



Haverhill

Board of Appeals
4 Summer Street – Room #201
Haverhill, MA 01830
Phone: 978-374-2330 Fax: 978-374-2315
jdewey@cityofhaverhill.com

The regular meeting of the Haverhill Board of Appeals was held on Wednesday evening, January 19, 2022 at 7:00 P.M.

Those Present: Chairman George Moriarty
Member Theodore Vathally
Member Ron LaPlume
Member Lynda Brown
Member Louise Bevilacqua
Assoc Member Magdiel Matias
Assoc Member Pascual Ruiz

Also, Present: Jill Dewey, Board Secretary
Tom Bridgewater, Building Commissioner

Chairman Moriarty called the meeting in to order on January 19, 2022

Member Vathally: I make a motion to approve the variance for 40 Brown Street, for 6 months...2nd by Member Brown

Member Vathally: Yes
Member Brown: Yes
Member LaPlume: Yes
Member Bevilacqua: Yes
Chairman: Yes
*Granted 5-0

Request of extension of variance for 0 Linwood Street

Glen Fogarty: I own the lot on Linwood Street, just to give you a little background in 2019 a variance was issued for that lot, and it was appealed by a neighbor, ultimately the supreme court dismissed the case and the variance stood. I have been working diligently with conservation. I am in the site plan process now currently. But the decision from superior court come on March 1st, 2021, so it is going to expire come March. I made it through conservation, I got an order of conditions and the same neighbor appealed to DEP. December 10th we had a site walk with DEP, I am pretty confident that their findings on what needs to be done there if anything I don't think that anything will need to be changed. With that being said March is coming up quick, I am not sure when the decision is coming from DEP so I am requesting a 6-month extension, so that I can get my building permits.

Chairman Moriarty: Any questions from the board? Entertain a motion

Member Vathally: I make a motion to approve the variance extension for 0 Linwood Street, for 6 months...2nd by Member Brown



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Member Vathally: Yes
Member Brown: Yes
Member LaPlume: Yes
Member Bevilacqua: Yes
Chairman: Yes
***Granted 5-0**

Request of extension of variance for 71 Jaffarian Road

Chairman Moriarty: The applicant is not here; this one is similar to the one we just heard. They are also seeking a 6-month extension of their variance. Any questions from the board? If there are no questions, entertain a motion.

Member Vathally: I make a motion to approve the variance extension for 71 Jaffarian Road, for 6 months...2nd by Member Brown

Member Vathally: Yes
Member Brown: Yes
Member LaPlume: Yes
Member Bevilacqua: Yes
Chairman: Yes
***Granted 5-0**

Judy Luff for 25 Marble Lane (Map 775, Block 791, Lot 25)

The Applicant seeks a special permit to operate a foster-based animal rescue (kennel) in a RR and RS zone. BOA-21-55

Chairman Moriarty: This applicant requests a continuance to the next meeting. Any questions from the board? If not I will entertain a motion.

Member Vathally: I make a motion to continuance the application for 25 Marble Lane to the February 2022 Board of Appeals meeting...2nd by Member Brown

Member Vathally: Yes
Member Brown: Yes
Member LaPlume: Yes
Member Bevilacqua: Yes
Chairman: Yes
***Granted 5-0**



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John Pettis for 15 Cedarcrest Lane (Map 761, Block 793, Lot 32)

Applicant seeks renewal of special permit for accessory apartment in a RS zone that was originally granted September 21, 2005. BOA-21-57

John Pettis (15 Cedarcrest Lane): In 2005 I was in front of the board for a variance for an accessory apartment, we were able to move my in-laws in with us at that time, that is an arrangement that has been there, and it is good for my family. Back in 2005 the approval was with a stipulation that I have to come back and renew, so I am here doing that and ask that you approve the accessory apartment.

Chairman: Thank you. Any questions from the board? Tom at this point we no longer have to require the 5 year.

Tom Bridgewater: Nope, once you have it you have it.

Chairman: Entertain a motion

Member Vathally: I make a motion to approve the special permit for 15 Cedarcrest Lane...2nd by Member Brown

Member Vathally: Yes sighting 255-10.4.2 in addition to 255-8.1

Member Brown: Yes

Member LaPlume: Yes, it meets all the criteria for an accessory apartment 255-8.1

Member Bevilacqua: Yes

Chairman: Yes

***Granted 5-0**

Bob Williams for 6 Nathaniel Street (Map 429, Block 14, Lot 406)

Applicant seeks a special permit for construction of an accessory apartment in a RM zone. BOA-21-51

Bob Williams (Star Construction Groveland): I am the owner/operator of Start Construction; we are here for a special permit for an accessory apartment in order to put in a kitchen for an in-law addition.

