

SOMERSWORTH ZONING BOARD OF ADJUSTMENTS
MINUTES OF MEETING
January 29, 2020

MEMBERS PRESENT: Matt Keiser Chair, Richard Brooks, Brad Fredette,
Keith Perkins-Alternate, Coty Donohue
MEMBERS ABESENT: Glenn Garvin-Alternate, and Donald Routhier
STAFF PRESENT: Shanna B. Saunders, Director of Development Services,
Dana Crossley Planning Secretary

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

Keiser appointed Perkins as a full voting member for the meeting.

1) Approval of the minutes of the meeting of December 4, 2019.

Brooks **MOVED** to accept the minutes of December 4, 2019.

Donohue seconded the motion.

The **MOTION CARRIED** by a 5-0 vote.

2) OLD BUSINESS

- A) Home Made by Rivka, Rivka Rowe is seeking a variance from Section 8.F.5 of the Zoning Ordinance to allow additional signage for a home occupation on a property located at 95 W. High Street, in the Residential/Single Family (R1) District, Assessor's map 25 Lot 72, ZBA#18-2019 PUBLIC HEARING**

Keiser opened the public hearing at 7:01 pm.

Saunders stated the applicant is seeking to install two signs for the home occupation business. The signs being requested are as follows:

Sign #1: 20" x 20" sign on a 4' post

Sign #2: 16" x 16" sign on a 3' post.

Saunders stated the applicant will be providing an example of the signage for the Board tonight.

Applicant Statement: **Rivka Rowe**, of 95 West High Street was in attendance to represent the application.

Rowe stated she is seeking a variance for signage. She stated she brought to examples of the requested signage and at the last meeting provided pictures of the posts. She stated her request is for two signs, one with a 4' post that is 20"x20" which would be placed at the corner of West High Street and Sunset Drive. She stated the second sign would be 16"x16" on a 3' post and would be located at the entrance to the business' parking lot on Sunset Drive.

Rowe stated the proposal would not diminish surrounding property values because the signage request is to direct customers onto the property as opposed to throughout the neighborhood of Sunset Drive. She stated the signs would direct customers to the correct entrance of the property as well. She stated the sign design is no different than a welcome sign on a person's private property. She stated it would be similar to a granite mailbox but less flashy. She stated the only thing on the property that would show there was a home occupation would be the signage.

Rowe stated her understanding of the ordinance is to keep Sunset Dr. residential. She stated the attempt to have visible signage is to direct customers into her property and minimize traffic to maintain the integrity of

the neighborhood. She stated on the opening day of her shop she had 8 cars over 6 hours. She stated the goal is not to bring in thousands of customers to the neighborhood but for directional purposes of the existing customers.

Rowe stated the house is setback considerably from the street and behind trees which makes it less visible when traveling on High Street. She stated the house sits back 150' from the road. She stated any amount of foot traffic has not disturbed the neighborhood. Rowe stated that limiting signage would hinder the business and cause unnecessary traffic in the area when searching for the business. She stated the property is exceptionally large being 1.14 acres, a double lot, the home is setback 150' and hidden by vegetation. She stated those factors are why she should be allowed to have more signage than what is allowed under the home occupation ordinance. She stated the request is reasonable because the business will exist regardless of the result of this variance. She stated the proposed use is reasonable because the signage would not be attracting customers but rather direct them. She stated the signage would keep in character of the neighborhood.

Keiser opened for public comment:

Mike Fischer, 93 W. High Street, stated his house faces the applicant's property. He stated he is in support of the request. He stated the impact on the neighborhood is very minimal.

Keiser clarified the applicant is seeking a 20"x20" sign on the corner and a 16"x16" sign at the driveway entrance. Rowe stated yes.

Keiser asked how high the post of the sign will be. Rowe stated the goal is to use a 5' post and bury a foot for safety and it would be 4' high.

Keiser clarified one sign will be 4' and the other will be 3' above the ground. Rowe stated yes that is the intent.

Keiser asked if the applicant is going to put a sign on the house. Rowe stated she would not mind and has considered putting one there. She stated there is only one entrance to the building from the parking lot and if she was to install a sign it would adhere to the Home Occupation rules.

Fredette asked for clarification on the signs provided from the file. Rowe stated at the last meeting she had proposed a sign that included the street address but alternatively is seeking to have just the 'Home Made by Rivka' sign.

Keiser asked if the sign will need to meet setbacks. There was a brief discussion about the setbacks. It was determined that the sign ordinance does not regulate sign setbacks for the Residential zone and would need to comply then with building setbacks.

Keiser stated a 25' setback for the sign would be extreme. He asked if the applicant would find a 10' setback acceptable. Rowe stated 10' would be reasonable.

Saunders stated the only other aspect to consider is the site distance on the corner of the lot. She stated the sign ordinance states that a sign shall not obstruct clear and free vision along or onto a public right of way. Saunders stated it can be a condition that Public Works reviews the sign placement to ensure the location of the sign does not obstruct the sight line.

Keiser closed the public hearing at 7:21 PM.

Board Discussion: Brooks stated he recalls the discussion the Board had at the previous meeting. He stated this property is very large, large setbacks, parking lot off of a side road that is not the main address and find those attributes make the property unique. He stated he is in favor of the variance and feels it meets the criteria.

Fredette stated he agrees with Brooks.

Donohue stated he does not see how the surrounding properties values would be diminished. He stated the signs are wayfinding signs rather than advertisement signs. He stated the signs create a potential to reduce the amount of cars traveling on Sunset Dr. He stated he thinks it is a reasonable request and would not alter the nature or character of the neighborhood. He stated there are other signs in the general area West High St. He stated the spirit of the ordinance is to prohibit the feeling of a commercial area. He stated there are other signs already in the area and adding a small modest sign does not alter that.

