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Chester Zoning Board of Adjustment

Approved Minutes of May 15, 2018

Members Present:

Chair Billie Maloney
Vice Chair Kevin Scott
Adam Maciaszczyk
Courtney Cashman

Absent:

Jean Methot, Alternate
Richard Snyder, Alternate
Matt Gelinas, Alternate

Guests:

Jack Cannon
Erika DeBeckers
Kevin White
Travis Clay
Rose Vallee
Peter Dembitzky
Jonathan Farr
Mike Oleson, Road Agent
Robert Latham
Robert Manfrate
Nancy Hoffman
Kellie Doherty
Staci Frazier
Douglas & Paula Potter
Terry Akashian
Annette Kurman
And other persons unknown to the minute taker

Agenda

1. **Call to Order/Roll Call**
2. **Spring Seminar**
3. **Members**
4. **Approval of Minutes – April 17, 2018**
5. **Public Hearings**

- a. Jonathan Farr, Edsel Barred Properties, LLC for a variance from Article 5, Section 5.4, Subsection 5.4.4 (Table 1) to permit the construction of a

26'x190' parking island with (17) 9'x20' stalls and (1) 8'x20' handicap stall with required 8'x20' loading zone 0' from the Shaker Heights Road property line and 30' from the Raymond Road (front) property line where 75' is required; and to construct a 42'x120' mixed-use building at this location 55' from the Raymond Road (front) pre-existing property line where 75' is required on the property known as Map/Lot 009-063-000, located at 680 Raymond Road

b. Rose Vallee for Peter Dembitzky for a variance from Article 5, Section 2 and Article 5, Section 5.3.5 Table 2 to permit the construction of a hay storage building within 75' of a man-made pond which is defined as wetlands by NH RSA 485-A:2, XIV on the property known as Map/Lot 009-092-003 located at 560 Fremont Road

c. Erika DeBeckers doing business as ARK Animal Homecare, PLLC for a variance from Article 5, Section 5.3.5 Table 1 to permit paving of the 65'x124' parking area and creation of an 18' driveway setback 20' from the front property line where 40' is required on the property known as Map/Lot 009-037-001 located at 112 Towle Road

d. Travis Clay for a variance from Article 4, Section 4.2.1 expansion of a prior non-conforming use, to permit the construction of a second driveway on the right side of a lot. The lot is 1.19 acres where 2 acres is required. Dwelling is within front setback where 40' is required, on the property known as Map/Lot 005-063 located at 21 Donna Street

1 Call to Order/Roll Call

Chair Maloney called the meeting to order at 7:05 pm. By roll call were present: Chair Billie Maloney, Vice Chair Kevin Scott, Courtney Cashman and Adam Maciaszczyk, all being regular members of the Board.

Vice Chair Scott advised those who were present for the Public Hearing that there were four of the five regular members present for this hearing to vote on the applications, and as the odds increased, they had the option to continue their hearing until the next monthly meeting, however not guaranteeing there would be a better attendance. Vice Chair Scott asked if anyone would like to have their hearings continued and there being none, read the 30-Day Appeal Notice and advised that any party who objected to the decision could file for a rehearing and proceeding with construction would be at their own risk during this time period.

2. Spring Seminar

Vice Chair Scott stated that the seminar had been well attended and that two members, himself, and Mr. Maciaszczyk and in-coming member, Mr. Cannon as well as the administrative assistant had gone to the seminar. Chair Maloney added at the close of the hearing that the training session recommended to be consistent with voting and deliberations. As with tonight's hearing, to have each member go over each of the five points.

3. Minutes – April 17, 2018

Mr. Scott motioned to accept the minutes of April 17, 2018 as written. Mr. Maciaszczyk seconded his motion, with all in favor, so moved.

4. Public Hearings

Vice Chair Maloney advised that as the Road Agent, Mike Oleson was here to speak on two of the applications, she would like to change the order so that those can go first.

- a. Erika DeBeckers doing business as ARK Animal Homecare, PLLC for a variance from Article 5, Section 5.3.5 Table 1 to permit paving of the 65'x124' parking area and creation of a 18' driveway setback 20' from the front property line where 40' is required on the property known as Map/Lot 009-037-001 located at 112 Towle Road

Mrs. Debeckers indicated that she was waiting for Mr. White, who appeared shortly thereafter, as she was told she would be going third.

Vice Chair Scott read the Public Notice portion that pertained to Mrs. DeBeckers application into the record.

Chair Maloney summarized the application for variances to pave the parking area and have an 18' driveway entrance.

Vice Chair Scott stated that the difference between this application and the application Mrs. DeBeckers had come in for in March, reading that decision out loud, was that the paving wasn't mentioned and is within the front setback, reading the Building Inspector's denial letter.

The March variance was conditioned upon the approval of the Road Agent. Mr. Oleson stated that he was satisfied and approved the driveway design.

