



**Stratham Zoning Board of Adjustment
Meeting Minutes
December 13, 2022
Municipal Center
Time: 7:01 PM**

Members Present: Drew Pierce, Chairman
Richard Goulet, Member
Bruno Federico, Member
Brent Eastwood, Member
Phil Caparso, Alternate

Members Absent: None

Staff Present: Jim Marchese, Code Enforcement Officer/Building Inspector

1. Call to Order/Roll Call/Seating of Alternates

Mr. Pierce called the meeting to order and took roll call. Mr. Pierce asked for a motion to appoint Mr. Caparso as a voting member of the Board for tonight's meeting. Mr. Federico made a motion to give voting member status to Mr. Caparso and Mr. Goulet seconded the motion. All were in favor and the motion carried unanimously.

2. Approval of Minutes

a. November 22, 2022

Mr. Goulet made a motion to accept the meeting minutes from November 22, 2022 as submitted. Mr. Federico seconded the motion. The motion carried unanimously.

3. Public Hearing:

Mr. Pierce moved to the public portion of the meeting stating that the Board shall decide whether to grant or deny the following request:

- a. Case #666, Stratham retail Management, LLC 30200 Telegraph Road Suite 205 Bingham Farms MI regarding 23 Portsmouth Avenue, Map 4 Lot 13, Gateway Commercial Business District.** Mr. Pierce stated that it is a variance request from article 7.9b section 8.3 and 7.9b section 8.4 of the Stratham Zoning Ordinance to permit the applicant to install wall signs above the second floor line that are also larger than the ordinance allows.

Mr. Pierce explained the format that the Board will follow. The Board will first open the floor to public discussion, including any information the applicant would like to present to the Board, after that the Board will hear from the parties opposed, then parties either for or against the project to granting relief as stated. Then the Board will close the public portion of the hearing and have a discussion among the Board. After the discussion, the Board will vote whether or not to grant said

46 relief. Mr. Pierce then opened the floor to the public for input on case #666.

47
48 Mr. Timothy Phoenix, an attorney from Hoefle, Phoenix, Gormley & Roberts Law Firm in
49 Portsmouth introduced John Crowley, Samantha Burgner, and Jake Modestow as being part of their
50 team. Mr. Phoenix turned the floor over to Mr. Modestow and Ms. Burgner to review the history
51 and technical nature of the project through a PowerPoint presentation.

52
53 Mr. Modestow from Stonefield Engineering and Design introduced himself as the design engineer
54 of the project. Mr. Modestow gave a brief history of the project including a description of the parcel
55 where the building sits just south of Market Basket on a 1.4 acre parcel. Mr. Modestow noted that
56 there is a grade change from the northern property line to the southern property line approximately
57 10 feet from the pinch points of that property and the length of the property is a little bit longer in
58 the frontage. He stated that a unique component of the parcel is that it has frontage along two roads
59 so there is no typical front yard. Mr. Modestow continued saying that the Zoning Ordinance for the
60 Gateway Commercial District promotes the placement of buildings close to the right-of-way. He
61 mentioned that a lot of shopping centers have a stacked row of parking and then the building, which
62 is what people see when going up and down the roadway, however, the Gateway District promotes
63 pushing all the buildings forward closer to the road. Mr. Modestow noted that they have access from
64 a NHDOT roadway with increased speeds through the corridor. He mentioned that due to the double
65 frontage - the two access points for the property which give access from the front and rear, it is
66 important from a signage standpoint because it's really a visibility situation. Mr. Modestow said
67 that the signage is a visibility and safety concern (several slides were shown). The whole reason for
68 the sign is to visually see it, make the maneuver and turn into the facility. The applicant has come
69 to this conclusion as to the 150 square feet (sq. ft.) for each of the three signs that they are proposing.
70 He displayed a slide showing the three locations of the proposed signs for the building, including
71 the front and side building facades. Mr. Modestow also noted they are not proposing a sign at the
72 rear of the building, only at the areas where the applicant needs to have that visibility. The 150 sq.
73 ft. gives any drivers coming to the facility the ample ability to read (the signage) and get into the
74 site. Mr. Modestow stated that the corridor has higher speeds and will attract people outside the
75 local community who will not be familiar with the area. Brand recognition is important for the
76 company, similar to McDonald's where the golden arches are an iconic example of the brand. It is
77 important to make sure the customer is getting to the right facility since there are two access points
78 into the facility. Mr. Modestow mentioned that Samantha Burgner was going to go into the
79 background on how they came to this design.

80
81 Samantha Burgner introduced herself as being at the meeting to represent Optima Dermatology. Ms.
82 Burgner gave a history on what will be done in the building including general dermatology, medical
83 aesthetics, and some surgical procedures. Ms. Burgner explained that people will be coming to the
84 facility from throughout the state, as well as from Massachusetts and Maine, to have procedures
85 carried out. She suggested that there is a regional need for the facility due to rising skin cancer rates.
86 She explained the need for these types of buildings, as people are living longer and develop different
87 skin challenges. The building was built to grow and to be able to accommodate a regional need from
88 both the local community and larger area. Ms. Burgner said they are bringing new dermatologists
89 into the community and relocating dermatologists to New Hampshire. She said many factors,
90 including visibility, affects how the company plans and programs their facilities. Ms. Burgner said
91 they have about a 90-day wait time for the services they provide, which shows the need for these
92 services and facilities in this community. Ms. Burgner stated that they looked at the Zoning
93 Ordinance for the Gateway Business District when designing the building and worked with the
94 Planning Board. She believes their signage is consistent with the standards described in the
95 Ordinance from the effective use, to the early detection of the building, which goes back to Mr.