Keiser stated he agrees with Donohue's points. He stated because West High Street has a higher speed limit it warrants having a larger sign. The entrance to the business is on the side of Sunset Dr. and creates a need for the wayfinding signs.

Perkins stated he agrees with the statements made. He stated he would be in favor of a 10' setback.

Fredette asked if they should add the condition that the sign shall not be lit. Saunders stated it would make sense if the Board wants to restrict lighting to add it as a condition.

Donohue stated to have the 10' setback as a condition the condition to have Public Works ensure the sight line is clear should also be added.

MOTION: Fredette, stated after review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied for the reason's discussed and I move that the request of Home Made by Rivka, Rivka Rowe for a variance from Section 8.F.5 to allow additional signage for a home occupation on a property located at 95 W. High Street be **GRANTED WITH THE FOLLOWING CONDITIONS:**

1. The sign shall be at least 10' from the property line;
2. The location of the sign shall be reviewed and approved by Public Works to ensure it does not block the line of sight; and
3. The sign shall not be lighted.

The MOTION was SECONDED by Brooks.

The MOTION CARRIES by a 5-0 vote.

B) Any old business that may come before the Board.

i. No other business.

3) **NEW BUSINESS**

A) Velcro USA, is seeking a variance from Section 20.D.4 to allow a changeable copy sign a) greater than 12 sq. ft. b) with a message center greater than 1/3 of the total sign area c) within the 10' sign setback on a property located at 300 Route 108, in the Commercial Industrial (CI) District, Assessor's Map 47 Lot 01, ZBA#23-2019 **PUBLIC HEARING**

Keiser opened the public hearing at 7:28 pm.

Saunders stated the project is for three variance requests within one application. The first variance is to have a larger than 12 sq. ft. area message center for a changeable copy sign(19.20.D.4.h.ii). The second variance is for the changeable copy message center to be greater than 1/3 of the sign area (19.20.D.4.h.vii). And the third variance is for the sign to encroach within the 10' required sign setback (19.20.D.4.e.ii).

Donohue asked if the ordinance speaks to digital signs specifically or if they are all considered changeable copy signs. Saunders stated the ordinance does have a section specific to changeable copy signs and only allows them within the Commercial Zones and directed the Board to the 19.20.D.4.h Changeable Copy Signs of the ordinance.

Applicant Statement: **Gregory Jeanson** of Velcro and **Charles Raz** of Signs Now NH were in attendance to represent the application.

Jeanson stated Route 108 is already a commercial corridor for the City with attractive and interactive advertising along the corridor. He stated the proposal compliments the property and allows them to advertise locally. He stated Velcro is growing and actively seeking associates and vendor partners in the area. He stated there would be a column installed to match the existing column. He stated the intent is to catch the interest of those traveling on Rt. 108. He stated Velcro currently uses temporary A-frame signs for advertising job openings. He stated they are looking to use the sign to advertise job openings, advertise, and greet company partners that are traveling to meet them. He stated there has been talk about advertising the City's public meetings on the sign.

Jeanson stated although Velcro is located on a large parcel of land the developed road frontage is comparably small. He stated most of the property line that goes along Rt. 108 is wooded. He stated they are looking to augment the existing columns with the ability to advertise. He stated the proposed use is in line with the other advertisements along the corridor. He stated neighboring properties have large illuminated signs and message boards that are similar to what they are requesting. He stated they are seeking to make it safer because of the speed limit along the road it makes it difficult for drivers to see their signs. He stated the sign would assist in advertising job openings to locals.

Jeanson stated the entrance to the property pushes their setbacks back because of the turn lane and merge lane. He stated that setback creates an issue for safely advertising to the community. He stated the larger message sign would be safer because it would be able to be read for a farther distance. He stated the sign size limitations would effectively limit their communication to the community in a format that is safe and legible to drivers. He stated this format would blend into the existing landscaping. He stated at the entry way on the map it does reference an island which is not actually there. He stated by having a larger message board, sign and the encroachment would allow Velcro to take advantage of the existing frontage and integration of the existing landscaping. He stated this design would eliminate a need to remove any trees. Jeanson stated the proposed use is in line with the other advertisement strategies along the Rt. 108 corridor. He stated there are signs up and down Rt. 108 in the same spirit.

Keiser opened for public comment:

Ken Vincent, 19 Vincent Way, City Council Member, stated he is also a business owner on Route 108. He stated he is in support of the proposal. He stated he feels it fits the Route 108 corridor since it is a commercial corridor. He stated he just installed an electronic sign and is in process of installing an internally illuminated sign.

Brooks asked if the entire requested sign is larger than what is allowed. Jeanson stated the message center is about 50% of the size of the entire sign. Saunders stated the total square footage of the sign being requested does meet the ordinance.

There was a brief discussion of the messages that would be relayed on the message board center.

Brooks asked how far the sign would be from the road. Jeanson pointed out a diagram in the packet that shows the distance.

Keiser clarified that the applicant is estimating the property line is 25' from the roadway. Jeanson stated yes. Keiser stated they are proposing to go within the 10' sign setback. He asked if they knew how far into that 10' setback they are going into. Jeanson stated it would depend on what was approved tonight. Jeanson stated the sign would be attaching to the existing column at the property.

Raz stated they expect it would extend 3' into the 10' setback.