Mr. White spoke to Mr. Oleson's concerns regarding runoff and low spots and Mr. Oleson offered that this would improve upon conditions not only of the property itself, which tends to be muddy, but minimizing water, runoff and potential icing

126 across the road surface after heavy rains. Mr. Oleson testified that there used to
127 be a culvert that drained beneath the road, but it had been removed at some point.

128
129 Mrs. DeBeckers read her application verbatim into the record.

130
131 Chair Maloney asked about the arborvitae screening. Mr. White responded that it
132 would be that or a similar evergreen.

133
134 Chair Maloney asked if the number of vehicles would be 6-7 and Mrs. DeBeckers
135 responded that yes, it would be the same.

136
137 Chair Maloney asked if there were any questions from the public, and being none,
138 closed the hearing to the public at 7:25 pm for deliberations.

139
140 Chair Maloney stated that "This will provide off-street parking for the same area
141 which is muddy and dirty." "Because paving is now considered a structure it is in
142 the front setback." "The Road Agent has approved the plan, which was a condition
143 of the March variance." "The spirit, substantial justice has been observed and
144 there is no diminishing of values of surrounding property." "The hardship is the
145 driveway and parking area in the front setback, would agree to all five points."

146
147 Mr. Maciaszczyk questioned whether it would be subject to Site Plan Review from
148 the Planning Board.

149
150 Mr. Oleson stated that he was not an expert on runoff and did not know the
151 drainage on that, it may not be a problem. Vice Chair Scott asked if it could be
152 pitched back some and Mr. White thought that it could be. Chairman Oleson stated
153 that the old culvert may have to be put back at some time.

154
155 Mr. Maciaszczyk stated that he felt that granting the variance would not be contrary
156 to the public interest. "Based on the fact that it's a muddy pit right now, paving
157 would be good." "The spirit and substantial justice are observed." "This would
158 allow the business to continue to operate which provides an essential service to
159 the town." "It won't diminish the value of surrounding properties." "I can see the
160 hardship as the only other alternative is to park on the should and bang them up
161 pretty good." "I would vote yes on all five points to grant the variance."

162
163 Chair Maloney asked how many acres. Mrs. DeBeckers responded that there
164 were two.

165
166 Mrs. Cashman stated that she agreed with everything Mr. Maciaszczyk said. "The
167 parking is obviously an issue there." Rather have off-street." "Is safer, not muddy."
168 "The spirit is observed; parking and the business is wonderful for the community
169 so the substantial justice allows the continued practice." "The values will not be
170 diminished." "The parking will be screened and not be on the side." "The Road
171 Agent addressed the unnecessary hardship." "Yes, on all five."

Vice Chair Scott clarified that “if anyone is thinking of using her services, its not going to be a mud bog, it’s going to be a whole lot better.”

Chair Maloney advised Mrs. DeBeckers that if the business, being that its on a small, two-acre lot, is to grow in the future, she may want to move to a commercial zone. Mr. White advised that the septic allowed for growth to a certain point.

Chair Maloney motioned to grant a variance from Article 5, Section 5.3.5 (Table 1) to construct a 65’x124’ paved parking area with an 18’ wide entrance, per the plan shown to the Board, conditioned upon screening with the arborvitae trees shown on the plan be done, or similar, with approval of the Road Agent. Mr. Maciaszczyk seconded her motion, with all in favor, so moved.

Chair Maloney advised that they would receive a letter in the mail. Mrs. DeBeckers and Mr. White departed the meeting at 7:35 pm.

- b. Travis Clay for a variance from Article 4, Section 4.2.1 expansion of a prior non-conforming use, to permit the construction of a second driveway on the right side of a lot. The lot is 1.19 acres where 2 acres is required. Dwelling is within front setback where 40’ is required, on the property known as Map/Lot 005-063 located at 21 Donna Street

Vice Chair Scott read the Public Notice out loud. Chair Maloney explained the scope of the application which was for a second driveway within the 25’ setback requirement on a pre-existing non-conforming lot with a dwelling which is 1.19 acres where 2 are now required.

Mr. Clay read his application into the record verbatim.

Chair Maloney asked Mr. Clay what kind of secondary vehicles were parked on the premises. Mr. Clay answered that mainly his work vehicle which was a tractor-trailer that he brought home when it was empty. Chair Maloney asked Mr. Clay if he owned the vehicle. Mr. Clay answered that it was the company’s vehicle, primarily out of Newburyport, MA and he hauled for Stoneyfield Yogurt which was out of Londonderry, NH. Chair Maloney asked Mr. Clay why he wasn’t able to keep the vehicle at the company. Mr. Clay explained that his reasons were that you are allowed to drive only a logged allowable number of hours and parking at his home allowed him to shave off the drive time to and from the company.

