6:00 p.m. – Vice Chair Hunt Dowse called the meeting to order. He moved that the Board enter into non-public session under RSA 91A:3(l) Consideration of legal advice provided legal counsel, either in writing or orally, to one or more members of the public body, even where legal counsel is not present. Jon Grosjean seconded the motion. The roll call vote to enter non-public session was Hunt-yes; Jon-yes; and Jeff Reder-yes.

The Board came back into public session at 6:40 p.m.; they voted unanimously to seal the minutes of the non-public session.

7:00 p.m. – Tanner Continued Hearing
Hunt called the continued hearing to order. He noted that he was covering the meeting for Chair Alison Rossiter who was ill.

Hunt read the published notice for the continued hearing which was for an application for a variance under Article 5 Section 5.6.3.2 Side and Rear Setback. He introduced the Board and acknowledged that the five members present would make a quorum and would all be voting tonight. He verified that the notice had been posted, published and that the fees had been paid.

Hunt explained the procedure that would be followed for the hearing beginning with the applicant’s testimony, followed by the Board’s comments or questions, then the hearing would be opened to the public for those who wished to speak in support or in opposition of the application, and then the Board would move into the deliberative portion.

Hunt asked the applicants to come forward. Sheldon Pennoyer the Tanner’s architect said Attorney Tom Hannah would be addressing the application tonight.

Attorney Hannah came forward and presented the Board with booklets that included materials in support of the application. Hannah mentioned that there was one member present who had not been present at the January 8th hearing. It was noted that the applicant had reviewed all of the material and was now up to speed.

- Please note that the booklet provided by Attorney Hannah will be in the Tanner file at the Town Office for anyone interested in viewing it in its entirety.

Hannah gave a brief history of the Tanner’s purchase of the property. He said it’s currently a three apartment house and they would like to convert it back to a single family house. He commented that the Tanner’s had been approved for a Special Exception for an Accessory Dwelling on January 8th. Hannah added the January 8th minutes showed they would be able to review the questions that the Board compiled for town counsel. Hunt said they had supplied
Sheldon with the topics they covered which had been variances and non-conforming uses. Hunt added that town counsel had advised them that they couldn’t share information from their discussion under RSA 91: 3(l).

The list of exhibits provided in Hannah’s booklet was:
1. Narrative in Support of the Variance, dated February 12, 2020
2. Tanner deed, showing shared driveways for 39 and 37 Main Street. Book 9160; Page 1149
3. Three aerial photos
4. Four plans of property and project design
5. Photographs of village properties
6. Hancock Historic District Map

Hannah said the Tanner lot is 1.063 acres and has 100 feet of frontage. He added the lot is oddly shaped with additional backland that is offset from the Main Street portion. This offset resulted from a Lot Line Adjustment dated 10/17/90. Hannah said the property is also unique in that 39 and 37 Main Street share each other’s driveways. He referenced the cross-easement in the Tanner deed.

The Board moved on to review the testimony as presented in the application. New information provided in the booklet provided by Attorney Hannah is included in each case after the initial statement.

Applicant’s Testimony:
1) Granting the variance would not be contrary to the public interest because:
   Article 5.6.3.2 Property line setback. Currently there exists 1 ½ story garage which is located within the 20-foot setback, 10 feet off the easterly property line. Currently there exists a garage that is 10 feet from the easterly side lot line. In the 1990’s there existed a Music Studio Building 10’ off the easterly side lot line which was demolished by a previous owner due to the condition of the structure and replaced it with a new structure 10 feet off the easterly property line. This would create no significant changes and replaces the existing structure with a lower profile, and better scaled structure. Granting the variance would not be contrary to the public interest.
   Granting the setback will be consistent with the building density throughout the village. The proposal is consistent with the historic fabric of the village where multiple properties contain buildings inside the 20-foot setback. Likewise, there is a long history of non-conforming structures at 39 Main Street, as well as 41 and 37 Main Street. Hannah referenced the photos that were submitted in the booklet he provided.

2) If the variance were granted, the spirit of the ordinance would be observed because:
   A. Article 5.6.3.2: There exists a structure within the 10-foot setback, so this is considered an existing non-conformity, and would be not less “non-conforming: By granting the variances it would do substantial justice.

3) Granting the variance would do substantial justice because:
   Article 5.6.3.2: The existing garage sits within the 20-foot setback, so this is considered an existing non-conformity, and would not be less “non-conforming”. By granting the variance it would do substantial justice.
   This is a balancing test. Will the denial of the variance benefit the public more than do harm to the applicant. As stated in the above narrative justification, the Tanners have stated sound
grounds for locating the garage building within 10 feet of the east side line. The encroachment will not be harmful to the public.

