



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, March 17, 2021 at 7:00 P.M.

Those Present: Chairman George Moriarty
Member Theodore Vathally
Member Ron LaPlume
Member Joseph Sullivan
Member Louise Bevilacqua
Assoc. Member Lynda Brown
Assoc. Member Magdiel Matias

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

Chairman: Moriarty called the meeting in to order March 17, 2021

Request Extension

Norwood Group for 219 Lincoln Avenue (Map 408, Block 2, Lots 5 & 5A)

Applicant seeks to extend expiration date for variance and special permit that was approved on March 20, 2019.

Attorney Norman Greenberg: I represent the owner of the property at 219 Lincoln Avenue. We have an outstanding special permit and variance; we filed an application to extend those. Just to refresh everyone's memory when those permits were issued there were stipulations that were imposed. We are not asking for any changes to those stipulations or anything else. Regarding the stipulations for the variance and special permit, those stipulations include restrictions on operating hours as well as the agreement not to use the loading dock or access from Riverside Avenue and also for the benefit of the city we have agreed on receiving permits that we would grant an easement from the city for parking alongside the ball field and also so an easement in the rear of the property along the Merrimack River, it would be a continuation of the trail along the river, so that anyone walking the trail can exit behind our property onto Riverside Avenue, so these stipulations will still remain. We are not asking for any changes whatsoever. Since the last time that I was in front of this board we received subdivision approval, the Planning board has agreed to give us their approval of the subdivision plan. The variance that we hold is a frontage variance, which is required for a subdivision. At the same time because this is registered land we have to go through an entire process with Land Court, to gain the Land court approval, we have just completed that process. Although there is still some administrative procedures that we have to follow so that the plan can be recorded with the Land Court in Boston and also with the registry of deeds. We are just finishing up that process and in the meantime we are asking that you allow an extension of the special permit and also an extension of a variance. I think that completes it. Also on the line is Brian Levy who represents a potential purchaser of the property Americo Real estate Company which is a division of UHAL. The special permit that we now hold would allow the property to be used for self-storage, nothing has changed, it is exactly what the present intention is.



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Chairman Moriarty: Any questions from the board members? Mr. Levy would you like to make any comments?

Brian Levy: We conquer with Normans presentation, there has been a lot of progress that has been made, we have a lot more work to do. We are hopeful that the board will grant these extensions so that we can get the work done.

Chairman Moriarty: Thank you very much, we appreciate you joining us. Any Board members have questions, or any opposition wish to speak?

Member Lynda Brown: I just have one quick question, the volume was going in and out, so I just want to verify, is the variance for 6 months and what was for the year?

Attorney Norman Greenberg: We are asking for an extension for one year for the special permit.

Member Lynda Brown: Awesome, thank you. That is, it.

Chairman Moriarty: Any other questions? Was there someone else that wanted to speak?... Ok, I will entertain a motion.

Member Vathally: I make a motion that we approve the variance for 6-months for 219 Lincoln Avenue second by Member LaPlume

Member: Joe Sullivan: Yes

Member Ron LaPlume: Yes

Member Theodore Vathally: Yes

Member Louise Bevilacqua: Yes

Chairman George Moriarty: Yes

Motion granted 5-0

Member Vathally: I make a motion that we approve the special permit for 1 year for 219 Lincoln Avenue second by Member LaPlume

Member: Joe Sullivan: Yes

Member Ron LaPlume: Yes

Member Theodore Vathally: Yes

Member Louise Bevilacqua: Yes

Chairman George Moriarty: Yes

Motion granted 5-0

Remand from the Land Court Department of the Trial Court for Reconsideration

Russell Channen for 48 Jasper Street (Map 647, Block 2, Lot 72 & 73) Applicant seeks following dimensional variances to create new building lot and construct new single-family dwelling in a RM zone. Requested variances for new lot (Lot 73) include lot area (7,320 sf where 20,000 sf is required), lot frontage (60 ft where 150 ft is required), lot width (60 ft where 112.5 ft is required), and side yard setback (11 ft where 15 ft is required). Proposed Lot 72 shall include existing single-family dwelling to be renovated. Requested variances for Lot 72 include lot area (7,320 sf where 20,000 sf is required), lot frontage (60 ft where 150 ft is required), and lot width (60 ft where 112.5 ft is required). (BOA 20-27)



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Chairman George Moriarty: I want to remind everyone what a remand is. The court is not necessarily saying our decision was wrong, what they are saying is they believe the justification for the decision did not meet the standards. So, with that in mind, I will turn it over to Attorney Mark Bobrowski. For those of you who don't know, he is the Attorney the city turns to, to give us advise on appeals board matters, particulier when the appeals court remands matters back to the board.

Attorney Mark Bobrowski (office in Concord): I serve as special counsel to the city on many matters involving land use. In the matter this evening the superior court has remanded this back to the city, largely because of under section 15 of the zoning act and I quote the board shall course be made in detail in these proceedings indication the vote of each member or those simply failing to vote, indicating such facts, and setting forth clearly the reason of its decision official actions copies in which it should be filed in 14 days. It's the protocol of setting forth clearly the reason for it's decision and official actions. Attorney Costa on behalf of the applicant argued in count 2 of his complaint that there were not adequate finings that the board made in its decisions, which of course is attached to the complaint as an exhibit and so we are back, this is not uncommon, no one should be offended by this. It is simply a way of trying to get more precise reasons for the decision on the judicial document, that the judge can make an intelligent decision as to why and what the board decided. There is no obligation for the board to change any specific conclusion here. I would recommend that you give your attention to Attorney Costa, who will make his argument and if there is any questions, I am more than welcome to help and obviously this is a public hearing so I will listen to the information that is provided by members of the audience as well. I am happy to answer any questions about this initial matter Mr. Chairman.

Chairman Moriarty: Do any of the board members have any questions before we hear from Attorney Costa?

Member LaPlume: I have a question. This is under the zoning criteria of the old zoning criteria of 255-79, is that correct?

Attorney Mark Bobrowski: That was the ordinance that was there at the time they submitted yes, correct. Because this was a request for a variance and the statue hasn't changed, nothing changed in the new one. It is the same standard then as it is today.

Chairman Moriarty: Any other questions? Attorney costa are you ready to make your presentation?

Attorney Adam Costa (30 Green Street Newburyport): I represent Russell Channen who is the partitioner before you tonight, the same partitioner who was before you back in July of 2020 approximately 8 or 9 months ago. You ca see Attorney Channen is with me here and also Steve Defeo with me as well who is a co-applicant also affiliated with this particular property and the application that was previously put forth. What I want to say initial, and I appreciate Attorney Borowski's interdiction and I concur generally with what he said in terms of the remand. I would like to refer the board to my letter from March 16th which I believe you have a copy of in your meeting packages for tonight and I refer you to that letter because I don't want to take too much of your time reading that letter in complete detail but I do want to point out a few highlights and maybe you can follow along because there are various exhibit's and attachments to that correspondence, that will help orient the boards sight and help the board better understand the justification that we put forward for the variance that we requested last year. And I guess as a preliminary matter there is one thing that I want to say that relates to the remand process is that it is true that in the complaint we filed with the superior court and the second count



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of that complaint to be we highlighted the fact that the supreme court is that the board didn't specify in any detail the findings upon which the outcome was picked, it didn't clarify why it was that the variance was denied. In fact, the vote was quite close, it was a 3-2 vote in favor of granting the variance and the chair actually announced at the time that, that was an approval, only for there to be a commotion, at least that is what the minutes say., then for the board to then realize that it was a 3-2 vote and not a 4-1 vote and a 3-2 vote while it's the majority of the board is not super majority under the statue and there forth failed. It is always difficult with the 3-2 approvals which amount to an effective denial for the decision to reflect justification for really the minority of the board 2 members of the board and why they decided to be against it. So, part 2 of our plan to pass to the superior court was to consider the fact that the board didn't clarify reasons for denial. But that is not really the sole basis of the remand, the remand is not something that was ordered by the superior judge, the judge did sign off on the remand request, but it was a joint request that was submitted by all parties. I looked at the language of the joint request and I quoted on the second page of my March 16th letter and it says here that the parties quote, have discussed the relief sought and the appropriate of and believe that a remand to the board for reconsideration would be appropriate and is likely to achieve a resolution of pending litigation, so there was a recognition through the courts of litigation. The discussions I had with Attorney Bobrowski and the correspondence that was had between my client and the City of Haverhill, that there may be justification for reconsideration of the decision of the board back in 2020 and part of that I think pertains to my part one of the letter. The compliant that I have expanded upon in the correspondence submitted and that is the fact that, this application was before you in July of 2020 was not all that unique within the city of Haverhill it was not that unique for the city's zoning board of appeals. In fact I don't mean to jump around in the letter too much but if you look to beginning on page 3 of the letter and onto page 4, the entirely pf page 4 of my letter, I link this particular application in July of 2020, to a series one, two, three, for, five, six, seven, eight; eight other applications that have come before the board within the last 9 or 10 months, I think the earliest of them was from May of 2020, so what's that about 9 or 10 months. You have an application in fact, that was on your agenda just last month at 71 Jaffarian Road and what was so remarkable that I reviewed that agenda and was thinking I might be able to get onto that agenda. But I reviewed it and saw the 71 Jaffarian Road application, I saw the language of the public notice and what was being requested and it said the applicant was seeking a whole series of dimensional variances to quote create a new building lot and construct a new single-family dwelling and then it went on to identify those variances, a lot area variances a significant one from 40,000 down to 18,000, a lot frontage variance also referred to the additional lot that would be created, again a lot area variance, a lot frontage variance, very similar to what we are requesting here. A series of variances to justify the continued existence of the single-family residence on the property, but also to allow for the creation of a second residence on what was previously a valid building lot in the City of Haverhill, but which has been zoned out and doesn't benefit any longer from grandfather protection. So Jaffarian Road is one recent example, that I presume is fresh in the mind of the board members, because it was on your agenda back on February 17th . But I have also looked at some other recent applications, I looed at your September agenda, you had two matters on that agenda West Lowell Avenue and 70 Bailys Court, that again was a lot split on exhibit G on my correspondence, the exact agenda language that you included there sighting to a series variance that were requested for a lot split to create a new building lot. I looked to the 3 Wyoming Avenue property which was a series of variances to allow for the construction of a single-family home on what would otherwise be a undersized building lot and it didn't meet the other dimensional criteria of the zoning ordinance and then there is a series of others. 0 Haverhill Street was on your



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agenda, 452 Lake Street was on your July agenda, 12 Acorn Street was on your June agenda, and again I can go on and on, I don't want to bore you with the details, you know these cases far better than I do. The reality is that there is an established precedent in the City of Haverhill and before your Zoning Board of Appeals in doing exactly this and I'm not surprised by that, when I looked to make my variance argument. Earlier in my correspondence on page 2 and page 3, I start test 3 parts where Attorney Bobrowski referred to your old zoning ordinance and then the recently modified zoning ordinance, in the old ordinance you spelled out that test and in the new ordinance you simply incorporate in my reference chapter 48.10 the test hasn't changed, it is still the 3-part test. But I said to that test in par 2 and page 2 in my correspondence, what was really remarkable from my perspective as an attorney to look through this again with a second pair of eyes as I wasn't the original attorney representing Attorney Russell Channen, when he was before you back in July of last year, but when I looked at this and I looked at the 3rd part of the test, the 3rd part of the test requires the desirable relief be granted without a substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning district. What I normally do when applying that section of the test is I look to the requirements of the zoning ordinance obviously and the purposes that might be enumerated within it, but I also look to other planning documents, what is the zoning scheme for this neighborhood, what is the plan for the City of Haverhill, what is the plan on a statewide basis and I sighted some of this in my correspondence. Increasing the amount of housing with an urban form encourages walkability within the neighborhoods across the city. That is a direct vote from vision Haverhill 2035, which is your newest master plan that was just adopted by the city. I look to the Governor's recent legislation and there is nothing that is directly on point here, but the Governor has made a real effort and a significant effort from the State level to encourage the development of housing in locations where it is appropriate, in fill development in locations like this, neighborhoods that have gaps in the street, where you have many houses on 7,000, 7,500, 8,000 sf lots with 50, 60 or 70 frontage, here we have a vacant lot that has 60 feet of frontage has approximately 7,500 sf of lot area. If you look to exhibit A in my correspondence you'll see a plan of the land that we are proposing, the development we are proposing and if you look at the other single-family dwelling which is on lot 73, lot 72 is the existing residence, if you look at lot 73 and you look at that proposed dwelling, you'll see that the proposed dwelling meets the front yard setback it meets the left yard setback which is the one that is closest to any neighbor, not us because we are the neighbor on the other side. It meets the rear yard setback. So, there is no question that it is an undersized lot, we can't get around that, that was the case in all of those other cases that have come in front of your board in the last 7 or 8 or 9 months. They were all undersized lots, many of them were lots without sufficient frontage to meet current zoning requirements. So, we can't get around that, but we can develop this lot in a manner that is consistent with the street scape, consistent with the neighborhood and we have made that case in our correspondence. The last thing I want to touch upon is, I reviewed the correspondence that was submitted to your board back in June or July of last year before your public hearing and I reviewed the meeting minutes which were lengthy, and I reviewed some of the correspondence that was in reference to that meeting minutes and I have seen the recent correspondence submitted by some of the same neighbors Mr. & Mrs. Lynch are the first signatories on the correspondence and I think it comes primarily from them but there is a series of signatories on the letter as well. They are expressing opposition and I appreciate their right to do that, it's the right of any citizen in the neighborhood or beyond the neighborhoods to express their concern, but Meir neighborhood opposition is not a justification for denying or approving any variance request, any special permit request, any type or zoning relief that might be before your board. When I advise boards, I give them that advice all the time. Don't rely on the support or



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opposition of the neighborhood. I appreciate that there is some opposition, we have support as well. We have a petition that we submitted back in July of last year with 13 or 14 different signatories from the neighborhood who are in support of this proposal, some of those who are in the immediate vicinity. We submitted two letters recently with this March 16th correspondence from individuals who support this project. In fact, one of them was a staunch opponent to a prior application submitted by Mr. Defeo seeking to create a lot split from your board that was approved in the past. Gerry Rogers wrote a glowing endorsement Mr. Defeo indicating that after seeing that development completed, after dealing with Mr. Defeo directly, he considers him a quality builder and was happy with the finished product with his dealings with Mr. Defeo. So, I ask the board to take the opposition with a grain of salt. I understand that there are some neighbors who don't want change in their neighborhood. Neighbors are resistant with change. What I haven't seen in the correspondence with the neighbors is the sort of aggrievement that would give them standing to challenge the variance, for example in a court of law. They haven't sighted to any significant traffic, they haven't sighted to any significant change to the neighborhood character, I think there is a reason they haven't sighted to those things and the reason is that they can't because this addition of this home to the neighborhood is not going to change the character of the neighborhood, it's quite the opposite, it's going to be entirely consistent with the neighborhood. Look at exhibit B of my correspondence excuse me exhibit C of my correspondence it's an aerial photograph of this vacant lot, you can see as you look to the left of this vacant lot, you have a house on a lot with 7,500 sf and approx. and 60 feet of frontage, followed by another house on a lot with 7,500 sf and 50 or 60 feet of frontage, followed by another house on the same size lot and the same amount of frontage, followed by this gap a sizable gap, a vacant lot and then right after it you have this property that we are dealing with here the 48 Jasper Street property, followed by another property on a undersized lot. So, this is very much consistent with the neighborhood, it is not going to ruin the neighborhood, it is not going to add any sort of nuisance factor to the neighborhood, it is going to comply with setbacks as it relates to the immediately adjoining property, it is not going to add significant traffic to the neighborhood. This is going to be consistent with the zoning scheme, consistent with what is intended by the City of Haverhill and its own master plan, and I urge the Board to consider all that, in addition to considering your own president. When you take a close look again at this application and I am hopeful that when you do that tonight, despite the repeated concerns from the opponents to this project, that we will have the support that we are supposed to, the unanimous support, at least the super majority support of your board, will move the pending litigation and bring the case to an end. That is my sincere hope, that is why I tried to work to bring the remand to the board and I am hopeful you'll take a fresh look at the application that is before you. With that I will yield authority to you Mr. Chairman, and I am certainly available to answer any questions you may have, and I would like to reserve the opportunity to speak if opponents raise concerns, to address those before the board proceeds to vote.

Chairman George Moriarty: Would any of the Board Members like to comment or ask any questions?

Member Louise Bevilacqua: My question to the Attorney, is the time when it did get approved in similar situations, could you elaborate for me when the lot area was 7,320 where 25 or more was required. Could you just be specific about which time that occurred?, where the 20,000 was required and the lot was 7,300?

