

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
Tuesday, January 27, 2026

A public hearing of the Zoning Board of Adjustment was held on Tuesday, January 27, 2026 at 6:30 PM, at City Hall.

Josh Nehiley, Vice Chair, asked for a Roll Call:

Josh Nehiley, Vice Chair
JP Boucher
Steve Lionel
Joseph Patry - Alternate

Carter Falk, Deputy Planning Manager

Mr. Nehiley explained the Board's procedures, stating that the public is encouraged to submit their comments for future meetings via email to the Planning Department, which is zb@nashuanh.gov, or by mail, at P.O. Box 2019, Nashua, NH, 03061. Mr. Nehiley identified the points of law required for applicants to address relative to variances and special exceptions. Mr. Nehiley explained how testimony we will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws. Mr. Nehiley said that all four attendees will be voting members, and any vote ending in a 2-2 tie will be considered denied, as three affirmative votes are required for approval.

- 1. Jaira & Alfredo Gutierrez (Owners) 45 Nagle Street (Sheet 102 Lot 60) requesting variance from Land Use Code Section 190-17 (E) (1) to exceed maximum driveway width, 24 feet permitted, 32 feet existing - requesting to add an additional 19 feet of driveway width on right side of existing driveway for a total width of 51 feet. RB Zone, Ward 6.**

Voting on this case:

Josh Nehiley
JP Boucher
Steve Lionel
Joseph Patry

Alfredo Gutierrez, 45 Nagle Street, Nashua, NH. Mr. Gutierrez stated that they are requesting a variance to extend their driveway, it is a two-unit dwelling, and want to extend the driveway for more space for their vehicles. He said that they are first-time homebuyers, so they weren't aware of the rules, and a

paving contractor came by and offered to pave the driveway area. He said that the extra pavement will not harm any of the neighbors, or create any unsafe conditions to the public. He said they had gravel there, and cars parked there, but it was messy and gravel was all over the road, and it didn't look good. He said that he has photos and a sketch of the new driveway area. He said it is much easier for plowing and snow removal with the pavement, rather than the gravel with a snowblower. He said that the use of the property as a two-unit will not change.

Mr. Boucher asked how long they've lived there.

Mr. Gutierrez said about seven years.

Mr. Boucher asked how many vehicles are there from each unit.

Mr. Gutierrez said five.

Mr. Boucher asked when the property was bought, if the area was used for parking on that side.

Mr. Gutierrez said it was, and it was two units as well.

Mr. Lionel stated that it got converted into a two unit in 2015, the gravel extension was there, from looking at GIS photos, from at least 2019. He asked when it was extended with new asphalt.

Mr. Gutierrez said it was last June or July.

Mr. Lionel asked when he became aware that this variance was needed.

Mr. Gutierrez said it was about two weeks later, there was a complaint, and someone came to his door.

Mr. Nehiley asked if the garage is usable for vehicles.

Mr. Gutierrez said that they are using the garage for storage.

Mr. Nehiley said that the proposal is for a 51 foot wide driveway, and cannot remember a driveway that wide that has been approved by the Board, there are five cars, maybe some work vehicles, and asked if a car could be placed in the garage.

Mr. Gutierrez said that one car could fit, but the other side is

set up where it can't be used, there is a little room where the boiler is.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Lionel said that 51 feet is very wide, but in driving down the street, there is one, if not more driveways, that have very similar driveways. He said normally, he wouldn't be in favor of such a wide driveway, but is also not in favor of asking for forgiveness instead of permission. He said that given that the driveway has been extended for at least eight years, and there are other houses with similar driveways, he said he would not object to this one.

Mr. Boucher said that while driving by, there are some trucks parked there, so parking two vehicles deep will not happen. He said it is not untypical with this driveway in the neighborhood, and doesn't see a reason to deny the application.

Mr. Patry said he agrees.