4) If the variance were granted, the values of the surrounding property would not be diminished because:
   
   Article 5.6.3.2: The proposed project will enhance the surrounding property values. The new structure will be lower in scale to meet the objectives of the Historic District.
   
   Granting of this variance would not diminish the values of the surrounding properties. The setback will not affect the neighbor to the west, which house also encroaches on the setback. The new garage will provide greater privacy for neighbor to east and preserves the use of the shared driveways. The major investment in 39 Main Street will increase and/or stabilize the values of all neighboring properties in the village.

5) Unnecessary Hardship
   
   A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:
      
      i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific of that provision to the property because:
         
         The owner would be denied the use of the property as it was originally intended; a single-family house with an accessory unit. When the house was built in the 1970’s setback requirements did not exist resulting in the shape and size of the lot as it is today. Granting the variance would allow the property to be used as many downtown properties are used today. From a density perspective, reducing the use from the current three apartments to a single family house with a 768 SF Accessory Dwelling unit would reduce the overall traffic density of the property.
         
         Does the “literal enforcement” of the side setback regulation of the zoning ordinance interfere with the Tanner’s proposed use. Literal enforcement of the sideline setback provision of the ordinance would force the structure west another 10 feet.
         
         And:
         
         ii. The proposed use is a reasonable one because:
         
         The requested variance is consistent with other properties in the district and would fit into the neighborhood harmoniously.
   
   B. Explain how, if the criteria in subparagraph (A) are not established, an 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 a reasonable use of it.
      
      By not granting the requested variance, the property owners would be denied the use of the property that is consistent with the neighborhood and surrounding properties. Granting the variance will allow the property to revert to its original single-family use with an accessory dwelling unit that is harmonious to the surrounding properties. The owners are proposing to make a substantial investment into the property and the variance is required to allow the property to fit into the historic district architectural fabric.
      
      Is the restriction on the proposed use “owing to” special conditions of the property that distinguish it from other properties in the area?
      
      The Tanner’s lot is over one acre in size; however, its unusual shape- two area connected along a short connecting border in the rear – means that a major part of the lot is not suitable for building. This forces the proposed improvement to the Main Street part of the lot, where the
sideline setback provision impacts the proposed improvements. These conditions distinguish this property from most other properties in the area that typically have more rectangular shape. The variance will allow a building whose setback will be consistent with the character of the neighborhood. The character of this neighborhood is established by the predominance of older, larger, and often historic buildings that are set closer than 20 feet and often less than 10 feet from their side property lines. The use of the property as a residence, with accessory uses including a garage and an accessory apartment is permitted by zoning and therefore reasonable by definition. See Vigeant v. Town of Hudson. According to the Simplex decision, and as codified in RSA 674: 33, I, it is not necessary to find that there is no other possible or reasonable use of the property in order to grant a variance, if the proposal has good reasons. As previously noted, the proposed improvements with a 10-foot side setback, are consistent with and in keeping with the character of this part of Hancock, and therefore this use is reasonable.

At this point, Hunt asked the Board if they any comments or questions. Jeff Reder questioned if the garage was going to be for a two car or three cars. Hannah answered by saying the garage would be same size 20 x 24.

Dave Anderson asked if there was any reason they couldn’t back out into the existing driveway. Sheldon said the driveway is jointly owned and it would create a safety issue.

Hunt said this property was similar in many ways in density and setback encroachments to other properties on Main Street. He noted that under the RSA there has to be something unique in relation to other properties on Main Street in consideration of a variance.

Hannah said there are two factors to consider.
1. The Tanner’s have an unusual lot shape which makes it unique from the properties on Main Street and;
2. The shared driveway is unique Hannah said he believes that it sufficient to say that this is an unusual lot due to these two conditions.

Jeff said he understands the unique situation in that most of the land area is in the front of the lot. But he added that in reviewing the plan there seems to be room behind the house to work with.

Jon Grosjean said there does seem to be a lot space back there.

Hunt referenced Article 13.2.1.1 which states, “No such non-conforming building or structure may be enlarged or altered in a way which increases its nonconformity, but any building or structure or portion thereof may be altered to decrease its nonconformity. He said this indicates that non-conforming uses should be made more conforming. Hunt said maybe there are alternatives that should be considered.