Attorney Adam Costa: So, I have attached to the correspondence I submitted under exhibit G, the variance agendas from those meetings, I had referenced earlier. In an effort to try to make it clear, I highlighted the specific area of the agenda item. So, as I looked at those agendas, as an example June 17th, 2020, that was one sought to create a new building a month before this application was last before you, the 12 Acorn Street was



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proposed to you. And in that case there was dimensional variances sought to create a new building lot and to construct a new single-family home on that new building lot, that was in an RH zone, they requested variances for the new lot and included a lot frontage variance of 50 feet and a lot area variance from 7,500 sf to less than 5,000 sf, so that was a reduction of about a third of the area. In the preceding month there were 2 consecutive frontage variances, that were more significant than the lot frontage that we are seeking here. There was a variance that was granted in the agenda for April 15, 2020, so this is just over a year ago, and that was the 225 Rosemount Street proposal and in that case the requirement was 20,000 sf and the lot area variance was down to 11,082 sf for one lot and 13,103 sf for the other lot, so obviously not all of these instances are examples from the same zoning district, you have a number of zoning districts in Haverhill as many communities do. But my contention is in these instances the difference between the requirement and the proposed size of the new lot and the existing lot, the ratio was approximately the same as what we are dealing with in this instance. And consistent with the neighborhood that surrounds the site in question.

Chairman George Moriarty: Thank you. Any other comments or questions from the Board?

Member Louise Bevilacqua: Well actually my question was and I'm not talking about frontages and sides. My question is can you point to any time when the requirement was 20,000 and the lot area was 7,320? You just mentioned when it was 20,000 and the lot area was 11,000, there is a big difference between 7,000 and 11,000. So, my question is, and it would be very helpful to me, is there any instance that you can sight when the board did approve a 7,320 sf lot when it was required of 20,000. Because that is, I mean I understand the idea that there are a lot of small lots around that street, there are a lot of properties on that street that have side lots, side yards just about that size and they are not putting houses on them. So, if you could just tell me of a specific occasion when the board approved a 7,320 when 20,000 was required, that would be helpful.

Attorney Adam Costa: Sure. I appreciate your questions and the short answer to your questions, but I want to copy on it because, I think it is importance. Is no, I went back a year, I didn't go back 2, 3, 4, 5 years in the ZBA'S agendas and meeting minutes, but I went back a year, I reviewed the agendas for the past year back to March 2020. And I reviewed the agendas, and I reviewed the various meeting minutes, to see the discussions that were had between board members with respect to these various applications and ultimately to see what the vote was, and I think I found one instance where there was a request for a lot split when the board didn't approve it and in that instance the application was actually withdrawn, it wasn't a denial, it was a withdrawal. In every other instance I found, when there was a request for lot split, not even to split lots but simply to grant variances, dimensional variance which to render what would otherwise be a non-buildable lot and in every other instances I have found the board granted permission. Now I didn't look for exact apples to apples situations, every case obviously stands on its own merit. So, I will defer to you on whether this case falls into a category for approval or denial, and I understand that this is a significant departure in terms of lot size. I would say two things similar significant departures have occurred in other instances, I gave you one example of a 40,000-sf lot in a district that requires 80,000 sf, that is a significant departure from the requirements. Its not a district that requires 20, it's a district that requires 80, but it was a significant departure. The other point I'll make, and its an important one, I have made it in my correspondence and this is partly in response to your question and partly in response to some of the opposing residents in their correspondence and that was insightful to this condition with many other lots in the neighborhood being side lots or vacant lots with similar size and I took a look as well at the graphics provided and I pulled up assessors records and I looked at GIS and I looked at the neighborhood generally and I came to the conclusion of, it that this is not the sort of condition that generally affects the district, I'm not telling you that this is the only vacant lot in the district, but



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I am telling you is the standard that would prevent the grant for a variance, variances or prohibited where the circumstance is not unique and what does that mean. It means that it doesn't general effect the zoning district and there's some case law that would general affect what a case law means and general affect the zoning district, the one example I gave you, I sighted in my submittal to the board of appeals Chelmsford case, which was a case from 50-60 years ago, but in that case the variance wasn't appropriate because the condition in issue affected quote all the near by area of Gorham Street well this instance of a vacant undersized lot, doesn't affect all of the nearby area, yes it's not the only instance, but it doesn't need to be the only instance to qualify for a variance, it has to be something that doesn't occur generally in the neighborhood. And I would argue to you that it doesn't occur entirely and certainly doesn't occur in this same configuration generally, where you got a vacant lot 60 feet of frontage, the house to the right which is the 48 Jasper Street property, the house and the driveway are situated on the right side of that property, the easterly side of that property so there is a significant side yard on that property, before you even reach that vacant lot. So, I would argue that this configuration is a configuration that is not mirrored in the immediate neighborhood or in the zoning district.

Chairman George Moriarty: Thank you Attorney. Any other comments or questions from the board? As you referenced we did receive a letter from neighbors and we have a number of people on the lines, so hopefully we can manage this but if someone would like to speak up in opposition let us know and take yourself off mute and introduce yourself. Is there anyone who wants to speak in opposition?

Paul Cox (52 Jasper): I know Richard Lynch is on the call and I am not sure why he is unable to respond to you. Richard are you there?

Chairman George Moriarty: We can hear you, why don't we start with you Mr. Cox.

Paul Cox (52 Jasper): Well, my letter was a follow up from his, but I actually have his letter I suppose I could read that, it says "My name is Richard Lynch and I live at 61 Coral Street. I am a direct abutter to the property located at 48 Jasper Street which contains the lot (73) seeking the variance. When this variance was first raised in July 2020 I submitted a letter that was read into record as to why the variance should not be approved because it does not meet any of the five conditions outlined in the Chapter 255 zoning regulations. And it must meet all five conditions to be approved. (The original letter is attached). The four direct abutters- Richard Lynch and Cheryl Lynch, 61 Coral Street; Paul and Marie Lawson, 53 Coral Street; Paul and Teresa Cox, 52 Jasper Street and the new owners of 40 Jasper Street, Mareh and Mathew Bleecker are adamantly opposed to granting this variance. In addition, Dave Pisano who lives directly across the street from lot 72 at 51 Jasper Street and Heather and Mark Rousseau who live at 38 Jasper Street are also strongly opposed. All six homeowners signed this letter of opposition. Lot 73

Richard Lynch (61 Coral Street): Paul I'm on now, I'm sorry I was on my phone, but I guess no one could hear me. Can you hear me?.. I will just finish what Paul was reading. "Lot 73 is not unique, and I supplied a map that shows a number of similar vacant lots that are in the immediate surrounding area on Jasper and Coral Streets. And as I stated in my July letter I grew up in this neighborhood and no similar vacant lot has allowed to be developed since the new zoning went into effect in the 1960's -over 55 years. And as a former Haverhill City Councilor Mike Bresnahan said in the July meeting, the council expanded the RM zone zoning requirements in 2000 to further reduce density. The existing lots- 72 and 73 combined fall well short of the 20,000-sf required in the RM zone and the 150 feet of frontage. Approval of this variance will create two non-conforming lots that grossly undersized. The homes were built in the 1920s on these 7200 square foot lots are smaller homes- 1200 square feet or less and many contain small garages that could house the cars of the era



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like a model T. In the past families owned only one car and it could be parked in the driveway. Today families own multiple cars and if you take a ride down Jasper Street you will see many, many cars parked on the street. Increasing the neighborhood density will only make the parking situation worse. One of the biggest concerns we have as homeowners in this neighborhood is approving this variance will set a major precedent that the Board of Appeals is willing to by-pass RM zoning regulations. As I stated there are many similar lots to 73 spread throughout the neighborhood. Realtors are hungry for listings. I have been told by local prominent realtor that if variance is approved realtors and builders will be sending letters out to property owners that the small lot that they own may be buildable because the Board of Appeals has set a precedent by allowing the first one. If a variance is permitted for this lot how can the board not allow a variance for other similar lots. And this will result in a complete buildout of the neighborhood. The homeowners of this neighborhood who combined have invested millions of dollars in their properties through purchase and renovations are asking the members of the Board of Appeals to support them and not the outside investor and builder who do not live in Haverhill. The investor and builder only want to make a major profit and as stated in Chapter 255 the fact that the builder and the investor will realize a financial gain makes them ineligible for consideration that there is a hard ship involved with this property. But we, the residents of the neighborhood, have to live with the results if the variance is approved. Please support the Haverhill residents who live in this neighborhood and deny the variance. And please take note once again that all four abutters are opposed. Respectfully yours, Richard & Cheryl Lunch (61 Coral St), Paul & Marie Lawson (53 Coral St), Paul & Teresa Cox (52 Jasper), Mareh & Matthew Bleecker (40 Jasper), Mark & Heather Rousseau (38 Jasper St), Dave Pisano (51 Jasper St) “end of letter”

Richard Lynch (61 Coral Street): I just have one other thing I want to say. The remand hearing process is really unfair to the abutters and the other homeowners who live in the neighborhood. We were only notified of this hearing 2 weeks ago; we thought the case was settled back in July. We had no idea that this was coming, we have been scrambling over the past few days to mark our opposition to this variance one again. We are not lawyers we are not public speakers; we are a group of working and retired homeowners who have unanimously reunited to oppose this variance to secure the remaining green space in our neighborhood. I have 6 homeowners including all 4 abutters who have signed a letter of opposition. Just because a case was remanded back to the Board of Appeals as Attorney Bobrowski said that, that does not mean that mistakes were made in the first hearing, there were no conditions mentioned in the remand order. We believe the right decision was made back in July and we hope that the board members will not be intimidated to vote on the variance just because it was remanded back. The variance was denied because it does not meet any of the five conditions necessary for approval, it was the right decision in July, and it is the right decision now. Thank you. Chairman George Moriarty: Thank you very much. Anyone else who wants to speak in opposition?

Mike Bresnahan: Thank you Chairman Moriarty and Members of the Board; I appreciate the opportunity to address you today. Member Bevilacqua brought up a very good point about the size of the lot and the size of the deviation of the 20,000 sf. I respect everybody who voted to approve this application the first time and I respect everybody who made the decision to vote against it. When I was on the board, I sat on this board many years ago for four and a half years. Each case is unique but when you look at this case and the square footage of the 20,000 sf and having a house built on a lot that is 7,320, you only have 36% of the required square footage to build a house and a 11-foot set back on one side is the length of an automobile, that is why the parking can't be on the side of the house with a 34 foot wide house, you are increasing the density of the neighborhood. I also want to spent the fact that the applicant has a choice to go forward with this. If you look



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at the brief that Attorney Costa has presented to the court, there were statements in there that were questionable. The rehabilitation of the house happened, and the cleaning of the house and the modifications of the house were happening during the variance process. I think with the decision that was made in July was the right decision. The density of this neighborhood is going to increase. The hardship as stated and I do not want to repeat, keep repeating points. It's self-proclaimed, if Mr. Demers had owned the property the whole time and the zoning laws changed, that is the purpose of the Zoning Board of Appeals. Owned and continuation and the zoning changes out from under you, if you have a lot that was once buildable and is no longer buildable, that is the first form of what a variance is there for, for building properties. I would hope that the board members who voted in opposition to this back in July, would continue to vote against this. The house is just too big on a lot that is going to be split off of the existing building. If the existing building and that lot remain the same, it will fit into the nature of the neighborhood. I have a house in the neighborhood that has 3 lots, they were combined when the previous owner built this house. I have 44,000 sf within this neighborhood and my house fits and is off my neighbors properties by the zonings setbacks at the time that this house was built in the 40's. I would continue to say that you need to maintain consistence, some of the lots that were referenced the 20,000 sf lot with requirements of 11,000 sf lot under the zoning was at 55% of the requirement, the 13,000 ft lot that was referenced was at 65%, one was at almost 90 as a reference, this one is 36% square footage of the requirement. I appreciate the time; I appreciate the service that you present to the city and I know you have difficult decisions to make. I employ you to keep this decision they way you made it in July. Thank you very much.

Chairman George Moriarty: Thank you Mr. Bresnahan. Anyone else who wants to speak?

Paul Cox (52 Jasper): So, in addition to the information that has already been presented by Richard Lynch. We are opposed to any of the requested variances following these additional reasons. The attorney for the plaintive and the statements of facts filed with the Supreme Court or the Superior Court excuse me, states that the existing residence on lot 72 is in disrepair, that was certainly known to the plaintive when he purchased the property. In count one of the complaint the attorney for the plaintive states, after a variance it is possible and even probable that lot 72 will remain in disrepair indefinitely. It is the anticipated revenue from the construction and sale of a home on lot 73 that will fund anticipated building renovations on lot 72. The decision by the board on July 15, 2020 did not deny the plaintiffs the right to renovate the existing property on lot 72. The plaintiff could have made this successful in granting these variances a continence in the purchase and sale agreement on the property and he did not. For those of you who are not familiar with the existing residence on lot 72, that property is currently completely renovated. In count two of the complaint the attorney for the p[plaintiff states the decision reflects no questions from or deliberations from amongst the board members, only public comment followed by an immediate vote, see exhibit A. In count two of the complaint the attorney for the plaintive states absent from the decision is any reference to the statutory of standards for issuance or denial of a variance. Nor did the board make specific or adequate findings to support it's decision, again see exhibit A, not requirements exist the board ask questions or deliberate amongst them self's prior to voting on an application for variances and in fact the boards notice of decision dated July 15th, 2020 sighted the following specific findings for its decision, some members of the board found the request for relief to be extreme and that the application involved a self-imposed hardship. Both of these findings support the abutters position that this application for variances should not have even been considered. For all of these reasons stated this evening on behalf of the neighborhood abutters we urge the board to reaffirm their decision to deny this application for variances. Respectfully Paul Cox and Teresa Tiani-Cox



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Chairman George Moriarty: Thank you Mr. Cox and Teresa Cox, I appreciate it. Anyone else who wants to speak. Attorney Costa, would you like to talk regarding the two presentations?

Attorney Adam Costa: I would Mr. Chairman. I will try to be brief; I know you have a lengthy agenda tonight. I took some notes as I heard the three speakers make their presentations and I certainly appreciate their arguments. I have a few comments, so the first one is a complaint was raised regarding the remand process and the notice that the neighbors received, and it was suggested, and I think the statement was don't let the applicant intimidate the Board members or don't let the remand order intimidate the board members to vote differently and I want to be very clear that, that is not why we are here, there is no intent to intimidate neighbors, intimidate board members, that is not the case at all. We are here before you because we think the wrong decision was made and we want an opportunity that with additional information, we hope that you can become better informed about the proposal, view it in light of other applications made to your board and variances by your board and a different result made too. And that is why we are here, there is certainly no intent to intimidate the board. I also appreciate that there weren't any individuals who spoke in support of the application, but I want refer the board again, I know it was a long time ago doing this but opponent tend to mobilize well because they are opposed to a opposel, it could be much more difficult for an applicant to bring supporters to a meeting or to get supporters to join the Zoom meeting, so I want to refer the board to the fact that we have petition, we submitted it back in July, we resubmitted it, that was signed by various property owners and they are not property owners from across town, I am looking at it and there is a list here that 14 have signed and of the 14, 9 of them are located on Jasper Street. So, to the extent that we hope the board is going to give reconsideration and the statements made by the opponents and to the extent to the opposition, I hope that you take it with a bit of a grain of salt and do it with the context in the support that exists and in the immediate neighborhood as well and that is in addition to the two letters that we sent in with the March 16th correspondence, we sent the letters that fully support what is now before you. So, a couple of statements were made, and I attempted to get ahead of one of them in my initial presentation, but I want to remark upon it again. And this is in the concept that this is not a unique lot in the neighborhood, there are other under sized lots in the neighborhood. Again, I will refer the board to my correspondence, we are not suggesting that this is the only undersized lot the exists in the neighborhood. We are suggesting the fact that there are other undersized lots in the neighborhood, it does not necessary mean that these two properties can't be granted variances, it would be contrary to the variance standard. It doesn't make it a condition that generally affects the zoning district as a whole, that is simply not the case. Parking concerns were raised to add additional parking demand to the neighborhood, but I urge you to look at the proposal before you for the new lot and we are proposing onsite parking, 3 spots onsite, adequate parking will be provided on the property. This is not going to create significant traffic in the neighborhood or a significant parking demand in the immediate area, that is simply not the case, not for a single-family home that has it's own parking on site. A count was also made that the applicant new what he was getting into and that is a fare statement, developers understand the risk they are taking when involved in acquiring properties. But I also think there is a confusion amongst the opponents to the difference between a loss of financial gain and financial hardship. So, the loss of financial gain might not justify a variance, might be considered a self-created hardship, but that does not mean that financial hardship is a thing that financial hardship can't justify the issuance of a variance. Because if you look in the fact of the verbatim statement which is now incorporated as reference in the zoning ordinance in chapter 48 section 10. It uses the term (Mic cut out, couldn't hear the word). I stand by the statements that I have made in my complaint to court, that the adjective here as has been the adjective with many of these other



