

**ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
May 23, 2022  
(ADOPTED)**

**MEMBERS PRESENT:** Bruce Kudrick, Chairman, Thomas Hebert, Vice Chairman, Dana Carlucci, Paul Paradis, Natalie Glisson

**ALTERNATES PRESENT:** Robert Bourque, Wendy Chase

**EXCUSED:** Blakely Miner III

**STAFF PRESENT:** Paul Bacon, Code Enforcement Officer

Chairman Kudrick called the public hearing to order at 7:00 p.m.

Roll call was taken by the Reporting Secretary.

The Applicant for Case 22-02-Z and 22-03-Z was not present. Chairman Kudrick proceeded with Case 22-05-Z.

**I. Public Hearing**

**Case 22-05-Z** A request has been made for a **Variance under Article V Dimensional and Density Regulations, § 143-21, G & H Side and Rear Setback**. The applicant, Front Street Realty Co., LLC of 443 Deerpath Lane, Pembroke, NH, is requesting a **Variance to construct a garage 10' from the side and 2' from the rear setback where 15' side and 40' rear is required**. The property is owned by Front Street Realty Co., LLC of 443 Deerpath Lane, Pembroke, NH 03275. The property is located at 112-116 Glass St., Map VE lot 119, in the B-1 Business/Residential Zoning District.

**Applicant:** Front Street Realty Company, LLC

**Property Owner(s):** Front Street Realty Company, LLC

**Property Address:** 112-116 Glass Street  
Tax Map VE, Lot 119

**Included in the Member Packets:** Assessing card, Fee Schedule Worksheet, Plot Plan, Abutters List

**Present:** Larry Preston

Member Carlucci recused himself. Chairman Kudrick appointed Alternate Member Chase to vote in his place.

Chairman Kudrick read aloud the rules governing the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed to the application will speak; (4) Rebuttal by the applicant and those in favor of the application will speak; (5) Rebuttal by those in opposition to the application will speak.

He stated that anyone wishing to speak must first give their name, address, and interest in the case. All questions and comments will be directed to the Chairman. The Board will base their decisions on facts presented by the applicant. If any of the presented facts are found to be different than what was presented, the Board reserves the right to reconsider its approval.

Mr. Preston said that he would like to change his application to read: Requesting a 15' westerly setback and a 5' easterly setback. The rear setback would remain at 2'. He said that it would give him more room to store equipment/material on the westerly side of the garage. He also said that it would make the westerly setback more conforming to the Town Code.

Mr. Preston said that he is asking to build a 20' x 30' three-stall garage on the site to create additional parking. He said that it is consistent with the B1 area and surrounding properties.

Chairman Kudrick noted that the present application is requesting a 10' side setback on the east and west sides and a 2' rear setback.

Mr. Preston said that the driveway between the 2 buildings is shared by both properties.

As requested by Chairman Kudrick, the Applicant read the application aloud:

**Please give a detailed description of your proposal below.** Create 3 additional parking spaces in the B-1 District by building a 3-car garage on the property. A variance would allow us to encroach into the zoning setbacks and would not have a detrimental impact to abutters or the area and would be in keeping with similar abutters' properties.

1. **The variance will not be contrary to the public interest.** The building being closer to the lot line will have no effect on the public's interest.
2. **The spirit of the ordinance is observed.** By adding value to the property and town without negatively impacting abutters.
3. **Substantial justice is done.** Being allowed to construct 3 new parking spaces in an area of town that desperately is in need of additional parking relieves over-congestion on public parking and creates a useful purpose for otherwise unusable land.
4. **Property values are not diminished.** The garage will not diminish surrounding properties. Rather it should enhance and add value to my property as well as to surrounding properties. It will also increase the tax base as well.

**5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**

**(A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one.**

Because of the small size of the lot and the setbacks required in the ordinance, it is an unnecessary hardship preventing me to add more parking and also protected parking. The proposed garage does not exceed the spatial requirements for the yard, maintains 10’ setbacks – **Mr. Preston noted the recently requested change to his application of a 15’ and 5’ setback** – on either side and 2’ on the rear of building. It also brings a non-conforming lot closer to conforming by meeting parking requirements of the code.

**(B) If the criteria in subparagraph (A) are not established, and unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it.**

A variance would enable a reasonable use of the property. It would create additional parking in the B-1 District. It would add value to the property and tax base. It would have little to no impact on abutters. It would be keeping in character with other small lots in the B-1 District and abutters.

Alternate Member Bourque asked if the applicant would be doing any paving.

Mr. Preston said that there is existing pavement and that the building would come up to the existing pavement. There will be no increase in pavement.

With regard to stormwater runoff, Mr. Preston said that he will have a 6’ shed roof (a 5-12 or 6-12 pitch) on the front side of the garage and a 16’ roof (5-12 pitch) on the back side with a trench consisting of crushed stone to absorb the storm water.

Alternate Member Bourque asked if any water would be migrating onto his neighbor’s property to the north.

Mr. Preston said no, that the land slopes to the south, which is towards Mr. Preston’s apartment building.

Chairman Kudrick noted that Mr. Preston said that he was adding 3 parking spots, but, in reality, he is asking to build a garage. The 3 parking spaces will be inside the garage.