Vice Chair Scott asked Mr. Clay what kind of trailer he had, was it a freight-box? Mr. Clay answered that it was a tanker and when weighed empty it was no heavier than most commercial vehicles, and as it was 70’ long, the weight was spread out much more so than with a dump or utility vehicle with a shorter length.

Vice Chair Scott asked Mr. Clay if the driveway construction had begun and Mr. Clay explained that he was unaware that he needed a permit from the Building Inspector.

Mr. Latham, of 31 Donna Street stated that he did not want it to become a truck stop, as their bedroom, dining room and kitchen were on that side and were going to get fumes and noise and the road is starting to break up and he is concerned that the roads are not constructed to handle that weight.

Vice Chair Scott asked Mr. Latham how close and he stated 60' plus or minus.

Mr. Manfrate of 30 Donna Street stated that he was concerned because "the law says 25' from the property line and so that's the way I'd like it to stay." "My neighbors are moving soon, I don't want this happening to me."

Chair Maloney clarified that Mr. Clay was not getting a variance because of 25.' "That's not why we're here." Chair Maloney clarified that Mr. Clay is looking to construct a second driveway on a lot that is 1.19 acres where 2 acres are now required which encroaches on the front setback, making the lot a non-conforming lot. "We're not going to ask him to move, the lot would still be non-conforming because of its size, he is expanding."

Mr. Maciaszczyk asked Mr. Clay how often he brought the vehicle back with him. Mr. Clay stated that he tries to be courteous, doesn't leave it running in the morning, starts for five minutes. "Federal guidelines allow 14 hours of driving and its easier to come home in the allotted time than sleep in the truck or drive from Newburyport."

Mrs. Hoffman of 22 Donna Street stated that she lives directly across the street and has no problems with this driveway and thinks it's a good idea. "Travis is the slowest driving person, often we leave at the same time, the truck is quiet and makes less noise than the UPS truck that comes flying in and it is an improvement over what's there."

Vice Chair Scott asked Mr. Clay what time he normally left, 6-7, not too early? Mr. Maciaszczyk added "You don't crank it up at 3 am?" Mr. Clay stated rarely. Vice Chair Scott asked Mrs. Hoffman if that was what she observed, and she stated "Yes" and added that trash pickup shows up between 3 am and 4, revving their engines and hydraulics and he is quieter than that.

Mrs. Doherty of 11 Donna Street stated that she lives on the other side of Mr. Latham and agreed that the trash truck wakes them up at 3 am and stated that they didn't even hear Mr. Clay leaving in the morning and he drives very slow, as he says, on the road.

Road Agent Mike Oleson stated that he went out and did some measurements of the apron and it measures 44.' "Bringing a tractor-trailer onto a road that is 22' wide, there is no way you can get it in and out without going off road." "The road is fragile, jacking the rear wheels will and is ripping up the pavement and everyday use is going to cause problems to the road surface which is already bad in that neighborhood with no money to fix it if it falls apart and gets worse than it already is."

Vice Chair Scott asked about a wider apron.

Road Agent Oleson explained that "You're into the mud already when you pull out in the morning." "I drive a truck and it's a tough spot to get into and you don't get in on one shot, most times."

Mr. Clay stated that he stopped and weighed the truck. Mr. Maciaszczyk read the bill which reported 34,980 lbs. empty. Mr. Clay added that most tandem dumps are 55,000-65,000 lbs. and do greater harm because they're shorter, their turning radius is shorter. Road Agent Oleson added that its not the weight, it's the dual end when you back up, the tires are tearing away at the asphalt.

Vice Chair Scott asked about making the new flare on the proposed driveway 44.'

Road Agent Oleson explained that it will not alleviate the truck backing and turning on the roadway.

Mr. Latham asked if you went from 44' from the 25' you would be in the drainage? Mr. Clay showed the plan. Vice Chair Scott suggested that with the 25' from the required setback out there, and only 44' flare, again, it would move that over onto the town right of way over 11' on each side.

Road Agent Oleson stated that it would still be chewing up the road.

Chair Maloney clarified for everyone that there was nothing in zoning that says you can't have a tractor trailer on your property. This is a neighborhood with small lots. The homes are closer together than in other areas.

Chair Maloney asked if there were any questions and being none closed the hearing to the public at 8:05 pm.

Chair Maloney stated "This is not your personal tractor-trailer." "It belongs to your employer in Londonderry." "I don't understand why you have to bring it home." "This is a non-conforming 1.19 acres lot." "Why you need to have a second driveway on this I don't see anything in the five points that I could vote yes on to say you can have a second driveway." "There's no hardship." "You have a driveway." "Most people who have a second work vehicle, leave it at work." "I don't see the necessity and the value could be diminished by having a tractor-

trailer there.” “I don’t see how this would be in the public interest, the spirit isn’t being observed.” “There is no hardship.” “You have a driveway already.” “You don’t need a second driveway.”