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split lot cases brought before your board, is to renovate, repair, approve upon the existing condition of an existing older, sometime dilapidating residence and to justify that, by creating one lot to two lots from restoring, grandfather protection at one point existed and allowed an additional single-family home to be built on a lot, wither its in advance to fund operations to be made to the existing structure or as is the case now. Because as you just heard some of those reparations have been made, some of those renovations have been completed. Or to reimburse the applicant for the cost of proceeding with those renovations, the reality is that that's a financial hardship. And a financial hardship is something that is explicitly referenced in the statue. And the final point I make because I heard this sent not once but 2 or 3 times by the opponents that this will establish a dangerous precedent in the neighborhood and again, I would argue to you I believe I have given you sufficient examples in my correspondence and in past exhibits that, that precedent has already been set. And we can talk about numbers, we can say that this is significant departure, we can say this isn't a district that requires 40,000 sf where the reduction is down to 20,000 sf. We can play with the numbers and we can argue that this is somewhat more significant than some is the other examples that I gave. But the reality here is that this is the division of a lot to restore a once existing lot line to create a buildable lot, it will be within keeping with what else is in the area, look at the street scape, look at the areal photograph. The average lot size in this district is approximately 7,500 sf, approximately 60 feet of frontage, that's just the reality of how this development pattern of this neighborhood is. And the precedent has been set in this neighborhood, in this zoning district and the precedent has been set outside this zoning district to allow for the creation of single-family homes as infill development in circumstances like these. I would urge he board to consider that and to look at the examples that I have provided to the board. The last point that I have is, so this correspondence I referred to it previously, it is part of my written submittal, it's the second letter to exhibit D, it is a brief letter, I just want to read it because we heard one other letter read for reference. I think it speaks to the character of the applicant that is before you and the substance of the proposal that is before you and what the outcome will be in understanding some of these neighbors concerns. (reading letter) " To whom it may concern: On April 15, 2020, I appeared at the ZBA board hearing to oppose a variance for Bradford Unlimited regarding its request to build a single family home. I was a direct abutter. I didn't think that this would be an appropriate use of the property. Bradford Unlimited was granted the variance. After the hearing, and without any obligation to do so, Stephen Defeo, Owner of Bradford Unlimited, met with me to discuss mu concerns regarding the construction of the single family home. As a result of our meeting, Mr. Defeo installed drainage in my backyard and tied it into the system on Rosemont Street (with two catch basins). This was all done through the guidance and approval of John Pettis, City Engineer. I now look at the new home and realize that any fears I had regarding its location, etc.. Were unfounded. Mr. Defeo was a man of his words and his efforts went above and beyond my expectations. Gerry Rogers.""

Attorney Adam Costa: So again, I just give that as one example of fears that are often had by neighbors with something new in their neighborhood and I would just argue to the Board and Members of the Board that this is very much in keeping with the pattern of development in the neighborhood, it will not be inconsistent with the character of the neighborhood and I would submit to you that the fears of the neighbors, some of the neighbors will be met. Thank you.

Chairman George Moriarty: Thank you very much. Just for the record we did receive those two letters and we did receive the list of 14 people of support, as well as the letter from Mr. Lynch and the abutters and their letters also. All of those documents were received by the Board ahead of time. Thank you all. Anyone else want to speak? Heather Rousseau?



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Heather Rousseau: Hi I already submitted a letter, but my neighbor Heidi Rasp would like to speak.

Heidi Rasp (55 Jasper Street): I just wanted to say that many of the signatures of the 14 people that were gotten by our neighbor Joe Bresno, because he wanted to move into that lot with a new home, so he went around to get those signatures but then he, just as an interesting note to the board, he has since moved out of the neighborhood and no longer lives at 47 Jasper Street. He was the one who went around and collected those signatures, and a lot of people supported his personally because he was our neighbor and wanted that lot. They didn't necessarily support once they found out all the details of what went into splitting the lot and how that would affect our neighborhood. I for one of them, do not agree with it. I just thought that it was an interesting note that the person who got most of those signatures is someone who has since moved out of the neighborhood and is no longer here.

Chairman George Moriarty: Thank you very much. Allison?

Allison Bruyette: I am actually one of those neighbors who did sign the initial one with being in agreement of putting in the new home, I felt badly for the person who came around asking me, I felt badly, I felt like it was a neighbor, I felt like I needed to sign in support of a neighbor. And I did go to the meeting last summer and I listened to all the arguments for and against and I would not have signed that, had I know what I know now. I would not have signed that, so I am another neighbor that is no longer in agreement with that. Just putting that out there. Thank you.

Chairman George Moriarty: Thank you very much. Any other neighbors that want to speak?

Paul Cox (52 Jasper): I just wanted to make 2 final points in regard to the last group of comments made by Attorney Costa. The first being the character of the plaintiff Bradford Unlimited as the builder is not to be considered as part of the request for a variance. And number 2 any self-imposed hardship, disqualifies an application for variances, I just want to make sure that there is a clear distinction between any kind of hardship, a self-imposed hardship which is the case that we are dealing with here. Thank you.

Chairman George Moriarty: Thank you. Ok if there are no other comments or questions. Attorney Bobrowski is there any more comments you would like to make?

Attorney Mark Bobrowski: Mr. Chairman if the board has heard enough comments and there are no other people in the audience wanting to speak, I would advise the board (Someone spoke over him from the public and so I could not hear the rest of the statement).

Chairman George Moriarty: Mr. Bleecker, are you wishing to speak?

Mathew Bleecker (40 Jasper): Yes please. We are Mathew and Mare Bleecker, we are the new owners of 40 Jasper Street and when we purchased our home, we were under the impression that lot 72-73 was actually a single lot, the meeting for the variances then we didn't know was happening and so we weren't involved, now we are in direct opposition to the project. As to the claim of hardship, I feel like the applicant had all of the information upfront before purchasing the property, it seems unlikely that a return on the large investment ever relied on getting these variances. Even if the renovated property was not to be sold, but to be rented such a loss would be his own choice and not to be considered as a hardship. It is my personal opinion that by approving these sizable variances would negatively alter the nature of the neighborhood. Aside from setting precedents the removal of open space, addition of utilities traffic and just general cluttered living, will permanently alter the landscape. Like I said we oppose the variances but wouldn't mind some clarification from the Attorney on what hardships are being claimed and how they differ as he pointed out from expenses.

Chairman George Moriarty: Thank you Mr. Bleecker. One final comment from you Mr. Costa and then we do have to close this and move to a vote. So, if you have a very brief comment to make Attorney Costa.



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Attorney Adam Costa: Thank you Mr. Chairman and I will be brief. I will take the opportunity to say what I have to say, I will generally rest on my papers. But I do have to respond to the last speakers question because it is something I specifically addressed on page 2 of my correspondence, that I submitted. If you look at the bottom of that page, you will see that I addressed the hardship argument, one thing that is notable about this parcel is that if anybody other than Russell Channen owned the adjacent property, what we refer to as lot 73, it would be entitled to zoning protections. It is the fact that it is in common ownership with lot 72 as what you know as 48 Jasper Street residences. The fact of current ownership that renders lot 73 unbuildable without the relief that we are seeking. The comment that I made in my correspondence is that it is inertly a hardship, if anybody else was standing in the shoes of my client, that individual would be entitled to that grandfather protection. It is simply the fact that my client is also the owner of the adjacent property lot 72 venders this lot unbuildable. So, I just wanted to direct you to that argument in my papers and with that I will rest on my papers and allow the board to deliberate, thank you for your time.

Chairman George Moriarty: Thank you. Anyone asking to speak again?... Ok than I will close the hearing and make a motion.

Attorney Mark Bobrowski: Mr. Chairman, may I say something. I am mindful of the fact, that last time the Board had a 3-2 vote, I just want to explain that in those circumstances, the 3 may be offended by what I have to say but the court particulier wants to hear from the members with the 2, so I am not predicting the outcome here. What I would urge people to do is to make a motion wither its to approve or deny, have a second and then prior to voting I would like each board member to state which position they intend to take, with a brief, very brief statement of reasons, so that I can accorporate that into the remand decision and represent that to the court.

Chairman George Moriarty: Great thank you for that guidance. I should announce that I'm actually abstain on this because of a conflict. We need a motion, Member Vathally....Ted?

Attorney Mark Bobrowski: May I get the names of the voting Members?

Chairman George Moriarty: Member Brown, Member Sullivan, member LaPlume, Member Vathally and Member Bevilacqua... Entertain a motion, Member Sullivan?

Member Sullivan: Mr. Chairman I make a motion to approve the variance for the purposes of starting the debate, the discussion for 48 Jasper Street, seconded by Member LaPlume.

Member Brown: Yes

Member Sullivan: George, are we voting? Or are we discussing at this point?

Attorney Mark Bobrowski: Discussing.

Chairman George Moriarty: Attorney Bobrowski has asked us to give our reasons for whatever our vote would be.

Attorney Mark Bobrowski: I said to discuss amongst yourselves.

Member Sullivan: I believe the motions been made. But I would like to speak regarding my intended vote to my fellow bboard members and I guess all who are here in attendance. We have heard a lot about precedence setting the decision we made in the past and wither or not our position this evening could set a precedence. I would just like to point out to my fellow board members in particular that real-estate is a very unique asset. All of the properties that come before us have their own unique circumstances. Our decisions do not create any binding precedent on the Board of Appeals. So, the insinuation that somebody can come in and run up a list of decisions that we have made in the past, those decisions were all made on their own unique



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circumstances, and so I intend to vote this variance request on its own circumstances, and I urge my fellow members to do the same. One thing that stands out to me in particular and this is the reason why I voted in opposition of this variance last year back in July is, I have a great deal of respect for everybody on both sides of this application, but I have seen nothing that indicates that there is a hardship owing to circumstances relater to soil conditions, shape or topography of this parcel of land, that especially affects the land and is unique/ We are talking about precedent and when you look at the assessors map and you look at this neighborhood, although as I said each property is unique, there are so many other parcels in this neighborhood that could make a very similar case to what the case tonight made and if we vote to approve it we may be hard pressed, the circumstances could be very similar to the facts of this application. There are so many other lots in this neighborhood and in the surrounding area that could argue for lot splits and new buildings to be constructed so although we don't make precedent, I think we may be hard pressed to denie and application like that in the future. But my decision back in July, I thought I made a comment on or asked a question that I don't know if it made it into record, but I thought that it was a self-imposed hardship, that the applicant knew that the lot was undersized and didn't meet zoning and I also as I just stated, I didn't see anything in the application that evidences a hardship owing to circumstances related to soil conditions, sharp or topography. So, that is my statement and that is why I intend to vote no, however like I said, I have a lot of respect for the folks involved.

Chairman George Moriarty: Thank you Joe. Lynda would you like to comment?

Assoc. Member Brown: I had some going back and forth and in fact I took another ride by there this afternoon, to really look at the property again, just in case I missed anything thing the last time I was there. And some of the things Joe is saying is some of the things I have written down. We do vote and we make some real tuff decisions sometimes as board members and I think it is importance that we do get across, that we do take each and every case that comes across us on its own merit and I think that we always want to continue doing that. I did have a question for the attorney about the financial hardship, I know he kind of alluded to it in his letter, but I am not really sure its from or in anything that has to do with 255-79, the ordinance that we have the stand to go by. I do like the fact that the existing home was renovated, it does look wonderful, I do like that. But from hearing from everyone tonight and I know its really personal for them, to come here, it's their home, it's a very tuff decision for all of us. But I am going to have to go ahead and change my decision from July to a no.

Chairman George Moriarty: Thank you. Member LaPlum?

Member LaPlume: The last meeting in July, I voted Yes. I believe it meets zoning criteria 255-79, I still believe the same. I believe that the letter from costa also substantiates my vote, so I am staying with that. I have looked at the exhibits that he has and yes we are setting a precedent in the city. So I am staying with a yes vote.

Chairman George Moriarty: Thank you Ron. Ted Vathally?... Ted are you there?....Ok we will move on to Member Bevilacqua?

Member Bevilacqua: I believe like Member Sullivan that the hardship appears to be self-imposed. And again, I saw no issues of topographic issues here, nothing was alluded to in any of the brief. I have visited that site in every season since last July and I have tried to see wither or not my vote in opposition was the correct vote and I believe my vote in opposition was the correct vote. I don't' believe that the vast criteria that must be met are met. I believe that it would change the area and I will continue to vote no, I cannot get beyond the 66% departure from the square footage required. If this were not 7 thousand and something, maybe if it were a 14



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thousand sf lot or a 12,000 sf lot but a 7,000 sf lot is just too far a departure from what is required. So, my vote remains no.

Chairman George Moriarty: Thank you. Ted?

Member Vathally: I heard the opposition, and the opposition had some very good arguments, as well as the applicant. I feel the property is, and I would hope the applicant did meet, and I was going to ask the attorney if he did meet with the neighbors as to maybe the size of the house. I do think based on the measurements and the average lot in the area, I do think it is unique to the area. I mean the parking is going to be off street, I do feel that this property would fit in with the character of the neighborhood, if it is obviously done right. So, I continue to support this application. Thank you.

Chairman George Moriarty: Thank you, so now we will take the actual formal vote. I know you all have spoken but now to formally vote.

Member Brown: No

Member Sullivan: No

Member LaPlume: Yes

Member Vathally: Yes

Member Bevilacqua: No

Denied .

Early Contractors, Inc. for 47 Railroad Street (Map 701, Block 631, Lot 1) Applicant seeks dimensional variances for construction of 4-Unit townhouse condominium structure (existing auto repair / machine shop to be razed) in a RH Zone. Variances sought for Lot Area (12,648 sf where 49,000 sf is required), lot depth (82.5 ft mean where 200 ft required), front setback (20 ft & 21 ft where 25 ft is required), side setback (11 ft where 20 ft is required), rear setback (18.2 ft where 40 ft is required), maximum floor area ratio (.85 where .5 is maximum). (BOA-21-1)

Attorney Don Bornstein (Johnson & Bornstein 12 Acorn Street Andover): This is a property located at 47 Railroad Avenue, it is in an RH district, the high density residential district. This board previously granted a series of variances to allow the same exact project you have in front of you tonight. It would be converting an existing commercial garage I, large machine shop and demolishing all that replacing it with a 4-unit residential condominium. The board might recall when this was originally proposed back in 2018 as a 6-uni building, we heard substantial comments from the neighborhood at that time. Over the course of 5 continuances by this board, we spoke with the neighbors, we met in the hallway several times. We reduced the project to a 4-unit project, we rearranged design and we reconfigured the parking. I will note that each of these units has 4 parking spaces, 2 in the garage and 2 in the driveway in front of each unit. We got to a project that I think is respected by many of the people who originally opposed it. Not saying everyone loved it, but it was much more approved than when we first started with and the board granted us with the variances back in 2018. That variance appears now to have expired, we are requesting the same exact variance, the plan you have in front of you is the same plan that was approved in 2018, with updated dates and notes. We are also willing to accept the same conditions that were put on the first variance, which were.

#1 That if necessary snow would be disposed of offsite if the stockpiling got too large.

#2 We would also remain subject to the height limit, the existing height limit of 35 feet.



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#3 Also we would remain subject to the 2.5 story limit, 2 and a half stories. Otherwise, the project remains the same as when approved in 2018 and we would be willing to keep the same conditions. Thank you Mr. Chairman.

Chairman George Moriarty: Thank you attorney. Any questions from the board? ...Is there anyone on the line who would like to speak, either in support or in opposition? I'm not hearing any opposition. I will entertain a motion.

Member Vathally: I make a motion that we approve the variances for 47 Railroad Street, 2nd by Member LaPlume.

Member Sullivan: Yes, as I recall from the original application that the topography of this property creates a hardship, justifying the granting of a variance.