Mr. Preston said yes. Presently his tenants are parking where the garage will be located.

Chairman Kudrick asked if the area behind where the tenants are presently parking was also used for parking.

Mr. Preston said no. The area where the garage will be built is grass and pretty rough and rutty. He said that someone would park inside the garage and someone would park outside each garage door. There are 3 apartments in the building.

In order to ensure that the Board was familiar with the property, Chairman Kudrick described its location.

Alternate Member Bourque asked what the fire codes stipulated for minimum distance between buildings.

Mr. Bacon said that it is 30' between homes but he was not sure if it also pertained to accessory buildings.

Mr. Preston said that the garage will not have electricity. The abutter's garage has no electricity. There will also be no living space in the proposed garage and there is no living space in the abutter's garage. It is not their intention to have electric garage doors because then he would have to dig up the pavement in order to get electricity to the building.

No one spoke in favor or in opposition to the case. There was no rebuttal by the applicant or those in favor or in opposition to the case.

Member Hebert asked how many parking spaces were currently on the premises.

Mr. Preston said that he had 4 squeezed into the area now. Although the minimum number of parking spaces for a new 3-unit building would be 6, he noted that his property is grandfathered, but felt that the garage would bring the parking more into compliance with Town Code.

Vice Chairman Hebert said that, in the B1 District, the maximum impervious coverage allowed on a lot is 70%. He asked Mr. Preston if the lot contained 30% pervious coverage.

Mr. Preston said that where the garage is going is presently grass.

Vice Chairman Hebert said that when the garage is built, that area would be removed from the pervious calculation and would become impervious.

Mr. Preston said that Mr. Bacon and Chairman Kudrick looked at the site to make sure.

Chairman Kudrick said that he merely drove by.

Mr. Bacon said that he does not remember checking the impervious vs. pervious areas.

Vice Chairman Hebert said that typically that subject would be discussed at the Planning Board level but since this case would not be going to the Planning Board, he felt that it was within the Zoning Board's purview to ask for that clarification.

Mr. Preston said that there is a front yard and a side yard opposite the driveway that is small. The lot is 50' wide and approximately 90' deep.

Vice Chairman Hebert said that the records show .19 acres. 8,276 sq. ft. He asked if Mr. Preston's property had 872 sq. ft. of grass area.

Mr. Preston said that he would estimate that it was between 800-1000 sq. ft. but did not measure it.

There were no further questions by the Board.

Member Glisson summarized the case as follows: **Case 22-05-Z, a Variance under Article V Dimensional and Density Regulations, §143-21, G & H Side and Rear Setback:** The Applicant stated that he would like to build a 20' x 30' garage. He said that he would like to modify his original variance and move the structure 15' to one side and have 5' on the other side but still have 2' on the rear setback. He stated his reasons for making the change from the original variance. The Applicant read through the criteria. Alternate Member Bourque asked if there would be any additional paving involved. The Applicant said no. There was a discussion about storm water runoff, and the Applicant stated that he would like to build a shed roof with a trench to absorb the water. Chairman Kudrick clarified that it would be a 3-bay garage but not adding 3 spaces. The Applicant stated that it would essentially be adding more room since the garage would be taking up property that is not currently being used for parking. There are 3 apartments in the building. Chairman Kudrick clarified the geography of the land for the Board members. Alternate Member Bourque asked about the Fire Code distance between buildings and Mr. Bacon stated that there is 30' for residential buildings but unsure of the distance for accessory buildings. There will be no electricity to the garage. No one spoke for or against the case. Member Hebert asked about existing parking, which is 3-4 spaces, and asked about pervious and impervious area per lot size.

Chairman Kudrick stated that the Board will decide all cases within 30 days. The Notice of Decision will be posted for public inspection within 5 business days of the decision and will be sent to the applicant. The Board will either approve, deny, or continue deliberation on the case. No comments will be taken from the audience.

Chairman Kudrick officially closed the hearing at 7:30 p.m.

With regard to changing the distance from what was requested on the original application, to 15' from the westerly property line and 5' from the easterly property line, Chairman Kudrick did not think that it was a good idea because there is a garage on the neighbor's property that is presently on the property line. He said that the best way would be to leave the requested distances the way that they appear on the original application (10' on the west and east sides of the property).

Alternate Member Bourque commented that, on the right hand side of the garage where the applicant would like to be 5' from the property line and where there is an adjacent building, he felt that they would have a problem with the fire code and that it should be a greater distance. He would prefer the distance to remain at no less than 10'.

Zoning Board Member Deliberations:

**1. The variance will not be contrary to the public interest.**

Chairman Kudrick said that these are old lots established in the 1920's. He said that even with a 2-stall garage, it would be in the setback. He did not feel that it would be contrary to the public interest because building a garage would make the site better than it presently is.

Members Glisson agreed.

Vice Chairman Hebert said that he agreed but creating a hazard by having things too close is not in the public's interest. Allowing the Applicant to have a garage is within reason, but was concerned with having it 5' from the lot line.

Chairman Kudrick said that it would have to remain the same distance as requested in the Application (10' from the property line).

Member Glisson said that the Applicant's original application was 10' from the easterly and westerly lot lines, and 2' from the northerly lot line. It should not be changed.

Member Paradis agreed.