Chair Maloney continued “If I were a neighbor, I would have a problem with this.” “I know some don’t care and others do, but trying to look at what is best for the town and you, and I think the town is losing if we allow you to have another driveway, which according to the Road Agent is wrecking the road.”

Mr. Maciaszczyk stated that he would be a yes if it wasn’t for the employer is out of Newburyport and hauling out of Londonderry. Wouldn’t let you leave it there? Mr. Clay stated that he asked multiple spots to drop trailers and they’ve said no. “It makes an in-between point for him to get home on a regular basis rather than having to stay out on the truck for no reason.”

Vice Chair Scott added that if he’s in that truck at the 14 hour point the truck will get pulled over and parked wherever.

Chair Maloney stated that there must be someplace closer to park that truck. There have been three abutters, none vehemently opposed, his speed is reasonable the truck is quiet. “The question is about whether we can vote on the five points that he can have a second driveway.”

Mr. Maciaszczyk stated for the purpose of argument “what if it were an RV?”

Vice Chair Scott continued “Let’s say it was a motor home that he couldn’t fit.”

Mrs. Cashman stated, “it would tear up the road the same way.”

Chair Maloney clarified “two driveways with two exits in a non-conforming substandard piece of property.”

Vice Chair Scott stated that he could see both sides.

Mrs. Cashman stated that “It sounds like you’re polite, but there is a problem when the road agent is saying that five years from now, and there is a neighbor who showed concern about property values being diminished.” “I have a problem with the five points, not because of the truck, but because of the second driveway on a sub-standard lot, concentrate on that.”

Mr. Maciaszczyk stated that “it’s someone’s property, it doesn’t encroach.” “I do see your side of it.”

Chair Maloney added that the lots are small, the houses close together. “I can’t see this lot having two driveways on Donna Street.”

Vice Chair Scott stated that he would like to continue this hearing to drive through and see how many other residents have two driveways in that neighborhood.

Chair Maloney asked the road agent if he knew of any other lots on Donna Street that had two driveways. Mr. Latham stated that there were no other houses on Donna Street that do, and he has been there for many years. **Correction: Mr. Latham contacted Vice-Chair Scott on June 21, 2018 and amended this testimony. There are in fact, a few other second driveways on Donna Street.**

Road Agent Oleson stated that it is not the weight of the truck, it's the every day backing up in that same truck. Oils trucks come once a month, others once a week or so, it's the every day use on the same spot that is his concern.

Mr. Maciaszczyk asked about continuing it? Vice Chair Scott stated that he will take Mr. Latham's word that there are no other residents with second driveways but there are or could be those who are parking off street on areas that are not designated as driveways, which is more of an eyesore than putting in a paved driveway.

Mr. Maciaszczyk stated that "we have a delivery box truck and have to put down heavy duty concrete, so I understand where he is coming from." The biggest point is that this is contrary to the public interest. "You do have a hardship because of the property but you have to get a yes vote on all five points to get a yes from us."

Vice Chair Scott stated that if he had a two-acre lot and his house was setback we wouldn't be here; the road wouldn't be a consideration.

Mr. Maciaszczyk stated "I think granting would be contrary to the public interest."

Chair Maloney advised him to state why.

Mr. Maciaszczyk stated that because of the long-term damage that it would do to a road, that is already a little beat up, which is normal around here. Spirit would be observed, yes and no on that. Mainly the public interest. Substantial justice would allow him to park his work vehicle. Agree with the values its hard to quantify if a new driveway would diminish that. Unnecessary, small lot encroaches on the short frontage..." acreage" corrected Vice Chair Scott. Making changes to utilize the property, natural hardship, use is reasonable, agree with that, trying to use the property in way that is best for him and so yes on four and no on one, so "I won't be a yes."

Chair Maloney stated that she felt the spirit, justice and all of that, is a no vote from her. "On a 1.1-acre substandard lot which is overcrowded, this is too much on this lot and there is no hardship here." "I don't think the use is a reasonable one on a 1.1-acre lot in this neighborhood." "I don't see that he needs to have a second driveway, I vote no."

Mrs. Cashman stated that it would be contrary to the public interest based on the road agent's testimony, the spirit, overcrowding on small acreage, adding a second driveway, that's why we're here. "I know that it would enable you to work and live more comfortably, that's the hard part for me." "The value of surrounding, you are saying you would make it look nice and it sounds like you're a good neighbor and there was someone who stated that he was concerned with his value." "I don't think there's an unnecessary hardship, so have to say no."

Vice Chair Scott stated that contrary to the public interest, spirit of the ordinance, substantial justice, he has not heard enough compelling testimony to think I would not be able to support all three. Diminished values, not hearing testimony that diminishes, yes, it's a tractor trailer, not every night. Chair Maloney added "talk about driveway, not trailer." Vice Chair Scott continued "I cannot see how that would diminish the value of surrounding properties. Reading..." Explain how the criteria are not established, an unnecessary hardship, owing to special conditions that distinguish it from other property in the area..." Nothing that distinguishes it, lots all on the small side, all non-conforming. "That would mean that anybody that wanted to do anything would need to come in." "Not seeing the hardship and would also have to vote no and would cause me to deny."

