard is the second lot that was merged to the other piece decades ago. Mr. Bergeron has filed a request to unmerge the properties. The intent is to build a small single-family home on the newly-unmerged land area. It is currently a vacant lot occupied by several vehicles and debris, which will be cleaned up. In order to build on that lot, which is less than the 6,000 square feet minimum land area required in the High Density Zone, Mr. Bergeron would need a Variance.

Mr. Phippard continued that he has retained surveyor Russell Huntley, who has gone to the property and is just now completing the survey. An hour ago, Mr. Huntley sent him an email correcting the square footage of this lot if it is successfully unmerged. In his background paragraph to the ZBA, he (Mr. Phippard) described it as “approximately 5,583 square feet.” Mr.

Huntley says the correct number is 5,558 square feet. The reason he had said “approximately” is because he did not have the survey done at the time. Regardless, it is undersized by a little over 400 square feet. That is a rather small measure. There are six other lots along Fairbanks St. that are developed with houses and garages and buildings, which are on the same size land areas of .12 acres. Thus, they are not proposing anything that is out of character with the neighborhood. He thinks this *is* in character with the neighborhood. More importantly, it gives an opportunity for an affordable house to be built.

Mr. Phippard stated that he prepared a plan. This is what Mr. Bergeron proposes to build. The area shaded in green would be the unmerged property. He showed the footprint of the house Mr. Bergeron proposes to build, 22’ by 18.’ He continued that by today’s single-family home standards, this is small, but certainly habitable. It would be a two-story building. There is room to comply with the setback and lot coverage requirements, and plenty of room for a driveway and parking for two cars, which is the City’s standard for a single-family home. Figuring all of that lot coverage, they are well under what is permitted in the High Density District. This conforms in every way except for the size of the lot, which is an important point to consider.

Mr. Phippard went through the criteria.

1. *Granting the Variance would not be contrary to the public interest.*

Mr. Phippard stated that he thinks this is true, because of the existing properties in the neighborhood today. This is consistent with the character of the neighborhood. This is also true because even though it is a small lot and substandard in size, it can comply with all of the other zone dimensional requirements. It would be a new house built on this property and it would be elevated because it is in the floodplain. All of that can be accommodated. He believes it would help enhance the character of the neighborhood. It would encourage other properties to improve and to enhance the appearance of their properties as well. It is an opportunity to construct affordable housing in the city. This helps to satisfy one of the goals they are hearing more and more about.

2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

Mr. Phippard stated that in the High Density District, the spirit of the Ordinance is “to allow high-density, high-intensity, residential uses on lots served by City water and City sewer.” He continued that all of this area is on City water and City sewer. This house, if constructed, would also be on City water and City sewer, which already exists through this location on Wetmore St. He believes it does comply with the spirit of the Ordinance. It would also meet the setback, lot coverage, and density requirements of the High Density Ordinance.

3. *Granting the Variance would do substantial justice.*

Mr. Phippard stated that using the surveyor's corrected number, they are 442 square feet short of the required minimum lot size, which he thinks is a small number. He continued that if this were retained as a single lot, they would have the ability to build a second house on this property because only 5,000 square feet is needed for a second dwelling unit on a lot in a High Density District. Mr. Bergeron does not want to do that, because he wants his daughter to own this house, and he wants the ability to sell the existing house on Fairbanks St. Substantial justice would be allowed by recognizing such a small shortfall and in other circumstances, it is larger than the 5,000 square feet necessary if this were a second dwelling unit on the property.

4. *If the Variance were granted, the values of the surrounding properties would not be diminished.*

Mr. Phippard stated that he thinks cleaning up the lot and getting rid of the junk cars, trailers, and used equipment is the first step to help enhance the properties in the neighborhood. Building a new home here, with a homeowner occupying the premises, not having it as a rental unit, will further enhance the values of not only this property but adjacent properties as well.

5. *Unnecessary Hardship*

A. *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:*

i. *No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:*

Mr. Phippard stated that he believes that, because this lot was created in 1926, long before the current Zoning regulations. He continued that he thinks that the High Density District, under the current dimensional requirements, was created in 1970. That is just before he started working in his business, but he has been familiar with those old Ordinances and has binders collecting them over the years, which have come in useful, especially in cases like this. This was a legal, conforming lot at the time it was constructed and became non-conforming because the City decided to change all the Zoning requirements throughout the city. This property meets all of the dimensional requirements, other than that square footage, which he thinks is the most important characteristic. It resulted in creating this hardship where a only a Variance can give the relief needed to construct a single-family home on this property, which is the primary purpose of having the High Density District.

and

ii. *The proposed use is a reasonable one because:*

Mr. Phippard stated that the use is a reasonable one. It will be on City water and City sewer and meets all the dimensional requirements, lot coverage, and setbacks. It will not feel

overdeveloped. If you drive up and down those streets, you will see it is similar to existing lots. Six other undersized properties are developed without creating problems in the neighborhood.