Keiser asked why Velcro should be allowed to have a larger message center when other properties should follow the ordinance. Jeanson stated that Velcro has very little street presence and is looking to be able to advertise. He stated they have information they are trying to share to the public that would not fit on a two line message board. Jeanson stated the distance from the center of the road and the speed of Rt. 108 both plays a factor in the size request.

Fredette stated he needs to know what makes Velcro different than the surrounding properties that also employ people and pay taxes. Jeanson stated Velcro applied for the variance and the other businesses did not.

Fredette clarified that the issue is not Velcro's right to put up a sign but rather to put a sign that has a message center larger than allowed. Saunders stated yes.

Fredette stated, for himself, he needs to understand what makes Velcro and their property unique or the hardship that exists to grant the variance.

Raz stated the road in front of Velcro is on a curve. He stated because of the curve there is less time to see the sign and it will need more information in an instant rather than to cycle through. He stated to have a larger area will allow them to be able to get their message across.

Fredette clarified the speed limit is 35 mph and inquired how much time does someone need to read a sign. Raz stated one needs at least 3 seconds to capture an image and text takes longer. He stated Velcro will be using primarily text. He stated they think it is reasonable to have a larger sign to be able to present the entire message they are seeking to.

Keiser clarified that Velcro owns the entire area around the curve in the road. Jeanson stated yes. Keiser asked if that land is in conservation. Jeanson stated no, the rear of the property is but that area is all wooded.

Jeanson stated Velcro employees over 300 people and there are times they have many openings they are looking to advertise. One to two lines does not give them enough time to display their message.

Keiser closed the public hearing at 7:54PM.

Board Discussion: Donohue stated the ordinance groups together R/C, R/O and Commercial. He stated keeping the changeable copy sign at a minimum of 12 sq. ft. when the entire sign is allowed to be significantly larger he sees there to be a problem with the ordinance. He stated Rt. 108 is much more commercial than High St. He stated an R/C district is very different than a CI district and could see the ordinance being reviewed to separate those regulations.

Brooks asked if there have been any issues with the brightness of the signs in the area that exist. Saunders stated they have had problems in the past, but would not say it is routine. She explained that the signs are programmable and when the sign program is changed, that sometimes creates an issue. She stated they have not received a complaint about a bright sign in at least 6 months.

Brooks stated the applicant is requesting to have over half of the entire sign be the changeable copy. He stated he does not see it as a problem of being able to read the message when driving by, because long messages would not be comprehended by drivers.

Fredette stated they may be able to have up to 100 sq. ft. of signage but with this request they are running into the setback already. He stated he thinks 1/3 is a good number and does think this request is big. He stated a concern he has of approving this variance would be then the surrounding properties all come in for the same request.

Keiser stated he understands how the hardship can be for the placement of the sign within the setback. He stated there is a pre-existing post they are seeking to use and to put it on the alternate side of the post it would make it more difficult to be seen by the public. He stated the sign will be at least 30' from the road and would not impact anyone driving around the corner. He stated he thinks there is some hardship but it would not affect surrounding property values and is in good public interest. He stated he thinks it meets substantial justice, still within the spirit of the ordinance and does not have an issue with the setback encroachment.

Keiser stated he finds the zoning ordinance to be firm on the size of the changeable copy sign, that it shall be no larger than 12 sq. ft. He stated unless there is some uniqueness to the property that should allow for a larger changeable sign and finds it hard to come up with. He stated it does not necessarily benefit the public interest to put more information on the sign. He stated he does not see a significant difference in this property to grant the sign. He stated he does not think it is within the spirit of the ordinance to grant the variance. He stated the spirit of the ordinance is to limit the size of changeable copy.

Brooks stated he agrees with Keiser's points. He stated there are three aspects of the variance request and would be in favor of the encroachment but not in favor of the square foot of the changeable copy.

Perkins stated if the columns are considered in the size of the sign the changeable copy sign portion would not be more than a 1/3. He stated he does not think property values would be diminished since there are others along the road. He stated he does not think it would be contrary to public interest because they are seeking for just a larger sign rather than message. He stated because of the speed limit it would be better to have the larger message. He stated the slope and trees is a good buffer to the building. He stated he thinks because of the terrain and road geometry he finds the property to be unique. He stated substantial justice would be done because it would be better for the land owner and drivers. He stated the spirit of the ordinance would be observed because it would tie in the current landscaping and match surrounding properties.

MOTION: Fredette stated, after review of the application, the file and all the information presented to the Board, I feel that the uniqueness and spirit of the ordinance of the five criteria have **NOT** been satisfied and I move that the

request of Velcro USA for a variance from 19.20.D.4.h.ii. to have a larger than 12 sq. ft. area message center of a changeable copy sign be **DENIED**.

The MOTION is SECONDED Brooks.

The MOTION CARRIES by a 4-1 vote.

MOTION: Brooks stated, after review of the application, the file and all the information presented to the Board, I feel that the hardship and spirit of the ordinance of the five criteria have **NOT** been satisfied and I move that the request of Velcro USA for a variance from 19.20.D.4.h.vii to allow a changeable copy message center is greater than 1/3 of the sign area be **DENEID**

The MOTION is SECONDED by Fredette.

The MOTION CARRIES by a 4-1 vote.

MOTION: Brooks stated, after review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied because of the setback, curve of the road and sight line discussion and I move that the request of Velcro USA for a variance from 19.20.D.4.e.ii to allow the sign to encroach within the 10' required sign setback be **APPROVED**.

The MOTION is SECONDED by Donohue.

The MOTION CARRIES by a 5-0 vote.