Alternate Member Chase asked if the case would be going before the Planning Board.

Chairman Kudrick said no.

Alternate Member Bourque said that the garage should remain as presented on the Application - 10' on either side and 2' on the back.

**2. The spirit of the ordinance is observed.**

Alternate Member Bourque said that the property is narrow and they do not have much choice, therefore, he felt that it was within the spirit of the ordinance.

Agreed by: Alternate Member Chase, Members Paradis and Glisson, Chairman Kudrick, and Vice Chairman Hebert.

**3. Substantial justice is done.**

Chairman Kudrick said that he felt that substantial justice will be done by allowing the garage. It will make the property more valuable, as long as it stays with original plan.

Vice Chairman Hebert said that it is allowing the Applicant the ability to utilize his property to the best of the property's ability given its lot size.

Agreed by: Member Paradis, Member Glisson, Alternate Members Chase and Bourque.

**4. Property values are not diminished.**

Chairman Kudrick said that no one offered proof that property values would go down. He felt that it would not diminish the value.

Alternate Member Bourque agreed and said that it would be more in line with the rest of the properties in the area.

Alternate Member Chase said that it would be more in compliance with the Town code on parking.

Agreed by: Member Paradis, Chairman Kudrick, Vice Chairman Hebert, and Member Glisson.

Member Glisson noted that if the neighbor at the rear of the property was concerned with water runoff or the 2' distance, he would have come to the meeting or notified the Board.

**5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**

**(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the**

**ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one.**

Chairman Kudrick said that the Applicant's hardship was the property itself.

Agreed by: Member Glisson, Vice Chairman Hebert, Alternate Members Chase and Bourque.

**(B) If the criteria in subparagraph (A) are not established, and unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it.**

Vice Chairman Hebert said that this is a motion, in reference to Case 22-05-Z, a request for a variance having been presented to the Board for consideration. A variance is required because the proposed construction is closer to the property lines than what is allowed by code.

**MOTION:** Vice Chairman Hebert moved to approve the application (**Case 22-05-Z Variance under Article V Dimensional and Density Regulations, § 143-21, G & H Side and Rear Setback**) as presented with the following conditions: (1) The applicant must follow all state and local regulations; (2) Prior to construction, the applicant must coordinate with the Code Enforcement Officer for a site inspection. The reason for the inspection is to identify the rear and side lotlines in placement of the proposed garage and reference to those lot lines ensuring that a minimum distance of 10' to the West lot line, 10' to the East lot line, and 2' to the North lot line is maintained; (3) No stormwater discharge onto abutting properties is allowed. In order to achieve this, the Applicant must install a stone dripline along the rear of the garage to adequately mitigate any stormwater from the roof. The Code Enforcement Officer shall inspect this feature to determine that it achieves this purpose upon final inspection and prior to issuing a certificate of completion. Seconded by Member Paradis.

**VOTE:**            B. Kudrick – Y            T. Hebert – Y            N. Glisson – Y  
                      W. Chase – Y            P. Paradis – Y

**MOTION TO APPROVE THE APPLICATION (CASE 22-05-Z VARIANCE UNDER ARTICLE V DIMENSIONAL AND DENSITY REGULATIONS, § 143-21, G & H SIDE AND REAR SETBACK), AS PRESENTED WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST FOLLOW ALL STATE AND LOCAL REGULATIONS; (2) PRIOR TO CONSTRUCTION, THE APPLICANT MUST COORDINATE WITH THE CODE ENFORCEMENT OFFICER FOR A SITE INSPECTION. THE REASON FOR THE INSPECTION IS TO IDENTIFY THE REAR AND SIDE LOTLINES IN PLACEMENT OF THE PROPOSED GARAGE AND REFERENCE TO THOSE LOT LINES ENSURING THAT A MINIMUM DISTANCE OF 10' TO THE WEST LOT LINE, 10' TO THE EAST LOT LINE, AND 2' TO THE NORTH LOT LINE IS**



**MAINTAINED; (3) NO STORMWATER DISCHARGE ONTO ABUTTING PROPERTIES IS ALLOWED. IN ORDER TO ACHIEVE THIS, THE APPLICANT MUST INSTALL A STONE DRIPLINE ALONG THE REAR OF THE GARAGE TO ADEQUATELY MITIGATE ANY STORMWATER FROM THE ROOF. THE CODE ENFORCEMENT OFFICER SHALL INSPECT THIS FEATURE TO DETERMINE THAT IT ACHIEVES THIS PURPOSE UPON FINAL INSPECTION AND PRIOR TO ISSUING A CERTIFICATE OF COMPLETION PASSED ON A 5-0 VOTE.**

Member Carlucci returned to the Board as a voting member.

Chairman Kudrick opened the hearing at 7:45 pm.

**Case 22-02-Z** A request has been made for a **Variance under Article IX Suncook Business Overlay District, § 143-71.1, A.** The applicant, Justin Tuminowski, of 20 Summer Dr., Londonderry, NH, 03053, is requesting a **Variance to turn an illegal *existing* residential dwelling unit on the first floor into a *legal* dwelling unit where no dwelling unit is permitted.** The property is located at 10 Glass St., Map VE, Lot 164, in the B-2, Central Business District, the Suncook Business Overlay District, and is owned by the applicant.