Chairman: Could you give us a little background on what the accessory apartment will look like.

Bob Williams: Basically, we are putting an 18x22 addition on the back, replacing what was a 22x8 addition, we took that down and put then putting a new one up, that will hold a bedroom area, living room and a kitchen, and then we are utilizing an existing room off the house and making that the bathroom and laundry area.

Chairman: I know you have already gone over this with the building inspector but the 6 stipulations that are part of an accessory apartment you are aware of them all and you have gone over them with the building commissioner? And you request complies with all 6 of them.

Bob Williams: Yes, as far as I know.



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Chairman: Great. Questions from the board? Is there anyone who would like to speak in support or opposition? Entertain a motion

Member Vathally: I make a motion to approve the special permit for 6 Nathaniel Street...2nd by Member Brown

Member Vathally: Yes it meets the criteria for 255-10.4.2 in addition to 255-8.1

Member Brown: Yes

Member LaPlume: Yes, it meets all the criteria for an accessory apartment 255-8.1 and 255-10.4.2

Member Bevilacqua: Yes

Chairman: Yes confirming that it meets the 6 stipulations that are required for an accessory apartment and conforms with 255-10.4.2

***Granted 5-0**

Erin Long for 100 Talmuth Avenue (Map 635, Block 5, Lot 21)

Applicant seeks a special permit to convert existing attached garage into an accessory apartment in a RM zone. BOA-21-54

Erin Long (100 Talmuth Ave): My request is for an accessory apartment in an existing garage that we don't use, its about 400 square feet, it will be a studio apartment with a bathroom and a wet bar. It meets all 6 of the stipulations of an accessory apartment.

Chairman: Thank you. Questions from the board? Ok, entertain a motion.

Member Vathally: I make a motion to approve the special permit for 100 Talmuth Avenue...2nd by Member Brown

Member Vathally: Yes it meets the criteria for 255-10.4.2 in addition to 255-8.1

Member Brown: Yes

Member LaPlume: Yes, it meets all the criteria for an accessory apartment 255-8.1 and 255-10.4.2

Member Bevilacqua: Yes

Chairman: Yes confirming that it meets the 6 stipulations that are required for an accessory apartment and conforms with 255-10.4.2

***Granted 5-0**

Carolina Fischer for 4 Maple Avenue (Map 203, Block 34, Lot 12)

Applicant seeks a special permit to operate a family home day care (large) for up to 10 children in a RU zone. BOA-21-50

Carolina Fischer (4 Maple Avenue): Basically, I hold a license from the state of Massachusetts to do childcare in a home and my license is for 10 children. I moved here about 6 months ago and went for a business certificate for that, which brought me to the permit department, and they looked up the rules and said they could not allow me to take care of up to 10 children but only up to 6, the next step was to come here and explain to you guys. I am actually licensed from the state



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of Massachusetts, I have been doing this for over 20 years and the area of the house where I do daycare is 1,800 square feet, which is 2 or 3 times more than what I used to have, which that was not impairment before.

Chairman: Questions from the board?

Member Vathally: I have a question for the commissioner. Tom is there a parking stipulation here with the increase.

Building commissioner Tom Bridgewater: No there is no parking in the zoning because it is all drop off.

Member Vathally: So there is no cars parked at your establishment during the day?

Carolina Fischer: No sir, it is only pickup and drop off.

Member Vathally: Thank you.

Chairman: Any other questions from the board? Does anyone else want to speak either in favor or against? Entertain a motion.

Member Vathally: I make a motion to approve the special permit for 4 Maple Avenue...2nd by Member Brown

Member Vathally: Yes it meets the criteria for 255-10.4.2

Member Brown: Yes

Member LaPlume: Yes, it meets all the criteria for a special permit 255-10.4.2

Member Bevilacqua: Yes, it meets all the criteria for a special permit 255-10.4.2

Chairman: Yes. I acknowledge that you are supporting a certain need in the community, which is important and as mentioned by member Vathally, the issues about parking and traffic are taken care of. Thank you very much.

***Granted 5-0**

Jairo Rodriguez for 216 Winter Street (Map 304, Block 61, Lot 12)

Applicant seeks a special permit for open (outside) storage of granite slabs in a BG zone. BOA-21-56

Jairo Rodriguez (216 Winter Street): I am here with my partner Mr. Flores. We opened a business about 2 months ago and we are looking for a special permit to be able to store slats outside the building. We are here to see if you guys could give us a chance to be able to put a fence and any requirements that you guys need to be able to grow our business.

Chairman: Your place of business is right on Winter

Jairo: The old glass business, in front of Dunkin donuts. We are planning to put a fence far away from the street back all the way on the right corner, far from the street.