- B)** Lisciotti Development, is seeking a special exception to allow a motor vehicle repair garage/station use on a property located in the R/C district, at 442 & 444 High Street, in the Residential/Commercial and Residential Single Family (R/C & R-1) District, Assessor's Map 38 Lots 3, 3A & 4, ZBA#27-2019
PUBLIC HEARING

Keiser opened the public hearing at 8:10 pm.

Saunders stated the applicant has four applications before the board, a special exception request and three variances. Saunders reviewed the applications being requested.

Applicant Statement: **Matthew Bombaci** of Bohler Engineering, **Sean O'Connell** of Shaheen & Gordon, **Ethan Conley** and **Chad Brubaker** of Lisciotti Development were in attendance to represent the application.

Bombaci stated the property is located at 442 and 444 High Street, between the Tri City Plaza and Walmart commercial area. He stated the area is developed mostly with commercial uses with very limited residential. He stated it is a 0.9 acre lot and there are two existing dwellings currently. He stated they are seeking a special exception approval and three variances. He stated the purpose of the R/C district is to allow the commercial development of transitional areas and not new residential. He stated a portion of the subject lot is within the R1 district. He stated the lot is unique because it has three fronts, fronting High Street and Middle Street twice. He stated to meet all of the setbacks would create a building envelope that was undesirable. He stated the property has multiple existing non-conformities and with their requests they would make the lot less non-conforming. He stated Middle Street is 90-100' wide, it has two separate in and out lanes and a large landscaped area in the middle and on the alternate side is a commercial development.

Bombaci stated the proposed project is for a 5,800 sq. ft. auto repair facility that will focus primarily on tires. He stated they have located the driveway as far from Middle St. as possible and an exit-only lane onto Middle St. He stated the proposal meets almost all of the property line setbacks excluding the front setback to Middle Street on the side of the property. He stated the use itself is a low traffic generator and they anticipate 30 customers a day. Bombaci stated the facility is equipped with noise dampeners on the air wrenches. He stated studies have been completed, that at the doors the noise would be 60 decibels.

Bombaci reviewed the three variance requests. He stated the first request is for a front yard setback of Middle Street variance. He stated the layout of the property took into consideration ensuring the driveway did not make an unsafe condition and an appropriate buffer to Middle St. residential properties in the rear. He stated the second request is for the trash enclosure within the R1 area of the lot. He stated the goal is to keep the entire operational portion of the use on the R/C portion of the lot. He stated the trash enclosure area will be used significantly less than the other parts of the commercial use and will have landscape and fence screening. Bombaci stated the third variance is for the minimal lot size requirement for a commercial use. He stated once the lots are merged together they are still short by around 950 sq. ft. Bombaci stated the use being requested under the special exception is consistent to the uses in the surrounding area.

O'Connell spoke to the Special Exception request the variances that they are seeking would make it so that the use being requested under special exception met all of the criteria. He stated the use will not impair the integrity or be out of character with the district or the immediate neighborhood in which it is located, because the R/C portion of High St. is a transitional commercial district. He stated this use would be consistent and the goal of the City to develop new commercial in the R/C rather than new residential. He stated the design of the property shown on the plans provided, shows that there would be adequate and appropriate utilities, drainage, access, parking and loading, and other necessary site improvements. He stated the site is designed to have egress only onto Middle St. and access only from High St. He stated the property is serviced by City water and sewer. He stated the building is going to be an auto repair facility with a focus on tires. He stated the design of the building is to limit noise that emanates from the building. He stated the property will be screened with existing vegetation, new vegetation and fencing. He stated lighting will be designed to be downward directed and away from any offensive use. O'Connell stated the use is anticipated to see 30 cars per day and there is more than enough space to accommodate that. He stated the traffic will enter from High St. and exit via Middle St. He stated there isn't much pedestrian traffic and the sidewalks would remain to be maintained as they currently are. O'Connell stated the proposed use would not use an exceptional amount of water and sewer, would not require an exceptional amount of service from the Fire and Police and would not have an impact on the schools. He stated it would not have a significant effect on the services provided by the City. O'Connell stated the property is located in the R/C and the use proposed is almost identical to the surrounding commercial uses on High St. He stated the use would not be dissimilar or affect the public health, safety, and general welfare of the neighborhood and of the City. He stated the design meets the 50' setback on the frontage of High St. so to not create a hazard there and on the front rear of Middle St. to allow for a buffer to the residential neighborhood. He stated for those reasons he feels they have met the requirements of the special exception.

Keiser opened to the public.

Public Comment: **Dave Witham**, 10 Rouleau Drive, City Councilor & Planning Board member: stated High Street is a City maintained road. He stated there is a significant amount of pedestrian traffic along High Street. He stated High St. is under a pavement moratorium. He stated he sees this lot to be unique since it has three street frontages. He stated there are many corner lots in the City but not many that have three frontages. He stated additionally Middle St. is a unique street being that it is divided with a landscape buffer. He stated the portion of the lot that the trash storage is proposed is a uniquely shaped area.

Ken Vincent, 19 Vincent Way, City Councilor: stated he is in favor of the request. He stated he thinks it would be a positive development for the City.

John LaFornier, representative of 440 High St, he stated 440 High St. is not opposed to the construction of the proposed garage. He stated they want to ensure there is an appropriate buffer between the properties to protect their residential unit. He stated the proposed buffer shown on the plans looks adequate. He stated he wants to ensure that buffer does not shrink.