**Applicant:** Justin Tuminowski/The Gwendolyn Group LLC

**Property Owner(s):** Justin Tuminowski/The Gwendolyn Group LLC

**Property Address:** 10 Glass Street  
Tax Map VE, Lot 164

**Included in the Member Packets:** Assessing card

**Present:** Justin Tuminowski

Chairman Kudrick read aloud the rules governing the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed to the application will speak; (4) Rebuttal by the applicant and those in favor of the application will speak; (5) Rebuttal by those in opposition to the application will speak.

He stated that anyone wishing to speak must first give their name, address, and interest in the case. All questions and comments will be directed to the Chairman. The Board will base their decisions on facts presented by the applicant. If any of the presented facts are found to be different than what was presented, the Board reserves the right to reconsider its approval.

Justin Tuminowski said that he acquired 10 Glass Street and 32 Glass Street which are across from Crescent Street. When he purchased 10 Glass Street, the property records showed that it was listed as a mixed use. He said that the prior owners had the property as a residential and would like it to be approved as such. It currently is a 3-unit property in a business district. The

lower sidewalk unit was used as a real estate office and a barber shop. Within the last 20 years, it was used as a residential unit.

As requested by Chairman Kudrick, the Applicant read the application aloud:

**Please give a detailed description of your proposal below.** Subject property, 10 Glass Street is currently a 3-family residential dwelling, with a lower level mixed use designation. However, prior owners have converted the lower level into an illegal residential rental unit. It's with my new ownership status, I would like the town to officially recognize the lower level as an approved 4<sup>th</sup> unit in the home. The lower level is roughly 20' x 25' and will be brand new if the town shall approve such designation. We do fit into the lot dimension and zoning requirements by the Town. Being over 6,500 sq. ft. and over 90' of frontage. Having over 8,000 sq. ft and 112' of frontage.

1. **The variance will not be contrary to the public interest.** Glass Street, which is next to Main Street, is comprised of many non-conforming, original 1700-1800 era lots and dwellings. We believe this is the property's best and highest use. The public is very much in need of clean, safe, healthy housing. We feel this will very much be an asset to the town and the local area.

2. **The spirit of the ordinance is observed.** We are providing the rental unit with 1-2 dedicated off-street parking spots. There is a garage spot and 1 spot outside barn/garage. Currently, each unit gets 1 dedicated parking spot in our property (existing). Also we do have a conforming lot.

3. **Substantial justice is done.** The intent for this application/variance is to legalize an existing unit. To become a recognized 4<sup>th</sup> unit for the property, within the Town of Pembroke. However, a denial would certainly not be conducive to the ecosystem of the property and its intended purpose. Including its financials required to properly run and maintain it. Furthermore, it would undoubtedly remove a fantastic opportunity for someone to call it home, in an already skinny housing market.

4. **The values of surrounding properties are not diminished.** This actually would be furthest from the reality. It's the contrary actually. Being an owner of 2 multifamily properties with a 3<sup>rd</sup> projected by end of 2022 in Town. We are finding it increasingly difficult to find quality, renovated 2-4 unit properties in the area for appraisal comps. The quality of the renovation we put into our properties far exceed industry and community standard. We have the mindset that, put out a nice product, and attract quality people. So we will undoubtedly be increasing the surrounding property values. Very exciting.

Some additional benefits are: Tax increase for town revenue. Improved home values. Improved quality of life and improved community members. Bringing clean, modern housing opportunity to folks in a time of major need. Foot traffic to downtown shops and eateries. We also hope to

bring a small piece of rejuvenation to the immediate area. Showing some improvements, where neighbors may also be encouraged to be mindful of their properties and the upkeep.

**5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. (A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one.** The subject property is currently a legal 3 family. With once also holding a “mixed use” designation. The prior owners and many before them have certainly used the sidewalk – lower level space for all purposes. Please know, with acceptance of this variance, the property/bedroom/bath count would be as follows:

Unit 1: 2 bedroom 1 bath existing unit.

Unit 2: 1 bedroom 1 bath existing unit.

Unit 3: 1 bedroom 1 bath existing unit.

Unit 4: 1 bedroom 1 bath existing unit (already having pre-existing town sewer water with commercial space).

**(B) If the criteria in subparagraph (A) are not established, and unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it.**

Chairman Kudrick asked the Board to refer to Page 120 (§143-71.1 Suncook Business Overlay District) of the Town Code. He said that this area was designated by Town Meeting in 2005. “The purpose of this District is to restrict residential dwellings from the first floor of buildings in the Suncook Business District.” The Board reviewed the district boundaries.

Member Glisson said that the purpose was to encourage businesses on the first floors. She also said that the front of the lower level of 10 Glass Street looks like a business.

Alternate Member Chase asked if there were other residences on the first floor in that District.

Member Carlucci said that prior to the designation, there was one 4 unit building that Level Headed Construction converted to a main level residential building.

Chairman Kudrick asked the Board to read the ordinance so that they understand why the Code was created.

No one spoke in favor or in opposition to the case.

The Recording Secretary read into the record a letter from the Pembroke Sewer Commission to the Zoning Board of Adjustment dated March 17, 2022 with regard to 10 Glass Street.