Modestow's point regarding the general welfare of the public. She stated the importance of consistent signage throughout the building not having different styles and looking at the building holistically.

Ms. Burgner gave a history of how the building was constructed. She stated they worked with the Planning Board through preliminary and formal meetings, to transform the design originally proposed to the one which is under construction. Ms. Burgner stated they looked at what the Planning Board thought was important in the community- with ties back to its agricultural heritage, different roof lines including pitched roof lines, to change the architecture into what is being built today on the property. This took into account the appropriate use of the signage and the scalability and design. She mentioned that the signage is 150 sq. ft. on all three signs, but the building is 10,000 sq. ft., 40 feet tall, and the larger size signage does not look awkward on the building itself. Ms. Burgner then discussed regional pull and where the pull comes from. Patients from the Maine practice will be referred to the MOHS surgeon in Stratham and along the 101 to the Manchester area to bring people to the community in Stratham. She showed photos of how signage looks on their three open locations in Ohio, which has the previous version of the design, to show the size and scale on the building. (Slides and elevations shown of east, north and south elevations). Ms. Burgner noted that originally they wanted branding on all four sides, but removed the back sign as there was already a free standing sign. (A slide was shown of the site plan for reference). Ms. Burgner summarized why they chose Stratham stating that they are here as a member of the community, not as a national retailer. They choose Stratham as it is a great place for these services and a big need in the community and they take pride and understanding in designing these buildings to not stick out, and not be their own brand, but rather to be absorbed where they are in the community. She concluded by saying that they are at the meeting to have this discussion and to provide the information so the Board has understanding of how they came to this proposed sign package.

Mr. Phoenix stated he submitted a memo with the plans attached to it and then presented a summary of the relief they are requesting (page 2). He noted the first thing they are requesting is under section 7.9.b.8.3 requiring that signs be placed below the second story floor line. They do not believe they need this, because although the building is tall, it is only one story and there are not two floors. Mr. Phoenix mentioned that Mr. Marchese was very helpful in working with them to get the application right on what they are allowed by right given certain distances of the building from the centerline of the nearest streets. Mr. Phoenix said a total of 237 sq. ft. of signage is allowed and they are asking for 450 sq. ft. of signage, each sign is 150 sq. ft. The Ordinance provision relating to the second story does not apply (and he believes that Mr. Marchese agrees with them), because although the building is tall it is still only one story. They request that the Board agree that this provision does not apply. If you disagree, then he asks that the Board approve of a variance to allow the signage placement as proposed. Mr. Phoenix stated that the way the ordinance determines signage in this area is, if the centerline of the abutting street is 99 feet from the front of the building or less, then you multiply the building frontage perimeter by one to get your allowed maximum square footage of signage. If you are more than 99 feet from the road centerline, then the building frontage is multiplied by 1.5. Since the west side of the building is more than 99 feet from the centerline of the right-of-way in the rear, they are permitted additional signage which equates to a total of 237.5 sq. ft. of signage which is permitted. Mr. Phoenix stated that the ordinance pushes the building up to 15 feet of the front property line setback whereas most ordinances require buildings to be further back. If this building was constructed 40 or 50 feet more than they would have gotten the 142.5 square feet on both streets and it's just because of the ordinance requirement that the building be located toward the front that they are short.

Mr. Phoenix stated the reason the building is in the front is that the Town prefers to have the buildings in front and put the parking behind it. The original design of the building was presented

to the Planning Board (several slides are being referred to). The top slide is what was presented to the Planning Board to begin with, and it was at the request of the Planning Board that the changes were made which led to what the Planning Board approval on the bottom (slide). He stated that the interesting thing is the sign plans were submitted along with the Planning Board package. He explained that the owners understood that as they went through that process they didn't need a variance and that it was okay. In addition to changing the building they also changed the signs- originally they had signs on all four sides including a front free-standing sign, but with Planning Board input they agreed to remove the back sign because they have a free standing sign. They also removed the front free-standing sign which was 48 sq. ft. on each side and stated he is not sure if the Town considers that 96 sq. ft. since it is 48 sq. ft. on each side. Mr. Phoenix said the importance of the size they need is twofold:

1. The scale of the building: the size of the sign doesn't look too big for the size of the building it is on.
2. People will be coming from outside the area and the speed is high on this state road. They want people to be able to see the building from either the north or south direction with enough time to find the entrance, or find the alternative entrances at the Market Basket parking lot or at the Shaws/110 Grill entrance. Size is important to identify the sign from a good distance away. Regarding the eastern (front) side of the building, Mr. Phoenix stated that they don't believe the building would look right, given its size and scale to have a big open wall area without having a sign on it. They believe buildings deserve to have signs on the front. He stated that many of the buildings have signs on the front, including free standing signs and signs on the building as well. Mr. Phoenix provided examples of these to include CVS and Burger King which both have buildings with signs on the front and free standing signs. Mr. Phoenix said they removed 150 sq. ft. of wall signage and 96 sq. ft. of free-standing signs and it is part of the branding. There are 35 characters not including the blue logo on the sign "Optima Dermatology and Medical Aesthetics". It is not just a dermatologist and medical aesthetics, but also cancer treatments etc. and this is the branding. He referred back to what Mr. Modestow said about the golden arches - you know what you're looking at and you know what it means - and they are trying to be consistent with these signs and they want all of their buildings to be consistent. His client understood that because the Planning Board was dealing with these signs, that they were okay with the signs. The second "story" design is because they want the sign to fit on the building. They learned after the fact that zoning and planning are different, but that is how they got here with the design of the building all done, stating that the building is up and they believe it is reasonable to grant the variance for all three of the signs because of the way they got here, because of the way they designed the building and reliance upon that and because it fits on the building given its size.

Mr. Phoenix turned to the variance criteria:

1. Denial of a variance results in an unnecessary hardship. He stated this is a three pronged test:
 - a. Special conditions distinguish the property from others in the area. It is distinguishable because it's one of the last lots to be developed, the building is already up, it's pushed to the front (which is what the zoning wants) and space is also needed in the back to accommodate parking, well and septic. These combine to create special conditions under all the circumstances as to how the building got to the site and to how it got built the way it did, with the understanding- at the time- that this sign was permissible. They understand now that it is not.
 - b. No fair and substantial relationship exists between the general public purposes of the ordinance and its specific application. Mr. Phoenix referred to page three of the variance

196 application. Mr. Phoenix referred to Stratham's ordinance and spoke to the following
197 bullet points:

- 198 i. Encourage the effective use of signs as a means of communication in Stratham;
199 which they believe it does, as both Mr. Phoenix and Ms. Burgner explained.
- 200 ii. They want to protect the health, safety and welfare of the public with a specific focus
201 on improving pedestrian and traffic safety. Mr. Phoenix referred to the fast speeds
202 and heavy traffic on Portsmouth Avenue. They think having a larger sign will help
203 protect the health, safety and welfare of those trying to find the building.
- 204 iii. Maintain and enhance the appearance and aesthetic environment of Stratham: He
205 believes this is aesthetically pleasing as the building was designed with discussions
206 with the Planning Board
- 207 iv. Maintain and promote the rural, agricultural and historical character of Stratham. Mr.
208 Phoenix stated that this area of Stratham is not all that rural, but is as busy as most
209 heavily travelled roads in the seacoast of New Hampshire.
- 210 v. Control visual clutter and encourage high-quality professional standards in sign
211 design and display: He believes that has happened here.
- 212 vi. Promote signs that are harmonious in color, material and lighting with the buildings
213 and surroundings to which they relate, while minimizing the adverse effects of signs
214 on nearby public and private property: This lot is in the middle of a heavily
215 commercial area with the grocery store behind it, restaurant next to it, and the
216 shopping center and other restaurants across the street, they feel it is harmonious in
217 color with the building, it is easy to see and is not overwhelming.
- 218 vii. Retain and enhance the Town's ability to attract and encourage economic
219 development and growth: As Ms. Burgner mentioned there will be new
220 dermatologists coming to the area to practice here, which will bring new people to
221 the area for economic growth.

222
223 For these reasons, they believe there is no fair and substantial relationship between the
224 sign limitations which are arbitrary (not meaning they aren't well thought out), but some
225 towns allow larger or smaller signs etc. Mr. Phoenix asked the Board to look at what is
226 going on here for the reasons their team has stated and agree there is a hardship and that
227 the sign fits. Mr. Phoenix stated the third prong of the hardship test is that the proposed
228 use is a reasonable: the signs are reasonable, the use of the property is permitted, so also
229 reasonable.

230
231 The second and third variance requirements (page 4 of variance requirements) are put together
232 in that the variances are not contrary to the public interest in the spirit of the ordinances observed.
233 Mr. Phoenix cited the Malachy Glen Case then read:

- 234
235 2. Would the variances unduly end or to a marked degree conflict with the ordinance such that
236 it violates the ordinance's basic zoning objectives. He referred to the purposes under section
237 1.2 (page 4 of variance requirements).
- 238
239 i. To promote health, safety and convenience and general welfare: which they believe it
240 does.
- 241 ii. Protect and conserve the value of the property: Mr. Phoenix thinks it does that.
- 242 iii. Encourage the most appropriate use of land throughout the Town: They think this is
243 appropriate use and appropriate sign.
- 244 iv. Promote the efficiency and economy in the process of development by securing safety
245 from fire, panic and other dangers: Mr. Phoenix referred to the people driving on