Mike Machado, 2 Ruel St. stated he does not have an issue with the commercial property. He stated he wants to ensure that the residential neighborhood that abuts that lot on Ruel and Middle St. is not adversely affected. He stated he would like to see more specific information on the buffers and setbacks they will end up with. He stated he has a concern of the exit onto Middle St. He stated the residential neighborhood has a lot of foot traffic. He stated he has a concern of the trash section being close to his property line. He stated he does not want to see any of the vegetative buffer there go away.

Dave Francoeur, 48 Blue Heron & property owner: stated he is in favor of the proposal. He stated he thinks the plan was completed with a thoughtful design. He stated the neighbor's concerns would be addressed during the Planning Board review. He read into the record a letter submitted by Raymond Blaisdell of BPPM INC (446-448 High St) in support of the application.

Francoeur stated that there are a lot of surrounding properties who have received variances in that High St. area. He stated he thinks it would be a good project for the City.

Keiser asked the Director if the City had any issues or concerns that are brought up in the special exception criteria. Saunders stated the Planning Department has worked with the applicant on the plan and she agrees with the applicant that the intent of the R/C zone is for commercial development. She stated she agrees with the statement that the residentially zoned lot does not match the zoning line that goes along the street and may have been a zoning typo. She stated the applicant has taken steps for proper screening and all of the utilities are available, recognizing the moratorium in place. She stated the soils are very good in the area as far as stormwater and the only issue that PB will review with a fine tooth comb is the traffic. She stated they will want a more in depth traffic report at the Planning level.

Brooks stated 19.4.B.4.d. of the criteria talks about noise, glare and odor, he asked for more information on the efforts to keep the noise down, in addition to the special noise dampeners on the air wrenches. O'Connell stated the doors will also have noise dampening and other methods used to mitigate the sound so that the noise would not interrupt a conversation taking place outside the building.

Brooks asked if in the summer or warmer months if the doors would be open while they're working. O'Connell stated he does not know the answer to that. Bombaci stated they would have the doors closed when they were operating.

Brooks stated there are several other operations that will be loud. He stated other than the noise concern he feels the criteria have been met. He stated he understands the application will be further reviewed by the Planning Board, but has concern of the entrance only on High St. He stated his concern would be a tow truck missing the High St. entrance and trying to enter the property off of Middle St.

Keiser clarified that the Board could approve the special exception with the condition that the PB specifically look at the noise and traffic. Saunders stated yes. Keiser stated he understands they would look at that anyways but it would be to highlight the matter.

O'Connell stated they will participate in the Planning process as required by the City.

Keiser closed the public hearing at 8:54PM.

Board Discussion: Fredette stated an auto repair facility will have adverse effects on a residential neighborhood. He stated he finds this area to be unique in that it is the last areas of fairly dense residential area on High St. He stated the lot is unique being a small property. He stated his concern that out of the purview of this discussion, there is one small property that is being isolated and cannot be used as a commercial lot.

Brooks stated when subdividing properties it is ideal to make the lot a regular shape. He stated when these lots have been merged the lot will be a very irregular shape.

Fredette stated an abutter expressed concern about the trash and understood the first speaker stated the trash would be addressed every few weeks. He stated his knowledge of tire shops is that they create a lot of trash. He stated he would argue the trash would be more than dumpster's worth.

Keiser stated the property is in the R/C district and one would expect there to be commercial business allowed on the lot adjacent to a residential property. He stated the Planning Board can address the traffic concerns. He stated fencing and vegetation has been discussed in regards of noise. The applicant implies to have the interest to look at actions to lower the noise.

Donohue stated he would echo Keiser's statements. He stated mitigation for the potentially adverse effects of the proposed use on nearby properties has been discussed. He stated the applicant has put a lot of thought to install screening and vegetation for mitigation of noise. He stated an abutter discussed the vegetation that borders the two properties. He stated he would like to see some of that natural growth vegetation to have a condition the vegetation remains in place. He stated the applicant anticipates 30 cars per day and to him it sounds reasonable. He stated the Middle St. egress is a question for him but he would be comfortable approving this request and allowing the Planning Board to further review that aspect.

Keiser stated part of that existing vegetation is on the abutter's property and that would be for them to keep. He stated he would not support a condition that the applicant would need to keep the existing vegetation. He stated the PB can determine what the appropriate vegetation would be.

Donohue stated his only thought is that the vegetation is in the plans and he would think they would be agreeable to keeping it.

Perkins stated he supports this project. He stated his only questions are utilities, parking, drainage and traffic. He stated those questions would be answered at the Planning Board level though. He stated he thinks all conditions will be met after the Planning Board review.

MOTION: Brooks stated, after review of the application, the file and all the information presented to the Board, I feel that the criteria for special exception have been satisfied as stated in the previous discussion and I move that the request of Lisciotti Development for a special exception to allow a motor vehicle repair garage/station be **GRANTED WITH THE FOLLOWING CONDITIONS:**

1. The noise of the garage work and traffic flow shall be reviewed by the Planning Board.

The MOTION is SECONDED by Donohue.

Discussion: Fredette stated he would be more excited to support this motion if they were saving the existing buffer trees because it was brought up by an abutter.

AMENDMENT to the MOTION: Fredette stated he proposes an amendment to the motion to approve with an additional condition to include the preservation of the existing vegetation along the North East side of the lot property line between the applicant's property and Map 38 Lot 5.

The MOTION to AMEND is SECONDED by Donohue.

The AMENDMENT CARRIES by a 4-1 vote.