Mr. Nehiley said that when he looked at the application, he initially thought that 51 feet is wider than any other application the Board has seen. He said he did a drive-by today, but there was a lot of snow, but the house is set forward on the lot, but this driveway is shorter, and it is a two-family. He said he will not oppose this application.

MOTION by Mr. Boucher to approve the variance application on behalf of the owner as advertised. Mr. Boucher stated that the granting of the variance would not be contrary to the public interest, because the Board feels that even though it exceeds the permitted driveway width, it is a two-family dwelling and it is warranted to have the extra driveway width and it would not be out of character with the neighborhood, and there is evidence of other homes in the neighborhood with similar wider driveways.

Mr. Boucher said that the request is within the spirit and intent

of the Ordinance, because it would be in character of the neighborhood and will not be detrimental to any of the surrounding properties, and there was no testimony in opposition.

Mr. Boucher stated that substantial justice will be served, it will allow the homeowner to keep the paved driveway that used to be gravel, in the manner that it's been used for the past ten years.

Mr. Boucher stated that the Board did not have any testimony about the value of surrounding properties being diminished, but it is the Board's opinion that it most likely will not be detrimental to property values and may help property values.

Mr. Boucher stated that for unnecessary hardship, the Board finds that the proposed use is a reasonable one, it will allow the homeowner to park cars off the street.

SECONDED by Mr. Patry.

MOTION TO APPROVE CARRIED UNANIMOUSLY 4-0.

2. Weverson Araujo (Owner) 55 Lake Street Unit 1-8 (Sheet 99 Lot 30) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#'s 97, 102, 108 & 149) to allow an event planning office, including apparel renting, photograph studio, esthetics spa, church place of assembly and contractor shop. RC Zone, Ward 6.

Voting on this case:

Josh Nehiley
JP Boucher
Steve Lionel
Joseph Patry

Weverson Araujo, 55 Lake Street, Nashua, NH. Mr. Araujo stated that the variances requested are for his future company, as advertised. He said that he is a contractor, and his office will be here as well. He said that the building is already a commercial building, and has over one hundred parking spaces. He said it is a giant building, and recently bought three of the units. He said one of the uses is for a hall, like a party hall, it used to be used for a planetary use, so it would look like you'd be looking into outer space. He said that the church use would be in the

lower level, but the Fire Marshal has requested that it not be there, and go on the upstairs floor instead.

Mr. Nehiley said that he'd like a better feel for what is going in there. He asked if he would be starting off with the contractor's office.

Mr. Araujo said that he has three separate units, and said he asked for the church, to go in one of the unit's downstairs, and the Fire Marshal said he couldn't have the church downstairs, and the Fire Marshal asked for an engineering design plan, showing fire code matters, and to use the church downstairs, he said that he'd have to install a sprinkler system, which is very expensive. He said that the building is already commercial.

Mr. Nehiley said it seems like there would be one business, with a lot of sub-businesses inside, but in reality, he's trying to get the church going in there, and at some point, an apparel renting company and photograph studio would move in as well.

Mr. Araujo said that he's already doing this work, but is doing it at home, and has a storage facility as well. He said that he has a lot of clothes to use, so if you want to get married, he has the clothes. He said that he will not bother anybody, won't make any noise, and won't bother neighbors. He said that he wants to bring his businesses together, with the party planning, apparel renting and the spa so it's all in one area.

Mr. Nehiley asked if he has seen the letter sent by the Fire Marshal.

Mr. Araujo said yes.

Mr. Nehiley said that the Fire Marshal's letter sounds like they're against this application because of NFPA Fire Life Safety Code, but it sounds like the church can be moved to another unit.

Mr. Araujo said that the Fire Marshal and the City will not let him use the bottom floor for the church, and upstairs it's like a hall, a party hall, and the church would be fine upstairs. He said that there are sufficient exits and the hall upstairs can be used for the church.

Mr. Nehiley asked if the hall upstairs is part of units 1-8.