Chairman: How big is the area, you are going to be storing stuff?



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Jairo: 15x20, it is not super big.

Chairman: Thank you. Questions from the board?

Member Brown: You are going to be storing granite?

Jairo: Yes granite, big slabs. We are planning to put a fence 6 feet high, nice and safe. I know that location is kind of open in the city, we plan to keep it nice and clean for the City of Haverhill.

Member Brown: And secure them for you.

Jairo: Yes secure them, because there is a lot of money there.

Member Vathally: What type of fence are you putting?

Jairo: A chain link fence with screening.

Chairman: Other questions from the board? I went up there the other day and looked around at the place, it looks like what you are proposing is a good idea. No other questions I will entertain a motion

Member Vathally: I make a motion to approve the special permit for 216 Winter Street...2nd by Member Brown

Member Vathally: Yes it meets the criteria for 255-10.4.2

Member Brown: Yes meets the criteria for 255-10.4.2

Member LaPlume: Yes, it meets all the criteria for a special permit 255-10.4.2

Member Bevilacqua: Yes, it meets all the criteria for a special permit 255-10.4.2

Chairman: Yes. I wish you well with your business.

***Granted 5-0**

James Yartz for 45 Greenough Street (Map 549, Block 1, Lot 36)

Prior to filing for a Special Permit for Multifamily Dwelling with City Council, Applicant seeks dimensional variance for lot area of 8,963 sf where 11,700 sf is required and lot depth of 87.07 ft where 100 ft is required to construct a new third unit onto the left side of existing two-family dwelling to create a three-family dwelling in a RH zone. BOA-21-52

James Yartz (The builder): I have the owner James Young here with me. Some background on it, it presently is a 2-family, he lives in one of the units, its owner occupied and what he is looking to do is put a third unit on the end, townhouse style, so he will have a nicer apartment and it will help him towards the mortgage with having 2 units to help pay towards the building. In the process of doing it, it will upgrade and have off street parking for everything. Right now it has 4 parking spots and there is 5 bedrooms there, now it will be 8 bedrooms but it will have 8 parking spots off of the street. It is a corner lot so where he is putting the unit is not infringing on anybody, it has a good setback. The area has at



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least 2 dozen 3-families right around there. Mainly he wants a nicer apartment, and he wants to make a little more income from it, and the city makes out as it is better taxes.

Chairman: Questions from the board?

Member Vathally: Describe the parking a little bit to me there 2700 in square feet in area that you are asking for, so tell me about the parking around that corner.

James Yarat: Right now, if you are looking at the plan on the right side is 4 parking spots, there are two units that are up and down. He wants to put a townhouse on the left side of the building and in front of that he is going to put another parking spot off of Greenough that has four more parking spots, it is not off of Sherman, you don't want the parking to come off of Sherman, he wants it to come off of Greenough to be the same facing the front of the building, that is where the present building faces out on to. The units right now are 43 and 45. There will be another identical parking driveway the is the same as the other but located over to the left.

Member Vathally: Could you briefly touch on the criteria for this variance. Criteria wise why should his be approved.

James Yarat: Presently the lot is I believe 8,963 square feet, it is in a residential high density, 11,700 is required, our lot depth is 87.07 feet where 100 feet is required. Again, one is a corner, so it is not going towards anyone on that, and on the back, we are not going back any further than where the present building is, it is just an extension straight out onto it. There are other lots in that area that are smaller with buildings on it, they have been around a while but this kind of fits in the area.

Member Vathally: There is also a lot of single families in that area.

James Yarat: Further up on the other street, not on his street, there are 2-familys and 3-familys in the area where he is and as you go down Hilldale there is a bunch of 3-familys

Member Vathally: Could you describe for me under 255 the applicant's hardship involved here.

James Yarat: Expanding the size of the building will help him pay for the building. Right now, he has one unit he is occupying, and he is only collecting rent from one, by collecting rent from 2 it will lower his mortgage and make it easier on him, it makes it more livable for him.

Member Vathally: So, he plans to live in one of the units.

James Yarat: Yes, he plans to live in the new unit. It is not to make a 2-family to rent out to everybody, it is going to be owner occupied. He is just looking to make a better unit for himself and to help him lower his mortgage cost.

Member Vathally: How long has the applicant lived there?

James Young: Since 2016



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Member Vathally: Purchased as a 2-family?

James Young: Yes

Chairman: Other questions from the board?

Member Brown: When I am looking at your house, the house to the right is not a single-family home?