- B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

Mr. Phippard stated that he does not need to repeat all the same reasons. Changes to municipal zoning created the non-conformity for this lot due to its lot size. He is not sure why the merger occurred. Many mergers were done in that time period. Mr. Bergeron is asking for it to be restored back to its original condition. Regarding Mr. Welsh's questions, this would be the historic lot line location between the two properties and the existing lot fronting on Fairbanks St. is non-conforming today and will remain that way if the lots are unmerged as proposed. The existing house on the front lot is partially within the side setback and meets the front setbacks. The garage constructed in the rear is about three feet off the rear property line. That is non-conforming and would remain so.

Ms. Taylor asked if the owner's purpose for wanting to unmerge is specifically to be able to build on this lot. Mr. Phippard replied that is correct.

Ms. Taylor stated that she was confused by Mr. Phippard's statement that they could build a "second unit" on the property. She asked if he meant a second stand-alone unit or a duplex or something like that. Mr. Rogers replied that the owner would not be able to build a separate, detached, single-family home, per the City's Zoning Code. He continued that it would have to be attached. As Mr. Phippard stated, they could build a second dwelling unit attached to the existing one based on the square footage that they currently have.

Chair Gorman asked if there were any further questions from the Board. Hearing none, he asked if members of the public had any questions or input.

Douglas Fish of 25 Wetmore St. stated that he has lived there for 37 years. He continued that Jane and Frank Hinkle own the piece of land between the end of Fairbanks St. and Wetmore St. They also own a piece of land out into the swamp. The people right across the street from this house on Fairbanks St. park in a way that [blocks others], and have been doing so for a long time. He owns a lot on Fairbanks St. and right across from it are two places that are close together, and when they first started out they planted a tree, which is now in between both houses. It is a fire hazard but no one complains. There is a lot on the east side of (Mr. Bergeron's) property that is a hook property; there were a lot of spaces in there that were funny. If you drive there now and look at the pavement, every place that has new pavement has a [sinkhole] for water or sewer. On Wetmore St. there is a big pile of gravel getting deeper and deeper, which has something to do with the water lines. At the end of Wetmore St. and

Fairbanks St. a pipe goes from one street to the other, above the ground. There are ramps so cars can drive over it. The water goes to Filtrine. There is a problem with the water system there and it will get worse. He does not think there is any malicious intent and they are scrambling to get jobs done, but when you get people closer and closer together, these little things become big things. There are neighbors who do not like each other, who had a fistfight.

Mr. Fish continued that (Mr. Bergeron's) property on Fairbanks St. does not have enough land on it so he can take care of his own sewage. A couple weeks ago, Mr. Bergeron asked to use his property to get to his sewer. There are several people there and the sewer is blocked and it costs several thousand dollars to have it dug up. He agreed to let Mr. Bergeron use his (Mr. Fish's) land to access his (Mr. Bergeron's) sewer. The next morning, there were 10 or 12 people from different construction companies digging and he told Mr. Bergeron he did not want them putting a sewer line in his property. Mr. Bergeron replied that Mr. Fish had agreed to that, but he had not. Mr. Fish spoke more about this situation. Chair Gorman asked him to keep his comments limited to those that are relevant to this application and the five criteria that need to be met. He continued that Mr. Fish is making general comments but the Board is looking for specific things relative to this application.

Chair Gorman asked if members of the public had any further questions or comments. Hearing none, he asked for questions from the Board.

Ms. Taylor asked to see the map again. She stated that she may have read something in the paper that she would like clarified. She asked if the City is currently undertaking improvements in this area. Mr. Rogers replied not that he is aware of. He continued that it is possible, but not something he could speak to. Ms. Taylor asked if Mr. Phippard is aware of any. Mr. Phippard replied that he is not aware of any improvements happening on Fairbanks St. and Wetmore St. He continued that the City did improve drainage on lower Winchester St. and there is a State plan in 2025 to improve traffic on Winchester St. Ms. Taylor asked if there is anything specific to these two streets. Mr. Phippard replied not that he is aware.