AMENDED MOTION: Brooks stated, after review of the application, the file and all the information presented to the Board, I feel that the criteria for special exception have been satisfied because of the discussion and I move that the request of Lisciotti Development for a special exception to allow a motor vehicle repair garage/station be **GRANTED WITH THE FOLLOWING CONDITIONS:**

1. The noise of the garage work and traffic flow shall be reviewed by the Planning Board; and
2. The existing vegetation on the North East side of the lot along the property line between the applicant's property and Map 38 Lot 5 shall be preserved.

The MOTION is SECONDED by Donohue.

The MOTION CARRIES by a 5-0 vote.

The Chairman called for a 10 minute recess.

The meeting was brought back to order at 9:10 PM.

- C) Lisciotti Development, is seeking a variance from Table 5.A.1 to allow a commercial use on a lot below the minimum lot size for the R/C District on a property located at 442 & 444 High Street, in the Residential/Commercial and Residential Single Family (R/C & R-1) District, Assessor's Map 38 Lots 3, 3A & 4, ZBA#25-2019**PUBLIC HEARING**

Keiser opened the public hearing.

Saunders stated this is a proposal that takes into account three lots: 38-3A, 38-3 and 38-4. The proposal is to merge them which then create a 39,065 sf. Parcel. Table 5.A.1 requires a lot in the R/C District to be 40,000 sf in order to be used for commercial use. She noted the applicant is requesting to use the portion of the lot that is zone R1 for the commercial use.

Keiser clarified that granting this variance would be contingent on the approval of ZBA#28-2019. Saunders stated that is correct.

The Board had a brief discussion on the zoning language for the R/C district and the zoning map.

Applicant Statement: **Sean O'Connell** of Shaheen & Gordon attended the meeting to represent the application.

O'Connell stated once the lots are combined they will be still be about 950 sf. short of the required acreage for a commercial use in the R/C zone. He stated the use would not diminish surrounding property values because it would be adjacent to many lots that have also received similar variances. He stated the surrounding

lots are already adjacent to commercial lots, which have the expectation of a commercial development. He stated screening and other mitigation efforts will be completed and more considered for the protection of the abutters. O'Connell stated the public interest within this zone is as stated by the ordinance, to transition into a commercial zone up and down High St. He stated they have 39,065 sq. ft. of acreage and without the variance they would not be able to develop the lot commercially. He stated that addresses the public interest and the uniqueness of the property. He stated the spirit of the ordinance is met in that this lot is 39,065 sf. and only short by about 950 sf. which is meeting the spirit of the ordinance. He stated this is the R/C zone and what they are seeking is a permissible use in the zone. He stated this is a 39,065 sf. lot as merged that is very unique that it is within the R/C but does not quite make the square foot minimum requirement. He stated the use is reasonable as in the Board granted the special exception to allow the use. He stated they are 950 sf. short of meeting the ordinance and otherwise cannot develop the lot commercially and that makes their lot unique. Substantial justice would be done because the applicant would be able to use the lot and that matches the goal of the City, Master Plan and the ordinance.

Keiser opened for public comment:

No public comment.

The Board had no questions for the applicant.

Keiser closed the public hearing at 9:20PM.

Board Discussion: Fredette stated he is in favor of this request. He stated the lot is close to the required size; it is within a R/C zone and does not see how granting the variance would change any other factors. He stated the City's Master Plan and the direction of that corridor has moved in the last 20 years is towards commercial and less residential. He stated the public interest is more served by commercial development remaining in a concentrated area. He stated the general public purpose of the ordinance to keep big buildings off small pieces of property. He stated 950 sq. ft. would not make a difference one way or another in his opinion. He stated the proposed use is reasonable because it meets the criteria for development of that area. He stated the Board has approved the special exception and that the lot should be developed commercially and without granting this variance the applicant would not be able to move forward with the development. He stated substantial justice is done by allowing the applicant to develop the lot.

Brooks stated he agrees with Fredette's statement. He stated he does still have some concern of the adjacent lot that is very small as a residential lot. He stated it is not something they have a purview over.

Fredette asked if there can be a condition of approval that the lots must be merged. Saunders stated yes. Fredette stated he would do that if he was to make the motion.

Donohue stated he agreed with Fredette, and that Brooks' concerns are fair. He stated he would be in support of this approval.

Keiser stated he would like the approval of ZBA#28-2019 be tied as a condition of approval to this application.

There was a brief discussion about the small residential property that abuts this lot.

MOTION: Donohue stated after review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied because of discussion and I move that the request of Lisciotti Development for a variance from Table 5.A.1 to allow commercial use on a lot below the minimum lot size for the R/C District be **GRANTED WITH THE FOLLOWING CONDITIONS:**

1. The three lots (Map 38 Lots 3, 3A &4) shall be merged; and
2. This variance is approved contingent that ZBA#28-2019 shall also be approved.

The MOTION is SECONDED by Fredette.

The MOTION CARRIES by a 5-0 vote.

D) Lisciotti Development, is seeking a variance from Table 5.A.1 to allow a building 40' into the 50' front setback on a property located at 442 & 444 High Street, in the Residential/Commercial and Residential Single Family (R/C & R-1) District, Assessor's Map 38 Lots 3, 3A & 4, ZBA#26-2019 **PUBLIC HEARING**

Keiser opened the public hearing.

Saunders stated she had no further information outside of her memo.

Applicant Statement: **Sean O'Connell** of Shaheen & Gordon attended the meeting to represent the application.