Member LaPlume: Yes meets zoning criteria for a variance 255.10.2.22

Vathally: Yes

Member Bevilacqua: Yes

Chairman: Yes

Granted 5-0

Bradford Unlimited Corp. for 606 Salem Street (Map, Block, Lots 776-789-7, 776-789-8, 776-789-9, and 776-789-10)

Applicant seeks a dimensional variance to create three building lots (Lot 7, Lot 8, and Lot 9) and construct two new single-family dwellings in a RL zone. Proposed Lot 8 shall include the existing single-family dwelling. Requested variance is for lot frontage for Lot 8 (128.35 ft where 150 ft is required). (BOA-21-2)

Note: I had a tough time hearing and making out all the words Channen said, so I did my best below. (Jill-Board Secretary)

Attorney Russell Channen (25 Kenoza Ave Haverhill): I am here representing Bradford Unlimited Corp. for a frontage variance. Part of this application includes authorization from the current owner of the property. Ms. MacDonald. What we have tried to show the board is overall concept as part of this variance. Ms. MacDonald lives at the property and she is getting up in age and instead of moving elsewhere her goal is to try and build a house on one of the adjoining lots and what we have been able to do, in a creative way is to subdivide what I would consider to be an oversized lot, to break a parcel that is 4 lots into 3 lots. Ms. MacDonald would stay and Bradford Unlimited builds her a new custom home on one of the lots and as part of this project we would then obtain a lot on the right side of the existing property. This would allow her to remain on the property. The only thing that would be required would be a frontage variance for the existing lot. And I hear Member Bevilacqua, talk about the proportion of the lot area for 48 Jasper but as I put in this brief, the variance that we are looking for, for frontage of approximately only 50%, with the new lots frontage would be 128.35 where 150 is required, so the variance request is minimal in nature and under these circumstances again we have provided copies of the plans showing the new home, which is a custom home, as well as plans showing the other home to be built on lot 7. With that being said we would rely upon as well as the documents submitted and ask the board to look favorable on this variance.

Chairman George Moriarty: Thank you. So, it's the middle lot basically that need the variance, is that correct?

Attorney Russell Channen: Yes that is correct. If you look at the plan it shows frontage on the two new lots that we created, and it would be the existing lot that would need that variance.



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Chairman George Moriarty: Right and that would be 128.35. Great Thank you. Any comments or questions from the board? ...I will entertain a motion.

Member Vathally: Mr. Chairman I would like to make a motion to approve the variance for 606 Salem Street. 2nd by Member Sullivan.

Member Sullivan: Yes. The basis of it is if you look at the plot plan, this original parcel is almost a triangle shape, so due to the shape of the land and particularly the southern boundary of the new lot 7, coming in on a reverse angle, there is a hardship that relates to the land justifying the granting of a variance for frontage for the new lot 8.

Chairman George Moriarty: Before I ask for the other votes, I noticed David, I didn't catch your last name. Did you want to speak?

David Madalono (75 Old Groveland Rd): I am one of the abutters. This is the first I have heard about the new build requested. I am going to keep this brief. How will this if at all affect local taxes in the area, based on the addition of new properties?

Chairman George Moriarty: Attorney Channen can you offer to explain.

Attorney Russell Channen: One of the things that we have always tried to mention to the board by allowing for a variance under these circumstances and allowing for construction of two new homes, will increase the property tax revenue for the City of Haverhill and I think from that standpoint I don't think it would have a negative fact for any existing homes, it would only be providing extra revenue for the city and extra services for the homeowners in the surrounding area.

Chairman George Moriarty: Thank you very much. If you have any more questions Dave, you might want to contact the attorney again and get some additional information. Returning to the vote

Member LaPlume Yes 255.10.2.2

Member Vathally: Yes 259-79 A, B, C

Member Bevilacqua: Yes 259-79 abc

Chairman: Yes

Member LaPlume: George are we using the new zoning criteria? 255-10.2.2

Tom Bridgewater: Yes we are using the new zoning criteria on this one and the next one.

Member LaPlume: So, when the other board members were saying 255-79

Tom Bridgewater: You should change that, as 255-79 is no longer.

Chairman: so, it is 255-10-2.2

Granted 5-0



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Note: I had a tough time hearing and making out all the words Channen said, so I did my best below. (Jill-Board Secretary)

Bradford Unlimited Corp. for 333 North Broadway (Map 563, Block 13, Lots 3 & 4) Applicant seeks dimensional variances for lot area of 15,559 sf where 20,000 sf is required and lot frontage of 100 ft where 150 ft is required to construct a single-family dwelling in a RM zone. (BOA-21-3)

Attorney Russell Channen (25 Kenoza Ave Haverhill): I am here representing Bradford Unlimited Corp. We have submitted with this application and the previous one the authorization of the current owner, Jackson as trustee of 333 North Broadway Realty Trust. As I indicated in my brief that we are back in front of the board 18 years later, on a very similar application. We were back in 2002 and a unanimous basis for a variance requested for construction of a single-family home. One thing that differs and in fact it differs to the cities benefit at this point, is back then the approval and I attached a copy of the recorded variance decision, back in 2002, it was with the installation of a second system, at this time members of the board the property will be tied into city water & sewer lines with would mean no runoff and a benefit to the city. One thing that I did hear from the Planning Department, is that there was a cost full composition serving the location of the lot in connection with eh lot in the area of Broadway, so what I did do, I think it was yesterday, I went out to Broadway and I took a photograph or the area and wanted to make sure the board could see it, the exact area in question and in fact there is a for sale sign that shows where the lot is. I am here with Mr. Defeo and he says in fact that that is the area where that for sale sign is, is roughly the area where the driveway would be located. In addition, we requested some guidance from John Pettis the City Engineer as to his thoughts concerning the area and whether or not the bend in the road at that location would create any potential traffic situations and what we learned from Mr. Pettis is that it would not cause problems, from a traffic standpoint, from a driveway standpoint, with the location of the property and so again, we also tried to have our contractor reach out to Mr. Powers about all these situations where there are possible opposition to try to address or hear any possible concerns, we weren't able to create a dialog, but from our standpoint

Mr. Powers: (Cut off the attorney) Mr. Powers is here

Attorney Russell Channen (25 Kenoza Ave Haverhill): The precedent has been set; I'm not asking for anything different than

Mr. Powers: (Cut off the attorney) I did speak with Mr., Defeo last night.

Chairman Moriarty: Mr. Powers I will give you a chance to speak in a minute, ok.

Attorney Russell Channen: Again, the board voted to unanimously approve the lot we are asking for. Two minor variances in this situation, 100 feet of frontage where there is 150 required and 15,559 sf of lot area where 20,000 is required. And again, alluding back to Member Bevilacqua comments back on Jasper Street, we believe that those variances are not unreasonable and are consistent with what occurred 18 years ago when we were asking the court to at this point reapprove the variance request and I thank you.

Chairman Moriarty: Thank you very much. I know Member Vathally drove up there to look at the property and I drove up a couple of days ago also and saw where it is on the bend and saw the for sale sign, so thank you for pointing out that that's where if this is approved, that's where the driveway would be, so thank you. And comments or questions from the board before Mr. Powers speaks?

Member LaPlume: I think Attorney Channen is doing his due diligence in taking this picture and it means a lot to me and I wouldn't be able to see it otherwise, this clarifies things a lot for me. I appreciate the work that you have done, thank you.

Chairman Moriarty: Any other comments from board members?...

Member Sullivan: Maybe later

Chairman Moriarty: Mr. Powers did you want to speak?



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Kevin Powers: I have a couple of questions. 1st of all I have lived at the location for 31 years. And there was a variance granted in 2002, I was never notified because at that point. There was a variance that happened across the street from me, they did the same thing with the house, they did a variance where no one told anyone, and I had a wooded lot and now there is a house there and it was built by Mr. Defeo. So my question is in 2002 why was I not notified?

Chairman Moriarty: I don't believe any of us were on the board at that time, so I don't think any of us can respond to that. I'm pretty sure none of us were on the board.

Kevin Powers: Well, I have lived here. It is great that they have changed the zoning without notifying the abutters. The other question is that house is on the corner of Glenn, North Broadway and West Louria, so where is the setback on the house?

Chairman: Attorney can you answer that?

Attorney Russell Channen: From which street, there is 3 streets there?

Kevin Powers: Glenn, North Broadway and West Louria it is on a 3-way corner.

Mr. Defeo: It is going to face North Broadway.

Kevin Powers: Ok, and how far is it set off of each or the three roads? There is 3 roads, Glenn, West Louria and North Broadway, that that house is cornered on. What are the setbacks on those?

Attorney Russell Channen: It is not on the corner of 3 streets.

Mr. Defeo: Those are paper streets. They are paper streets Kevin. Those are paper streets.

Kevin Powers: I understand that. My point is that you are building a house on the corner of 3 streets, they are paper streets that have other unbuildable lots, that all of a sudden can be built on if that address, we are opening up Pandoras box, the house here and then there's other lots out there.

Mr. Defeo: There is no road, for others to develop. They would have to develop roads Kevin.

Kevin Powers: You could build those roads. You could build that road.

Mr. Defeo: The cost though. This road is already developed.

Kevin Powers: What is there to prevent someone from building one there? They are paper roads, they are all over here, how owns them?

Member Sullivan: I believe according to the plan; they are privately owned.

Kevin Powers: The paper road behind my house, who owns it? I don't own it, that's city property. 2 trees fell down on the neighboring property and he contacted me, and the city had to take care of it because they are owned by the city. West Louria is owned by the city, East Glenn is owned by the city and his house abuts those two streets.

Member Sullivan: According to the plan from RAM engineering West Louria and Glenn Street are shown as private, so obviously I haven't done the title for these properties, but they are private. The abutters would own to the center, so North Broadway is the only public way on which the parcel has frontage.

Mr. Defeo: Exactly.

Kevin Powers: But you still could develop these streets. That's why I am asking if someone decided to develop these streets, where would his house sit on those three streets?

Tom Bridgewater: This is an RM zone and the setback in that required zone is 25 feet off the street, so he has to have on a corner through lot, he has to have 3 setbacks which on West Louria Street its 25.7 to the house, the rear line is 68 off of Glenn Street and it is 35 feet off of North Broadway, which meets all the zoning requirements, if they ever develop those streets.

Chairman: Thank you Tom. In response to Mr. Powers comments and questions, I will entertain a motion. Mr. Powers you look like you are talking but you are on mute.

Kevin Powers: Ok so the other question is, I worked for the post office for 35 years, I walked the streets for 35 years, I have lived in this house for 31 years and I have never walked down in front of that house because it is too dangerous. I haven't met with any of the people on this zoning here and if you spend some time on that street, you have no idea how many accidents there are, there are 3-4 we constantly lose power. The traffic coming so fast. Someone is going to get hurt, someone is going to get seriously hurt. It is not a safe place, there are no sidewalks out here. I have 4 grandchildren, you are putting it in a dangerous, dangerous spot. I think you people should



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physically come out here. I just think it should be put on an obedience and I would love to meet with all of you people and take a walk out there with me. You are telling me they are going to put a house there and have cars pulling in and out, I'm telling you someone is going to get hurt.

Chairman: Just as a point of reference, I know that Member Vathally did go up there, I went up there and also Saint Patrick's Cemetery is up there, so I have gone up there many, many times. I have two relatives in that cemetery actually 3 relatives.

Kevin Powers: Did you get out of your car and walk it?

Chairman: Yes I did get out of my car and walked the whole length on North Broadway. I go out for walks and I walk the entire North Broadway, so yes I have walked it and you are right you have to be very careful.

Kevin Powers: Did you feel safe?

Chairman: You have to be very careful; you absolutely have to be careful.

Kevin Powers: The other issue I have is Mr. Defeo built across the street from me, my street is supposed to be 22 feet wide, and it is less than 19 feet wide. He came down and all of his truck cracked the street. So, he comes in and builds a house, cracks the whole street and then just takes off and you never see him again until 5 years later when he wants to build another house out here. I would be more than happy, I have heard for 2 hours what a wonderful guy he is, if he wants to come and pave my street, you know I would be more willing if he gave me a little kick back, he is going to make a lot of money off of this house because the real estate market is through the roof. And I think that having an out of town guy and leave a neighborhood is not a good reason to give a variance. Attorney Russell Channen: I heard Mr. Powers term out of town, and I think I can speak clearly to the fact that and think all the members of the board know that Mr. Defeo and his company is not an out of town developer. Although he may live out of town and there was a good reason for that. But he grew up in Haverhill, his wife grew up in Haverhill, all the properties that he has developed/built are here in Haverhill. The reason why he lives out of town is because they had to move out of town because one of his children has a learning disability and they had to move to a different school district. But, to suggest that Mr. Defeo is an out of town, I think is a really poor characterization of himself. Also, to suggest that Mr. Defeo leaves sites in a disarray, the number of applications that have come across the board, I don't think there has been any situation and I believe one of the members said earlier during the Jasper Street, that he know Mr. Defeo goes out of his way to make sure that things are done correctly. And I am sure, and I'm sure the board is aware of this, that if this variance is granted that he will provide the same level of development on this project, that he has done always over the years. Again, we would ask the board to look favorably upon this application.

Note: Chairman keeps trying to speak but Mr. Powers is speaking loudly, almost shouting over him so we cannot hear the chairman.

Kevin Powers: If you want to come to my house, I can show you the street is all cracked. When Mr. Defeo had me on the phone yesterday, I asked him if we should go near his house and buy some property and go for some variances, he said to me they would do that there now, so they don't do it where he lives but he thinks he can do it here in Haverhill. They won't do it in Boxford, but they'll do it in Haverhill.

Note: "Chairman Trying to talk still" But Mr. Powers just speaks louder, over him

Chairman: Mr. Powers this is going off track now, it's not in the preview of the Appeals Board to talk about other things that are outside of the area.

Note: AGAIN, Chairman keeps trying to speak but Mr. Powers is speaking loudly, almost shouting over him

Chairman: I would encourage you to have more conversations with Mr. Defeo and see if you could work some of this out. I will entertain a motion...



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Member Vathally: I make a motion that we approve the variances for 333 North Broadway second by Member Sullivan

Member: Joe Sullivan: Yes the variance request meets the requirements of chapter 255-10.2.2 paragraph 2

Member Ron LaPlume: Yes it meets zoning criteria for variance 255-10.2.2 paragraph 2

Member Theodore Vathally: Yes it meets zoning criteria for variance 255-10.2.2 paragraph 2\

Member Louise Bevilacqua: sighting 255-10.2.2

Chairman George Moriarty: Yes

Motion granted 5-0

Board Secretary Jill Dewey: Excuse me Chairman, but I believe there are others trying to speak.

Eugenia Al-Ziab (327 North Broadway): When the gentleman that was speaking earlier said it was a dangerous street, we had 3 cars crash at 3 different times and there were 2 cars at 333, 2 different times. So yes it is a dangerous street and if its daytime and you are walking and if its nighttime, you don't want to be around. Some of those accidents were not very easy. There is not enough frontage and I guarantee you somebody will go through the house. I'm not very familiar with the ordinances and the variances and the square footage but the lot is very small for a house that size. It is not the greatest place, to have that little of frontage. And it is a wetland. I know you approved it but

Chairman: Again, you might want to have a conversation with Mr. Defeo to express your concerns.

Man (146 Woodstock Street): I have also been trying to speak but I wasn't able to. I directly about the property and it is wetlands. It is not a suitable property, it is a very rectangular, narrow property. It is in a very dangerous area; I always worry about accidents. In regard to the neighborhood, it is going to change the neighborhood entirely. So, if other people could be heard before you pass it, that would be great.

Chairman: This system is not very good; it is hard to know who wants to speak and who doesn't, so I apologize for not recognizing you earlier. But again, I would say, have some conversations with Mr. Defeo and see if you can resolve some of these issues. Zif it is wetlands than that is with conservation.

Man (146 Woodstock Street): Is there anything I can do to organize a petition?

Tom Bridgewater: So, this is for zoning purposes only, if this gets approved it has to go through developmental review and then all the wetlands, the conservation officer will be involved in it then. This all has to go through all the departments, that is the next step.

Eugenia Al-Ziab: So, may I ask a question?

Russell Channen: we obliterated all the wetlands on the plan, so we understand this and will make sure that everything is done correctly.

Man (146 Woodstock Street): Ok well you can't build on wetlands, you know what happens when you build on wetlands, the water runs down. I'm down, I'm directly down, my property is right there. The water has to go somewhere.

Chairman: Again, I would encourage the applicant Mr. Defeo to talk with both of you about your concerns. And, as Tom just mentioned, this is about the zoning aspect of it, it still has several fazes to go through and you can certainly have input at all of those fazes also.

Man (146 Woodstock Street): Ok so I can call in, for every other aspect as well?

Chairman: Tom?

Tom Bridgewater: They certainly can call the conservation officer Rob Moore and have a conversation with him, he is part of the developmental Review.

Eugenia Al-Ziab: And what is the conservation officers name?

Tom Bridgewater: Rob Moore



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Chairman: Ok thank you all. Thank you both for hanging on the line. Again, I apologize, this is a difficult situation with this Zoom and everything else. We will be back to normal in April. Si I will entertain a motion to accept the minutes of February.

Minutes: February 17, 2021 meeting.

Member Vathally motioned to accept the minutes from the February 17, 2021 meeting. Seconded by Member Sullivan.

Member: Joe Sullivan: Yes

Member Ron LaPlume: Yes

Member Theodore Vathally: Yes

Member Louise Bevilacqua: Yes

Chairman George Moriarty: Yes

Chairman: So, the minutes from the February 17, 2021

Ron LaPlume gave Board Sectary (Jill Dewey) permission to sign on his behalf.