Chairman Kudrick clarified that the Sewer Commission letter stated that there is no sewer capacity for the fourth unit – whether commercial or residential. An application would have to be submitted to the Allenstown Wastewater Treatment Facility for approval.

Mr. Tuminowski said that he demolished the inside of the lower unit. He said that he could provide photos upon request. He said that the unit previously had no tub but had a shower and a toilet.

Chairman Kudrick said that whether the lower space is used for a residential or business unit, there is no gallonage given to that unit, therefore, Mr. Tuminowski would have to get a permit and pay the Sewer Commission fee if it were allowed by the Allenstown Wastewater Treatment Facility.

Vice Chairman Hebert said that originally it was 2 units upstairs and one unit downstairs. Once the owner put the third residential unit upstairs, the commercial lower space ceased to be utilized in the same capacity.

Member Glisson said that a commercial space only needs a toilet and a sink.

Mr. Bacon said that presumably there is capacity for Pembroke since the EPA approved the request for expanded gallonage.

Chairman Kudrick said that, no matter whether residential or commercial, approval would have to be received from Allenstown and the sewer fees would have to be paid.

Vice Chairman Hebert said that if the Sewer Commission does not have records of gallonage being appropriated for that space and the records show that there is only 3 hookups for that property, then Pembroke Water Works would have a similar situation which means that if the Zoning Board approved it, Mr. Tuminowski would have to pay for a connection for that 4<sup>th</sup> unit on both the water and the sewer.

With regard to parking, Vice Chairman Hebert asked how many parking spaces were existing.

Mr. Tuminowski said that he owns a portion of Village Lane and Crescent Street. On Crescent Street they have 3 parking spaces existing and one spot in front of the garage/barn. They are trying to get 2 more spots (one in the garage and one spot in front of the garage).

Mr. Tuminowski said that they are trying not to have tenants use any of the municipal parking spaces or street parking on Glass Street, other than for the commercial use.

Mr. Bacon said that Mr. Tuminowski does not have to meet the code with regarding to parking spaces for a new building because it is an existing building.

Chairman Kudrick said that the existing building containing 3 units is grandfathered but if he is adding a new unit, it is not grandfathered.

Vice Chairman Hebert said that he would have to add 2 additional spaces.

Member Carlucci asked about the pervious vs. impervious on site material.

Mr. Tuminowski said that he owns approximately 75' up Crescent Street to the municipal lot, at the garage. He said that he could easily add one spot in front of the Glass Street unit and there would be one spot inside the garage.

Mr. Tuminowski said that at the rear of 10 Glass Street, there is a 24' x 10' wide deck which abuts Village Lane.

Vice Chairman Hebert said that 90% of the lot can be impervious. The lot is 8,220 sq. ft. which 822 sq. ft. of pervious would be needed.

Mr. Bacon said that the footprint of the building is not changing and the pervious/impervious areas have always existed.

As clarification, Chairman Kudrick said that when the lower space was a commercial space, they used the parking on the street, but now Mr. Tuminowski is asking for a new 4th residential unit which will require 2 additional spaces which will affect the pervious/impervious calculation.

There is pervious pavement which has been used in Hooksett by Public Service Company of NH.

Member Carlucci said that gravel is considered impervious according to NH DES, if it is driven on by vehicles because it would become compacted.

Alternate Member Bourque said that the pervious asphalt, if not taken care of, will become plugged up with sand and salt within 2 years.

Mr. Tuminowski said that he will not be paving. He intends on having the cars at 10 Glass Street park at an angle.

If the 4<sup>th</sup> residential unit is allowed, Chairman Kudrick said that the site will require 5 parking spaces. Three spaces are grandfathered and already exist. If the Board approves the new residential unit, the Applicant must create another 2 spaces.

Mr. Tuminowski said that he will have 6 parking spaces once he has reorganized the site.

Member Carlucci asked if there was any information on the parking when the third unit was created.

Mr. Bacon said that he had no idea and did not look that deep into the property records.

Alternate Member Bourque said that his impression was always that if someone wanted to change something on an existing property, they become subject to all the new regulations.

Mr. Bacon said that according to the existing Building Code if 40% or less of the existing structure is affected by the proposed work, the whole house does not have to be brought up to code.

Chairman Kudrick said that the Board is only looking at that one particular unit and, therefore, the Board can stipulate the parking requirement.

Mr. Tuminowski said that the building square footage is conforming to a 4-unit. The parking would be the only issue.

Member Carlucci said that the Board is discussing pervious and impervious and when parking is added, it adds impervious material.

Chairman Kudrick said that they need 822 sq. ft. of non-pervious material. The Board does not have that information.

Mr. Bacon said that the percentage of pervious is grandfathered.

There were no further questions from the Board. No one spoke in favor or in opposition to the case.