Mr. Araujo said that the unit numbers there are tricky, it's three different tax bills for the units. He said that for the church use, if there are over 300 persons in the room, it's required to have a sprinkler system.

Mr. Falk said that religious uses are permitted in every zoning district, he is not here seeking relief for the church, it's only for the other uses listed in the advertisement. He said that staff added the church in the list just so the Board would be aware of all the uses, but he does not need a variance for the church use. He said that the applicant will need to work out the occupancy issues for the church with the Fire Marshal and the Building Department separately. He's stated that he doesn't want all those other uses right now, but should the Board support this request, he would have two years in which to establish them.

Mr. Boucher asked to clarify that the letter from the Fire Marshal was strictly for the church, and no concern with the rest of the application.

Mr. Falk said that the Fire Marshals letter was for the church, as there needs to be a certain amount of ingress and egress doors, signage, panic doors, per the square footage for people to get out safely if there's an emergency, they are concerned about the safety for occupants using the church.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Mr. Nehiley read the letter from Michael DuVarney, Fire Marshal, into the record, which included an email from Carter Falk to Mr. DuVarney (letter is in the record).

SPEAKING IN FAVOR - REBUTTAL:

Mr. Araujo said that when the Fire Marshal's letter was sent, he had already applied for a building permit. He said that he was told that he couldn't use the bottom floor because it didn't have a sprinkler system, and he needed an engineer's plan to show that it is safe to have people there, so he hired an architect for the plans. He said that it's agreed that he can have the church upstairs.

Mr. Nehiley asked if he has a building permit that has been applied for.

Mr. Araujo said yes, the building is safe for the fire system, and it's all connected to the Fire Department, so if anything happens, the alarm will sound there.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Lionel said that the Board should separate what's been applied for, and the objections from the Fire Marshal and Building Department, as the church does not need a variance, so it's not something we will be voting on. He said that if the building is up to Fire Code, and whatever these other uses are required, it seems odd that there was no comment about the photography studio, etc., whether sprinklers would be required for that. He said it's a commercial building, and we're looking at a use variance for these other uses, what would be the reason to say no, and can't think of one, so based on what the Board is here for, the use variance, he said he'd be in favor of it, and the applicant has other issues to take care of so he can make full use of the building, and doesn't see a good reason to deny the use variance, based on objections on the use of the building as a church, which is not what the Zoning Board is here to discuss.

Mr. Nehiley said that we, as well as the Fire Marshal, want to make sure that it's safe and people can get out of the building, so they're doing their job. He said that the Fire Marshal's letter is mostly about the church, but the Board's purview is more towards the other uses that the applicant has requested. He said it is a big, rambling building, there are so many uses going on in there, and if the Board had seven different people coming to us individually tonight, one wanting a photography studio, he'd say yes, one coming in for an esthetic spa, he'd say yes, as the building has a ton of commercial activity going on in it, and is in favor of the application.

Mr. Nehiley asked if every time the Zoning Board approves something, it's with the assumption that they'll have to go to the Planning Board next, or they'll have to pull all proper permits, it's a given.

Mr. Falk said that every use that comes into the office, they have to get a building permit, and the Building Department and Fire

Marshal review everything to ensure that the building is safe to occupy before getting a Certificate of Occupancy. He said that the church is a permitted use in any zone, as long as you get proper permits and a Certificate of Occupancy. He said that the other uses, like the photography studio and contractor shop, the Fire Marshal will still look at those as well, but they may not have the same concerns as the church, as the church may have a lot of people together in a room, but a photography studio may only have one or two people. He said that the real crux of this application is the other uses, not necessarily the church.

Mr. Nehiley said that he is in favor of this application, and the business uses are consistent with other things going on in the building, and will be in favor.

Mr. Patry said that he cannot see a reason to deny this, the uses are all fitting in a commercial building, and doesn't see a reason to deny it.