Mr. Maciaszczyk motioned to deny the variance from Article 4, Section 4.2.1 to construct a new driveway on the right side of the property on Map 5, Lot 6-3 on a non-conforming 1.19-acre lot where 2 acres are required. Mrs. Cashman seconded his motion, with 3 in favor and Vice Chair Scott abstaining, the motion passes with 3 votes in favor, request has been denied.

Mr. Clay departed the meeting at 8:20 pm.

- c. Rose Vallee for Peter Dembitzky for a variance from Article 5, Section 2 and Article 5, Section 5.3.5 Table 2 to permit the construction of a hay storage building within 75' of a man-made pond which is defined as wetlands by NH RSA 485-A:2, XIV on the property known as Map/Lot 009-092-003 located at 560 Fremont Road

Vice Chair Scott read the Public Hearing notice out loud. Chair Maloney stated that the RSA defines surface waters to include ponds and other bodies, natural or artificial. Chair Maloney asked Ms. Vallee and Mr. Dembitzky if they were the owners of the property and they responded that they were.

Chair Maloney asked Ms. Vallee and Mr. Dembitzky if they wanted to make a 36'x42' structure and Ms. Vallee stated that they made it smaller.

Chair Maloney stated, "You have a man-made pond." "Did you put it in?"

Ms. Vallee read their application into the record. Vice Chair Scott asked if they had a mock up of the structure, advising that he was a stickler that the structure when finished look like what was proposed to the Board at these hearings.

Mr. Dembitzky stated that he has an original listing sheet from 2005 and the remarks include "skating pond" so the pond was put in in the early 70s. Chair Maloney asked if it was a natural wet area. Mr. Dembitzky stated that it was no, they dug a hole and let it fill up. Chair Maloney stated that it didn't matter it was artificial. Chair Maloney asked how big it was and the owner estimated it was 100'x80' and 25' from the original barn which is twice as big as the proposed pole barn, 36'x60,' 43' from the pond.

Mr. Maciaszczyk asked if it was too steep to move it back?

Ms. Vallee stated that she would be sacrificing her riding arena to put the building up because it's the only level spot, its one or the other. "There is a huge ledge, you would have to blast." "You would have to cut down the apple trees and then it would be too close to the house." Ms. Vallee showed the Board pictures she had on her laptop. "Its all granite slope, dips and goes up to another large granite hill." "There was one barn fire because of hay."

Mr. Maciaszczyk asked if there would be a foundation. Mr. Dembitzky stated that no just a pole barn with no foundation, vapor barrier and gravel. "We don't want to get a box trailer, don't think it looks good, don't think the neighbors would appreciate it." "We put our vehicles in the garage versus outside."

Chair Maloney asked if there were any questions and being none, closed the hearing to the public at 8:35 pm.

Vice Chair Scott stated that the barn that burnt was that Pheasant Run, LaMontagne. The garage is close to the house. Good hay isn't a problem but has got some large bales that looked good on the outside and had some hot spots and then it is combustible. "Do like substantial justice, its agriculturally pleasing." "Don't see that its contrary to the public interest." "Its out of sight, I swung by there early this evening, there were two dogs, they met me at the door." "Its going to be invisible so not everyone will get to see that its agriculturally pleasing." "The hill is solid granite, I'd be surprised you could even get down 4' with the pole barn." "In favor on all five points."

Mrs. Cashman stated that it was in the public interest, for safety reasons for the hay to be stored there. The spirit is observed, the substantial justice, its safe and looks nice. "The value of surrounding properties will not be diminished." "Unnecessary hardship, the previous placement its there forever, you can't move that and the granite." "I'm in favor on all five."

Mr. Maciaszczyk stated that “Yes, its not contrary to the public interest, the spirit is observed, substantial justice, its agriculturally pleasing the values will not be diminished.” “There is certainly a hardship based on the ledge you can’t find another place to put it.” “Yes, on all five.”

Vice Chair Scott stated that he had a question he should have asked earlier, would it have plumbing or electricity? Mr. Dembitzky stated no.

Chair Maloney stated, “yes, to the public interest, spirit, justice.” “I think it’s a reasonable use and has special conditions because of the ledge.”

Chair Maloney motioned to grant the variance to construct a 36’x42’ hay barn within 30’ of a man-made artificial pond. Mr. Maciaszczyk seconded her motion, with all in favor, so moved.

Ms. Vallee and Mr. Dembitzky departed the meeting at 8:40 pm.