James Young: All the houses on the street are 2-familys

James Yarat: There are no single-family homes there, you'd have to go over a couple more streets. They are up on Pilgrim; I know there are some single-families and 2-families up there. On Greenough there are just 2-familys and then on the side streets there are some that have attic apartments, there are 2 & 3 families. It is more of a congested area.

Member Brown: Ok thank you, that's it.

Chairman: This backs up to Willy Street extension, does it? Right behind you, is Willy Street, I think.

James Yarat: Willy Street is a street over yes.

Chairman: Other questions from the board?

Member Vathally: What is you plan for the back yard there, I notice all the fences are down, are you planning to put a buffer behind the building?

James Young: I would like to replace the fence, once I get the house going, I want to replace that whole fence. I know what you mean, and I want to re-due the side. That is my goal to replace the whole fence once the project gets going.

Member Vathally: So, where the parking is going to go in that corner, is there going to be a buffer around that corner there?

James Yarat: Yes, the fence will be going there, the driveway will only be accessible from Greenough, the driveway will kind of be where the building ends now and extend in front of the new unit. He is going to fence Sherman and all that ack off again.

Chairman: Other comments or questions? Would anyone in the audience like to speak?

Andrew Roberts: I am here with my wife Michelle, we liv on Gerson Way which our back yard looks right down Greenough. The only reason we are here, we are not opposed to it at all, I think if he increases his value, it helps mine, so it is not that. Actually, all of our concerns were kind of answered because we hadn't seen the plan. We were concerned with parking, it is a very tight corner the garbage trucks, the delivery vehicles, school busses, fire trucks, they have trouble navigating that and there are a lot of students that walk from the high school and cut through those streets to get down to Hilldale, so that



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was our only concern and if that is addressed where it is off street parking. We just we didn't want to see someone get hurt. Thank is it, not opposed at all, actually we would be grateful to have our property increase from this.

Chairman: Thank you very much, I Appreciate you coming here tonight. Any other comments or questions from the board? Entertain a motion.

Tom Bridgewater: So if you guys approve this, this has to go to City Council, so this is just step one.

Member Vathally: I make a motion to approve the special permit for 45 Greenough Street...2nd by Member Brown

Member Vathally: Yes, it meets the criteria for 255-10.2.2(2)

Member Brown: Yes, it meets the zoning criteria for 255—10.2.2(2)

Member LaPlume: Yes, it meets all the criteria for a variance 255-10.4.2

Member Bevilacqua: Yes, it meets all the criteria for the variance 255-10.2.2(2)

Chairman: Yes. Sighted by the same as my colleges have stated across the board.

***Granted 5-0**

Bradford Unlimited Corp. for 815 Hilldale Avenue (Map 585, Block 430, Lot 1A)

Applicant seeks dimensional variances to create two new building lots and construct two new single-family dwellings in a RM zone. Requested variances for new Lot 69 include lot area (14,919 sf where 20,000 sf is required) and lot frontage (111 ft where 150 ft is required). Requested variances for new Lot 71 include lot area (14,245 sf where 20,000 sf is required) and lot frontage (111 ft where 150 ft is required). BOA-21-35

Attorney Russell Channen: I am here tonight on behalf of Bradford Unlimited Corp along with the Mazlowski's concerning the application for a variance, concerning the property that is listed at 8:15 Hilldale Avenue. If I could, a little out of turn there is an individual here Maricruz Laura, who is in favor of this application who has to pick her son up at Central shortly and with the board's permission could I have her speak out of turn and allow her up here.

Chairman: Sure absolutely.

Maricruz Laura (239 Rosemont): My yard is in front of the property that they want to build on, I am in favor of Bradford Unlimited. Just a little background, where my house is, where my back yard it, the water, they built a house a few years ago and their water comes right into my backyard, right into my pool. And Mr. Defeo offered to help and basically repair the road, because the water is coming into the pool and into the yard. I am hoping that you all approve the variance for those reasons and that is about it, I have to get to Central, but if you have any questions.

Chairman: Any questions from the board? Ok, we want to than you obviously you are on a time frame here and the fact that you took the time to come here speaks volume. Thank you.