Mr. Boucher said that he is in support of the application, and the Fire Marshal has rightfully expressed his concerns based on his knowledge of the building. He said that the proposed business aren't an issue, and will be supporting the application.

MOTION by Mr. Patry to approve the use variance application on behalf of the owner as advertised. Mr. Patry stated that the granting of the variance would not be contrary to the public interest, because these are all uses that would be consistent with a commercial building in this commercial zone.

Mr. Patry said that the request is within the spirit and intent of the Ordinance because the uses are consistent with a commercial zone.

Mr. Patry stated that substantial justice will be served to the owner, as it would allow for different businesses to be used in his space.

Mr. Patry stated that the Board did not have any testimony about the value of surrounding properties being diminished, but may actually be increased by the additional commercial businesses in the building.

Mr. Patry stated that for unnecessary hardship, 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 there is no fair and substantial relationship between the general public purpose of the Ordinance provisions because this is a large commercial building and will be able to accommodate the uses, and the Board finds that the proposed use is reasonable because it fits with the commercial use in the commercial zone. He said that the church listed in the application is not before the Board, as it is allowed in all zones.

SECONDED by Mr. Lionel.

MOTION TO APPROVE CARRIED UNANIMOUSLY 4-0.

MISCELLANEOUS:

REGIONAL IMPACT:

The Board did not see any cases that would have Regional Impact.

MINUTES:

January 13, 2026:

MOTION by Mr. Lionel to approve the minutes as presented, waive the reading, and place the minutes in the file.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 4-0.

REHEARING REQUESTS:

36 Granite Street:

Mr. Nehiley said that there were two very specific rehearing items that were brought up by Attorney Swiniarski, from Devine Millimet. He said that he'd like to read the letter submitted by Attorney Swiniarski and then discuss the two specific points brought up.

Mr. Nehiley said that the letter is dated December 11, 2024, which is likely a typo, send via email to Nicole Wilkins and Carter Falk, and is addressed to the Zoning Board. He said that it is regarding "Motion for Rehearing" - twice reversed and remanded variance application (the "application") of Sam N. Katz (the "applicant") to allow more than one principal structure on a residential lot

for property located at 36 Granite Street, Nashua, NH (the "property"). He said that the letter reads as follows:

Hello Board members:

By this correspondence, Applicant hereby requests and moves for "rehearing" by the Zoning Board of Adjustment (the "Board") of its decision rendered on or about December 6, 2025. The appellant hereby requests and moves for a rehearing on the Decision and alleges that the Board made factual and legal errors in issuing the Decision as more particularly set forth below.

Count 1: The Board has for the fourth time failed to issue a written decision in compliance with RSA 676:3, I.

Count 2: The Board has for the fourth time failed to issue a written decision in compliance with RSA 676:3, II.

The Applicant reserves its rights to amend this motion for rehearing within thirty (30) days of the Board complying with the above referenced statutes, pursuant to RSA 677:4, whenever the Board chooses to do so and notifies the applicant of the same.

Summary:

For the reasons discussed above, the Appellant respectfully requests that the Board:

(1) Grant the variance requested by the Application based upon the findings of fact evidenced by the appropriate and lawful official record as the Board was ordered by both the New Hampshire Housing Appeals Board Case 2024-022 ZBA and the Superior Court Case 226-2025-CV-00145;

(2) Compensate the Applicant for its damages suffered as a result of the intentional and wanton disregard of New Hampshire law, the evidence of which continues to mount after four unlawful decision, and violations of court orders, which damages have currently accrued in excess of \$90,000, plus interest, and continue to accrue.

Thank you.

Sincerely

Christopher Swiniarski

Attorney for Applicant.