- d. Jonathan Farr, Edsel Barred Properties, LLC for a variance from Article 5, Section 5.4, Subsection 5.4.4 (Table 1) to permit the construction of a 26’x190’ parking island with (17) 9’x20’ stalls and (1) 8’x20’ handicap stall with required 8’x20’ loading zone 0’ from the Shaker Heights Road property line and 30’ from the Raymond Road (front) property line where 75’ is required; and to construct a 42’x120’ mixed-use building at this location 55’ from the Raymond Road (front) pre-existing property line where 75’ is required on the property known as Map/Lot 009-063-000, located at 680 Raymond Road

Vice Chair Scott read the Public Hearing Notice out loud.

Vice Chair Scott asked Mr. Farr what a parking island is. Mr. Farr answered that was the Building Inspector’s terminology for a parking spot.

Chair Maloney asked Mr. Farr if he was the owner of the property and he stated that he was. Chair Maloney explained that the nature of the application was that this was a Commercial lot in the C1 zone on 3.8 acres. The applicant was requesting two variances, one to construct a 42’x120’ mixed-use building which it going to be their home and place of business which is an auto repair shop, 55’ from Route 102 where 75’ is required. “Let’s look at each separately and then vote on them together.”

Mr. Farr read his application into the record and showed the Board a copy of his plan. Mr. Farr explained that at some point in the past Route 102 had a bend to it there and it changed but the State does not give back. “Their right of way almost doubles the now existing 55’ from the road, at 146’ or we wouldn’t be here.” Vice Chair Scott clarified that when the road moved, they kept that portion.

Chair Maloney stated that according to the Building Inspector the plan depicts 55' from the property line in C1 Zone supposed to have 75.' Vice Chair Scott asked what the line was here on the plan and indicated where the overhead wires and power lines were.

Mr. Farr read his application into the record concerning the structure adding to what he had written on Line 2 "not 55' from right of way, not actual road."

Chair Maloney asked if there were any questions.

Mr. Maciaszczyk asked when the road moved like that.

Mr. Potter, who identified himself as the abutter directly across the street (683 Raymond Road) stated that it was along time ago. "It was a big curve, there used to be a house roughly where they took land from your lot."

Vice Chair Scott clarified that they took on the North side and didn't give back on the other side. "He can't use without state permits and can't have anything under those power lines." "If the State were to re-establish the right of way, your property line would move to the North and that triangle would get bigger."

Mr. Farr answered, "As far as I've been told that will never happen."

Chair Maloney asked to see the color-coded map which Ms. Hoijer provided from the file and asked if there were any public input. Several of the public approached the meeting table to view the plan which was allowed and then Chair Maloney instructed them to return to their seats after viewing the map and needed to pound the gavel several times to return the hearing to order.

Chair Maloney asked the public to direct their questions individually and to state their names and addresses for the record.

Staci Frazier of 9 Shaker Heights clarified that we were just talking about the building now and asked how many bays that you need 18 parking spaces? Mr. Farr answered that there would be 5 with 1 dedicated to alignments. Ms. Frazier asked what type of auto repair would be conducted. Mr. Farr answered, "Everything up to dual-wheeled." Ms. Frazier asked about waste and that sort of thing expressing concerns about the nearby Exeter River.

Mr. Farr answered that they recycled absolutely everything they could, he has had a shop for five years and his landlord burns waste oil.

Ms. Frazier asked how the bays line up with the house and Mr. Farr explained that it would all be one building, two stories with 90 feet for the shop, it has to be one building.

Vice Chair Scott asked if he had a facsimile.

Chair Maloney asked if any body or fender repair or paint, spraying or used car sales? Mr. Farr responded that those were not allowed in that zone.

Mr. Potter asked about the hours of operation for the business and Mr. Farr stated that it would be from 8-5. Mr. Potter expressed concerns about things that would interrupt basic living such as lights shining and wondered about any screening or signs.

Mr. Farr stated that he would comply with whatever was legal in the C1 zone and didn't want any big sign with flashing lights. Mr. Potter added that the town doesn't allow that anyway.

Mr. Farr stated that he had five trees there now that he doesn't plan to touch. The bays will face the existing gas station with the parking lot on the building side where the five trees are now. "I want to mirror the pumps." The house will face the condos toward the Woods with the back facing Towle Road. There will be a couple of sliders. There will be no auto sales or body work, just service work.

Mrs. Akashian of 4 Shaker Heights asked if there was a list of abutters and expressed concerns about the well owned by whom she identified as Penichuck Water Supply. Ms. Hoijer displayed the certified mail for viewing and answered that Penichuck was not shown as an abutter. Chair Maloney asked where Penichuck was located and Mrs. Akashian stated that they had a well on the nearby property. Ms. Hoijer advised that if their property did not touch Mr. Farr's property they were not an abutter and did not need to be notified. Mrs. Akashian asked about the Condominium Association and Ms. Hoijer answered that town counsel advised that the Association needed to be noticed not individual owners and that was what was done. Ms. Hoijer advised that the DOT was notified concerning the right of way and as such the Attorney General as well.