Attorney Russell Channen (25 Kenoza Avenue): we are here for a variance for the building of two homes on 2 lots listed as Hilldale Avenue. Now this is property that has been in Mazlowski family for years. Was were back here in August initially for the original application and I believe there is some confusion with possibly some of the neighbors because the



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application is listed as 815 Hilldale Avenue and that is part of the Mazlowski land which actually sits on Hilldale Avenue, what I want the members of the board as well as anyone here at the hearing tonight to understand that the 2 lots if the board was to approve the application that the 2 homes would be built on Oliver Street and again Hilldale Avenue is just there for the accessors purpose and that is the only reason why it is listed. Also, I believe there is some confusion that some think Mr. Defeo is looking to put in a subdivision there and build 6 homes and again what I would tell the board is that this is an application to put up two homes on two lots, on the Oliver Street side of this property. Neither Mr. Defeo from Bradford Unlimited or the Mazlowski's are looking to subdivide any further land or to allow for any subdivision in that field. Again, to go over the history back in August when we submitted our original application, we asked for a variance for 2 lots where there would be a right of way between both properties, the application at that time requested a frontage variance of 86 feet where 150 is required and the lot area was basically 11,500 for both lots. We continued that meeting because there was opposition and my client wanted to meet with the individuals that had issues. Subsequent to that meeting and based upon his understanding of the abutters concerns, we were able to put together a new plan that we have submitted to the board. This plan shows that the right of way has been discontinued and in fact the entire frontage area would now be used as part of the development, in fact the new plan shows an increase of frontage of roughly 86 feet to 111 feet for each property and the lot sizes for both properties has also increased significantly, the lot sizes have increased from roughly 11,500 sf from now one lot being 14,919 sf and the other lot being 14,245 sf. Again, important to note the entire frontage would be used as part of the development. Now I remember back when we were here in August Member Bevilacqua had made a point and that point being you can just take the lot and just build on and you wouldn't even need a variance because there is enough frontage and there is enough area to just request a building permit, why go forward with this request for 2 lots and the need for the variances and one of the reasons for it and I think that could be evidence by the letter that you may have received from the city engineer John Pettis. One of the things that again Ms. Cruz gave, and I think Mr. Stein is here as well, would indicate that this road for Oliver Street if anyone has been out there, is in need of direr repairs, there is water issues there is drainage issues, it crests and one of the things that my client has worked diligently and hard doing is speaking to the neighbors as well as the engineer and has committed to using funds and his resources to assist in the repairing to alleviate the drainage problem for a lot of the neighbors in the area. So one of the things on the variance request is you have to show a substantial hardship and it talks about financial or otherwise and what I would suggest to the board is and again each variance request stands on its own and in this situation where to do this project, to have to insure the expenses to repair the road and to do all those things to basically alleviate the water problems that sort have started because of a prior home that was built at 64 Oliver Street based upon a variance that was approved by this board, is going to cost my client a substantial amount of funds, so the question is does it make sense or should he in fact do that work when he can only build one house on that property. Again, I would suggest that my client Mr. DeFeo has built homes in Haverhill, has done a lot of work here in Haverhill, but it is still a business, and it has to also make financial sense, and so from that standpoint o commit those funds to benefit the neighbors, it makes sense to be able to at least allow for 2 lots to be built on that property site. I know that Member Vathally has also mentioned that again each case stands on its own, last time I had mentioned that there was some persistent from some prior variances that were approved, for purposes of tonight what I would like the board to know and I think we presented Jill with a plan and what we did that for was to just show that not only were there previous variances granted for the neighboring property 64 Oliver Street as well as 20 Hazel Street that I have identified in my brief, but if you look at those lots in the highlighted section, there are a lot of homes in that area that are again basically undersized as well,, so allowing for this variance to build 2 homes on that lot on the property, would not be inconsistent or would not deviate from the character of the neighborhood. So, we wanted the board to at least see the homes in the area and see that these homes if allowed, would



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fit in nicely to the neighborhood. We all know the work that Mr. Defeo does, again he has built a hoe at 20 Hazel Street, and I have plans that I could show to the board if you'd like that show the type of homes that he would build.

Chairman: We have them, Jill provided them.

Attorney Russell Channen: Oh good. If you have any questions at this point, but again we believe that under these circumstances because of the need to repair the road, because of the various factors involved, because of the financial hardship that would be involved that the criteria for or allow the variance under the circumstances has been met and again we all know the Mayors task force is again to try to find housing in the city, the standard suggestions again that this is going to create additional housing, tax revenue for the city, I think that is an important factor as well, for those reasons we would ask the board to approve the variance and I will reserve my right to respond to any potential opposition.

Chairman: Thank you very much. I just want to make a comment that the thing about setting precedent, we try not to be setting precedents, we are not the supreme court so we try to look at every application separate, they may on the surface look the same and we granted a variance, and it looks on the surface to be the same but usually through discussion and comments we do find differences so I would say that aside

Attorney Russell Channen: That is why I wanted to edit what I said the first time back in August that again I am not suggesting that what happened before sets a precedent but that again a lot of the homes in the area are consistent with what would be built.

Chairman: I just also want to acknowledge that we have received the letter from Ken & Patty Stein supporting this. I know you had questions previously about this, they have talked about it and had some good conversations with Steve and resolved a lot of the issues that they had concerned to you. We also have to put on file an email from the city engineer John Pettis talking about what you mentioned about the commitment to provide work within the city and other things like that, so that we can get some improvements in there, so those are important extra things, obviously it helps us out a lot to understand those kinds of things. Questions from the board?