- 246 Portsmouth Avenue need to see this building with time to figure out where they are
247 going.
- 248 v. Providing adequate areas between buildings and various rights-of-way: They meet these
249 requirements.
- 250 vi. Preserving the character of the Town, by promoting good civic design and arrangements:
251 They believe that has happened with the assistance of the Planning Board.
- 252 vii. Wise and efficient expenditure of public funds, and the provision of public utilities and
253 other public requirements: This is all private. Mr. Phoenix again referred to the Malachy
254 Glen Case stating the Supreme Court summarized the case by saying, will granting the
255 variance alter the essential character of the locality or threaten the public health, safety,
256 or welfare. He went on to say that for the reasons they have stated the essential character
257 of the locality here is heavy commercial use, many different buildings all of which have
258 signs, many of which have more than one sign on the building or freestanding. Mr.
259 Phoenix referred back to the ordinance stating that the intent of the GCBD zone is to
260 “promote economic vitality and diversity, accessibility and visual appeal of the Rt. 108
261 corridor” He believes that is exactly what this project and this sign request does.
262
- 263 3. Substantial justice will be done by granting the variance. He cited cases from the Supreme
264 Court to site what the rule is. “If there is no benefit to the public that would outweigh the
265 hardship to the applicant” this factor is satisfied (he cited the Harborside Case) and “any loss
266 to the applicant this is not outweighed by a gain to the general public is an injustice to the
267 applicant.” Here Mr. Phoenix goes through the constitutional issues and rights that the
268 Constitution affords. He summarized by stating they are bringing in a new medical office,
269 its services are needed, the wall signage is tastefully done and they asking for it in exchange
270 for giving up a sign on the rear and a front free standing sign. They do not feel it is much
271 different from other buildings along the corridor (i.e. King’s Highway Plaza, Market Basket,
272 Shaws). They believe that it fits in well and there is no harm to the public, but does help
273 people get to the location as it is somewhat funky to get to. If any of these variances are
274 denied, it will be a harm to Optima as they will not be able to go forward as they have with
275 their form of branding. They believe that making the sign smaller will make it look out of
276 place on the large expanse of wall on the front and both sides. Mr. Phoenix reminded the
277 Board that they got here because the owner thought the Planning Board process was
278 sufficient, but it wasn’t. They believe that for all the reasons stated it fits and is deserving of
279 150 feet on three sides. He stated they are all there to answer any questions.
280

281 Mr. Pierce asked if there were any questions from the Board for the applicant.
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283 Mr. Goulet asked if there any free standing signs.
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285 Mr. Phoenix responded that there is a monument sign in the rear. He stated that the original plans had
286 one in the front as well, but they agreed to remove it.
287

288 Ms. Burgner said it is meant to be one of the main points of access so they put the sign to identify the
289 drive.
290

291 Mr. Pierce asked if that comes in from McInnis Road. This was affirmed.
292

293 Mr. Modestow said they were permitted two of those but are only providing one.
294

295 Mr. Goulet asked about dimensions and was referred to a diagram.

Mr. Phoenix said the signs' dimensions are in several places but they are all the same. The design just put a different page for each side of the building

Mr. Goulet stated that there is no second floor. This was confirmed by Mr. Phoenix. Mr. Goulet asked if the massing of the building was outcome of the Planning Board process.

Mr. Phoenix responded saying the building they originally proposed was a different design which was similar in height but shaped differently and the Planning Board was not fond of that design, which led to discussions and the design that was approved.

Ms. Burgner said the massing of the building allows for natural light to come into the waiting areas through the front windows and the store front, including an oculus, as well as the store front that oversees the vestibule, so that is where you will see a lot of the height being utilized.

Mr. Goulet asked them speak to the lighting for the signage.

Ms. Burgner responded saying that all the signage is internally lit by a solar time clock which turns it on at dark and off when the light comes up so it is not on 24/7.

Mr. Goulet asked if this was for all the signs, including the free standing sign. This was affirmed by Ms. Burgner.

Mr. Eastwood asked if every letter was lit. This was confirmed by Ms. Burgner. Mr. Eastwood asked how the maximum square footage for the ordinance is calculated.

Mr. Marchese stated that it is based on the size of the building which is 95 ft. in width.

Mr. Eastwood asked if this were on the east side. Mr. Marchese responded yes. Mr. Eastwood asked about the other sides, or if it only states one side.

Mr. Marchese stated it is the side of the building that faces the street.

Mr. Piece mentioned that in this case three are multiple streets read the definition from the ordinance. Mr. Piece asked how the frontage was determined.

Mr. Modestow replied that the linear footage is the length of the building, so it's 95 feet fronting both Portsmouth Avenue and McInnis Avenue. He mentioned that there is a multiplier component, where the further back the building is the more square footage it gets. The building has multiplier on the rear component (the building is 160 sq. feet so you put in 1.5 to the multiplier). So that frontage gets the 1.5 x 95 and the frontage gets the straight up 95 because it's in the lower tier.

Mr. Phoenix referred to a chart, 95 feet, 2 streets, so it's 95 times 2 = 190 and then on the back because the building is more than 99 feet from the centerline of McGinnis it is 1.5 so the two added together comes up with the 237.5 sq. ft. of signs permitted.

Mr. Eastwood asked if it had been 100, which is just five more then they would have gotten an additional multiplier.

Mr. Marchese confirmed this and mentioned that it is in the memo he gave. He reiterated that 100-250 feet is a 1.5 multiplier and over 250 ft is a multiplier of 2.