Mrs. Akashian stated that the exit was dangerous, people just don't look when they are leaving Your Variety. It's a safety concern. There is also concern about the brook and conservation land across the street.

Chair Maloney advised that if the variance were approved he would have to go to Site Plan Review with the Planning Board and they would review all of that.

Chair Maloney reminded everyone that the variance is for the building not for the use.

Ms. Kurman of 15 Shaker Heights stated that she didn't believe the letter got to the people that it should have, and Ms. Frazier indicated that the association had additionally sent an email out. Ms. Hoijer reminded that they were only required to send it to the Board.

It was brought to her attention that the audio was not coming through on the PACT broadcast. Ms. Hoijer interrupted to let the Board know to move maps and other things that might be blocking the microphones.

Mr. Farr was asked if he owned the business or if it were a franchise.

Mr. Farr answered that he had a location in Hampstead right now where he was renting, and they could google "Farr's Auto Repair."

She continued "It sounds like you're going to be pulling out bushes and woods on the triangle." Chair Maloney reminded that we were not on that variance yet and asked if there were anything else.

Road Agent Mike Oleson stated that he felt this was a good use of the property which is commercial in town and should be used for commercial business.

Many residents of Shaker Heights expressed some confusion to the Board about the zone, insisting that these were residences and they were not told by their realtors that they lived in a Commercial zone and asked why something wasn't done about that by the Town. Chair Maloney and Vice Chair Scott advised the residents of the zoning history of their property at Shaker Heights and how it had been the subject of a lawsuit by its developer, Mr. Remillard who wanted low income housing, and as a Judge had ruled on this particular zoning the town's hands were tied. The property that is the subject of this hearing is zoned for commercial business and Shaker Heights is within that zone, even as residences and could not be changed.

A resident of Shaker Heights who identified herself as Lee Ann stated that there was no audio on the PACT broadcast at home and stated other concerns about the noise that would be generated by an auto repair business.

Chair Maloney reminded everyone that the property was commercially zoned for use and that we were not here for that.

Chair Maloney asked if there were any additional questions and closed the hearing to the public at 9:10 pm for deliberations.

Chair Maloney asked to go over the five points. They are asking for a variance to construct within 55' where 75' required in a C1 zone. Chair Maloney stated that she was a yes to all five points. It's a hardship here because of that right of way that had been taken when the road was moved. The use is a reasonable one. It is commercially zoned. Its in the public interest, the spirit and substantial justice prongs have been met. "Voting yes on all five points."

Vice Chair Scott asked Mr. Farr if the property could be driven around completely, say if a fire truck needed to get back there? Mr. Farr answered affirmatively.

Mr. Maciaszczyk stated that he was a yes on all five. "There is a hardship with the state right of way." "This is reasonable for a C1 zone and can't see any harm to the public." "Yes, on all five."

Mrs. Cashman agreed, stating that it was not contrary to the public interest. "The right of way makes things difficult." "The applicant has figured out a good way to do things." "The spirit is observed." "Values won't be diminished." "Yes, on all five."

Vice Chair Scott stated that he too thought it was a good use and the applicant has shared with us a picture of the proposed building. "That's what I want to see when you're done" he told Mr. Farr. "Sometimes we see a picture and what we see when it is built is not what we were shown." Vice Chair Scott continued, stating that it seems to be a reasonable use of this parcel given the setbacks. "In agreement with all, voting yes."

Chair Maloney stated that the Board will now take up the other part of the application and then vote on both, with conditions.

The hearing was reopened to the public at 9:30 pm.

Chair Maloney identified that the second part of the proceedings concerned the parking area. Mr. Farr read that portion of his application into the record verbatim.

Chair Maloney redirected to the denial of the Building Inspector. Vice Chair Scott asked about snow. Mr. Farr clarified that he was looking at 43' where 75' is required and does not intend to disturb the grassy area.

Chair Maloney asked if there were any comments from the public.

Ms. Frazier stated that she was glad the trees are going to stay, it was a little confusing when said 0' clearance. Ms. Frazier stated that she had a bigger concern with the parking lot than the building, she does think it's a safety issue and does think it will depreciate the value of homes and thinks you should be able to stay within the ordinance. There are already several accidents coming out of that gas station.

Road Agent Oleson stated that he wanted to reiterate that all those homes are condominiums built on commercial land. Its still commercial land and he is trying to build on land zoned for that. We have very little of that and its important that we use that land for what it was intended.

Mrs. Akashian of 4 Shaker Heights stated that she is a direct abutter and does not want to have to listen to pneumatic guns all day long. She is concerned about the water quality and run off. When you purchase a piece of land you should have to abide by the setbacks and we live in a residential area, don't care if it was listed as commercial, we were sold residential and have to listen to noise from business and think our property values are going to go down.