Member Vathally: Attorney just a couple of questions. What exactly are we doing to Oliver Street if this passes this evening, what are the plans, because I know that street is tight and one of the commitments that Mr. Defeo has is making relative to Oliver Street and the general area before I get into the area?

Steve Defeo (Bradford Unlimited Corp): What I am going to do is on the opposite side of Oliver Street I am going to do a Cape Cod berm and that will prevent any water from going down to Maricruz's yard into the Steins yard and then a couple other yards around the corner an instead of a granite berm it is a Cape Cod, it is made out of hot top, it will make the water run to Rosemont and down to Hazel. Mr. Steins driveway when they repaved it, they didn't put a big enough berm, so if you drove by and looked at it if you get any type of heavy rain it will go right down his driveway, so I am going to cut that back about 3 or 4 feet and try to math in the berm that I make with the hot top curbing to keep the water rung right down the street. Then where the 2 houses are proposed to be built, we are going to clear the trees back to the right of way, this is with the help of John Pettis and the highway department have some extra funds for roadwork, we are going to remove those trees, we are going to widen the road in that area because right now the street tips to Mr. Steins house, the whole road if you drove up there. What we are going to do is help by widening the road by putting a belly in the road, so now



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some of the water will go on the left side and around, so not all of the water will go to Mr. Steins side, so we actually are going to have the road have a little belly in it. So we will widen the road, I wouldn't say twice as wide but quit a bit wider.

Chairman: Great thank you

Member Vathally: When facing the property is there going to be any buffer area to the left and to the right? Along the fence trees shrubs

Mr. Defeo: I an open to suggestions. I told the neighbors on the left, I told Kathy Shribny if she wants some trees, I am always open to doing that stuff, I will put it right on the plan.

Chairman: Great thank you, I also want to thank you for posting it around there so when we drove up there, we were able to see where the property was, a lot of times we go to a piece of property and its hard to fine where it is. You did a good job of marking it and laying it out. Member Vathally and I have both gone up there and looked for it, that helps us out a lot when we are trying to look for it. Initially just my quick opinion I was skeptical about this, as initially I started out as basically half the area and half of the frontage which is an awful lot, but the increase of the right of way adds to that and bases and also the work that you are proposing on the street, and again having driven up there and seeing the condition of the street it really helps put and I think adds a tremendous amount, so I was skeptical in the beginning and feeling much better about it in this point and time. Any questions from the rest of the board?

Member Brown: I just want to say that I was really glad to hear about the frontage and that right of way, it helps a lot.

Attorney Russell Channen: We took as much as we can, now.

Member Brown: Right

Chairman: Are there any members of the audience that would like to speak?

Kenneth Stein 67 Oliver Street): My home will be directly across from one of the two houses that are planning for building. Just want to get a little background, Maricruz had mentioned water running into her yard from the new house that was put up and the new plan would address some of that, I sure hope it will. When we got serious rainstorms, I latterly have mud flowing into my garage, that rolls off of that new home's property. They raised that house up 6 feet higher than the original roadway was. To back up further about 12-15years ago, long before that house I came home from work and the graders were coming down the street ripping up the road. That entire road was slanted right towards my property at that time, and I was after the city to do something about it, nothing happened initially, it took rain, and my basement has flooded several back then. Finally, they came through and they put up Cap Cod curb, which is there now in front of my property, which was wonderful, and it solved most of my problems except for heavy rain. In any case building the new house and made the waterflow even worse and that is what is happening right now, a lot of water run off and the road is at a poor angle towards our home, and it is just not handling waterflow and drainage. A new drain was installed, that was tied into the Rosemount water runoff the sewer down there, so that is helpful unfortunately with the heavy rains it's still comes over the berm as Steve has mentioned that the berm was not built up high enough to handle it and that berm only starts at my property, all the way across Maricruz's yard there is nothing there, the dirt and water just flows right into their yard. Now



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beyond that, I am somewhat of a minority in my neighborhood, my neighbors have been all over me about supporting this project. Down on the corner of Hazel and down that street, they do not want any new development, but they are lifelong residents, and they don't want development they want quiet in the neighborhood, I am not totally with them on that, I think development needs to be done. I might have joined them if it wasn't for the fact that this gentleman's project will improve our road. I am the only one that will benefit from that improvement at this point and time, myself and Maricruz. But I do approve of the project, Steve has been working with me and talking to me and promising a lot of things, John Pettis as well, so I am hoping that the road gets squared away.