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The regular meeting of the Haverhill Board of Appeals was held on Wednesday evening, March 17, 2021 at 7:00 P.M.

Those Present: Chairman George Moriarty
Member Theodore Vathally
Member Ron LaPlume
Member Joseph Sullivan
Member Louise Bevilacqua
Assoc. Member Lynda Brown
Assoc. Member Magdiel Matias

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

Chairman: Moriarty called the meeting in to order March 17, 2021

Request Extension

Norwood Group for 219 Lincoln Avenue (Map 408, Block 2, Lots 5 & 5A)

Applicant seeks to extend expiration date for variance and special permit that was approved on March 20, 2019.

Attorney Norman Greenberg: I represent the owner of the property at 219 Lincoln Avenue. We have an outstanding special permit and variance; we filed an application to extend those. Just to refresh everyone's memory when those permits were issued there were stipulations that were imposed. We are not asking for any changes to those stipulations or anything else. Regarding the stipulations for the variance and special permit, those stipulations include restrictions on operating hours as well as the agreement not to use the loading dock or access from Riverside Avenue and also for the benefit of the city we have agreed on receiving permits that we would grant an easement from the city for parking alongside the ball field and also so an easement in the rear of the property along the Merrimack River, it would be a continuation of the trail along the river, so that anyone walking the trail can exit behind our property onto Riverside Avenue, so these stipulations will still remain. We are not asking for any changes whatsoever. Since the last time that I was in front of this board we received subdivision approval, the Planning board has agreed to give us their approval of the subdivision plan. The variance that we hold is a frontage variance, which is required for a subdivision. At the same time because this is registered land we have to go through an entire process with Land Court, to gain the Land court approval, we have just completed that process. Although there is still some administrative procedures that we have to follow so that the plan can be recorded with the Land Court in Boston and also with the registry of deeds. We are just finishing up that process and in the meantime we are asking that you allow an extension of the special permit and also an extension of a variance. I think that completes it. Also on the line is Brian Levy who represents a potential purchaser of the property Americo Real estate Company which is a division of UHAL. The special permit that we now hold would allow the property to be used for self-storage, nothing has changed, it is exactly what the present intention is.



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Chairman Moriarty: Any questions from the board members? Mr. Levy would you like to make any comments?

Brian Levy: We conquer with Normans presentation, there has been a lot of progress that has been made, we have a lot more work to do. We are hopeful that the board will grant these extensions so that we can get the work done.

Chairman Moriarty: Thank you very much, we appreciate you joining us. Any Board members have questions, or any opposition wish to speak?

Member Lynda Brown: I just have one quick question, the volume was going in and out, so I just want to verify, is the variance for 6 months and what was for the year?

Attorney Norman Greenberg: We are asking for an extension for one year for the special permit.

Member Lynda Brown: Awesome, thank you. That is, it.

Chairman Moriarty: Any other questions? Was there someone else that wanted to speak?... Ok, I will entertain a motion.

Member Vathally: I make a motion that we approve the variance for 6-months for 219 Lincoln Avenue second by Member LaPlume

Member: Joe Sullivan: Yes

Member Ron LaPlume: Yes

Member Theodore Vathally: Yes

Member Louise Bevilacqua: Yes

Chairman George Moriarty: Yes

Motion granted 5-0

Member Vathally: I make a motion that we approve the special permit for 1 year for 219 Lincoln Avenue second by Member LaPlume

Member: Joe Sullivan: Yes

Member Ron LaPlume: Yes

Member Theodore Vathally: Yes

Member Louise Bevilacqua: Yes

Chairman George Moriarty: Yes

Motion granted 5-0

Remand from the Land Court Department of the Trial Court for Reconsideration

Russell Channen for 48 Jasper Street (Map 647, Block 2, Lot 72 & 73) Applicant seeks following dimensional variances to create new building lot and construct new single-family dwelling in a RM zone. Requested variances for new lot (Lot 73) include lot area (7,320 sf where 20,000 sf is required), lot frontage (60 ft where 150 ft is required), lot width (60 ft where 112.5 ft is required), and side yard setback (11 ft where 15 ft is required). Proposed Lot 72 shall include existing single-family dwelling to be renovated. Requested variances for Lot 72 include lot area (7,320 sf where 20,000 sf is required), lot frontage (60 ft where 150 ft is required), and lot width (60 ft where 112.5 ft is required). (BOA 20-27)



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Chairman George Moriarty: I want to remind everyone what a remand is. The court is not necessarily saying our decision was wrong, what they are saying is they believe the justification for the decision did not meet the standards. So, with that in mind, I will turn it over to Attorney Mark Bobrowski. For those of you who don't know, he is the Attorney the city turns to, to give us advise on appeals board matters, particulier when the appeals court remands matters back to the board.

Attorney Mark Bobrowski (office in Concord): I serve as special counsel to the city on many matters involving land use. In the matter this evening the superior court has remanded this back to the city, largely because of under section 15 of the zoning act and I quote the board shall course be made in detail in these proceedings indication the vote of each member or those simply failing to vote, indicating such facts, and setting forth clearly the reason of its decision official actions copies in which it should be filed in 14 days. It's the protocol of setting forth clearly the reason for it's decision and official actions. Attorney Costa on behalf of the applicant argued in count 2 of his complaint that there were not adequate finings that the board made in its decisions, which of course is attached to the complaint as an exhibit and so we are back, this is not uncommon, no one should be offended by this. It is simply a way of trying to get more precise reasons for the decision on the judicial document, that the judge can make an intelligent decision as to why and what the board decided. There is no obligation for the board to change any specific conclusion here. I would recommend that you give your attention to Attorney Costa, who will make his argument and if there is any questions, I am more than welcome to help and obviously this is a public hearing so I will listen to the information that is provided by members of the audience as well. I am happy to answer any questions about this initial matter Mr. Chairman.

Chairman Moriarty: Do any of the board members have any questions before we hear from Attorney Costa?

Member LaPlume: I have a question. This is under the zoning criteria of the old zoning criteria of 255-79, is that correct?

Attorney Mark Bobrowski: That was the ordinance that was there at the time they submitted yes, correct. Because this was a request for a variance and the statue hasn't changed, nothing changed in the new one. It is the same standard then as it is today.

Chairman Moriarty: Any other questions? Attorney costa are you ready to make your presentation?

Attorney Adam Costa (30 Green Street Newburyport): I represent Russell Channen who is the partitioner before you tonight, the same partitioner who was before you back in July of 2020 approximately 8 or 9 months ago. You ca see Attorney Channen is with me here and also Steve Defeo with me as well who is a co-applicant also affiliated with this particular property and the application that was previously put forth. What I want to say initial, and I appreciate Attorney Borowski's interdiction and I concur generally with what he said in terms of the remand. I would like to refer the board to my letter from March 16th which I believe you have a copy of in your meeting packages for tonight and I refer you to that letter because I don't want to take too much of your time reading that letter in complete detail but I do want to point out a few highlights and maybe you can follow along because there are various exhibit's and attachments to that correspondence, that will help orient the boards sight and help the board better understand the justification that we put forward for the variance that we requested last year. And I guess as a preliminary matter there is one thing that I want to say that relates to the remand process is that it is true that in the complaint we filed with the superior court and the second count



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of that complaint to be we highlighted the fact that the supreme court is that the board didn't specify in any detail the findings upon which the outcome was picked, it didn't clarify why it was that the variance was denied. In fact, the vote was quite close, it was a 3-2 vote in favor of granting the variance and the chair actually announced at the time that, that was an approval, only for there to be a commotion, at least that is what the minutes say., then for the board to then realize that it was a 3-2 vote and not a 4-1 vote and a 3-2 vote while it's the majority of the board is not super majority under the statue and there forth failed. It is always difficult with the 3-2 approvals which amount to an effective denial for the decision to reflect justification for really the minority of the board 2 members of the board and why they decided to be against it. So, part 2 of our plan to pass to the superior court was to consider the fact that the board didn't clarify reasons for denial. But that is not really the sole basis of the remand, the remand is not something that was ordered by the superior judge, the judge did sign off on the remand request, but it was a joint request that was submitted by all parties. I looked at the language of the joint request and I quoted on the second page of my March 16th letter and it says here that the parties quote, have discussed the relief sought and the appropriate of and believe that a remand to the board for reconsideration would be appropriate and is likely to achieve a resolution of pending litigation, so there was a recognition through the courts of litigation. The discussions I had with Attorney Bobrowski and the correspondence that was had between my client and the City of Haverhill, that there may be justification for reconsideration of the decision of the board back in 2020 and part of that I think pertains to my part one of the letter. The compliant that I have expanded upon in the correspondence submitted and that is the fact that, this application was before you in July of 2020 was not all that unique within the city of Haverhill it was not that unique for the city's zoning board of appeals. In fact I don't mean to jump around in the letter too much but if you look to beginning on page 3 of the letter and onto page 4, the entirely pf page 4 of my letter, I link this particular application in July of 2020, to a series one, two, three, for, five, six, seven, eight; eight other applications that have come before the board within the last 9 or 10 months, I think the earliest of them was from May of 2020, so what's that about 9 or 10 months. You have an application in fact, that was on your agenda just last month at 71 Jaffarian Road and what was so remarkable that I reviewed that agenda and was thinking I might be able to get onto that agenda. But I reviewed it and saw the 71 Jaffarian Road application, I saw the language of the public notice and what was being requested and it said the applicant was seeking a whole series of dimensional variances to quote create a new building lot and construct a new single-family dwelling and then it went on to identify those variances, a lot area variances a significant one from 40,000 down to 18,000, a lot frontage variance also referred to the additional lot that would be created, again a lot area variance, a lot frontage variance, very similar to what we are requesting here. A series of variances to justify the continued existence of the single-family residence on the property, but also to allow for the creation of a second residence on what was previously a valid building lot in the City of Haverhill, but which has been zoned out and doesn't benefit any longer from grandfather protection. So Jaffarian Road is one recent example, that I presume is fresh in the mind of the board members, because it was on your agenda back on February 17th . But I have also looked at some other recent applications, I looed at your September agenda, you had two matters on that agenda West Lowell Avenue and 70 Bailys Court, that again was a lot split on exhibit G on my correspondence, the exact agenda language that you included there sighting to a series variance that were requested for a lot split to create a new building lot. I looked to the 3 Wyoming Avenue property which was a series of variances to allow for the construction of a single-family home on what would otherwise be a undersized building lot and it didn't meet the other dimensional criteria of the zoning ordinance and then there is a series of others. 0 Haverhill Street was on your



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agenda, 452 Lake Street was on your July agenda, 12 Acorn Street was on your June agenda, and again I can go on and on, I don't want to bore you with the details, you know these cases far better than I do. The reality is that there is an established precedent in the City of Haverhill and before your Zoning Board of Appeals in doing exactly this and I'm not surprised by that, when I looked to make my variance argument. Earlier in my correspondence on page 2 and page 3, I start test 3 parts where Attorney Bobrowski referred to your old zoning ordinance and then the recently modified zoning ordinance, in the old ordinance you spelled out that test and in the new ordinance you simply incorporate in my reference chapter 48.10 the test hasn't changed, it is still the 3-part test. But I said to that test in par 2 and page 2 in my correspondence, what was really remarkable from my perspective as an attorney to look through this again with a second pair of eyes as I wasn't the original attorney representing Attorney Russell Channen, when he was before you back in July of last year, but when I looked at this and I looked at the 3rd part of the test, the 3rd part of the test requires the desirable relief be granted without a substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning district. What I normally do when applying that section of the test is I look to the requirements of the zoning ordinance obviously and the purposes that might be enumerated within it, but I also look to other planning documents, what is the zoning scheme for this neighborhood, what is the plan for the City of Haverhill, what is the plan on a statewide basis and I sighted some of this in my correspondence. Increasing the amount of housing with an urban form encourages walkability within the neighborhoods across the city. That is a direct vote from vision Haverhill 2035, which is your newest master plan that was just adopted by the city. I look to the Governor's recent legislation and there is nothing that is directly on point here, but the Governor has made a real effort and a significant effort from the State level to encourage the development of housing in locations where it is appropriate, in fill development in locations like this, neighborhoods that have gaps in the street, where you have many houses on 7,000, 7,500, 8,000 sf lots with 50, 60 or 70 frontage, here we have a vacant lot that has 60 feet of frontage has approximately 7,500 sf of lot area. If you look to exhibit A in my correspondence you'll see a plan of the land that we are proposing, the development we are proposing and if you look at the other single-family dwelling which is on lot 73, lot 72 is the existing residence, if you look at lot 73 and you look at that proposed dwelling, you'll see that the proposed dwelling meets the front yard setback it meets the left yard setback which is the one that is closest to any neighbor, not us because we are the neighbor on the other side. It meets the rear yard setback. So, there is no question that it is an undersized lot, we can't get around that, that was the case in all of those other cases that have come in front of your board in the last 7 or 8 or 9 months. They were all undersized lots, many of them were lots without sufficient frontage to meet current zoning requirements. So, we can't get around that, but we can develop this lot in a manner that is consistent with the street scape, consistent with the neighborhood and we have made that case in our correspondence. The last thing I want to touch upon is, I reviewed the correspondence that was submitted to your board back in June or July of last year before your public hearing and I reviewed the meeting minutes which were lengthy, and I reviewed some of the correspondence that was in reference to that meeting minutes and I have seen the recent correspondence submitted by some of the same neighbors Mr. & Mrs. Lynch are the first signatories on the correspondence and I think it comes primarily from them but there is a series of signatories on the letter as well. They are expressing opposition and I appreciate their right to do that, it's the right of any citizen in the neighborhood or beyond the neighborhoods to express their concern, but Merit neighborhood opposition is not a justification for denying or approving any variance request, any special permit request, any type or zoning relief that might be before your board. When I advise boards, I give them that advice all the time. Don't rely on the support or



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opposition of the neighborhood. I appreciate that there is some opposition, we have support as well. We have a petition that we submitted back in July of last year with 13 or 14 different signatories from the neighborhood who are in support of this proposal, some of those who are in the immediate vicinity. We submitted two letters recently with this March 16th correspondence from individuals who support this project. In fact, one of them was a staunch opponent to a prior application submitted by Mr. Defeo seeking to create a lot split from your board that was approved in the past. Gerry Rogers wrote a glowing endorsement Mr. Defeo indicating that after seeing that development completed, after dealing with Mr. Defeo directly, he considers him a quality builder and was happy with the finished product with his dealings with Mr. Defeo. So, I ask the board to take the opposition with a grain of salt. I understand that there are some neighbors who don't want change in their neighborhood. Neighbors are resistant with change. What I haven't seen in the correspondence with the neighbors is the sort of aggrievement that would give them standing to challenge the variance, for example in a court of law. They haven't sighted to any significant traffic, they haven't sighted to any significant change to the neighborhood character, I think there is a reason they haven't sighted to those things and the reason is that they can't because this addition of this home to the neighborhood is not going to change the character of the neighborhood, it's quite the opposite, it's going to be entirely consistent with the neighborhood. Look at exhibit B of my correspondence excuse me exhibit C of my correspondence it's an aerial photograph of this vacant lot, you can see as you look to the left of this vacant lot, you have a house on a lot with 7,500 sf and approx. and 60 feet of frontage, followed by another house on a lot with 7,500 sf and 50 or 60 feet of frontage, followed by another house on the same size lot and the same amount of frontage, followed by this gap a sizable gap, a vacant lot and then right after it you have this property that we are dealing with here the 48 Jasper Street property, followed by another property on a undersized lot. So, this is very much consistent with the neighborhood, it is not going to ruin the neighborhood, it is not going to add any sort of nuisance factor to the neighborhood, it is going to comply with setbacks as it relates to the immediately adjoining property, it is not going to add significant traffic to the neighborhood. This is going to be consistent with the zoning scheme, consistent with what is intended by the City of Haverhill and its own master plan, and I urge the Board to consider all that, in addition to considering your own president. When you take a close look again at this application and I am hopeful that when you do that tonight, despite the repeated concerns from the opponents to this project, that we will have the support that we are supposed to, the unanimous support, at least the super majority support of your board, will move the pending litigation and bring the case to an end. That is my sincere hope, that is why I tried to work to bring the remand to the board and I am hopeful you'll take a fresh look at the application that is before you. With that I will yield authority to you Mr. Chairman, and I am certainly available to answer any questions you may have, and I would like to reserve the opportunity to speak if opponents raise concerns, to address those before the board proceeds to vote.

Chairman George Moriarty: Would any of the Board Members like to comment or ask any questions?

Member Louise Bevilacqua: My question to the Attorney, is the time when it did get approved in similar situations, could you elaborate for me when the lot area was 7,320 where 25 or more was required. Could you just be specific about which time that occurred?, where the 20,000 was required and the lot was 7,300?