Member Glisson summarized the case as follows: **Case 22-02-Z, a Variance under Article IX Suncook Business Overlay District, §143-71.1, A.** The Applicant, Justin Tuminowski read through the criteria. Chairman Kudrick referred the Board to the Code which restricts residential units from being on the first floor. No one spoke in favor or against. The Pembroke Sewer Commission letter was read. The Applicant stated that he did a demo in the bathroom and that sewer was never granted to the unit which was clarified through the Sewer Commission letter. Mr. Bacon stated that there is capacity for additional sewer from Allenstown. The Board does not have information regarding the Pembroke Water Works, but Chairman Kudrick stated that there might be a connection fee for water and sewer if granted by the Board. Vice Chairman Hebert asked about parking and the Applicant clarified that he would still be 2 spaces short but the Board discussed that and it was clarified. Mr. Bacon asked whether the Applicant needed to meet code due to being grandfathered in. There was a discussion about parking and impervious vs. pervious lot area. There was discussion about lawn in back of the building that consisted of a deck, grass, and a retaining wall. Alternate Member Bourque asked about the number of needed parking spaces which the Board discussed in depth.

Chairman Kudrick stated that the Board will decide all cases within 30 days. The Notice of Decision will be posted for public inspection within 5 business days of the decision and will be

sent to the applicant. The Board will either approve, deny, or continue deliberation on the case. No comments will be taken from the audience.

Chairman Kudrick officially closed the hearing at 8:31 p.m.

### **ZONING BOARD MEMBER DELIBERATIONS:**

Chairman Kudrick said that it is probably easier to rent a residential unit rather than a commercial unit, but he said that he was focused on what the Town passed in 2005 which was a Business District that stipulates businesses on the street level. The Applicant is asking to go against the Suncook Business Overlay District.

Member Carlucci pointed out that the Overlay District is very small.

Chairman Kudrick said that the main reason that the Overlay District was created was because the Town wanted to encourage businesses in this area. Spaces above street level was intended for residential use.

The Applicant is asking for a variance to put in a residential unit on the street level.

Member Carlucci said that the catalyst for the Business Overlay District was when, prior to 2005, Level Headed Construction created first floor apartments in their Main Street building. It is the only first floor residential units within the Overlay District. The reason why the Pembroke Economic Development Committee and Meet Me in Suncook Committee requested an Overlay District was because they realized that businesses feed other businesses. They also felt that it was important to help maintain a thriving downtown business area.

Vice Chairman Hebert said that the past Economic Development Committee met with downtown business owners and recognized what the businesses were trying to promote and heard their struggles. The Town wanted to encourage other businesses.

Member Carlucci said that the State of New Hampshire was also very involved and encouraged many old mill towns to recognize their potential. It was an effort statewide and townwide.

### **ZONING BOARD MEMBER DELIBERATIONS:**

#### **1. The variance will not be contrary to the public interest.**

Member Glisson said that, when looking at the present housing market, it is not contrary, but it is contrary to the Town Code.

Vice Chairman Hebert said that there is such a small amount of business space to be had. To keep chipping away at the Business District is a hard pill to swallow. For the public interest,

the Overlay District was put in place with the thought process of protecting the area, promoting those businesses already in place, and encourage other businesses to that area.

Member Carlucci said that it would be contrary to the public interest, not only because of all the efforts that have been put into retaining this business area, but the businesses produce business profits taxes, enterprise taxes, rooms and meals taxes, and employee taxes. Even though it might not be directly funneled into the Town, it gives the Town support. He said that one of the things that was great about that kind of support is that, when the Economic Development Committee was looking at the downtown, Pembroke had Regional help which are supported by business taxes.

Member Paradis said that the ordinance was written 17 years ago and since the exterior of the building would not change, he felt that changing the use was okay.

Alternate Member Chase said that it is contrary to public interest because of the zoning district.

Alternate Member Bourque said that he does not agree that the use of the street level unit should be changed.

## **2. The spirit of the ordinance is observed.**

Alternate Members Bourque said that the spirit of the ordinance is not observed.

Agreed by: Members Paradise and Carlucci, Alternate Member Chase, Chairman Kudrick, and Vice Chairman Hebert.

Chairman Kudrick said that the Applicant could put a business in that unit because that is what the rules allow. The only thing he would have to do is take care of the water and sewer fees.

Mr. Bacon said that the “hot” thing is not businesses rentals.

Member Carlucci said that the municipal parking lot has helped the businesses and he thanked the Town for taking care of it.

## **3. Substantial justice is done.**

Chairman Kudrick said that, based on the regulations, he did not think that substantial justice would be done if the Board granted the variance. The Town is trying to keep businesses in that area and to grant the variance would be taking business away.

Member Carlucci said that, looking at this situation through common sense, the municipal parking lot is available during the day for business patrons. At night, when the residents



comes home from work, the parking lot is tied up, He said that it may not be such a burden to have a small business in that unit. It does not have to be a barber shop or a gift shop. It could be a professional office.

Member Paradis agreed with Member Carlucci.

Alternate Members Chase and Bourque said that substantial justice would not be done if granted.

#### **4. Property values are not diminished.**

Alternate Member Bourque said that the property value will not change whether the unit is used for business or residential.

Agreed by: Alternate Member Chase, Members Paradis, Carlucci, and Glisson, Vice Chairman Hebert, and Chairman Kudrick.

#### **5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**

**(A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one.**

Chairman Kudrick said that the hardship is that he is in a business zone.

Member Carlucci said that he understood the fact that a residential unit would bring in a higher rent, but, if you believe in the Town Ordinance and why it was established, that’s what you do. If the Board chooses not to approve it, the Applicant will still have 3 incomes to the building which will more than take care of the property and it would be great to get more people downtown with a new business in the 4<sup>th</sup> unit.