Mr. Piece said that they there wouldn't be any signage on the rear of the building, so are they using that

allowable signage to increase the signage on the other sides of the building?

Mr. Modestow responded that the way the ordinance reads is that it is total square footage. He stated the back sits down below the building so your eyes will be pointed at the monument sign.

Mr. Federico asked what the allowance is based on the building length.

Mr. Phoenix responded 237.5 sq. ft.

Mr. Federico asked if this was total signage. This was confirmed. Mr. Federico asked if they were asking for 450 sq. ft. of signage. This was also confirmed.

Mr. Phoenix said he made the point that if the building was pushed back 20 to 30 feet they would be allowed over 400 square-feet of signage.

Mr. Federico stated, so you are saying that because the Planning Board asked you to move the building closer to the street, you lost square footage?

Mr. Phoenix said yes. Mr. Phoenix said he did not remember how far it was set back to begin with. It meets the setback requirement, but I think they [the Planning Board] wanted it pushed forward. Mr. Phoenix said they lost square footage because they are not more than 99 feet from the centerline of Route 108. He stated he might have had them put the building at 100 linear feet if they had realized that got them the extra half.

Mr. Piece asked Mr. Marchese if footage is counted on private roads.

Mr. Marchese responded that he believes so, stating that it does not differentiate whether it is public or private.

Mr. Pierce asked if there was going to be any additional signage that is not on the application. The response was no. He asked about window lettering,

Ms. Burgner replied that the only lettering will be their address on the front door.

Mr. Federico asked Mr. Marchese what the size of the letters are on the Shaw's building and how many sq. ft. they are.

Mr. Pierce responded that they are 105 sq. feet, 191 total as shown on a chart.

Mr. Federico stated that the building is 40 ft. tall, but he thought that there was a 35 feet height limit and asked if the height limit has changed.

Mr. Marchese responded that the height limit has not changed, and that is the configuration of the building that the Planning Board approved.

Mr. Modestow responded that there is a maximum building height of 40 ft. within the zoning district. He went on to say there is a minimum of 1.5 story required so they have 2.5 story to comply with the height.

Mr. Pierce asked if the building was 1 or 1.5 story building.

Ms. Burgner stated that it is a 1 story building with the height of a two story building with a parapet that hides all the HVAC equipment and allows the windows on the “second story” to allow in natural light to the first.

Mr. Pierce asked if it considered a 1.5 story building because it makes the application somewhat unique if it is a 1 story building in a zoning district that requires a 1.5 story building and they’re talking about putting signs above the first story, when technically if it’s a 1 story building then there is no second story, but if it’s 1.5 story than there is a delineation mark where one story meets the 1.5 story mark.

Mr. Modestow responded saying no, it is determined by the elevation (he referred to a slide) saying the elevation gives them the half story. Looking at the second window about the ground level.

Ms. Burgner stated the occupied space on the inside is a one story.

Mr. Phoenix stated that most ordinances have both story and height limitations, stating what the ordinance says is very common, but in this case it is a little funky which way you consider it.

Mr. Eastwood asked if there is a height limit on a free-standing sign.

Mr. Marchese clarified that in the district in which this structure was built the height limit is 35 feet with footnote e which indicates that applicants may request a waiver from these regulations from the Planning Board during site plan review to exceed the height limit provided that it is determined by the Board that the extra height will not create a safety hazard. Mr. Marchese said that they should ask Mark Connors, the Stratham Town Planner, if that was the case.

Mr. Connors said that are allowed 40 feet, so they don’t exceed the height limit.

Mr. Modestow spoke saying they met on this and that it was 40 ft., but he would find out.

Mr. Federico said the requirement was 35 feet and there was a special adjustment made to that.

Mr. Connors said the height limit is 40 feet in the Gateway District.

Mr. Marchese confirmed this and showed what section it was under in the ordinance.

Mr. Federico asked when this was changed.

Mr. Connors replied that since he has been with the Town it has always been 40 feet. There was discussion about when the height limit changed.

Mr. Pierce asked if there were any other questions or comments for the applicant. Mr. Pierce asked if there was anyone from the public who would like to speak for or against the applicant. Mr. Piece asked if there was an opinion by the Code Enforcement Office. Mr. Marchese first clarified for Mr. Federico that section 3.8.8 development standards and tables, table 2 shows an illustration of a 40 ft. maximum height.

Mr. Pierce said the question is still when did the change from 35 to 40 ft happen? Mr. Pierce asked Mr. Connors from the Planning Board if he would like to provide any information.

Mr. Connors stated that he was there for the Planning Board process so if anyone had questions about

the Town Planning Board approval process he could answer those.

Mr. Pierce asked if the Planning Department compiled the information related to existing wall signage along the corridor?

Mr. Connors said yes. Specifically we looked at nearby buildings with fairly recent sign permits where we could easily get the signage dimensions and compiled that for the ZBA.