Paul Hertneky he feels that they should build the new building within the setback.

There being no further comments or questions from the Board, Hunt opened the meeting to the public.

Hunt asked if there was anyone that wished to speak in favor of the application. There being no one; Hunt opened the hearing to anyone who wished to speak against the application. He said first he would like to read a letter from Marcia Coffin for the record. In the letter, Marcia stated
that she believes that the Tanners can have all of the features they are looking for in adapting the historic structures at 39 Main Street enabled by their talented architect Sheldon Pennoyer – and not require a variance.

Tom Shevenell brought up the 85 foot driveway easement. He wanted to know if the garage would be encroaching on the neighbor’s easement. Tom said the right of the abutter is they have perpetual right regarding the easement and would have to relinquish that right in order let the applicants build in the easement. He said he feels that they can’t continue until this issue is resolved.

Sarah Laeng-Gilliatt who is the owner of 37 Main Street, said it would be helpful to look at markers to see exactly where the 85 foot back is located in the driveway. She expressed concern that they were removing the lilacs that at had been planted by her grandmother. Sarah said she didn’t see how the plan wouldn’t negatively impact her. Sheldon said they were going to remove the lilacs but then are planning to replace them afterwards.

Sharon Gordon questioned whether they might move the garage back to the north where they wouldn’t encroach on the 85 foot easement.

Sheldon said they would need a dialogue with Sarah regarding the 85 foot setback.

Hunt said the key is the 10 foot setback issue.

Hannah said moving the building 15 to the rear may be more favorable to the Board.

John Jordan came into the meeting. There was some confusion regarding whether the meeting was still in non-public session. Hunt advised him that the meeting was not in non-public session.

There being no further comments, Hunt closed the public comment portion of the meeting. He added the Board would be moving into their deliberative portion of the hearing. He advised those in attendance they were welcome to stay.

Hunt said they would now review the five variance criteria. Dave referenced the letter from the town attorney that addressed the pertinent issues of the application. He added that the attorney didn’t agree that the criteria were satisfied.

Review of the five variance criteria.

(1) Hunt said the applicant’s had presented a good argument on this criteria. The Board was in agreement that the variance would not be contrary to the public interest and that this criteria had been met.

(2) Hunt said criteria 1 and 2 were kind of intertwined. He read a section from the handbook. It was noted that plan for the garage wouldn’t really alter the neighborhood. The spirit of the ordinance would be observed. The consensus was that this does not negate the spirit of the ordinance.

(3) Hunt said in consideration of this criteria they need to determine whether denial of the variance would benefit the public more; or what would be the gain to the public if the application
were denied.

Dave said the original plan had shown the location of the garage had been closer to the front of the property; they were now moving the garage farther back. The consensus of the Board was that this criteria had been met.

(4) The consensus of the Board was that the property values of the surrounding properties would not be diminished upon approval of the application and this criteria had been met.

5) Hunt brought up the hardship criteria. He said hardship usually deals with issues with land such as ledge or boulders. It had been said in testimony relative to hardship, that if the garage was pushed farther west on the property to meet the setback, it would encroach on their outside living area.

Jon said in consideration of the hardship criteria, it seems to be more of matter of convenience rather than a hardship. Paul said he agreed with that and added that he would have a hard time classifying this as a hardship. Jeff said it looks like there is a lot of room in the back to move the garage that could make the non-conforming use more conforming.

Paul commented that uniqueness is a tough question; is there uniqueness relative to this property that requires a variance vs. other properties in the village.

Dave said the fact the courtyard would be smaller would be a challenge but there should be a way to accommodate the 20 foot setback and have a courtyard. He said he would have a hard time approving this criteria with the hardship being the interior courtyard would not be large enough.

Jon commented that the Board has ruled on past hardship cases in cases like wetland issues or rocks. He said he agrees it’s a convenience; but not a hardship.

At this point Hunt asked the Board if they were ready for a motion. The consensus was they were. Hunt moved that the application for a Variance under Article 5 Section 5.6.3.2 Side and Rear Setback be denied given that the applicant did not meet all of the criteria required under this article. Jon seconded the motion; the vote was unanimous in favor to deny the application.

Hunt advised the applicants of the 30 day appeal period if new information were to be brought forward. He concluded the public hearing at 8:55 p.m.

**Business Meeting:**
The Board discussed the Spring Planning/Zoning Conference. There being no further business, the meeting adjourned at 9:10 p.m.

Respectfully submitted,

Linda Coughlan
Recording Secretary