

**SOMERSWORTH ZONING BOARD OF ADJUSTMENTS**  
**MINUTES OF MEETING**  
**July 2, 2019**

**MEMBERS PRESENT:** Matt Keiser Chair, Richard Brooks, Brad Fredette,  
Glenn Garvin, Coty Donohue, Christien DuBois, Donald Routhier

**MEMBERS ABESENT:**

**STAFF PRESENT:** Shanna B. Saunders, Director of Development Services,  
Dana Crossley Planning Secretary

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

**1) Approval of the minutes of the meeting of June 5, 2019.**

Brooks **MOVED** to accept the minutes. Garvin seconded the motion. The **MOTION CARRIED** 5-0.

**2) OLD BUSINESS**

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

No Discussion

**3) NEW BUSINESS**

**A)** John & Lisa Mahar are seeking a variance from Table 5.A.1 of the Zoning Ordinance to construct a 30' x 32' garage within the setbacks on a property located at 54 West High Street, in the Residential Duplex (R2) District, Assessor's Map 14 Lot 64, ZBA#11-2019 - PUBLIC HEARING

Keiser opened the public hearing at 7:02pm.

Saunders explained the applicant has two front setbacks and is proposing to build a 30' x 32' garage within the front setback to Cemetery Road. The garage encroaches in the 25ft. front setback by 7ft. Location of the proposed garage is shown on the map.

**John Mahar applicant** stated he would like to build a garage that will have one corner encroaching into the 25' setback. He stated the project would not diminish the surrounding property values because it will be a new standard residential structure that will be an improvement to the property. He explained the garage would be constructed with 2x4 & 2x6 and concrete. Mahar stated it would not be a temporary structure of any kind. He stated granting the variance would not be contrary to public interest because it will not interfere with any visual sight lines of the intersection. He stated the 25' side setback would normally be a 10' setback if he was not a corner lot. He stated his house faces West High St. and to him that makes one front setback and not two as the City is also considering the Cemetery side of his lot a front setback. He stated having two 25' setbacks is the hardship of this lot.

Mahar stated the proposed use is reasonable because it is a residential garage to store vehicles, equipment and regular garage stuff. He stated it would not be used for commercial purposes. He explained the other hardship is his sewer line is off of Cemetery Road connecting to his home. He stated he does not want to build on top of his sewer line therefore is asking to encroach 7' into the setback. He stated they have staked out the proposed garage and practiced backing out without hitting the garage. He stated they could not move the garage back further due to the sewer line.

Mahar stated that his direct neighbor did not receive the abutters notice. The house was for sale at the time he submitted his abutters list. He stated he has spoken to him directly and the neighbor expressed no issue with them building the garage.

Saunders clarified that the office received notice from the former property owner that they received the abutters notice. She stated that the house sale had closed between when the application was submitted (as per RSA the applicant must submit the abutters list with their application in accordance to the City Records) and when the abutters notice had gone out. Saunders stated that she informed the applicant that there could be an issue if the new property owner was to appeal. She encouraged the applicant to talk with their abutter or ask for the application to be tabled in order to notify the abutter.

Public Comment: **Ken Vincent, 19 Vincent Way** and Council Member, stated he was in favor of granting this application and feels there is no impact to the surrounding properties.

**Brian Geiger Durham NH**, (owns 50 W. High) stated he did not understand why the applicant needs a variance to put a garage on a 3 acre lot. He felt with a lot this size they could have a garage without a variance and was not in favor of it.

Routhier asked how much are they encroaching into the 25' setback. Mahar stated is shown as 5' but asking for 7' to accommodate the roof overhang and for backing out of the garage to ensure they do not hit the house. Routhier asked why the applicant cannot build the garage in a location that it does not encroach into the setbacks. Mahar stated the majority of his land is behind his home and does not want to put the garage behind the house. Routhier asked why the garage couldn't be closer to the house. Mahar pointed out the different slopes and the old growth trees that would have to be removed to have the garage in a different location.

Fredette stated from review of the GIS map of this property it looks like the driveway ends close to where Routhier is suggesting to locate the garage. Fredette questioned what makes this property unique or the hardship to allow the board to grant a variance to build within the setback.