Mr. Pierce discussed up three emails from residents concerning the project that just came to his attention. He distributed the information to the board members and read the emails aloud so they could be on the record. The first email was from Rebecca Mitchell, of 200 Portsmouth Avenue, Stratham NH was sent Tuesday December 13th at 4:48 pm. Subject memo for the ZBA Optima. Mr. Pierce read the second email from Nathan Merrill, Tuesday December 13th 3:00 pm. Subject ZBA meeting. Mr. Pierce read the third email from Craig and Jan Tied, December 13th, 5:01 pm.

Mr. Phoenix responded that it was disappointing to have these emails come in at 5pm on the night of the hearing with little time to formally respond. He mentioned that he respects everyone's position, but there is a case law that says that if you are not affected by variance request in a way that is different than the general public then you do not have standing (at least for litigation purposes). Mr. Phoenix stated that if these people are not right next to Optima he would question if they have legal standing since they are not affected in anyway different than the general public. He continued that he does not think the sign looks out of place or too large and if you made the signs meet the ordinance he believes they would look too small. The scale of the sign to the scale of the building that was built in great measure by the desires of the Planning Board should be given some weight. Mr. Phoenix stated that he does not agree with the sentiment, that the clients are coming for a specific purpose and may or may not know where they are going or have GPS, so the further away they can see it the safer everyone else is on the road.

Ms. Burgner made the comment on behalf of the Optima team stating that they went through many meetings and were not met with a lot of public opposition at the Planning Board. She stated she wished she could have worked with these people at the Planning Board stage before the building went up to help ease some of the concerns. Ms. Burgner commented that many of the people who would be coming to the building with skin cancer would be elderly and coming with uncertainties as to whether or not they have skin cancer so she disagrees with the comment saying it's an easy turn around and that she thinks it is misconstrued unless you've been there. She said she has opened four of these buildings, three in Ohio and one in Maine and has seen the users of their practices and she believes these comments are made on paper without a full understanding of what they do in the facilities and who they are treating. Ms. Burgner said from her perspective of the operational aspect and some of the comments, that the building is easy to find, they are not a retail store, their pull is not people driving by and there are a lot of different aspects that come into the building and the users that use it and she believes that without them being at the meeting- and she wished the people that made the comments could be at the meeting- so she could explain the use of the building without it just being on paper, so they can fully understand the services provided and the patients that are coming to the location. Ms. Burgner stated that her initial reaction to theses comments- as operator and representative of the Optima Team- is that this is more than just a building on a piece of paper, but there is more that is happening on the inside and more for their users when they come to the property.

Mr. Phoenix disagreed with the sentiment that this is a billboard, but he believes it all fits.

Mr. Pierce asked Mr. Marchese if there was anything in the packet on what the Town's opinion on the

allowable signed.

Mr. Marchese asked if he received his comments date 11/16/22. Mr. Marchese explained that he went through the ordinance and explained where all the requirements were coming from and rounded it out by saying what they asking for verses what they are actually allowed.

Mr. Pierce read the applicant has requested that three 150 sq. ft. signs be installed totaling 450 sq. ft. The ordinance allows for 237.5 sq. ft. of signage based on the site constraints. The request is that 90% more signage be allowed. It is the opinion of this office, Building & Code Enforcement that the applicant could install a 95 sq. ft. sign on the north side of the building and a larger 142 sq. ft. sign on the south side. Based on the requirements of the ordinance the building was placed very close to Portsmouth Avenue. Mr. Pierce asked if it is the Town's opinion that only 237.5 sq. ft. of signage is allowed. Mr. Marchese confirmed this based on the ordinance.

Mr. Phoenix stated that they don't dispute the 237.5 but he does respectfully disagree with Mr. Marchese's analysis because placing smaller signs on one side or the other or no sign, it could go a little smaller, maybe 100 sq. ft. off the total but to make them smaller or do away with them. He stated that all the other buildings have signs on the front and it fits that size and on the north side of the building if you make that smaller to keep the south one bigger or vice versa than that sign looks to small on a building that's been approved which is their thoughts on it.

Mr. Modestow added to this saying the opinion is not to put the signage on the actual frontage but to put it in to separate sizing locations. He stated it is measured across the front but what the opinion of staff is to not put it on the front and apply that in two separate sizing locations so the opinion of the staff can be seen and the situation they had when they put the building across the front.

Ms. Burgner stated that they are looking to build a new building in Windham, New Hampshire and they were able to design the signage as it relates to the building and to create this building for New England with the Board before going through with Wyndham so this is how they fit the signage on the building and this is what they see as scalable but with comments from residents and comments from the community they are looking to be a member of the community here so they are not opposed to changing the sizing or anything of their variances. They want to make sure they are meeting both the ordinance and also meeting what they need to do for the community, even if it is reducing the sign on the east elevation to make it closed to the allowable ordinance. She stated they would not be opposed to that.

Mr. Goulet asked if they could see the rending of the slide of the front again (slide 10).

Mr. Eastwood stated the building is unique compared to a Shaws where you are only seeing the front and not seeing the other sides. He stated that he doesn't know what the founding fathers were thinking when they came up with the calculations, but he wonders if the founding fathers were only thinking there would be signage on the front face of the building.