Chairman: Thank you very much. Thank you for providing the letter/email. Other comments or questions?

Member LaPlume: Mr. Chairman Steve Defeo stated that they were going to put a belly in the road, just to clarify that he is going to reestablish a crown in the road, so that is the proper wording, and I didn't want anybody to get confused on that.

Chairman: Great, if anyone didn't hear that, Ron was saying that the proper terminology would be a crown for the road. Thank you. Anyone else wish to speak?

Tim Rosedel (822 Hilldale Ave): My concerns, in my previous like I was a builder, so I understand the process here. In applying and looking for a variance, you have to prove hardship beyond financial considerations. The only thing I have heard tonight is for financial considerations which he is asking the city to participate in, so that doesn't make any sense to me. One on the frontage I don't understand why he needs the variance on the frontage, two the lot size, there is capable property there to have sufficient lot size, so why is he asking for a variance on lot size, why doesn't he just get a bigger lot to have a lot that is adequate to that zone 20,000 feet, so I don't understand that. And if I can continue further with what I heard here tonight was on the drainage issues, without having a submitted plan to see what they are doing, he is asking you in good faith that this cap code berm is going to work, I know from previous experience that they don't work and they don't last. It is something that your city engineer should look at and should have to have it approved.

Chairman: The city engineer was part of the process, and he has been looking at it and will continue to look at it and provide guidance on all of this.

Tim Rosedel: But in terms of the hardship issue, I haven't heard anything with hardship.

Chairman: The attorney can address that.

Attorney Russell Channen: Again, quickly if you look at general laws chapter 40A section 10, one of the requirements is you have to show a literal enforcement of the provisions of the ordinance or bylaws would cause substantial hardship financial or otherwise. Now I have been in front of the board where someone talks about, they want to subdivide their land and sell it for financial gain, I think we can all agreed upon that, that is not substantial hardship, that is why I tried to indicate the financial hardship is the hardship as far as the costs are involved to do this additional work. If in fact there was no roadwork or no repairs that needed to be done, then I probably would not agree with my client and I would agree with this individual, but that is why we try to explain to you, the cost that my client will incur as far as trying to alleviate the water problems, that to have him do all that work and to build just one home up in that area does not make financial sense, is an economic hardship and that is why under these circumstances we would believe that allowing the variance for the 2 lots,



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which would then allow this additional work to be done to alleviate the water problems to help clear up road is an appropriate use of the variance statute.

Chairman: Thank you. Anyone else that wants to speak? Any other comments or questions from the board?

Member Vathally: Lets stay on that topic here. Is there any issues with topography up in that area or is it fairly kind of a square lot, is there a topography issue up there to deal with hardship or is it or is it basically what the attorney is saying is all financial based on these other improvements? Do you get what I am saying alluding to what this gentleman is saying? Other than the financial improvements, is there anything with the property?

Attorney Russell Channen: I do

Member Vathally: is there anything with the property topography or otherwise that would justify a hardship?

Chairman: One of the other things the board is required to look at is size, shape, topography and is there an issue there that suggests we need to take a look at this.

Attorney Russell Channen: Ultimately, I can tell you again, under normal circumstances, again a home could be put on that property site. There really isn't a topography issue with the property. Again, what I would tell you is the frontage is right now approximately 2241 feet is enough to allow for a single-family home to be put on that site, yes, there would unfortunately be unused frontage and again from that standpoint we believe that the best use for it would be to allow for the 2 lots to be granted and to allow the work to be performed. Again, this isn't a situation you seen a porkchop size lot, the property can only be fit into this certain area because of the way it is shaped in the back, it is an open field, so there isn't a topography issue.

Member Vathally: So, your initial application is for, well in tis application here you have increased the total area for more land, more total area that the seller is giving you, correct?

Attorney Russell Channen: That is correct, we have gone from roughly 11,000 to roughly 14,900. Again, if there was more frontage, we would have taken all that we could have to do this. But again, it is like coarsening with repairing the road. If in fact the road did not need to be repaired, one lot probably would have been sufficient but again in this situation when you look at the entire project as a whole and again it does refer to substantial hardships financial or otherwise.

Steve Defeo (Bradford Unlimited): I have to extend the sewer over 200 feet from the top of Hazel, over to Mr. Steins property, so that is quit an expense, with a couple manholes, there is no sewer in front of these houses, there is a manhole on the top of Hazel, so I have to extend the sewer, I am incurring all of the costs for that.

Chairman: And that allows Mr. Stein to tap into the sewer

Steve Defeo: Yes. That is more cost that I didn't mention earlier.

Member Bevilacqua: Mr. Defeo could you address the neighbors concern that, that remedy would not last.