Mr. Hoppock stated that he did not hear Mr. Phippard elaborate on the special conditions of these two lots, on his plan, as distinguished from the other properties in the area. He continued that he heard Mr. Phippard say there are six substandard lots with single-family homes on them, but that seems, to him, to make this property *similar* to those, not distinguishable from them.

Mr. Phippard replied that it is six out of 172 lots. He continued that if you look at the original subdivision, he thinks that does create a unique situation under today's standards. The bulk of the properties are larger, and as you can see over the years, several lots were bought and combined to make wider lots, depending on how people wanted to construct their homes on the property. This area is developed on both sides of those parcels, so they are left with the remaining, original tracts of land, which are only 55 feet wide. That creates a limiting factor for laying out a house or building improvements on the property, to be forced to build a house like they are proposing, which is only 18 feet wide. That is a rather narrow house by today's

standards and the construction standards in the City of Keene. That is due to the limiting factor on the lot sizes. He thinks this *is* unusual in the City of Keene, where there is only this handful out of 172 lots that remain this non-conforming size.

Mr. Hoppock asked, of the six that Mr. Phippard just mentioned, how many received Variances? Or are they all legally non-conforming? Mr. Phippard replied that he does not know. He continued that he did not research other than to find out the sizes of the existing lot sizes, using the tax assessment information. They are not new homes that were built. If they were newer, they would have had to come for a Variance. He did not check each property file to determine if individual Variances were granted.

Chair Gorman asked if Mr. Phippard could offer any relevant rebuttal to the public input. Mr. Phippard replied that the sewer line to the existing house fronting on Fairbanks St. failed and had to be replaced. He continued that his understanding is that Mr. Fish was approached and (Mr. Bergeron) requested permission. The contractor was Frank Lucius and he (Mr. Phippard) knows him well. Mr. Lucius asked for permission to go on the Fish property so he could gain access, because of the location of the sewer lines. A new sewer line was installed. His understanding is that it is entirely on the Bergeron property, but they did disturb the Fish property in order to get to it and complete the installation. Yes, there are parking issues. On the plan, you see that the houses are fairly close to the street and the right-of-way. The lots are not wide enough to have wide driveways to allow multiple parking spaces, so parking does become an issue in situations like that. He and Mr. Bergeron have no control over where people park or whether they are on someone else's property. On the lot they are asking for permission to build on, they are proposing a very small house, which leaves room to put in a double-wide driveway so cars can park side by side out of the right-of-way and not on anyone else's property. The Zoning regulations require two parking spaces for each single-family home and that is what this plan proposes. He does not think this will exacerbate the parking problems.

Chair Gorman stated that he thinks it is fair to say, then, that some of these issues are accurately reflected by the public, but perhaps not relevant to this specific piece of property and they are problems that already exist. He continued that he has a question about the parking. It appears to him that there is some parking in the setback, in Mr. Phippard's drawing. Mr. Phippard replied yes, there is. Chair Gorman replied that he imagines that will be amended upon final approval.

Mr. Rogers stated that the parking as shown on the plan would not meet the current Zoning standards. He continued that it would have to be moved back a little further to get outside of the front setback. The parking configuration that the Board sees would need to change.

Chair Gorman asked if he is convinced that the parking can be adequately satisfied. Mr. Rogers replied yes, he believes so. He continued that one concern that Mr. Phippard brought up before that he would have to look at is lot coverage, but in the High Density District, your lot coverage is rather high number, so he thinks he would be able to do that. The front setback is of concern. The side setback would only have to be three feet, but in order to get out of the front setback he

would have to create a parking space that is 18 feet long past that front setback issue. He might have to move it back a little further, but he believes Mr. Bergeron has the room for that.

Mr. Phippard stated that Mr. Rogers mentioned that they would have to watch the lot coverage and check it. He continued that on the plan, he summarized what the lot coverage would be under this proposal and the total lot coverage, including the building and the paving, would only be 14.9%. That is a low number. Seventy-five percent is allowed in the High Density District. They can certainly accommodate a straight driveway so cars can be parking behind the front line of the building. They could also propose to move the building forward. He prefers [this] location because there was a tree, which he did not show on this plan, that this plan would allow him to save. He thought that was important.