Mr. Phoenix mentioned how buildings used to be all pushed back with parking in front, but today the idea is to get buildings to the front and green space around them with parking and lighting in the back. He stated that this is what the town is trying to do with the new buildings coming in front of the shopping centers stating that when the buildings were all in the back signage was not need on the side since all people passing by saw was the front.

Mr. Modestow stated that this applies to every zoning district

Mr. Pierce asked Mr. Marchese when the Planning Boards approves these site plans that show signage on them, how detailed is the Planning Board approval and did they address the signage issues at all .

Mr. Marchese directed this question to Mr. Connors, Town Planner, to better answer the question.

Mr. Connors said there were three meetings with the Planning Board, two conceptual meetings, which are non-binding meetings so none of what's discussed is binding on the applicant or the Town. There was one meeting where they had their approval and that is the binding discussion that the Planning Board had with the applicant. Mr. Connors stated that he went through the minutes and signage was not discussed at all. He stated that although minutes are the official records of the meeting, he went back to the recording to double check that nothing was missed, but signage was not discussed at all at the meeting. Mr. Connors stated that it's possible it was mentioned somewhere in the plans but it was not the focus of the Planning Board discussion as they are focused on architecture, traffic, landscaping, parking, and the overall use of the site. Mr. Connors said he would not anticipate the applicant to have the specifics of their sign proposal when occupancy is many months away the Town would anticipate the applicant meet the requirements of the sign ordinance. Mr. Connors further explained that the sign ordinance is a separate ordinance of the zoning, so the Planning Board doesn't have the authority to waive the sign requirements, even if they did agree with the applicant. He said in the Gateway Regulations, the Planning Board can grant a waiver or conditional use permit to build further back or closer to the road and it provides more flexibility, but the Planning Board can't do that for signage as it is a separate ordinance, which is why they are at the meeting, to obtain a variance in they want to go in excess of what the Town allows for signage.

Mr. Phoenix stated he was not at the meetings but it is his understanding from talking with Max and Sam is that there was a fair amount of discussion about signs at the meetings which is how the sign got taken off the back and the free standing sign in front got removed. He agrees that it was an unfortunate circumstance that his client thought that once they went through the plans with the Planning Board that they were okay and it was not discovered until the internal review was done after that had all happened that they learned that they did need a variance. Mr. Phoenix agreed that the Planning Board does not have the prevue to tell the applicant they do not need to comply with the Zoning Board.

Ms. Burgner said they do take responsibility for that. She mentioned that the Planning Board and staff were very helpful. Ms. Burgner stated that Mr. Connors mentioned two informal meetings where they were able to discuss the scalability of the building in the relation to the signage and we did not realize that a variance was needed, as they thought it was a holistic approval. She stated that when they submitted their permit they wanted to come in and discuss and give the history of what they were working towards and what they've been doing for the last year. Ms. Burgner apologized that this (the signage) is out of order and that they did not come within the planning approval but they are here now and hoping that they can continue the conversation.

Mr. Phoenix stated that there was another thing he would like to say but is not related to this issue. It was just discovered within the last week (maybe) that the measurements on the site plans are to the wall and on the right side (north side) that is shown as meeting the requirement, but there is a detail- the roof sticks out a foot- so technically that is in the side set back so they will be coming before the Board for that. He hopes to file that soon, but there wasn't time to get the notice out to consider it all together. Mr. Phoenix did not want the Board to be surprised when another application came in.

Mr. Modestow confirmed that it was another 24 inches.

Mr. Phoenix referred to a slide of the building stating that it is the very back of the corner of the right side.

Mr. Pierce stated that if there was no other commentary on the application he would close the public portion of the meeting. Mr. Goulet made a motion to close the public meeting session and Mr. Caparso seconded the motion. All were in favor and the motion carried unanimously.

The Board discussed the project.

Mr. Goulet stated that we are surrounded by a district that has a lot of non-conforming signs. He would like to be sure we do not continue this with new requests that come up. He feels that the wall signs are to scale. Mr. Goulet mentioned that he thought about the front length and was at first wasn't too warm about it but prefers that to a free standing sign at the front of the building given its close proximity to 108. He believes that the applicant has made a good case for meeting the variance requirements he thinks we need to be somewhat welcoming to new businesses in the community as well. He thanked the team for a good presentation.

Mr. Pierce said the issue for him is that if they grant relief they are going against the ordinance so it would really have to speak to that special circumstance and reasonableness. He asked if anyone had an opinion on that and have they hit that threshold.

Mr. Goulet responded that he thinks it's reasonable as the size is determined by the building itself and the mass and the size, so to reduce the size of the signage area to strictly adhere to the zoning, he believes it would look odd.

Mr. Pierce stated that if the signage were too small it would be a safety issues to passing motorists trying to find it.

Mr. Caparso stated that because people are going to be using this from out of town they are going to be looking for this place and that stretch of 108 is difficult in the best of circumstances and doesn't want a lot of lost people wandering around that particular stretch of road. Mr. Caparso asked for clarification that the Planning Board asked for them to set the building closer to the road and in doing so they lost the ability to get the signage that they wanted.

Mr. Pierce said that it would have been calculated differently and they would have had more signage.

Mr. Caparso said they are talking that if they added 5 additional feet to the building they would have gotten it, so it is 95 verses 100.