O'Connell stated this lot is very unique in that it has frontage on three sides. He stated the proposal will not diminish the surrounding property values. He stated the building being proposed is reasonable. The applicant showed what the building envelope would look if they were to meet all of the building setbacks. He stated the proposed building would not be possible if they were to meet all of the setbacks. He stated they are meeting the front setback on the High St. side of the lot for safety and parking. He stated they meet the 50' on the backside of the property for the preservation of the neighborhood behind their lot. He stated they are seeking to encroach on the Middle St. side front setback. He stated Middle St. is a very wide street and so coming within 10' of the property line will not seem as close. He stated all properties within the R/C zone are subject to be adjacent to a commercially developed property. He stated for those reasons there would be no diminishment of the surrounding property values.

O'Connell stated setbacks are established to set a building back from the of the property line. He stated this lot is unique because it creates that setback three times. He stated the portion of the lot they are requesting to encroach would be the least offensive of all of the setbacks to encroach. He stated ordinance exists to push the buildings back from the front and feels the spirit of the ordinance is met. He stated their situation is unique and they have to make adjustments to develop the property. He stated the benefit to the applicant is only that the property can be developed. He stated they do not believe there is any harm to the general public especially since they have moved the encroachment to an area that is not adjacent to a residential property. He stated the lot is unique by having three front setbacks. He stated they do not see a fair and substantial purpose behind the ordinance for this property. The proposed use is reasonable, auto repair shop and the Board granted the special exception. He stated having three front setbacks that are 50' it creates a hardship for the lot.

Keiser opened for public comment:

No public comment.

Keiser asked what the difference is in the size of the building that could be built if the applicant did not receive a variance to if they did. **Matt Bombaci** of Bohler Engineering stated they would not be able to

build the building in a rectangular way they are seeking to. He stated the building envelope when meeting all of the setbacks creates an abnormal area. He stated the size of that area is similar to the size of the building they are seeking to build. Keiser asked for more clarification. Bombaci stated the area of the building envelope meeting all of the setbacks is about 6,000sf. But the configuration of it would not allow them to build the building they desire.

Keiser asked if the sf. of the building is a standard design of the company. Bombaci stated it is the company's prototype building.

Keiser closed the public hearing.

Board Discussion: Brooks stated he sees the hardship for the lot because it has the three frontages. He stated the building envelope they could build in without a variance, might be the same size but it would create a uniquely shaped building. He stated there is uniqueness from the road being on three sides and he can is in favor of granting the variance.

Fredette stated his concern is that they are talking about 10' to the property line along a road. He stated there was some discussion during the review of the special exception about traffic. He stated there is a funny entrance and is concerned about putting a building so close to that area.

Keiser asked for clarification on Fredette's concern.

Fredette stated the Board has talked about traffic concern. He stated in his estimation part of the traffic concerns is how the Middle St. intersection with High St. lays out. He stated if that intersection was reconfigured there is potential to not need the variance.

Keiser stated this is for the size of the building on the lot. He stated that if they did not receive the variance they would have to reconfigure the size and location of their building on their lot. He stated they could maybe fit the same size building within the building envelope meeting all setbacks, but it would not be designed in the manner they want.

Fredette stated it is still an odd intersection to begin with and then they would be allowing a building close to it. He stated he sees public safety concern.

Keiser stated he is not in support of this request. He stated the spirit of the ordinance is to put spacing between buildings and around. He stated to have a building within 10' of the property line, though it has a wider right of way, there is still a street right next to the property. He stated having a building within 10' of the property line would significantly change the nature of the neighborhood. He stated the portion of the lot they are seeking a variance from is really the corner of the lot. He stated the 'back' front of the property is the unique portion of the lot in his opinion. He stated there is some space that the applicant could reconfigure the building. He stated to him it does not meet the spirit of the ordinance and would change the character of the neighborhood. He stated it could have an effect on surrounding property values.

Keiser stated he would be in favor of allowing the building to be 30' from the property line.

Brooks stated Middle St. is a divided entrance and creates a 200' one way street. He stated traffic should be traveling at a slow speed through this area which alleviates some of his concern. He stated they are changing the neighborhood by allowing the commercial use in this area. He stated there are a lot bigger changes than

allowing the building closer to the road. He suggested the road could be redesigned to be farther from this property. Brooks stated he sees the uniqueness to the property to grant the variance, as submitted.

Donohue stated he agrees with Brooks. He stated if the property had neighbors on Middle St., where they are seeking a variance, those buildings would have to meet the same setback. He stated in this circumstance there are not close-by structures to match the streetscape on that side of Middle St. He stated to allow the applicant to construct the building with the sf. and shape on a unique property this setback makes the most sense to encroach. He stated he is in support of the request.

Fredette stated he agrees with Keiser's statement. He stated he is not comfortable with a 10' setback.

Saunders noted that it is not advisable for the City to give up right of way space. She stated to give up the City's right of way they would have to reconfigure the street and all of the existing utilities. She does not advise reconfiguring Middle St.

Keiser stated the applicant could build a building of a different size. He stated he does not support a building within 10' of the property line.

Fredette stated a Councilor spoke tonight that there is a lot of pedestrian traffic along High St.

Perkins stated he feels that 10' is too close. He stated he thinks 30' would be too far. He stated he would be in support of a 20' setback.

Fredette stated 25' would be reasonable. He stated snow on Middle St. would need to be considered.

Donohue stated he feels 25' would be an adequate alternate setback because it is a common setback used in surrounding zones.

Fredette stated the applicant will still need to meet a 50' setback on the 'back' front and is comfortable with a 25' setback.

MOTION: Donohue stated, after review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied for a **25' setback** and I move that the request of Lisciotti Development for a variance from Table 5.A.1 to allow a building within 25' ft of the property line front setback **be GRANTED.**

The MOTION is SECONDED by Fredette.