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Steve Defeo: Yes, I respect him as a builder ok, but every situation is different and I really care what I do, and I am going to make sure that this works, with the crown in the road, the crown in the road is going to take half the water away from him, so you are not going to get all the water on the street going into the cap cod berm now you are only going to get half. I will make sure his driveway is high enough, it is going to be higher than it should be and I will make sure that berm is done right, we could back it up with some gravel too and then loom, I am on the job you guys know I care what I do. This gentleman is not used to me, my boys are both going to school for this, it means a lot to me, reputation is everything.

Member Vathally: For the commissioner Tom if we approve this does fire & safety have to approve this

Tom Bridgewater: Absolutely, it will have to go through developmental review and that is when the fire department will get involved and whether they will need to have to sprinkle the houses and what not.

Steve Defeo: I have to sprinkle because I am asking for a variance. Whenever you ask for relief, you have to sprinkle the new homes.

Member Vathally: And they'll consider the roads for turns too

Steve Defeo: All that

Tom Bridgewater: They will be totally involved in that.

Chairman: Again, John Pettis the city engineer will continue to be involved in the whole process.

Mr. Stein: The Cap Cod berm curbing there is a risk factor on that when it comes to snowplows, I have seen some of them knocked out. I mark my curbs all the way up the street with reflectors in the winter, so that is important.

Chairman: Great. Mr. Defeo will look at the Cape Cod berm again and take another look at it to see if there's a better option.

Member Bevilacqua: This question would probably be for Attorney Channen. The neighbors other concern was that we wouldn't even have to be here because the seller has enough land to give you 2 20,000 square foot lots.

Attorney Russell Channen: No, I think I mentioned at the original hearing, there is not enough. We are not buying the field. But we would still be here for a variance for the frontage. And again, we wanted to make sure because there were some concerns from people on Hilldale Avenue as far as where these houses were going to be built and what it would do to any of the individuals who own homes on Hilldale. We wanted to make sure that the homes were situated on Oliver and would not affect the view or the backyards for the homes on Hilldale Avenue and we felt that a appropriate line to use as far as where the back of the lot line would be, we didn't want to go so far back into the field, that would hurt the properties and the homeowners on Hilldale Avenue. Whether or not we could go back to get 20,000 square feet for each lot we would still have to be here for a frontage variance. We were basically trying to reconcile the need to try and get as much land as possible, without basically developing the property in some ones back yard.



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Member Bevilacqua: Right, I did think that you would still need that frontage. Driving down there 5 times, I would think you would still need the frontage even if you had the land going back.

Attorney Russell Channen: Correct and the only way to get more land would be to go further back, which would create problems for the people on Hilldale, so we thought that this would be a nice compromise.

Member Bevilacqua: As far as you know, we are not going to be back here in a year looking to build a third house.

Attorney Russell Channen: That could be a fact, if the board was to approve this, that could be part of a stipulation, that could be put on a record.

Tim Rosedel (822 Hilldale Ave): ""Speaking in the background, not at the podium, I can not hear him to put him on record"" Per Jill Board Secretary

Attorney Russell Channen: I agree with you, what I am trying to explain to the board, at least our position is, there are people that live on Hilldale and what we are trying to do is we don't want to go so far back so hopefully when these homes are built closer to Oliver Street.

Chairman: To the gentleman in the audience, we can't have the going back and forth, we can't record what you are saying. We get the idea. Any other comments or questions? Entertain a motion

Member Vathally: I make a motion to approve the variance for 815 Hilldale Avenue...2nd by Member Brown

Member Vathally: Yes, it meets the criteria for 255-10.2.2(2)

Member Brown: Yes, sighting 255—10.2.2(2)

Member LaPlume: Yes, it meets all the criteria for a variance 255-10.4.2 because of the unique conditions of a financial hardship and lot size.

Member Bevilacqua: I have been with this for a few months now and I have to say that I was still not certain, I was still so unsure coming here this evening, but as usual Attorney Channen was meticulously prepared and I have to say that he combined with Mr. Defeo's supportive information has made me, I will vote Yes sighting 255-10.2.2(2)

Chairman: Yes, also sighting 255-10.2.2(2) and also as Member LaPlume mentioned a substantial hardship given all the extra work the applicant will be doing on Oliver Street in conjunction with the city and the unique conditions there with the road and the runoff is such a problem in that particular area, so the application is granted.

***Granted 5-0**

Minutes: Motion made by Member Vathally; I accept the meeting minutes from December 15 2nd by Member LaPlume

Member Vathally: Yes

Member Brown: Yes



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Member LaPlume: Yes

Member Matias: Yes

Chairman George Moriarty: Yes

Approved 5-0