Mr. Nehiley asked that the Board talk about Count I and Count II. He said that any of the minutes need to be up within a certain amount of time, and the applicant has to be notified within a certain amount of time. He said that the normal flow to what happens with our Board meetings is that normally we are on YouTube, but within five business days, staff does put a written set of minutes on the Nashuanh.gov website to be accessed by anybody. He said that staff also provided a letter in our packet, that was sent as a courtesy to Attorney Swiniarski in addition to what was posted online for his designees to take a look at. He said that this is really the crux of what is being requested here tonight.

Mr. Boucher said that he is assuming that all of these things happened.

Mr. Falk said that he is the one that does the minutes, and had them done, and given to Nicole Wilkins of Planning Department staff on Monday, December 15, 2025 in the morning, which is within five business days, and they were actually done in four business days, and they were posted on the City of Nashua webpage, and they were marked "draft", as they are not approved until the Board approves them, so, they were available. He said that the decision letter was done, in which staff went into great detail about the five points of law, which is also included in the Boards packet, in which the Board states why they did not meet the hardship, the spirit and intent of the Ordinance, property values, substantial justice, so that decision letter was done within thirty days, but there is not a statutory time frame for that, like the meeting minutes are, but the letter was done and given to the Attorney and the land owner before the 30th day, so they got a copy of what they had in count 1 and count 2 delivered to them, so they have all of this information, and nowhere in this rehearing request does it mention anything about findings of fact, or other reasons for denial, the counts were basically about the minutes and the decision letter, which were both made available to the applicant in a timely manner.

Mr. Nehiley said that the Board does not often see rehearing requests specifically and only about the timing of the notification of decisions going back to the applicant. He said that he believes that this is pretty straightforward, that we have the dates and the documentation that everything was provided in a timely manner. He said that under the summary, the applicant is asking the Board

to grant the variance requested by the applicant based upon the findings of fact, so he's basically saying that he wants us to go back to the September meeting and turn this whole thing around, and in addition, he's asking for compensation of \$90,000, plus interest that continues to accrue. He said that based upon his understanding, the Board has followed the proper procedure on what has happened in the hearings, it went to the Housing Appeals Board, they kicked it back to the Zoning Board, we went through it again, more details, had a full hearing, and it was kicked back to the Board again, saying we shouldn't have had that extra hearing, and we went through it again. He said that we have done this multiple times, and said that he feels very comfortable on the last rehearing, as well as the original case, the Board found that the five rules of law were not met, and that's why the Board voted against this application, and under no circumstances can the Zoning Board approve any type of payments from the City, it must be approved by the Board of Aldermen, so the summary request number two is something that is outside of the purview of the Zoning Board, and it's not something that the Board has the ability to say yes or no about, the Board cannot do anything about monetary damages.

Mr. Boucher said that he just wants to make sure the Board is doing due diligence, it's been back four times, and wanted to ask if we use all the resources we have at hand, and one of them is to ask legal staff. He said that he's not saying that we have to, or should, but just wants to make sure that we are going down the right path, and perhaps Mr. Falk has some more knowledge on that. He said that he doesn't want to put the City in a position that there are some open questions that the Board should be considering.

Mr. Falk said that he personally has not spoken to Corporation Counsel about this, but Sam Durfee did, and he gave him a copy of the rehearing request, and said that Mr. Durfee did not agree with what Attorney Bolton wrote back, and believes that they talked about it. He said that the message indicated that the Board did not do their job, meaning name and address, the request, the zoning district, a lot of obvious things that were in the advertisement sent out, and the discussions and deliberations here at the Zoning Board, those were all done, that is why Mr. Durfee did not agree with what he said. He said that staff believes that we've done everything correctly, and do not feel that there was an error, and if staff felt that there was an error, we'd be the first ones to bring this back.

Mr. Falk said that staff routinely contact the Legal Department, and we use other resources in the State as well to ask questions.

Mr. Boucher said he wanted to make sure that Legal Department had knowledge of this.

Mr. Falk said that all rehearing requests or any cases that go to the Courts, the Legal Department gets a copy, so they're well aware of this.