The MOTION CARRIES by a 4-1 vote.

E) Lisciotti Development, is seeking a variance from Table 4.A.5 to allow an accessory trash and inventory storage building associated with a motor vehicle repair garage in the R1 zoned portion of the lot at 442 & 444 High Street, in the Residential/Commercial and Residential Single Family (R/C & R-1) District, Assessor's Map 38 Lots 3, 3A & 4, ZBA#28-2019 **PUBLIC HEARING**

Keiser opened the public hearing at 9:56PM.

Saunders stated if the Board moves to approve this application she would advise to make this contingent to the merger of the lots and approval of application ZBA#25-2019.

Applicant Statement: **Sean O'Connell** of Shaheen & Gordon attended the meeting to represent the application.

O'Connell stated this will be a merged lot and a portion of the lot is within the R1 district. He stated R1 zone is a residential zone and the commercial use is not allowed. He stated the portion of the lot that is within the R1 district is 6,900 sf. He stated the lot is unique because there is this small portion of the land that exists within the R1 district. He stated within the request before the board it references inventory storage. He stated they do not intend to use the area for inventory storage. They would only be placing a screened dumpster.

O'Connell reviewed the criteria for the variance. He stated the small portion of the lot is surrounded by the R/C district. He stated the lot cannot be used alone but rather would need to be used with the surrounding property. He stated it would not alter the character of the neighborhood and the proposed use is not in conflict with the purpose of the ordinance. He stated the spirit of the ordinance is observed because of the uniqueness of the weird lot, 6,900 sf, of unusable space. He stated the lot is 2/3 smaller than what is required in the R1 district. He stated the inclusion of this lot into the calculations of the square footage would not cause any harm to the general public. He stated the portion of the lot would not be used for a building. He stated the values of the surrounding properties would not be diminished because the 6,900 sf would be substantially identical to its current condition. He stated there would be a dumpster on that portion of the lot with screening. He stated there is no connection between the configuration of the lot and the general public purpose of the ordinance. He stated the use of the space is reasonable as a merged lot to the adjacent R/C and a screened dumpster would be on a small portion of the property. O'Connell stated the purpose of the inclusion of this lot is to include it into the calculations to meet the required lot area to be able to develop commercially. He stated based on the location and unique characteristics it has a hardship.

Keiser opened for public comment:

Public Comment: **Dave Francoeur**, 48 Blue Heron & property owner, stated he has researched the zoning of the subject properties. He stated there is only one property card for lot 3.

Keiser clarified that the abutting lot is separate from Francoeur's lot. Francoeur stated 440 High St. is a separate lot, but lot 3 and 3A are on one assessment card.

There was a brief discussion of the location of the lots.

Keiser clarified the applicant does not intend to store inventory on this portion of the lot and it is for trash storage only. O'Connell stated that is correct, it could possibly be snow storage as well. He stated it would not be used for other business purposes.

Brooks asked where the old tire carcass storage would be. O'Connell stated he has not been part of that discussion and does not know.

Keiser clarified the exact request and which table it was seeking a variance from. He stated accessory use is allowed, so they would be approving a variance to allow the commercial use on the portion of the lot that is zoned residential. He stated that would be from Table 4.A.5. Saunders stated that is correct.

O'Connell stated the trash storage is going to be an accessory use to the main use of the property, which is a motor vehicle repair garage.

Keiser closed the public hearing.

Board Discussion: Brooks stated it circles back to the zoning of this landlocked portion of the lot. He stated based on the definition of the R/C district this part of the lot should be in the R/C, but the map did not

include it within that zone. He stated in his opinion once all of these lots are merged together this portion should be considered R/C. He stated he is in favor of approving this variance.

Fredette stated this 6,000 sf would not diminish the surrounding properties in light of the other variances approved; this on its own would not change anything. He stated the public interest is to separate commercial from residential. He stated there is no relationship between the public purposes of the ordinance and the application to this specific property. He stated the Board has decided that the construction of a motor vehicle garage is appropriate for this lot. He stated substantial justice is done because it addresses an isolated land locked parcel that was created some time ago. He stated the spirit of the ordinance would be observed by not mixing residential and commercial uses on the singular lot. He stated he would support a condition that the properties must be merged and it is used for accessory trash storage area.

Saunders advised the Board tie the accessory trash storage to the plan submitted.

Keiser asked if they should tie this variance to ZBA#25-2019. Saunders stated she would advise to tie them together, because should this particular plan not move forward the variances are still valid.

There was a brief discussion of requiring all three variances to be tied together.

MOTION: Fredette stated after review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied because of reasons discussed and I move that the request of Lisciotti Development for a variance from Table 4.A.5 to allow an accessory trash storage building associated with a motor vehicle repair garage in the R1 zoned portion of the lot. **GRANTED WITH THE FOLLOWING CONDITIONS:**

1. The three lots (Map 38 Lots 3, 3A & 4) shall be merged;
2. As per the plan presented; and
3. This variance is approved contingent that ZBA#25-2019 shall also be approved.

The MOTION is SECONDED by Donohue.

The MOTION CARRIES 5-0.

Any other new business that may come before the Board.

- Saunders stated the Board Appreciation Dinner invitations have gone out. She requested the Board members RSVP as soon as possible.

Donohue **MOVED** to **ADJOURN** the meeting. Brooks seconded the Motion. The **MOTION CARRIED** 5-0 and the meeting **ADJOURNED** at 10:24 PM.

Respectfully Submitted,

Dana Crossley, Planning Secretary