Mr. Eastwood said that he may have misunderstood that. The multiplier is only if it is a certain distance from the centerline of the street and the multiplier multiplies the width of the building so he was incorrect in saying if it were 5 feet wider it would get the multiplier. He went on to say it would have to be 100 feet off the road to get the multiplier, but then it would be pushed to the back and you wouldn't get the multiplier off the back. He asked if you would then get the multiplier on both sides.

Mr. Caparso said his point is that they came to the Town and the Town asked them to do something and in the process they lost the ability to get the signage they wanted. He stated that on top of that you will have a lot of people who aren't from town looking for this (building) on a stretch of road that is well travelled and complicated to get around. Mr. Caparso said he believed it was in the Town's best interest to grant it because they are complying with the Town's wishes to begin with and it's an additional safety issue if they make the sign smaller.

Mr. Pierce agreed with this and stated that the special condition of the property where it is visible on all four sides, and signage is needed to identify the building. He said he believes there is a special condition about the property that warrants additional signage and how much is what they need to decide.

Mr. Eastwood wanted to add that the signage is quite attractive and expensive signage and it's not a like a free standing sign. There is a lot of square footage where you see the building through the letters so it blends in better than if were just a rectangle standing out. Mr. Eastwood continued saying that because it's on three sides of the building he suggested that maybe the ordinance be reviewed at some future date because he doesn't know if it is considering the other sides that are important with the Gateway "pushed-up-to-the-street-look".

Mr. Pierce said that is something the Planning Board would look at and asked if there was any other discussion from the Board before they vote.

Mr. Federico said the idea of reducing the scale on the front because traffic will be moving quickly, allowing the requested signage on the south and north and make it smaller on the front of the building.

Mr. Pierce asked Mr. Federico if he was proposing a condition to reduce the signage on the front side.

Mr. Caparso asked Mr. Federico what his logic was behind reducing the signage.

Mr. Federico replied that most of the people are going to be looking at it from two directions, either the north or south side, and once you hit the front you are already past the building and the driveway is on the south side so that's where you would want the largest sign and where there is the largest area of siding on the building.

Mr. Goulet asked how much it would have to be reduced to get it within the zoning code.

Mr. Pierce said you would have to completely eliminate it and then take more square footage off the other signs as well, so there's no way to mitigate with just reducing the size of that sign. Mr. Pierce stated he disagrees, because if you were in the Staples parking lot you're going to be looking at the signage.

Mr. Federico clarified that he is not saying to eliminate the sign but to reduce the size.

Mr. Pierce thought you would run into scale issues with a smaller sign on the front of the building and big ones on the sides.

Mr. Caparso asked if Mr. Pierce wanted to draft a condition for them to vote on it.

Mr. Federico asked if they were in agreement to offer relief because if so, he would offer a condition on it.

An informal poll was taken. Mr. Eastwood was in agreement. Mr. Goulet was in agreement with granting relief. Mr. Pierce and Mr. Federico were also in agreement to grant relief. Mr. Federico made a motion to grant a condition that they think about allowing the north and south as requested and making the scale of the front a little bit smaller since that will be the least viewed. Mr. Pierce was not in agreement to make that a condition as he believes a smaller front sign would really change the character of the building. A poll was taken in support of the condition. Mr. Eastwood, Mr. Caparso, Mr. Goulet and Mr. Pierce did not agree with adding a condition.

Mr. Pierce said they discussed conditions. The Board of Adjustment shall hear and decide requests to vary the terms of this ordinance at the hearing on this application the applicant shall present testimony and other evidence to establish that conditions for a variance have been met. The decision of the Board shall be based on evidence both written and oral which shall be presented at the hearing and as may be contained in the application. No variance shall be granted unless all of the following conditions have been met. Mr. Pierce said the Board needs to vote on each of the five conditions.

1. The variance will not be contrary to the public interest. The Board was in agreement (5/5).
 2. The spirit of the ordinance is observed. The Board was in agreement (5/5).
 3. Substantial justice is done. The Board was in agreement (5/5).
 4. The values of the surrounding properties are not diminished. The Board was in agreement (5/5).
 5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
 - (1) For the purposes of subparagraph (E), “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:
 - (a) No fair substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
 - (b) The proposed use is a reasonable one.
- The Board was in agreement (5/5).

Mr. Piece asked for a motion to be made to approve the variance granting relief. Mr. Goulet moved to approve the variance granting relief for case #666. Mr. Caparso seconded the motion. All were in favor and the motion carried unanimously.

Mr. Pierce noted that there is a 30 day appeal period starting 12/13/2022 and any action taken before the expiration of that time is at the applicant’s risk.

4. New Business:

Mr. Marchese stated that there are several committee appointment applications up for renewal, including Mr. Pierce, Mr. Goulet, and Mr. Caparso and there are two other empty seats to fill. Mr. Marchese asked if people knew anyone interested to have them fill out an application and submit to the Select Board for review.

5. Adjourn

Mr. Federico made a motion to adjourn the meeting. Mr. Caparso seconded the motion. All were in favor and the motion carried unanimously. The meeting was adjourned at 8:29 pm.