Agreed by Alternate Member Chase, Member Paradise and Alternate Member Bourque.

Vice Chairman Hebert said that residential is not the only use for the space and is no different than other buildings in that District.

**(B) If the criteria in subparagraph (A) are not established, and unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in**

**strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it.**

Vice Chairman Hebert said that, in reference to **Case 22-02-Z**, a request for a variance having been presented to the Board for consideration. A variance is required to allow a residential use on the first floor in the Suncook Business Overlay District.

**MOTION:** Vice Chairman Hebert moved to deny the application (**Case 22-02-Z, Variance under Article IX Suncook Business Overlay District, §143-71.1, A**), as presented. The reason for the denial is that the variance is contrary to the public interest, the spirit of the ordinance is not observed, and that the proposed use conflicts with the written purpose of the District which does not allow residential units on the first floor. Substantial justice is not done because it would do harm to the Town at the benefit of the Applicant, and the Applicant did not prove the hardship of the property. Seconded by Member Carlucci.

Vice Chairman Hebert clarified that, if the Board votes in favor of the motion, it would mean that they are voting to deny the variance.

**VOTE:**            B. Kudrick – Y                            T. Hebert –    Y            D. Carlucci – Y  
                         N. Glisson –    Y                            P. Paradis –    N

**MOTION TO DENY THE APPLICATION (CASE 22-02-Z, VARIANCE UNDER ARTICLE IX SUNCOOK BUSINESS OVERLAY DISTRICT, §143-71.1, A), AS PRESENTED. THE REASON FOR THE DENIAL IS THAT THE VARIANCE IS CONTRARY TO THE PUBLIC INTEREST, THE SPIRIT OF THE ORDINANCE IS NOT OBSERVED, AND THAT THE PROPOSED USE CONFLICTS WITH THE WRITTEN PURPOSE OF THE DISTRICT WHICH DOES NOT ALLOW RESIDENTIAL UNITS ON THE FIRST FLOOR. SUBSTANTIAL JUSTICE IS NOT DONE BECAUSE IT WOULD DO HARM TO THE TOWN AT THE BENEFIT OF THE APPLICANT, AND THE APPLICANT DID NOT PROVE THE HARDSHIP OF THE PROPERTY PASSED ON A 4-1 VOTE.**

**Case 22-03-Z** A request has been made for a **Special Exception under Article IV Use Regulations, § 143-19 Table of Use Regulations #3**. The applicant, Justin Tuminowski, of 20 Summer Dr., Londonderry, NH, 03053, is requesting a **Special Exception to allow a (4) unit multi-family building, where the building is a (3) unit multi-family and the owner seeks to make an existing 4<sup>th</sup> unit a legal unit**. The property is located at 10 Glass St., Map VE, Lot 164, in the B-2, Central Business District, the Suncook Business Overlay District, and is owned by the applicant.

**Applicant:**                            Justin Tuminowski/The Gwendolyn Group LLC

**Property Owner(s):**            Justin Tuminowski/The Gwendolyn Group LLC

**Property Address:** 10 Glass Street  
Tax Map VE, Lot 164

**Included in the Member Packets:** Assessing card, plot plan

**Present:** Justin Tuminowski

Chairman Kudrick called the meeting to order at 8:50 p.m.

Chairman Kudrick said that the denial of Case 22-02-Z made Case 22-03-Z moot.

Chairman Kudrick asked the Applicant if they wanted to continue with Case 22-03-Z, Special Exception. He said that the Special Exception is to have 4 residential units in the building where there is only 3 right now.

Mr. Tuminowski asked for clarification on the use of the lower unit.

Chairman Kudrick said that the lower unit is a commercial unit based on the Town regulations.

Mr. Bacon said that if the Applicant wanted to appeal the decision, he could take it to the Housing Appeals Board. He said that if Mr. Tuminowski took care of both cases now, and if he appealed Case 22-02-Z, then he would not have to return to the Board for a Special Exception.

The Applicant decided to continue with the next case.

The Recording Secretary read the case aloud.

Chairman Kudrick stated the rules of the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed will speak; (4) Rebuttal by the applicant and those in favor of the application will speak; (5) Rebuttal by those in opposition to the application will speak. All people wishing to speak must give their name, address, and interest in the case. All questions and comments will be directed to the Chairman. The Board will base their decisions on facts presented by the applicant. If any of the presented facts are found to be different than what was presented, the Board reserves the right to reconsider the approval.

As requested by Chairman Kudrick, the Applicant read the application aloud:

**Please give a detailed description of your proposal below:** My request and submittal is for a Special Exception, to approve a once “Mixed Use/Commercial” space into an approved residential – 4<sup>th</sup> unit. The subject property is 10 Glass Street. The property is currently a legal 3 family that consists of 4 bedrooms and 3 bathrooms with additional living space in the lower level. Featuring 1 (one) additional bathroom. Not on current town tax card). The lot is currently 8,200 sq. ft. 4 unit zoning requires 6500 sq. ft. We are also in compliance on our existing frontages. Required 90’ (ft.) we currently have 112.5 ft. I just recently purchased the property in January 2022 with plans to upgrade and renovate the property inside and out. The prior owners

have failed to comply with the town zoning and used the space as an illegal rental unit. We are seeking approvals to change that within the town.