**Lisa Mahar applicant** stated one of the hardships is that the City considers their property to have two front setbacks. She felt the City should decide which one is their front setback and it would clarify most of the problem. She stated they could put the garage behind the house but it would cause more issues. She stated the issues would be the neighbor's backyard is their backyard and to put the garage in the back would potentially encroach on the neighbors. She stated they have 3.3 acres but the land in the back is all wet and believes that is on record. L. Mahar asked for clarification on why someone is disputing their request when it does not affect them. Keiser stated anyone in the City is legally allowed to.

Routhier asked if behind the house is all wetland. J. Mahar stated no, but a good portion of it is. Routhier asked if they had any dry land behind their house. J. Mahar stated in the areas that were raised up it is dry and would like to have the garage local to his house.

Dubois stated that out behind the house is a substantial wetland.

Saunders stated she does not have the wetland line with her but could get it for them.

Keiser asked why they wish to build a 30' x 32' garage. J. Mahar stated they would like to put a truck, tractor and SUV in to the garage. Keiser asked which side the garage doors would face. J. Mahar stated the garage doors would face the house. L. Mahar stated if the doors faced the road they would have to take down old growth trees. J. Mahar stated they would also have to put a new driveway entrance in. Keiser asked if they were to move the garage to the right and down out of the 25' setback what would that do. J. Mahar stated that would prevent them from using one of the doors and they would not be able to get out. He stated it would cause them to have to back out into the road which would be a safety issue.

Keiser clarified that the applicant did not want to build on top of the sewer line and asked if there was an issue with driving over the sewer line. J. Mahar stated there is not an issue yet.

Fredette stated if he's reading it right the driveway is over the sewer line. J. Mahar stated yes but not finished driveway just dirt. L. Mahar stated they built the driveway up 5ft. J. Mahar stated there would be a greater cost to repair the septic line after putting down asphalt, that would be a hardship. Keiser clarified that cost is not a hardship per the law.

Brooks asked if it was a water line too. Mahar stated just sewer line and the water line comes in from the West High side. Brooks asked if the applicant is putting a bathroom in the garage. J. Mahar stated no, it will be just a garage. Brooks questioned if the shed on the property is close to the wetlands. J. Mahar stated the water line does not get up to the shed but a tree that is near it does not grow well. L. Mahar stated a large portion of the property is wet and the dry area is what they have raised up.

Keiser closed the public hearing at 7:24pm

Board Discussion: Fredette asked if a wetland map exists. Saunders stated what she could provide would not be specific; it would be the hydric soils map. She explained it is taken from the USDA and likely done in the 60s.

Dubois stated to be fairly reasonable they could use the shed for measurement.

Fredette stated there was a similar situation in the recent months and sees similarities with this case and that.

Saunders stated if there is a wetland that comes about 10 feet from the shed, there would also be a 100' buffer to the wetland. She stated to build within that the applicant would have to go through the process to be granted a Conditional Use Permit.

Fredette stated that if that process was completed and found this was the only option he would feel more comfortable granting this variance.

Keiser stated he thinks the board is wrestling with the hardship criteria. He stated having two fronts, being a corner lot, is not reason for a hardship. He stated it is a large building. He questioned if there is enough evidence to grant a hardship and be in the spirit of the ordinance.

Routhier stated he is wrestling with the same thing, he knows there is a lot of land here and is not clear on why they can't put the garage in a different location. He stated the applicant has the burden of proof to show there is the wetland and that it is part of the hardship. He stated they also have the burden to show the difference in elevation in land that may cause a hardship. He stated neither of those things were proven. He stated he is wrestling with why the applicant can't change the proposal for a smaller garage or build in a different angle. He stated that being a corner lot is not unique there are a lot of corner lots.

Brooks stated he would echo the same. He stated this is similar to previous cases before the board. He stated the applicant has ample land, with other options to put the garage without encroaching in the setbacks. He stated they may not be as desirable to the applicant but would comply with the ordinance. He stated they do not have a clear answer on how the wetlands play in. He stated it felt there was a lot of land in the back that was above the shed line.

Dubois stated he felt the old growth trees hold some merit to approve the variance.

Fredette stated there is nothing to ensure that the trees are preserved if the garage goes up.