Mr. Lionel said that this is a rehearing request, and the Board has a particular protocol that is followed. He said that one of the questions is if there is any additional information provided that would cause us to change our mind, and thinks that a lot of this that Attorney Swiniarski sent is just irrelevant to what we're here to do, and would like to get on with the rehearing request according to the questions that were asked.

Mr. Nehiley said that he agrees, and understands the reasonings behind Mr. Boucher's questions, and would like to annunciate that it's on record, so would request Mr. Falk lets the solicitor's office know that they made a request to us for \$90,000 plus interest, and wants to make sure it doesn't go into a black hole, and would like to request that city staff make sure that they are aware of this.

Mr. Falk said that they were given a copy of this request so they're aware of it, and they know that the Zoning Board cannot issue that.

Mr. Lionel said that the only way that they can grant the variance is if we grant the rehearing request.

Mr. Patry said that the request for rehearing says that the decision was rendered on or about December 6, 2025, but we met on December 9, 2025, so that timeline is important as to when Mr. Falk posted the minutes.

Mr. Nehiley said that there are a few misprints in this letter.

Mr. Patry said that the letter is dated December 11, 2024, which is probably a typo, and assumes it was actually written in January, 2025, or January 2026.

Mr. Falk said that the December 11, 2024 date is probably a cut

and paste error from a previous letter, because our staff received it on January 8, 2026.

Mr. Patry said that we didn't have our meeting until January 13, that's when we approved the minutes. He said even December 11, 2025 wouldn't make sense.

Mr. Falk said that the meeting was December 9, 2025, and usually rehearing requests people have thirty days in which to get their request in, and we got this letter on January 8, 2026, which is the 29th day, just before the 30-day deadline. He said he doesn't want to speculate on what was meant for what dates were in the letter.

Mr. Nehiley said that it was a material date, but is not sure if it will change the information that we will be discussing here, and we believe everything was put out in a timely manner as put forth in the RSA.

Mr. Nehiley asked if there was a procedural error, this includes improper notice, denying someone the right to be heard, etc.

Mr. Patry said no.

Mr. Lionel said no.

Mr. Boucher said no.

Mr. Nehiley said no.

Mr. Nehiley asked if it was an illegal decision, in other words, did the Board fail to completely address the points of law required for a special exception and/or variance.

Mr. Patry said no.

Mr. Lionel said no.

Mr. Boucher said no.

Mr. Nehiley said no.

Mr. Nehiley asked if the request contains any information not presented or available to the Board at the original public hearing.

Mr. Patry said no.

Mr. Lionel said no.

Mr. Boucher said no.

Mr. Nehiley said no.

Mr. Nehiley asked if there is anything new that would/could cause the Board to make a different decision.

Mr. Patry said no.

Mr. Lionel said no.

Mr. Boucher said no.

Mr. Nehiley said no.

MOTION by Mr. Lionel to deny the rehearing request for Sam Katz, 36 Granite Street, for our multiple decision, most recently on December 9, 2025 and the rehearing request, in which the Board finds that there was no procedural error, it was not an illegal decision, that the rehearing request did not contain any new information not presented or available at the original public hearing, and the Board finds that there is nothing to cause the Board to make a different decision, therefore, the Motion is to deny the rehearing request.

SECONDED by Mr. Patry.

Mr. Nehiley said that he'd like to add that the online posting was the 15th of December, and a letter was sent to the applicant on the 8th of January, 2026, which was within the thirty days.

Mr. Patry said that he'd further add that the letter of January 8, 2026 constituted a written decision of the Board and that as Mr. Nehiley noted, the minutes were posted on December 15, 2025 as required by law.

MOTION CARRIED UNANIMOUSLY 4-0.

ADJOURNMENT:

MOTION by Mr. Patry to adjourn the meeting at 7:47 p.m.

Submitted by: Mr. Falk, Clerk.

CF - Taped Hearing