Chairman Kudrick explained to the Board that, as long as the lower level unit remains a commercial unit, the Applicant can make 4 units upstairs.

The Applicant said that he could “go up” if he had to.

Member Carlucci asked for clarification because the application seems to be asking for an approved residential fourth unit in a mixed-use three-unit building.

Chairman Kudrick said that the Applicant would have to ask the ZBA to change the top level of the building to 4 units.

Member Carlucci thought that the Applicant would have to reapply.

Vice Chairman Hebert said that the way that the Special Exception case is worded, Mr. Tuminowski is asking the Board to approve a fourth unit but he is not being specific as to where the fourth residential unit will be located.

Member Carlucci said that the application asks for approval of a once mixed-use commercial space, which, he pointed out was in the basement, to a 4<sup>th</sup> residential unit. There is no plan or sketch for the 4<sup>th</sup> unit. Usually the applicant comes in with information of where the structure is and where the parking is. He said that it would be a different application than what is before the Board. The Applicant’s application is for a mixed use commercial to be turned into a residential unit which the Board just denied. This new application is unclear except that Mr. Tuminowski is looking to place the unit where there was once a mixed use commercial space which is the ground floor which the Board just denied.

He said that, if Mr. Tuminowski wants to apply for a 4<sup>th</sup> residential unit in 10 Glass Street, then there should be a specific application for that.

Mr. Tuminowski said that when he came in to look at the folders for the property, it was his opinion that the property was stripped from the commercial use. He did not think that the property had the commercial designation until they discovered that it was in the Suncook Business Overlay District.

Chairman Kudrick said that it is very clear in the Town’s ordinance that that property is in the commercial area. The tax cards are not always correct.

Mr. Carlucci said that if there is room in that building to put a 4<sup>th</sup> residential unit, then the applicant should apply for it. It would be cleaner if the application indicated specifics such as

where the unit would be placed in the building, the size of the unit, where the safe accesses would be located, where the 2 parking spaces would be, etc.

Vice Chairman Hebert said that up to 6 units are allowed in that district with a special exception.

Alternate Member Bourque agreed with Member Carlucci. He said that the Town needs documentation in the file because when the Board's members change or other Town departments need specific information about that property, it would not be clear unless there is documentation.

Vice Chairman Hebert pointed out that the abutters were notified thinking that it would potentially be a 4 unit and now it would potentially be a 4 unit with a commercial unit which is actually 5 units.

Member Glisson said that the Board should discuss the application as presented and approve or deny it.

Chairman Kudrick said that the lower level must remain a commercial space. It cannot become a family room for one of the other units.

He recommended that Mr. Tuminowski pull the application and return with a clean application on what he would like to do.

Vice Chairman Hebert suggested continuing the case and allow the applicant to refine his application based on the wordage that is in place and the fact that the variance was denied. The reason for the suggestion was so the Applicant would not have to re-notify the abutters.

Alternate Member Bourque agreed that the application should be pulled and the applicant resubmit it. He said that it would be good to have the additional documentation listing entrances and exits, a floor plan, parking spaces, etc.

Chairman Kudrick also agreed that the Applicant should pull the present application and resubmit it as a 4-unit with a mixed commercial space on the lower level which is significantly different than just a 4-unit. It would still be a special exception. Whatever the applicant wishes to do on the upper floors is up to him, but the lower floor must remain a commercial space.

Mr. Tuminowski said that he would pull the application.

Chairman Kudrick said that in order for Mr. Tuminowski to rent out the commercial space, he only needs to take care of the water and sewer issues.

Mr. Bacon asked if the Town allows a 3-story building.

Alternate Member Bourque said that the maximum height is 35' from all 4 sides of the building to the highest occupied window, because it is the limit of the fire apparatus. The Code also notes 50' to the roof.

Mr. Tuminowski asked the Board to pull the application.

The hearing ended at 9:25 pm.

#### **IV. Approval of Minutes – April 25, 2022**

**MOTION: VICE CHAIRMAN HEBERT MOVED TO APPROVE THE MINUTES OF APRIL 25, 2022 AS SUBMITTED. SECONDED BY MEMBER CARLUCCI. UNANIMOUSLY APPROVED.**

#### **V. Other Business / Correspondence**

Alternate Member Bourque suggested that the ZBA consider ways to increase, decrease, or make changes to the Suncook Overlay District so those changes can be discussed with the Planning Board.

Chairman Kudrick apologized to Members Glisson and Paradis and Alternate Member Chase because they should have been notified by the Town that their terms were expiring and asked whether or not they wanted to continue as ZBA members. He said that the Town should not have waited until the last minute. They should have received a letter by May 1<sup>st</sup>.

Alternate Member Bourque noted that the Town's webpage does not show the tenure of each Zoning Board member as they do for the Planning Board. He suggested that it be brought to Mr. Jodoin's attention.

#### **VI. Adjournment**

**MOTION: VICE CHAIRMAN HEBERT MOVED TO ADJOURN THE MEETING AT 9:28 PM. SECONDED BY MEMBER PARADIS. UNANIMOUSLY APPROVED.**

Respectfully submitted,  
Jocelyn Carlucci  
Recording Secretary