Attorney Adam Costa: So, I have attached to the correspondence I submitted under exhibit G, the variance agendas from those meetings, I had referenced earlier. In an effort to try to make it clear, I highlighted the specific area of the agenda item. So, as I looked at those agendas, as an example June 17th, 2020, that was one sought to create a new building a month before this application was last before you, the 12 Acorn Street was



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proposed to you. And in that case there was dimensional variances sought to create a new building lot and to construct a new single-family home on that new building lot, that was in an RH zone, they requested variances for the new lot and included a lot frontage variance of 50 feet and a lot area variance from 7,500 sf to less than 5,000 sf, so that was a reduction of about a third of the area. In the preceding month there were 2 consecutive frontage variances, that were more significant than the lot frontage that we are seeking here. There was a variance that was granted in the agenda for April 15, 2020, so this is just over a year ago, and that was the 225 Rosemount Street proposal and in that case the requirement was 20,000 sf and the lot area variance was down to 11,082 sf for one lot and 13,103 sf for the other lot, so obviously not all of these instances are examples from the same zoning district, you have a number of zoning districts in Haverhill as many communities do. But my contention is in these instances the difference between the requirement and the proposed size of the new lot and the existing lot, the ratio was approximately the same as what we are dealing with in this instance. And consistent with the neighborhood that surrounds the site in question.

Chairman George Moriarty: Thank you. Any other comments or questions from the Board?

Member Louise Bevilacqua: Well actually my question was and I'm not talking about frontages and sides. My question is can you point to any time when the requirement was 20,000 and the lot area was 7,320? You just mentioned when it was 20,000 and the lot area was 11,000, there is a big difference between 7,000 and 11,000. So, my question is, and it would be very helpful to me, is there any instance that you can sight when the board did approve a 7,320 sf lot when it was required of 20,000. Because that is, I mean I understand the idea that there are a lot of small lots around that street, there are a lot of properties on that street that have side lots, side yards just about that size and they are not putting houses on them. So, if you could just tell me of a specific occasion when the board approved a 7,320 when 20,000 was required, that would be helpful.

Attorney Adam Costa: Sure. I appreciate your questions and the short answer to your questions, but I want to copy on it because, I think it is importance. Is no, I went back a year, I didn't go back 2, 3, 4, 5 years in the ZBA'S agendas and meeting minutes, but I went back a year, I reviewed the agendas for the past year back to March 2020. And I reviewed the agendas, and I reviewed the various meeting minutes, to see the discussions that were had between board members with respect to these various applications and ultimately to see what the vote was, and I think I found one instance where there was a request for a lot split when the board didn't approve it and in that instance the application was actually withdrawn, it wasn't a denial, it was a withdrawal. In every other instance I found, when there was a request for lot split, not even to split lots but simply to grant variances, dimensional variance which to render what would otherwise be a non-buildable lot and in every other instances I have found the board granted permission. Now I didn't look for exact apples to apples situations, every case obviously stands on its own merit. So, I will defer to you on whether this case falls into a category for approval or denial, and I understand that this is a significant departure in terms of lot size. I would say two things similar significant departures have occurred in other instances, I gave you one example of a 40,000-sf lot in a district that requires 80,000 sf, that is a significant departure from the requirements. Its not a district that requires 20, it's a district that requires 80, but it was a significant departure. The other point I'll make, and its an important one, I have made it in my correspondence and this is partly in response to your question and partly in response to some of the opposing residents in their correspondence and that was insightful to this condition with many other lots in the neighborhood being side lots or vacant lots with similar size and I took a look as well at the graphics provided and I pulled up assessors records and I looked at GIS and I looked at the neighborhood generally and I came to the conclusion of, it that this is not the sort of condition that generally affects the district, I'm not telling you that this is the only vacant lot in the district, but



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I am telling you is the standard that would prevent the grant for a variance, variances or prohibited where the circumstance is not unique and what does that mean. It means that it doesn't general effect the zoning district and there's some case law that would general affect what a case law means and general affect the zoning district, the one example I gave you, I sighted in my submittal to the board of appeals Chelmsford case, which was a case from 50-60 years ago, but in that case the variance wasn't appropriate because the condition in issue affected quote all the near by area of Gorham Street well this instance of a vacant undersized lot, doesn't affect all of the nearby area, yes it's not the only instance, but it doesn't need to be the only instance to qualify for a variance, it has to be something that doesn't occur generally in the neighborhood. And I would argue to you that it doesn't occur entirely and certainly doesn't occur in this same configuration generally, where you got a vacant lot 60 feet of frontage, the house to the right which is the 48 Jasper Street property, the house and the driveway are situated on the right side of that property, the easterly side of that property so there is a significant side yard on that property, before you even reach that vacant lot. So, I would argue that this configuration is a configuration that is not mirrored in the immediate neighborhood or in the zoning district.

Chairman George Moriarty: Thank you Attorney. Any other comments or questions from the board? As you referenced we did receive a letter from neighbors and we have a number of people on the lines, so hopefully we can manage this but if someone would like to speak up in opposition let us know and take yourself off mute and introduce yourself. Is there anyone who wants to speak in opposition?

Paul Cox (52 Jasper): I know Richard Lynch is on the call and I am not sure why he is unable to respond to you. Richard are you there?

Chairman George Moriarty: We can hear you, why don't we start with you Mr. Cox.

Paul Cox (52 Jasper): Well, my letter was a follow up from his, but I actually have his letter I suppose I could read that, it says "My name is Richard Lynch and I live at 61 Coral Street. I am a direct abutter to the property located at 48 Jasper Street which contains the lot (73) seeking the variance. When this variance was first raised in July 2020 I submitted a letter that was read into record as to why the variance should not be approved because it does not meet any of the five conditions outlined in the Chapter 255 zoning regulations. And it must meet all five conditions to be approved. (The original letter is attached). The four direct abutters- Richard Lynch and Cheryl Lynch, 61 Coral Street; Paul and Marie Lawson, 53 Coral Street; Paul and Teresa Cox, 52 Jasper Street and the new owners of 40 Jasper Street, Mareh and Mathew Bleecker are adamantly opposed to granting this variance. In addition, Dave Pisano who lives directly across the street from lot 72 at 51 Jasper Street and Heather and Mark Rousseau who live at 38 Jasper Street are also strongly opposed. All six homeowners signed this letter of opposition. Lot 73

Richard Lynch (61 Coral Street): Paul I'm on now, I'm sorry I was on my phone, but I guess no one could hear me. Can you hear me?.. I will just finish what Paul was reading. "Lot 73 is not unique, and I supplied a map that shows a number of similar vacant lots that are in the immediate surrounding area on Jasper and Coral Streets. And as I stated in my July letter I grew up in this neighborhood and no similar vacant lot has allowed to be developed since the new zoning went into effect in the 1960's -over 55 years. And as a former Haverhill City Councilor Mike Bresnahan said in the July meeting, the council expanded the RM zone zoning requirements in 2000 to further reduce density. The existing lots- 72 and 73 combined fall well short of the 20,000-sf required in the RM zone and the 150 feet of frontage. Approval of this variance will create two non-conforming lots that grossly undersized. The homes were built in the 1920s on these 7200 square foot lots are smaller homes- 1200 square feet or less and many contain small garages that could house the cars of the era



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like a model T. In the past families owned only one car and it could be parked in the driveway. Today families own multiple cars and if you take a ride down Jasper Street you will see many, many cars parked on the street. Increasing the neighborhood density will only make the parking situation worse. One of the biggest concerns we have as homeowners in this neighborhood is approving this variance will set a major precedent that the Board of Appeals is willing to by-pass RM zoning regulations. As I stated there are many similar lots to 73 spread throughout the neighborhood. Realtors are hungry for listings. I have been told by local prominent realtor that if variance is approved realtors and builders will be sending letters out to property owners that the small lot that they own may be buildable because the Board of Appeals has set a precedent by allowing the first one. If a variance is permitted for this lot how can the board not allow a variance for other similar lots. And this will result in a complete buildout of the neighborhood. The homeowners of this neighborhood who combined have invested millions of dollars in their properties through purchase and renovations are asking the members of the Board of Appeals to support them and not the outside investor and builder who do not live in Haverhill. The investor and builder only want to make a major profit and as stated in Chapter 255 the fact that the builder and the investor will realize a financial gain makes them ineligible for consideration that there is a hard ship involved with this property. But we, the residents of the neighborhood, have to live with the results if the variance is approved. Please support the Haverhill residents who live in this neighborhood and deny the variance. And please take note once again that all four abutters are opposed. Respectfully yours, Richard & Cheryl Lunch (61 Coral St), Paul & Marie Lawson (53 Coral St), Paul & Teresa Cox (52 Jasper), Mareh & Matthew Bleecker (40 Jasper), Mark & Heather Rousseau (38 Jasper St), Dave Pisano (51 Jasper St) “end of letter”

Richard Lynch (61 Coral Street): I just have one other thing I want to say. The remand hearing process is really unfair to the abutters and the other homeowners who live in the neighborhood. We were only notified of this hearing 2 weeks ago; we thought the case was settled back in July. We had no idea that this was coming, we have been scrambling over the past few days to mark our opposition to this variance one again. We are not lawyers we are not public speakers; we are a group of working and retired homeowners who have unanimously reunited to oppose this variance to secure the remaining green space in our neighborhood. I have 6 homeowners including all 4 abutters who have signed a letter of opposition. Just because a case was remanded back to the Board of Appeals as Attorney Bobrowski said that, that does not mean that mistakes were made in the first hearing, there were no conditions mentioned in the remand order. We believe the right decision was made back in July and we hope that the board members will not be intimidated to vote on the variance just because it was remanded back. The variance was denied because it does not meet any of the five conditions necessary for approval, it was the right decision in July, and it is the right decision now. Thank you. Chairman George Moriarty: Thank you very much. Anyone else who wants to speak in opposition?

Mike Bresnahan: Thank you Chairman Moriarty and Members of the Board; I appreciate the opportunity to address you today. Member Bevilacqua brought up a very good point about the size of the lot and the size of the deviation of the 20,000 sf. I respect everybody who voted to approve this application the first time and I respect everybody who made the decision to vote against it. When I was on the board, I sat on this board many years ago for four and a half years. Each case is unique but when you look at this case and the square footage of the 20,000 sf and having a house built on a lot that is 7,320, you only have 36% of the required square footage to build a house and a 11-foot set back on one side is the length of an automobile, that is why the parking can't be on the side of the house with a 34 foot wide house, you are increasing the density of the neighborhood. I also want to spent the fact that the applicant has a choice to go forward with this. If you look



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at the brief that Attorney Costa has presented to the court, there were statements in there that were questionable. The rehabilitation of the house happened, and the cleaning of the house and the modifications of the house were happening during the variance process. I think with the decision that was made in July was the right decision. The density of this neighborhood is going to increase. The hardship as stated and I do not want to repeat, keep repeating points. It's self-proclaimed, if Mr. Demers had owned the property the whole time and the zoning laws changed, that is the purpose of the Zoning Board of Appeals. Owned and continuation and the zoning changes out from under you, if you have a lot that was once buildable and is no longer buildable, that is the first form of what a variance is there for, for building properties. I would hope that the board members who voted in opposition to this back in July, would continue to vote against this. The house is just too big on a lot that is going to be split off of the existing building. If the existing building and that lot remain the same, it will fit into the nature of the neighborhood. I have a house in the neighborhood that has 3 lots, they were combined when the previous owner built this house. I have 44,000 sf within this neighborhood and my house fits and is off my neighbors properties by the zonings setbacks at the time that this house was built in the 40's. I would continue to say that you need to maintain consistence, some of the lots that were referenced the 20,000 sf lot with requirements of 11,000 sf lot under the zoning was at 55% of the requirement, the 13,000 ft lot that was referenced was at 65%, one was at almost 90 as a reference, this one is 36% square footage of the requirement. I appreciate the time; I appreciate the service that you present to the city and I know you have difficult decisions to make. I employ you to keep this decision they way you made it in July. Thank you very much.

Chairman George Moriarty: Thank you Mr. Bresnahan. Anyone else who wants to speak?

Paul Cox (52 Jasper): So, in addition to the information that has already been presented by Richard Lynch. We are opposed to any of the requested variances following these additional reasons. The attorney for the plaintive and the statements of facts filed with the Supreme Court or the Superior Court excuse me, states that the existing residence on lot 72 is in disrepair, that was certainly known to the plaintive when he purchased the property. In count one of the complaint the attorney for the plaintive states, after a variance it is possible and even probable that lot 72 will remain in disrepair indefinitely. It is the anticipated revenue from the construction and sale of a home on lot 73 that will fund anticipated building renovations on lot 72. The decision by the board on July 15, 2020 did not deny the plaintiffs the right to renovate the existing property on lot 72. The plaintiff could have made this successful in granting these variances a continence in the purchase and sale agreement on the property and he did not. For those of you who are not familiar with the existing residence on lot 72, that property is currently completely renovated. In count two of the complaint the attorney for the p[plaintiff states the decision reflects no questions from or deliberations from amongst the board members, only public comment followed by an immediate vote, see exhibit A. In count two of the complaint the attorney for the plaintive states absent from the decision is any reference to the statutory of standards for issuance or denial of a variance. Nor did the board make specific or adequate findings to support it's decision, again see exhibit A, not requirements exist the board ask questions or deliberate amongst them self's prior to voting on an application for variances and in fact the boards notice of decision dated July 15th, 2020 sighted the following specific findings for its decision, some members of the board found the request for relief to be extreme and that the application involved a self-imposed hardship. Both of these findings support the abutters position that this application for variances should not have even been considered. For all of these reasons stated this evening on behalf of the neighborhood abutters we urge the board to reaffirm their decision to deny this application for variances. Respectfully Paul Cox and Teresa Tiani-Cox



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Chairman George Moriarty: Thank you Mr. Cox and Teresa Cox, I appreciate it. Anyone else who wants to speak. Attorney Costa, would you like to talk regarding the two presentations?

Attorney Adam Costa: I would Mr. Chairman. I will try to be brief; I know you have a lengthy agenda tonight. I took some notes as I heard the three speakers make their presentations and I certainly appreciate their arguments. I have a few comments, so the first one is a complaint was raised regarding the remand process and the notice that the neighbors received, and it was suggested, and I think the statement was don't let the applicant intimidate the Board members or don't let the remand order intimidate the board members to vote differently and I want to be very clear that, that is not why we are here, there is no intent to intimidate neighbors, intimidate board members, that is not the case at all. We are here before you because we think the wrong decision was made and we want an opportunity that with additional information, we hope that you can become better informed about the proposal, view it in light of other applications made to your board and variances by your board and a different result made too. And that is why we are here, there is certainly no intent to intimidate the board. I also appreciate that there weren't any individuals who spoke in support of the application, but I want refer the board again, I know it was a long time ago doing this but opponent tend to mobilize well because they are opposed to a opposel, it could be much more difficult for an applicant to bring supporters to a meeting or to get supporters to join the Zoom meeting, so I want to refer the board to the fact that we have petition, we submitted it back in July, we resubmitted it, that was signed by various property owners and they are not property owners from across town, I am looking at it and there is a list here that 14 have signed and of the 14, 9 of them are located on Jasper Street. So, to the extent that we hope the board is going to give reconsideration and the statements made by the opponents and to the extent to the opposition, I hope that you take it with a bit of a grain of salt and do it with the context in the support that exists and in the immediate neighborhood as well and that is in addition to the two letters that we sent in with the March 16th correspondence, we sent the letters that fully support what is now before you. So, a couple of statements were made, and I attempted to get ahead of one of them in my initial presentation, but I want to remark upon it again. And this is in the concept that this is not a unique lot in the neighborhood, there are other under sized lots in the neighborhood. Again, I will refer the board to my correspondence, we are not suggesting that this is the only undersized lot the exists in the neighborhood. We are suggesting the fact that there are other undersized lots in the neighborhood, it does not necessary mean that these two properties can't be granted variances, it would be contrary to the variance standard. It doesn't make it a condition that generally affects the zoning district as a whole, that is simply not the case. Parking concerns were raised to add additional parking demand to the neighborhood, but I urge you to look at the proposal before you for the new lot and we are proposing onsite parking, 3 spots onsite, adequate parking will be provided on the property. This is not going to create significant traffic in the neighborhood or a significant parking demand in the immediate area, that is simply not the case, not for a single-family home that has it's own parking on site. A count was also made that the applicant new what he was getting into and that is a fare statement, developers understand the risk they are taking when involved in acquiring properties. But I also think there is a confusion amongst the opponents to the difference between a loss of financial gain and financial hardship. So, the loss of financial gain might not justify a variance, might be considered a self-created hardship, but that does not mean that financial hardship is a thing that financial hardship can't justify the issuance of a variance. Because if you look in the fact of the verbatim statement which is now incorporated as reference in the zoning ordinance in chapter 48 section 10. It uses the term (Mic cut out, couldn't hear the word). I stand by the statements that I have made in my complaint to court, that the adjective here as has been the adjective with many of these other