Lee Ann who identified herself as a resident of Shaker Heights, stated that she purchased in 2011 and when she bought her home she didn't buy a piece of commercial property. "That is not how it was advertised to me when I bought it so I don't understand."

Chair Maloney explained that the property used to be residential until Mr. Remillard sued the town. He had the business in that big white building that was zoned commercial and given by a judge against the town's approval to get low income, but now you can have residential and commercial business. The existing gas station also affects daily lives, with 40 Harleys gassing up. Mr. Farr stated that you won't hear me inside the building.

Chair Maloney continued that the low-income housing was interesting. The town does not oversee the requirements. It was taken totally out of our hands by the courts. We had a plan and the court overturned it and the abutters lost all control as well. "If you had no idea when you bought, your real estate agent wasn't very honest with you then."

Chair Maloney asked if there were any additional questions and being none closed the hearing to the public at 9:35 pm.

Chair Maloney asked to go over the five points. "There would be no reason to even ask if the road hadn't been moved." "The right of way has always been there." "When the road moved, it didn't come back." clarified Vice Chair Scott. "If the road had stayed, he wouldn't need this, had it come back." "He chose this spot for parking because he must be able to get a fire truck in there." "It has the least amount of pavement." "What did you go to Planning Board for" he asked Mr. Farr. Mr. Farr stated that he had gone to the Planning Board to discuss this whole project. He did not want to buy without them saying yes. "I started discussing the need for a variance with them, to see how they felt about the project." "The bays are facing Your Variety."

Mrs. Cashman stated that your home will be in between Shaker Heights. Mr. Farr answered affirmatively and added "Every customer says it's the cleanest place they've been in (referring to his existing shop).

Vice Chair Scott stated that the applicant had answered all five questions to his satisfaction. "It is a well-designed plan to be built in a commercial zone." "I do understand the neighbor's concerns, they don't want to live in a commercial zone

and the reality is they bought a house and if due diligence had been done, they would understand that they live in a commercial zone.” “The setbacks from parking are not contrary to the public interest, somewhat nearer the driveways and Shaker Heights Lane.” “The spirit, looking at the setbacks, are no issues with anything.” “It’s a solid design.” “The hardship is there.” “The building envelope is small.” “I don’t see any reason not to grant this variance.”

Mrs. Cashman stated that she agreed. “Granting is not contrary to the public interest.” “Its well designed.” “The spirit would be observed.” “It does substantial justice.” “It’s appropriate and well-designed and planned out, even keeping the trees.” “The values would not be diminished, including the owners living on the property.” “There has been a lot of attention to detail.” “There is an unnecessary hardship with the road.” “Yes, on all five.”

Mr. Maciaszczyk stated that it is an excellent use of a C1 zone property that has a serious hardship with the setback. “Because it is in a C1 zone, yes to part one.” “Spirit – Yes.” “Since the right of way impedes on the property’s ability to meet zoning ordinances.” “Substantial justice - there is added revenue, using rare C1 zone.” “There is a hardship.” “Yes, on all five.”

Chair Maloney stated that she votes yes on all five points. Its in a commercial zone. The public interest and spirit are observed. “I don’t think the value will be diminished.” This is a commercial business in a commercial zone. The use is a reasonable one. As Vice Chair Scott already stated, the building envelope is very small and due to the change in the shape of Route 102 it has created a hardship. “Yes, on all five points.” A variance is necessary to enable a reasonable use of it.

Chair Maloney motioned to grant both variances from Article 5, Section 5.4.4 (Table 1) (C1) to permit the construction of a 26’x190’ parking island with (17) 9’x20’ stalls and (1) 8’x20’ handicap stall with required 8’x20’ loading zone 0’ from the Shaker Heights Road property line and 30’ from the Raymond Road (front) property line where 75’ is required and to construct a 42’x120’ mixed-use building at this location 55’ from the Raymond Road (front) pre-existing property line where 75’ is required with the following conditions:

- 1) Site Plan Review with the Planning Board;***
- 2) Auto Repair shall not include body, fender, paint spraying or automobile sales***

Mr. Maciaszczyk seconded her motion. Vice Chair Scott abstained. With three of four in favor, the motion passed.

Vice Chair Scott read out loud the 30-Day Notice adding that the assistant could assist anyone requesting a re-hearing. Chair Maloney added that would have to be within the law.

These minutes are subject to the possible changes and corrections during the approval process of a subsequent ZBA meeting.

810 Mr. Farr departed the hearing at 9:50 pm.
811

812 **6. Adjournment**

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814 ***Vice Chair Scott motioned to adjourn the meeting at 9:53 pm. Chair Maloney***
815 ***seconded his motion, with all in favor, so moved.***
816

817 Respectfully submitted,
818

819
820 Nancy J. Hoijer
821 Administrative Assistant