Garvin asked if anyone saw a problem at this point with going 7' into the 25' setback and if someone should ensure the traffic sight line was not affected.

Saunders stated traffic view impact could be reviewed during the building permit stage. She stated at this point they are looking for permission to encroach.

Garvin stated he went by the property on his way here would support this one. He feels they can find uniqueness and hardship.

Donohue stated between the location of the sewer line, grade of the land, wetlands and old growth tree, those factors make the property unique in his opinion.

Fredette asked if it would be possible to table the application to get more information on the wetlands on this property. He stated he hears what the other members are saying but the Council would be responsible for reviewing the ordinance for amendments to allow more growth in the City.

Fredette questioned if the two fronts of the property is a State or Town level interpretation. Saunders stated she would not call it a State level interpretation, but the definition of front setback is standard from town to town across the State.

Fredette stated he is not convinced seeing two sides of a building at the intersection is most appealing. He stated he is still not convinced a tree is substantial enough hardship to vote for this.

Dubois stated he personally thinks if he was voting he would have enough information to vote on this and does not see the benefit to table for more information.

Brooks stated after review of the application, the file and all the information presented to the Board, I feel that the hardship criteria of the five criteria have **NOT** been satisfied and I move that the request John & Lisa Mahar for a variance from Table 5.A.1 of the Zoning Ordinance to build a 30' x 32' garage be **DENIED**.

The motion was seconded by Fredette.

The MOTION CARRIED by a 4-1 vote. The application is **DENIED**.

- B) Roger J. Saucier is seeking a variance from Section 19.6.C.1.a of the Zoning Ordinance to expand a non-conforming residential use by constructing a 1.5 story 2 car garage on a property located at 213 Route 108 in the Commercial Industrial (CI) District, Assessor's Map 44 Lot 23, ZBA#12-2019 - **PUBLIC HEARING** .**

Keiser opened the public hearing at 7:42pm.

Saunders stated this is a residential property in the Commercial Industrial District. Single family homes are not allowed in the district so this proposal for a brand new garage would be an expansion of a non-conforming use.

**Roger Saucier of 213 Route 108** stated he is requesting a variance to build a 30' x 24', 2 car garage on his existing property. He stated he has an oversized lot and the garage would be on the expanded lot the Kilda Street side. He stated his lot is a corner lot. He stated he has lived at the property for 20 years and feels he keeps a good property. Saucier stated it would be an improvement to the existing area. He stated it would be a 1.5 story garage with vinyl siding that will match his home and existing garage. He stated it would add value to the properties in the area.

Public Comment: **Ken Vincent of 19 Vincent Way**, stated this residential property was here prior to the change in the zoning to make this lot commercial. He felt this variance should be granted, since the property owner keeps a well maintained property, it would be a good garage, there would be no impact and would add to the tax base.

Routhier asked how long the applicant has lived at the property. Saucier stated for 20 years. Routhier asked if it was his recollection when he moved it was zoned differently. Saucier stated yes. Routhier asked where the applicant accesses his property. Saucier stated his driveway is off of Kilda Street. Routhier confirmed that Kilda St. is mainly residential and the applicant has 203' of frontage on Kilda. Saucier confirmed both were correct. Routhier questioned how far back the CI district goes. Keiser stated it goes back three lots in this area. Saunders clarified she would not be able to scale on this map and it is not constant down Route 108 but this lot is not in the residential zoning district.

Routhier asked if the applicant will be removing the existing garage. Saucier stated he is keeping the existing and asking to add a second garage. Routhier noted there was a lot that built a new home that did not come before this board to build a residential structure. Saucier stated yes and it is on Blackwater Road and is unsure the district.

Brooks asked if they knew the date of when the CI District was enacted for this area. Saunders stated she would have to review old ordinances to be sure on the date for the map but it has been a commercial corridor for a long time.

The Board reviewed the Zoning Map and where the CI District lies in that area.

Keiser confirmed with the applicant that he is proposing to build a 30' x 24', 2 car garage and keep the existing one car garage. Saucier stated that was correct. Keiser asked which side will be facing the road. Saucier stated the 30' side would face Kilda Street. Keiser asked for clarification on why the garage is 1.5 stories. Saucier stated it will have storage in the center part and will be cape style to match the house and existing garage. Keiser asked when the house was built. Saucier stated in the 1950s, his parents bought it from the original owner and he bought from his parents.