Mr. Hoppock stated that Mr. Fish also spoke about some density concerns along those streets. He asked if Mr. Phippard could speak to that. Will this proposal create greater density in terms of living space, air, traffic, and so on and so forth? Mr. Phippard replied that certainly, adding a dwelling unit adds to the density of the neighborhood, by one single-family home. He continued that it would fall in between two existing, developed lots. The location of the building they propose is almost parallel to the building on the lot numbered "28" on the plan, which is closer to the street. It does not align further back with this building. There would be a backyard area, which exists today and would remain. He does not think it is out of keeping. If you look at the areas across the street, that is the character of the neighborhood. He knows in-fill can be an issue in neighborhoods, but he thinks it is creating a characteristic that matches what is there today. There are houses in close proximity. In this case, he believes there is adequate yard area that can be preserved between these two properties and between the adjacent properties. He thinks it fits well. He was glad to hear Mr. Bergeron was proposing such a small building footprint.

Ms. Taylor stated that all of the current, substandard parcels Mr. Phippard referenced are on Fairbanks St. She continued that this proposal, if approved, would be fronting on Wetmore St. She does not see any of the substandard lots/construction on Wetmore St. She asked if she is reading that correctly. Mr. Phippard replied that he did not highlight any on Wetmore St., but the lot numbered "31" on the plan, closer to Winchester St., is 0.12 acres. That is currently used as a parking lot for the old Ocean Harvest restaurant. That is a separate lot, non-conforming, that fronts on and has access from Wetmore St. She is correct that most of the other properties on Wetmore St. were merged to make wider lots so people could build bigger homes. He does not think this is out of place for this location. He thinks the neighborhood is both streets. The character of the homes are similar on both streets. Both are zoned the same.

Chair Gorman thanked Mr. Phippard and closed the public hearing. He asked the Board to deliberate on the criteria.

Mr. Hoppock stated that subject to the approval of the unmerging of the lots at 26 Fairbanks St., he makes a motion to approve [ZBA 21-12] and to vary the terms of the Zoning Ordinance Section 102-791, to allow a Variance for the property located at 26 Fairbanks St. so the

Petitioner can build a single-family home on a lot containing 5,558 square feet where 6,000 square feet is needed. Mr. Welsh seconded the motion.

1. *Granting the Variance would not be contrary to the public interest.*

Mr. Hoppock stated that he agrees with Mr. Phippard's characterization of the neighborhood and the property and that it will serve to meet the housing needs, especially in this market today, which is consistent with the public interest. He continued that his argument is that construction on this lot would enhance the values of other lots in the neighborhood and the appearance on the street, and he thinks that is important as well. He mentioned the small lot on Wetmore St. that is a parking lot, which was the subject of another application to the ZBA not long ago, and there was some information during that hearing that led him to believe that that lot reflected negatively on the neighborhood, so this might counterbalance that to a degree. He would find that the Variance meets the requirements of the first criterion.

Ms. Taylor stated that she does not believe that this meets the public interest. She continued that she drove down there to see it and it is already a very overburdened area. Yes, the houses are small; and yes, the lots are small; and this would be adding additional traffic and other issues. She knows they can construct out of the floodplain but it is very wet. She does not see that it is in the public interest.

Mr. Welsh stated that for the most part, he concurs with Mr. Hoppock regarding the first criterion. He continued that his concern for crowding, which he thinks was raised by a member of the public, is valid, but the concentration of undersized lots is on Fairbanks St. and this would be a lot developed on Wetmore St. where there does seem to be more space. He is impressed that the development of the lot would be an improvement on the current use of the space. That is in the public interest.

Chair Gorman stated that he is inclined to agree with Mr. Hoppock and Mr. Welsh. He continued that that the affordable single-family home is probably more valuable to the public interest than the vacant lot. He thinks this fits the neighborhood, at least, and perhaps could enhance it.

2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

Mr. Hoppock stated that as he sees it, there are two questions to ask here. The first is whether granting the Variance would alter the essential character of the neighborhood, and he thinks Mr. Phippard persuasively demonstrated that it would not. His observation about most of the lots that are undersized with buildings on them, the single-family homes being on Fairbanks St. versus Wetmore St., is not a distinction he finds persuasive. He thinks it is one neighborhood, although entered by two different roads. It is in the same area and they are of the same type of dwelling structures, all small houses. He drove by the other day and did not get the impression that Ms. Taylor did, but he might not have spent enough time there. The second question is

whether granting the Variance would threaten the public health, safety, or welfare of the neighborhood. He does not think, in this instance, that it will, for the same reasons he believes the first prong was satisfied. He does not see any evidence that granting this Variance will threaten the people there or threaten the people who will be there, should a home be built. He does not think there will be any harm to the public if this is granted.