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split lot cases brought before your board, is to renovate, repair, approve upon the existing condition of an existing older, sometime dilapidating residence and to justify that, by creating one lot to two lots from restoring, grandfather protection at one point existed and allowed an additional single-family home to be built on a lot, wither its in advance to fund operations to be made to the existing structure or as is the case now. Because as you just heard some of those reparations have been made, some of those renovations have been completed. Or to reimburse the applicant for the cost of proceeding with those renovations, the reality is that that's a financial hardship. And a financial hardship is something that is explicitly referenced in the statue. And the final point I make because I heard this sent not once but 2 or 3 times by the opponents that this will establish a dangerous precedent in the neighborhood and again, I would argue to you I believe I have given you sufficient examples in my correspondence and in past exhibits that, that precedent has already been set. And we can talk about numbers, we can say that this is significant departure, we can say this isn't a district that requires 40,000 sf where the reduction is down to 20,000 sf. We can play with the numbers and we can argue that this is somewhat more significant than some is the other examples that I gave. But the reality here is that this is the division of a lot to restore a once existing lot line to create a buildable lot, it will be within keeping with what else is in the area, look at the street scape, look at the areal photograph. The average lot size in this district is approximately 7,500 sf, approximately 60 feet of frontage, that's just the reality of how this development pattern of this neighborhood is. And the precedent has been set in this neighborhood, in this zoning district and the precedent has been set outside this zoning district to allow for the creation of single-family homes as infill development in circumstances like these. I would urge he board to consider that and to look at the examples that I have provided to the board. The last point that I have is, so this correspondence I referred to it previously, it is part of my written submittal, it's the second letter to exhibit D, it is a brief letter, I just want to read it because we heard one other letter read for reference. I think it speaks to the character of the applicant that is before you and the substance of the proposal that is before you and what the outcome will be in understanding some of these neighbors concerns. (reading letter) " To whom it may concern: On April 15, 2020, I appeared at the ZBA board hearing to oppose a variance for Bradford Unlimited regarding its request to build a single family home. I was a direct abutter. I didn't think that this would be an appropriate use of the property. Bradford Unlimited was granted the variance. After the hearing, and without any obligation to do so, Stephen Defeo, Owner of Bradford Unlimited, met with me to discuss mu concerns regarding the construction of the single family home. As a result of our meeting, Mr. Defeo installed drainage in my backyard and tied it into the system on Rosemont Street (with two catch basins). This was all done through the guidance and approval of John Pettis, City Engineer. I now look at the new home and realize that any fears I had regarding its location, etc.. Were unfounded. Mr. Defeo was a man of his words and his efforts went above and beyond my expectations. Gerry Rogers.""

Attorney Adam Costa: So again, I just give that as one example of fears that are often had by neighbors with something new in their neighborhood and I would just argue to the Board and Members of the Board that this is very much in keeping with the pattern of development in the neighborhood, it will not be inconsistent with the character of the neighborhood and I would submit to you that the fears of the neighbors, some of the neighbors will be met. Thank you.

Chairman George Moriarty: Thank you very much. Just for the record we did receive those two letters and we did receive the list of 14 people of support, as well as the letter from Mr. Lynch and the abutters and their letters also. All of those documents were received by the Board ahead of time. Thank you all. Anyone else want to speak? Heather Rousseau?



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Heather Rousseau: Hi I already submitted a letter, but my neighbor Heidi Rasp would like to speak.

Heidi Rasp (55 Jasper Street): I just wanted to say that many of the signatures of the 14 people that were gotten by our neighbor Joe Bresno, because he wanted to move into that lot with a new home, so he went around to get those signatures but then he, just as an interesting note to the board, he has since moved out of the neighborhood and no longer lives at 47 Jasper Street. He was the one who went around and collected those signatures, and a lot of people supported his personally because he was our neighbor and wanted that lot. They didn't necessarily support once they found out all the details of what went into splitting the lot and how that would affect our neighborhood. I for one of them, do not agree with it. I just thought that it was an interesting note that the person who got most of those signatures is someone who has since moved out of the neighborhood and is no longer here.

Chairman George Moriarty: Thank you very much. Allison?

Allison Bruyette: I am actually one of those neighbors who did sign the initial one with being in agreement of putting in the new home, I felt badly for the person who came around asking me, I felt badly, I felt like it was a neighbor, I felt like I needed to sign in support of a neighbor. And I did go to the meeting last summer and I listened to all the arguments for and against and I would not have signed that, had I know what I know now. I would not have signed that, so I am another neighbor that is no longer in agreement with that. Just putting that out there. Thank you.

Chairman George Moriarty: Thank you very much. Any other neighbors that want to speak?

Paul Cox (52 Jasper): I just wanted to make 2 final points in regard to the last group of comments made by Attorney Costa. The first being the character of the plaintiff Bradford Unlimited as the builder is not to be considered as part of the request for a variance. And number 2 any self-imposed hardship, disqualifies an application for variances, I just want to make sure that there is a clear distinction between any kind of hardship, a self-imposed hardship which is the case that we are dealing with here. Thank you.

Chairman George Moriarty: Thank you. Ok if there are no other comments or questions. Attorney Bobrowski is there any more comments you would like to make?

Attorney Mark Bobrowski: Mr. Chairman if the board has heard enough comments and there are no other people in the audience wanting to speak, I would advise the board (Someone spoke over him from the public and so I could not hear the rest of the statement).

Chairman George Moriarty: Mr. Bleecker, are you wishing to speak?

Mathew Bleecker (40 Jasper): Yes please. We are Mathew and Mare Bleecker, we are the new owners of 40 Jasper Street and when we purchased our home, we were under the impression that lot 72-73 was actually a single lot, the meeting for the variances then we didn't know was happening and so we weren't involved, now we are in direct opposition to the project. As to the claim of hardship, I feel like the applicant had all of the information upfront before purchasing the property, it seems unlikely that a return on the large investment ever relied on getting these variances. Even if the renovated property was not to be sold, but to be rented such a loss would be his own choice and not to be considered as a hardship. It is my personal opinion that by approving these sizable variances would negatively alter the nature of the neighborhood. Aside from setting precedents the removal of open space, addition of utilities traffic and just general cluttered living, will permanently alter the landscape. Like I said we oppose the variances but wouldn't mind some clarification from the Attorney on what hardships are being claimed and how they differ as he pointed out from expenses.

Chairman George Moriarty: Thank you Mr. Bleecker. One final comment from you Mr. Costa and then we do have to close this and move to a vote. So, if you have a very brief comment to make Attorney Costa.



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Attorney Adam Costa: Thank you Mr. Chairman and I will be brief. I will take the opportunity to say what I have to say, I will generally rest on my papers. But I do have to respond to the last speakers question because it is something I specifically addressed on page 2 of my correspondence, that I submitted. If you look at the bottom of that page, you will see that I addressed the hardship argument, one thing that is notable about this parcel is that if anybody other than Russell Channen owned the adjacent property, what we refer to as lot 73, it would be entitled to zoning protections. It is the fact that it is in common ownership with lot 72 as what you know as 48 Jasper Street residences. The fact of current ownership that renders lot 73 unbuildable without the relief that we are seeking. The comment that I made in my correspondence is that it is inertly a hardship, if anybody else was standing in the shoes of my client, that individual would be entitled to that grandfather protection. It is simply the fact that my client is also the owner of the adjacent property lot 72 venders this lot unbuildable. So, I just wanted to direct you to that argument in my papers and with that I will rest on my papers and allow the board to deliberate, thank you for your time.

Chairman George Moriarty: Thank you. Anyone asking to speak again?... Ok than I will close the hearing and make a motion.

Attorney Mark Bobrowski: Mr. Chairman, may I say something. I am mindful of the fact, that last time the Board had a 3-2 vote, I just want to explain that in those circumstances, the 3 may be offended by what I have to say but the court particulier wants to hear from the members with the 2, so I am not predicting the outcome here. What I would urge people to do is to make a motion wither its to approve or deny, have a second and then prior to voting I would like each board member to state which position they intend to take, with a brief, very brief statement of reasons, so that I can accorporate that into the remand decision and represent that to the court.

Chairman George Moriarty: Great thank you for that guidance. I should announce that I'm actually abstain on this because of a conflict. We need a motion, Member Vathally....Ted?

Attorney Mark Bobrowski: May I get the names of the voting Members?

Chairman George Moriarty: Member Brown, Member Sullivan, member LaPlume, Member Vathally and Member Bevilacqua... Entertain a motion, Member Sullivan?

Member Sullivan: Mr. Chairman I make a motion to approve the variance for the purposes of starting the debate, the discussion for 48 Jasper Street, seconded by Member LaPlume.

Member Brown: Yes

Member Sullivan: George, are we voting? Or are we discussing at this point?

Attorney Mark Bobrowski: Discussing.

Chairman George Moriarty: Attorney Bobrowski has asked us to give our reasons for whatever our vote would be.

Attorney Mark Bobrowski: I said to discuss amongst yourselves.

Member Sullivan: I believe the motions been made. But I would like to speak regarding my intended vote to my fellow bboard members and I guess all who are here in attendance. We have heard a lot about precedence setting the decision we made in the past and wither or not our position this evening could set a precedence. I would just like to point out to my fellow board members in particular that real-estate is a very unique asset. All of the properties that come before us have their own unique circumstances. Our decisions do not create any binding precedent on the Board of Appeals. So, the insinuation that somebody can come in and run up a list of decisions that we have made in the past, those decisions were all made on their own unique



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circumstances, and so I intend to vote this variance request on its own circumstances, and I urge my fellow members to do the same. One thing that stands out to me in particular and this is the reason why I voted in opposition of this variance last year back in July is, I have a great deal of respect for everybody on both sides of this application, but I have seen nothing that indicates that there is a hardship owing to circumstances related to soil conditions, shape or topography of this parcel of land, that especially affects the land and is unique/ We are talking about precedent and when you look at the assessors map and you look at this neighborhood, although as I said each property is unique, there are so many other parcels in this neighborhood that could make a very similar case to what the case tonight made and if we vote to approve it we may be hard pressed, the circumstances could be very similar to the facts of this application. There are so many other lots in this neighborhood and in the surrounding area that could argue for lot splits and new buildings to be constructed so although we don't make precedent, I think we may be hard pressed to deny an application like that in the future. But my decision back in July, I thought I made a comment on or asked a question that I don't know if it made it into record, but I thought that it was a self-imposed hardship, that the applicant knew that the lot was undersized and didn't meet zoning and I also as I just stated, I didn't see anything in the application that evidences a hardship owing to circumstances related to soil conditions, sharp or topography. So, that is my statement and that is why I intend to vote no, however like I said, I have a lot of respect for the folks involved.

Chairman George Moriarty: Thank you Joe. Lynda would you like to comment?

Assoc. Member Brown: I had some going back and forth and in fact I took another ride by there this afternoon, to really look at the property again, just in case I missed anything thing the last time I was there. And some of the things Joe is saying is some of the things I have written down. We do vote and we make some real tuff decisions sometimes as board members and I think it is importance that we do get across, that we do take each and every case that comes across us on its own merit and I think that we always want to continue doing that. I did have a question for the attorney about the financial hardship, I know he kind of alluded to it in his letter, but I am not really sure its from or in anything that has to do with 255-79, the ordinance that we have the stand to go by. I do like the fact that the existing home was renovated, it does look wonderful, I do like that. But from hearing from everyone tonight and I know its really personal for them, to come here, it's their home, it's a very tuff decision for all of us. But I am going to have to go ahead and change my decision from July to a no.

Chairman George Moriarty: Thank you. Member LaPlum?

Member LaPlume: The last meeting in July, I voted Yes. I believe it meets zoning criteria 255-79, I still believe the same. I believe that the letter from costa also substantiates my vote, so I am staying with that. I have looked at the exhibits that he has and yes we are setting a precedent in the city. So I am staying with a yes vote.

Chairman George Moriarty: Thank you Ron. Ted Vathally?... Ted are you there?....Ok we will move on to Member Bevilacqua?

Member Bevilacqua: I believe like Member Sullivan that the hardship appears to be self-imposed. And again, I saw no issues of topographic issues here, nothing was alluded to in any of the brief. I have visited that site in every season since last July and I have tried to see wither or not my vote in opposition was the correct vote and I believe my vote in opposition was the correct vote. I don't' believe that the vast criteria that must be met are met. I believe that it would change the area and I will continue to vote no, I cannot get beyond the 66% departure from the square footage required. If this were not 7 thousand and something, maybe if it were a 14



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thousand sf lot or a 12,000 sf lot but a 7,000 sf lot is just too far a departure from what is required. So, my vote remains no.

Chairman George Moriarty: Thank you. Ted?

Member Vathally: I heard the opposition, and the opposition had some very good arguments, as well as the applicant. I feel the property is, and I would hope the applicant did meet, and I was going to ask the attorney if he did meet with the neighbors as to maybe the size of the house. I do think based on the measurements and the average lot in the area, I do think it is unique to the area. I mean the parking is going to be off street, I do feel that this property would fit in with the character of the neighborhood, if it is obviously done right. So, I continue to support this application. Thank you.

Chairman George Moriarty: Thank you, so now we will take the actual formal vote. I know you all have spoken but now to formally vote.

Member Brown: No

Member Sullivan: No

Member LaPlume: Yes

Member Vathally: Yes

Member Bevilacqua: No

Denied .

Early Contractors, Inc. for 47 Railroad Street (Map 701, Block 631, Lot 1) Applicant seeks dimensional variances for construction of 4-Unit townhouse condominium structure (existing auto repair / machine shop to be razed) in a RH Zone. Variances sought for Lot Area (12,648 sf where 49,000 sf is required), lot depth (82.5 ft mean where 200 ft required), front setback (20 ft & 21 ft where 25 ft is required), side setback (11 ft where 20 ft is required), rear setback (18.2 ft where 40 ft is required), maximum floor area ratio (.85 where .5 is maximum). (BOA-21-1)

Attorney Don Bornstein (Johnson & Bornstein 12 Acorn Street Andover): This is a property located at 47 Railroad Avenue, it is in an RH district, the high density residential district. This board previously granted a series of variances to allow the same exact project you have in front of you tonight. It would be converting an existing commercial garage I, large machine shop and demolishing all that replacing it with a 4-unit residential condominium. The board might recall when this was originally proposed back in 2018 as a 6-unit building, we heard substantial comments from the neighborhood at that time. Over the course of 5 continuances by this board, we spoke with the neighbors, we met in the hallway several times. We reduced the project to a 4-unit project, we rearranged design and we reconfigured the parking. I will note that each of these units has 4 parking spaces, 2 in the garage and 2 in the driveway in front of each unit. We got to a project that I think is respected by many of the people who originally opposed it. Not saying everyone loved it, but it was much more approved than when we first started with and the board granted us with the variances back in 2018. That variance appears now to have expired, we are requesting the same exact variance, the plan you have in front of you is the same plan that was approved in 2018, with updated dates and notes. We are also willing to accept the same conditions that were put on the first variance, which were.

#1 That if necessary snow would be disposed of offsite if the stockpiling got too large.

#2 We would also remain subject to the height limit, the existing height limit of 35 feet.



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#3 Also we would remain subject to the 2.5 story limit, 2 and a half stories. Otherwise, the project remains the same as when approved in 2018 and we would be willing to keep the same conditions. Thank you Mr. Chairman.

Chairman George Moriarty: Thank you attorney. Any questions from the board? ...Is there anyone on the line who would like to speak, either in support or in opposition? I'm not hearing any opposition. I will entertain a motion.

Member Vathally: I make a motion that we approve the variances for 47 Railroad Street, 2nd by Member LaPlume.

Member Sullivan: Yes, as I recall from the original application that the topography of this property creates a hardship, justifying the granting of a variance.