Keiser closed the public hearing at 7:56.

Board Discussion:

Fredette stated he is in favor of this variance. He stated there are a lot of small lots in the area and does not think it would be likely developed into Commercial unless a lot of the lots sold out. He stated he is moved by the fact the applicant has lived on the property for so long and bought it from his parents, it is his family homestead. He stated another factor is that the driveway is on Kilda St. and that he is building on the Kilda St. side. He thinks the garage will be almost invisible from Route 108. He stated he does not see how it hurts the neighbors either.

Brooks stated and that the house was purchased in 1998, after the CI amendments.

Routhier stated he agreed with Fredette's comments. He stated this is a residential neighborhood and feels it is a fluke of circumstance that this house fronts Route 108. He stated he felt it would remain residential, the request is reasonable and the circumstance warrant a hardship. He stated he is in favor of granting this variance.

Garvin stated he is not voting but would encourage support.

Keiser stated it is a nonconforming use. He stated he does not have an issue with the proposal as it is a residential use. He stated though that the City has deemed these plots of land are Commercial land. He stated

what is grandfathered is what is there and this is a nonconformance to build a garage outside the current structure and the Court cases have stated it is not what they support to expand nonconformance. Keiser stated he is having a hard time finding that this application meets the criteria.

Routhier stated the purpose of the variance is to allow relief. He stated the hardship is that this lot should not be in the zone in first place feels it is mislabeled or placed and will never be commercial.

Donohue stated he does think using Routhier's logic the parcel does not fit the zone it is in makes it unique and it has been applied in previous cases before this board. He stated he felt it fit here as the surrounding properties are residential.

Keiser stated the difference between this and the Calef case is that this is a variance request and that was an appeal of an administrative decision.

Dubois stated he would echo Keiser's statement regarding the spirit of the ordinance. He stated the City council has very specifically said this is Commercial area and would caution the board to speculate that this property would never be commercial and allowing an entire new structure.

Fredette stated he understands Dubois's argument. He stated he finds the hardship in living around so much commercial properties. He thinks this is an investment to the future.

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 after discussion of the 5 criteria and I move that the request of Roger J. Saucier for a variance from Section 19.6.C.1.a of the Zoning Ordinance to construct a 1.5 story 2 car garage be GRANTED.

The motion is seconded by Routhier.

Discussion: Routhier stated this property is surrounded by other residential properties and to allow the expansion is keeping with the ordinance because it will remain residential.

Fredette stated allowing this property to remain residential avoids a hardships on the abutting properties.

Keiser stated there are only 2 residential homes on Route 108 and he will not be voting in favor of this.

The MOTION FAILS by a 2-3 vote.

Donohue stated after review of the application, the file and all the information presented to the Board, I feel that all (specifically the hardship and spirit of the ordinance criteria) of the five criteria have **NOT** been satisfied and I move that the request Roger J. Saucier for a variance from Section 19.6.C.1.a of the Zoning Ordinance to construct a 1.5 story 2 car garage be DENIED.

The motion was seconded by Brooks.

Discussion: Saunders asked for clarification on which criteria were not satisfied. Donohue stated because it is a nonconforming use and this would be an expansion of the use the hardship and spirit of the ordinance criteria were not met. Fredette asked for clarification on the amendment to the ordinance in 1994 tells them by virtue of the fact it was the last time the ordinance was amended for the CI district and it would have had to have been Commercial when he bought the property. Saunders stated she is unsure if that amendment affected the geography of the Commercial Industrial District. Keiser stated if there have not been any changes since at least 1994. Saunders stated she would agree it has at least been CI since 1994.

Brooks stated he felt this did not meet the 5 criteria.

The MOTION CARRIES by a 3-2 vote. The application is denied.

**C) Any other new business that may come before the Board.**

- a.** No other business before the board.

Fredette **MOVED** to **ADJOURN** the meeting. Brooks seconded the Motion. The **MOTION CARRIED** 5-0 and the meeting **ADJOURNED** at 8:12 PM.

Respectfully Submitted,

Dana Crossley, Planning Secretary