Chair Gorman stated that he is inclined to agree with Mr. Hoppock. He continued that it helps him that they are talking about a few hundred square feet, 450 plus or minus. Less than 10% of what is required is not met, so in that sense, the lot is already close to what the Ordinance calls for. It is also high density, high intensity use. He is satisfied with this criterion.

3. *Granting the Variance would do substantial justice.*

Mr. Hoppock stated that he is trying to see what gain to the general public there would be if they denied this application and then compare it to the loss the individual would suffer. He continued that he thinks the loss to the individual is not outweighed by any gain to the general public, and therefore that criterion is met; that is an injustice.

4. *If the Variance were granted, the values of the surrounding properties would not be diminished.*

Mr. Welsh stated that this criterion always seems to involve some guesswork. He continued that his view is that the development of the property would be an improvement on the lot itself and it would improve the general character of the neighborhood. He thinks it would not diminish property values.

Mr. Hoppock stated that to support that observation and make it a little better than a guess, he would submit the pictures on the application cover sheet. He continued that those four vehicles that appear abandoned (although they might not be technically abandoned) will be gone. Those unsightly remnants will be removed. That will enhance the value of the land, too. He would say the fourth criterion is met.

Chair Gorman asked Mr. Rogers if it is safe to say that a permit will not be issued until that property is cleaned up. Mr. Rogers replied that is correct.

Ms. Taylor stated that she thinks what they see in that picture is a Code Enforcement issue, not necessarily "This is the state of the neighborhood." She continued that she thinks it is sort of a break-even situation of whether or not if there was a Code Enforcement action that would clean up the property that an open area might have as much value to the neighborhood as a new house. For her it is a wash.

5. *Unnecessary Hardship*

A. *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:*

i. *No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property*

and

ii. *The proposed use is a reasonable one*

Mr. Hoppock stated that he is convinced; Mr. Phippard persuaded him that 6 of 172 lots that have substandard lots that have single-family homes on them; he agrees that that is a special condition of the property that distinguishes it from 166 other properties in the area. The general public purpose of a dimensional size is to maintain regulation on density of population on a lot and density of vehicles that come on a lot. What they have been presented with is a lot with room for two cars, within the setbacks, and a modest-sized house that will not significantly increase people density or car density. He would have to conclude that no fair and substantial relationship exists between the general public purpose of the Ordinance and its application to this property, for the reasons just explained. And the proposed use is a reasonable one, a single-family home, not a business or something else.

Ms. Taylor stated that she disagrees with Mr. Hoppock. She continued that as she commented earlier, she has some concerns. There may have been 172 house lots in 1926 but she is not sure that is a valid number for what they see before them. As Mr. Phippard said, many of the original lots will probably never be developed because they are wet. Her primary concern of why she does not see the reasonable hardship is that there is fairly decent case law that states that just because a lot is small, and is similar to other ones in the neighborhood, does not mean that there is a special condition of the property. Thus, while it may be considered a reasonable use, she does not feel that it meets the standard for a special condition on the property.

Mr. Welsh stated that 5A is the most daunting of the criteria. He continued that he thinks that Mr. Phippard has made an argument that the property satisfies the Ordinance in many ways, creatively with the use of spacing and building size and things of that sort, and that it misses, just barely, in one way – the lot size itself. There is good effort there and that justifies hardship. He also thinks the use is a reasonable one. A modest-sized house in that neighborhood is a reasonable way to use that lot. A business or something else would not be.

Chair Gorman called for a vote on the criteria.

1. Granting the Variance would not be contrary to the public interest.

Met with a vote of 3-1. Ms. Taylor was opposed.

2. If the Variance were granted, the spirit of the Ordinance would be observed.

Met with a vote of 3-1. Ms. Taylor was opposed.

3. Granting the Variance would do substantial justice.

Met with a vote of 3-1. Ms. Taylor was opposed.

4. If the Variance were granted, the values of the surrounding properties would not be diminished.

Met with a vote of 4-0.

5. Unnecessary Hardship

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.

and

ii. The proposed use is a reasonable one.

Met with a vote of 3-1. Ms. Taylor was opposed.

The motion to approve ZBA 21-12 passed with a vote of 3-1. Ms. Taylor was opposed.

V) New Business

Chair Gorman asked if there was any new business. Mr. Rogers replied no.

VI) Communications and Miscellaneous

VII) Non-public Session (if required)

VIII) Adjournment

There being no further business, Chair Gorman adjourned the meeting at 7:45 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Edits submitted by,
Corinne Marcou, Zoning Clerk