Member LaPlume: Yes meets zoning criteria for a variance 255.10.2.22

Vathally: Yes

Member Bevilacqua: Yes

Chairman: Yes

Granted 5-0

Bradford Unlimited Corp. for 606 Salem Street (Map, Block, Lots 776-789-7, 776-789-8, 776-789-9, and 776-789-10)

Applicant seeks a dimensional variance to create three building lots (Lot 7, Lot 8, and Lot 9) and construct two new single-family dwellings in a RL zone. Proposed Lot 8 shall include the existing single-family dwelling. Requested variance is for lot frontage for Lot 8 (128.35 ft where 150 ft is required). (BOA-21-2)

Note: I had a tough time hearing and making out all the words Channen said, so I did my best below. (Jill-Board Secretary)

Attorney Russell Channen (25 Kenoza Ave Haverhill): I am here representing Bradford Unlimited Corp. for a frontage variance. Part of this application includes authorization from the current owner of the property. Ms. MacDonald. What we have tried to show the board is overall concept as part of this variance. Ms. MacDonald lives at the property and she is getting up in age and instead of moving elsewhere her goal is to try and build a house on one of the adjoining lots and what we have been able to do, in a creative way is to subdivide what I would consider to be an oversized lot, to break a parcel that is 4 lots into 3 lots. Ms. MacDonald would stay and Bradford Unlimited builds her a new custom home on one of the lots and as part of this project we would then obtain a lot on the right side of the existing property. This would allow her to remain on the property. The only thing that would be required would be a frontage variance for the existing lot. And I hear Member Bevilacqua, talk about the proportion of the lot area for 48 Jasper but as I put in this brief, the variance that we are looking for, for frontage of approximately only 50%, with the new lots frontage would be 128.35 where 150 is required, so the variance request is minimal in nature and under these circumstances again we have provided copies of the plans showing the new home, which is a custom home, as well as plans showing the other home to be built on lot 7. With that being said we would rely upon as well as the documents submitted and ask the board to look favorable on this variance.

Chairman George Moriarty: Thank you. So, it's the middle lot basically that need the variance, is that correct?

Attorney Russell Channen: Yes that is correct. If you look at the plan it shows frontage on the two new lots that we created, and it would be the existing lot that would need that variance.



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Chairman George Moriarty: Right and that would be 128.35. Great Thank you. Any comments or questions from the board? ...I will entertain a motion.

Member Vathally: Mr. Chairman I would like to make a motion to approve the variance for 606 Salem Street. 2nd by Member Sullivan.

Member Sullivan: Yes. The basis of it is if you look at the plot plan, this original parcel is almost a triangle shape, so due to the shape of the land and particularly the southern boundary of the new lot 7, coming in on a reverse angle, there is a hardship that relates to the land justifying the granting of a variance for frontage for the new lot 8.

Chairman George Moriarty: Before I ask for the other votes, I noticed David, I didn't catch your last name. Did you want to speak?

David Madalono (75 Old Groveland Rd): I am one of the abutters. This is the first I have heard about the new build requested. I am going to keep this brief. How will this if at all affect local taxes in the area, based on the addition of new properties?

Chairman George Moriarty: Attorney Channen can you offer to explain.

Attorney Russell Channen: One of the things that we have always tried to mention to the board by allowing for a variance under these circumstances and allowing for construction of two new homes, will increase the property tax revenue for the City of Haverhill and I think from that standpoint I don't think it would have a negative fact for any existing homes, it would only be providing extra revenue for the city and extra services for the homeowners in the surrounding area.

Chairman George Moriarty: Thank you very much. If you have any more questions Dave, you might want to contact the attorney again and get some additional information. Returning to the vote

Member LaPlume Yes 255.10.2.2

Member Vathally: Yes 259-79 A, B, C

Member Bevilacqua: Yes 259-79 abc

Chairman: Yes

Member LaPlume: George are we using the new zoning criteria? 255-10.2.2

Tom Bridgewater: Yes we are using the new zoning criteria on this one and the next one.

Member LaPlume: So, when the other board members were saying 255-79

Tom Bridgewater: You should change that, as 255-79 is no longer.

Chairman: so, it is 255-10-2.2

Granted 5-0



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Note: I had a tough time hearing and making out all the words Channen said, so I did my best below. (Jill-Board Secretary)

Bradford Unlimited Corp. for 333 North Broadway (Map 563, Block 13, Lots 3 & 4) Applicant seeks dimensional variances for lot area of 15,559 sf where 20,000 sf is required and lot frontage of 100 ft where 150 ft is required to construct a single-family dwelling in a RM zone. (BOA-21-3)

Attorney Russell Channen (25 Kenoza Ave Haverhill): I am here representing Bradford Unlimited Corp. We have submitted with this application and the previous one the authorization of the current owner, Jackson as trustee of 333 North Broadway Realty Trust. As I indicated in my brief that we are back in front of the board 18 years later, on a very similar application. We were back in 2002 and a unanimous basis for a variance requested for construction of a single-family home. One thing that differs and in fact it differs to the cities benefit at this point, is back then the approval and I attached a copy of the recorded variance decision, back in 2002, it was with the installation of a second system, at this time members of the board the property will be tied into city water & sewer lines with would mean no runoff and a benefit to the city. One thing that I did hear from the Planning Department, is that there was a cost full composition serving the location of the lot in connection with eh lot in the area of Broadway, so what I did do, I think it was yesterday, I went out to Broadway and I took a photograph or the area and wanted to make sure the board could see it, the exact area in question and in fact there is a for sale sign that shows where the lot is. I am here with Mr. Defeo and he says in fact that that is the area where that for sale sign is, is roughly the area where the driveway would be located. In addition, we requested some guidance from John Pettis the City Engineer as to his thoughts concerning the area and whether or not the bend in the road at that location would create any potential traffic situations and what we learned from Mr. Pettis is that it would not cause problems, from a traffic standpoint, from a driveway standpoint, with the location of the property and so again, we also tried to have our contractor reach out to Mr. Powers about all these situations where there are possible opposition to try to address or hear any possible concerns, we weren't able to create a dialog, but from our standpoint

Mr. Powers: (Cut off the attorney) Mr. Powers is here

Attorney Russell Channen (25 Kenoza Ave Haverhill): The precedent has been set; I'm not asking for anything different than

Mr. Powers: (Cut off the attorney) I did speak with Mr., Defeo last night.

Chairman Moriarty: Mr. Powers I will give you a chance to speak in a minute, ok.

Attorney Russell Channen: Again, the board voted to unanimously approve the lot we are asking for. Two minor variances in this situation, 100 feet of frontage where there is 150 required and 15,559 sf of lot area where 20,000 is required. And again, alluding back to Member Bevilacqua comments back on Jasper Street, we believe that those variances are not unreasonable and are consistent with what occurred 18 years ago when we were asking the court to at this point reapprove the variance request and I thank you.

Chairman Moriarty: Thank you very much. I know Member Vathally drove up there to look at the property and I drove up a couple of days ago also and saw where it is on the bend and saw the for sale sign, so thank you for pointing out that that's where if this is approved, that's where the driveway would be, so thank you. And comments or questions from the board before Mr. Powers speaks?

Member LaPlume: I think Attorney Channen is doing his due diligence in taking this picture and it means a lot to me and I wouldn't be able to see it otherwise, this clarifies things a lot for me. I appreciate the work that you have done, thank you.

Chairman Moriarty: Any other comments from board members?...

Member Sullivan: Maybe later

Chairman Moriarty: Mr. Powers did you want to speak?



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Kevin Powers: I have a couple of questions. 1st of all I have lived at the location for 31 years. And there was a variance granted in 2002, I was never notified because at that point. There was a variance that happened across the street from me, they did the same thing with the house, they did a variance where no one told anyone, and I had a wooded lot and now there is a house there and it was built by Mr. Defeo. So my question is in 2002 why was I not notified?

Chairman Moriarty: I don't believe any of us were on the board at that time, so I don't think any of us can respond to that. I'm pretty sure none of us were on the board.

Kevin Powers: Well, I have lived here. It is great that they have changed the zoning without notifying the abutters. The other question is that house is on the corner of Glenn, North Broadway and West Louria, so where is the setback on the house?

Chairman: Attorney can you answer that?

Attorney Russell Channen: From which street, there is 3 streets there?

Kevin Powers: Glenn, North Broadway and West Louria it is on a 3-way corner.

Mr. Defeo: It is going to face North Broadway.

Kevin Powers: Ok, and how far is it set off of each or the three roads? There is 3 roads, Glenn, West Louria and North Broadway, that that house is cornered on. What are the setbacks on those?

Attorney Russell Channen: It is not on the corner of 3 streets.

Mr. Defeo: Those are paper streets. They are paper streets Kevin. Those are paper streets.

Kevin Powers: I understand that. My point is that you are building a house on the corner of 3 streets, they are paper streets that have other unbuildable lots, that all of a sudden can be built on if that address, we are opening up Pandoras box, the house here and then there's other lots out there.

Mr. Defeo: There is no road, for others to develop. They would have to develop roads Kevin.

Kevin Powers: You could build those roads. You could build that road.

Mr. Defeo: The cost though. This road is already developed.

Kevin Powers: What is there to prevent someone from building one there? They are paper roads, they are all over here, how owns them?

Member Sullivan: I believe according to the plan; they are privately owned.

Kevin Powers: The paper road behind my house, who owns it? I don't own it, that's city property. 2 trees fell down on the neighboring property and he contacted me, and the city had to take care of it because they are owned by the city. West Louria is owned by the city, East Glenn is owned by the city and his house abuts those two streets.

Member Sullivan: According to the plan from RAM engineering West Louria and Glenn Street are shown as private, so obviously I haven't done the title for these properties, but they are private. The abutters would own to the center, so North Broadway is the only public way on which the parcel has frontage.

Mr. Defeo: Exactly.

Kevin Powers: But you still could develop these streets. That's why I am asking if someone decided to develop these streets, where would his house sit on those three streets?

Tom Bridgewater: This is an RM zone and the setback in that required zone is 25 feet off the street, so he has to have on a corner through lot, he has to have 3 setbacks which on West Louria Street its 25.7 to the house, the rear line is 68 off of Glenn Street and it is 35 feet off of North Broadway, which meets all the zoning requirements, if they ever develop those streets.

Chairman: Thank you Tom. In response to Mr. Powers comments and questions, I will entertain a motion. Mr. Powers you look like you are talking but you are on mute.

Kevin Powers: Ok so the other question is, I worked for the post office for 35 years, I walked the streets for 35 years, I have lived in this house for 31 years and I have never walked down in front of that house because it is too dangerous. I haven't met with any of the people on this zoning here and if you spend some time on that street, you have no idea how many accidents there are, there are 3-4 we constantly lose power. The traffic coming so fast. Someone is going to get hurt, someone is going to get seriously hurt. It is not a safe place, there are no sidewalks out here. I have 4 grandchildren, you are putting it in a dangerous, dangerous spot. I think you people should



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physically come out here. I just think it should be put on an obedience and I would love to meet with all of you people and take a walk out there with me. You are telling me they are going to put a house there and have cars pulling in and out, I'm telling you someone is going to get hurt.

Chairman: Just as a point of reference, I know that Member Vathally did go up there, I went up there and also Saint Patrick's Cemetery is up there, so I have gone up there many, many times. I have two relatives in that cemetery actually 3 relatives.

Kevin Powers: Did you get out of your car and walk it?

Chairman: Yes I did get out of my car and walked the whole length on North Broadway. I go out for walks and I walk the entire North Broadway, so yes I have walked it and you are right you have to be very careful.

Kevin Powers: Did you feel safe?

Chairman: You have to be very careful; you absolutely have to be careful.

Kevin Powers: The other issue I have is Mr. Defeo built across the street from me, my street is supposed to be 22 feet wide, and it is less than 19 feet wide. He came down and all of his truck cracked the street. So, he comes in and builds a house, cracks the whole street and then just takes off and you never see him again until 5 years later when he wants to build another house out here. I would be more than happy, I have heard for 2 hours what a wonderful guy he is, if he wants to come and pave my street, you know I would be more willing if he gave me a little kick back, he is going to make a lot of money off of this house because the real estate market is through the roof. And I think that having an out of town guy and leave a neighborhood is not a good reason to give a variance. Attorney Russell Channen: I heard Mr. Powers term out of town, and I think I can speak clearly to the fact that and think all the members of the board know that Mr. Defeo and his company is not an out of town developer. Although he may live out of town and there was a good reason for that. But he grew up in Haverhill, his wife grew up in Haverhill, all the properties that he has developed/built are here in Haverhill. The reason why he lives out of town is because they had to move out of town because one of his children has a learning disability and they had to move to a different school district. But, to suggest that Mr. Defeo is an out of town, I think is a really poor characterization of himself. Also, to suggest that Mr. Defeo leaves sites in a disarray, the number of applications that have come across the board, I don't think there has been any situation and I believe one of the members said earlier during the Jasper Street, that he know Mr. Defeo goes out of his way to make sure that things are done correctly. And I am sure, and I'm sure the board is aware of this, that if this variance is granted that he will provide the same level of development on this project, that he has done always over the years. Again, we would ask the board to look favorably upon this application.

Note: Chairman keeps trying to speak but Mr. Powers is speaking loudly, almost shouting over him so we cannot hear the chairman.

Kevin Powers: If you want to come to my house, I can show you the street is all cracked. When Mr. Defeo had me on the phone yesterday, I asked him if we should go near his house and buy some property and go for some variances, he said to me they would do that there now, so they don't do it where he lives but he thinks he can do it here in Haverhill. They won't do it in Boxford, but they'll do it in Haverhill.

Note: "Chairman Trying to talk still" But Mr. Powers just speaks louder, over him

Chairman: Mr. Powers this is going off track now, it's not in the preview of the Appeals Board to talk about other things that are outside of the area.

Note: AGAIN, Chairman keeps trying to speak but Mr. Powers is speaking loudly, almost shouting over him

Chairman: I would encourage you to have more conversations with Mr. Defeo and see if you could work some of this out. I will entertain a motion...



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Member Vathally: I make a motion that we approve the variances for 333 North Broadway second by Member Sullivan

Member: Joe Sullivan: Yes the variance request meets the requirements of chapter 255-10.2.2 paragraph 2

Member Ron LaPlume: Yes it meets zoning criteria for variance 255-10.2.2 paragraph 2

Member Theodore Vathally: Yes it meets zoning criteria for variance 255-10.2.2 paragraph 2\

Member Louise Bevilacqua: sighting 255-10.2.2

Chairman George Moriarty: Yes

Motion granted 5-0

Board Secretary Jill Dewey: Excuse me Chairman, but I believe there are others trying to speak.

Eugenia Al-Ziab (327 North Broadway): When the gentleman that was speaking earlier said it was a dangerous street, we had 3 cars crash at 3 different times and there were 2 cars at 333, 2 different times. So yes it is a dangerous street and if its daytime and you are walking and if its nighttime, you don't want to be around. Some of those accidents were not very easy. There is not enough frontage and I guarantee you somebody will go through the house. I'm not very familiar with the ordinances and the variances and the square footage but the lot is very small for a house that size. It is not the greatest place, to have that little of frontage. And it is a wetland. I know you approved it but

Chairman: Again, you might want to have a conversation with Mr. Defeo to express your concerns.

Man (146 Woodstock Street): I have also been trying to speak but I wasn't able to. I directly about the property and it is wetlands. It is not a suitable property, it is a very rectangular, narrow property. It is in a very dangerous area; I always worry about accidents. In regard to the neighborhood, it is going to change the neighborhood entirely. So, if other people could be heard before you pass it, that would be great.

Chairman: This system is not very good; it is hard to know who wants to speak and who doesn't, so I apologize for not recognizing you earlier. But again, I would say, have some conversations with Mr. Defeo and see if you can resolve some of these issues. Zif it is wetlands than that is with conservation.

Man (146 Woodstock Street): Is there anything I can do to organize a petition?

Tom Bridgewater: So, this is for zoning purposes only, if this gets approved it has to go through developmental review and then all the wetlands, the conservation officer will be involved in it then. This all has to go through all the departments, that is the next step.

Eugenia Al-Ziab: So, may I ask a question?

Russell Channen: we obliterated all the wetlands on the plan, so we understand this and will make sure that everything is done correctly.

Man (146 Woodstock Street): Ok well you can't build on wetlands, you know what happens when you build on wetlands, the water runs down. I'm down, I'm directly down, my property is right there. The water has to go somewhere.

Chairman: Again, I would encourage the applicant Mr. Defeo to talk with both of you about your concerns. And, as Tom just mentioned, this is about the zoning aspect of it, it still has several fazes to go through and you can certainly have input at all of those fazes also.

Man (146 Woodstock Street): Ok so I can call in, for every other aspect as well?

Chairman: Tom?

Tom Bridgewater: They certainly can call the conservation officer Rob Moore and have a conversation with him, he is part of the developmental Review.

Eugenia Al-Ziab: And what is the conservation officers name?

Tom Bridgewater: Rob Moore



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Chairman: Ok thank you all. Thank you both for hanging on the line. Again, I apologize, this is a difficult situation with this Zoom and everything else. We will be back to normal in April. Si I will entertain a motion to accept the minutes of February.

Minutes: February 17, 2021 meeting.

Member Vathally motioned to accept the minutes from the February 17, 2021 meeting. Seconded by Member Sullivan.

Member: Joe Sullivan: Yes

Member Ron LaPlume: Yes

Member Theodore Vathally: Yes

Member Louise Bevilacqua: Yes

Chairman George Moriarty: Yes

Chairman: So, the minutes from the February 17, 2021

Ron LaPlume gave Board Sectary (Jill Dewey) permission to sign on his behalf.