

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
March 22, 2005

A public hearing of the Zoning Board of Adjustment was held on Tuesday, March 22, 2005 at 6:30 p.m. in the Auditorium at City Hall.

Tom Jenkins conducted the hearing.

Members present were: Tom Jenkins, Chair
Jay Coffey
Jack Currier
Don Berthiaume
Jeffrey Anderson
Richard Rondeau

Also present: Mike Yeomans, Deputy Planning Manager

Mr. Jenkins said in hearing tonight's cases the Board would be looking for evidence on the following points of law as established under the City of Nashua Zoning Ordinance and empowered to it under the State of New Hampshire enabling legislation.

For variances in the ordinance the following conditions must be met:

(1) A zoning restriction as applied to your property interferes with reasonable use of the property, considering the unique setting of the property in its environment; (2) no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; and (3) the variance would not injure the public or private rights of others.

(2) The spirit and intent of the ordinance must not be broken by granting the variance.

(3) Granting the variance will not adversely affect other property in the district.

(4) Granting the variance must be of benefit to the general public and not solely the individual.

(5) Not to grant the variance would result in an injustice.

For special exceptions designated by the ordinance, the following must be met:

(1) The use requested must be listed in the Table of Use Regulations as a special exception in the district for which the application is made or is an existing non-conforming use for which a request to expand is being in accordance with Subchapter 13 of the Nashua Revised Ordinances.

(2) The requested use will not create undue traffic congestion or unduly impair pedestrian safety.

(3) The requested use will not overload any public water, drainage or sewer system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the City will be unduly subjected to hazards affecting health, safety, or the general welfare.

(4) Any special regulations for the use set forth in other sections of the zoning ordinance are fulfilled.

(5) The requested use will not impair the integrity or character of the district or adjoining zones nor be detrimental to the health, morals or welfare of the residents of Nashua.

He said the order of receiving testimony will be in the following manner: Testimony will be heard from the applicant seeking the adjustment. The applicant will have fifteen minutes to address the five points of law just described. The Board will not

consider in their decision any information which does not address those points.

The timing light on display will shine green until there is one minute remaining at which time the amber light will come on. When the light turns red, the speaker must stop testifying. The Board may then ask questions of the applicant.

After the presentation the Board will then take testimony from those in favor of the application and then from those in opposition.

He said each speaker will be allowed five minutes to address the Board. The timing light will show a green light until one minute is remaining. The amber light will be on during the last minute and the speaker must stop when the light turns red.

He said speakers are asked to confine their comments only to the new points of information or may simply state that they agree with the previous speaker. Speakers will come forward to the microphone and state their name and address for the record. All testimony given this evening is understood to be given under oath as in a court of law.

At the end of all testimony in opposition, the applicant will have five minutes to address any points raised in opposition. After this testimony one (only one) person from those in opposition will be given five minutes to address the applicant's rebuttal. No new testimony may be given and only someone who spoke in opposition may provide rebuttal testimony.

He said should the applicant or any of the public in opposition feel an unjust or unlawful decision was made may request a rehearing of the Board within 30 days of the decision. Contact the Office of Zoning for further details about the process. If any person or party is not granted a rehearing or still feels that an unjust or unlawful decision has been rendered by the Board you may appeal the case to the New Hampshire Superior Court. Three affirmative votes are needed for granting a variance or special exception.

The following cases are postponed to the dates shown:

Postponed to 4/12/05

2. David A. Cull (Owner) 12 Robert Drive (Sheet E Lot 97) requesting variance to exceed the maximum number of non-related people living together, 6 allowed - 9 requested. R9 Zone.

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3. David A. Cull (Owner) 9 New Searles Road (Sheet B Lot 622) requesting variance to exceed the maximum number of non-related people living together, 6 allowed - 9 requested.

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4. U.S. Land Development, LLC (Owner) Homes by Paradise, Inc. (Applicant) L Gilson Road (Sheet D Lot 21) requesting the following: 1) special exception to allow a 122-unit single-family cluster residential development; 2) special exception to work within critical wetland areas and wetland buffers to construct a stormwater wetland, pedestrian/bike path and stabilizing existing buffer areas; and 3) variance to construct a bike path/recreational trail and a 10'x20' public restroom building within the 50 foot buffer along project boundary. R30/R40 Zones.

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1. Cotton Transfer Bridge over Nashua River, between Nashua Clocktower Housing & Nashua Corporation (Owners) 2 Clocktower Place and 30 & 36 Front Street (Sheet 77 Lot 20 & Sheet 78 Lot 87) requesting special exception to work in the 75 foot prime wetland and wetland buffer of the Nashua River to rehabilitate the Cotton Transfer Bridge. GI/MU Zone.

Voting on This Case:

Tom Jenkins

Richard Rondeau
Jay Coffey
Jack Currier
Don Berthiaume

Paul Newman, Manager, Urban Programs Dept/Community Development Division. Mr. Newman said also present tonight is Christopher Baker, Vanesse, Hagen & Brustlin, the City's engineering firm designing the project for the City.

He said this project of adapting the old cotton transfer bridge which moved raw cotton product between the cotton storage building on the north shore (now owned by Nashua Corporation) to the loom rooms on the south shore (now Clocktower Place) was conceived back in the 1990s. It was decommissioned and has not been in use for as long as anyone he has talked to knows - he is thinking perhaps the 1930's or 1940's. He said this is a steel truss bridge built in 1902. It is somewhat unique in that it never carried vehicles or pedestrians, just simply cotton product.

He said the bridge is a component of the City's vision for the Downtown, particularly the riverfront area to create a continuous circuit on both the east and west sides of the Main Street Bridge wherein people can travel on the shoreline, reach this bridge, cross over and return on the north shore. The City is working on the Riverfront Promenade associated with the Jackson Falls project.

He said this was conceived in the 1990s and the City was waiting for Federal funds to become available. It took several years for that to happen. At this point the project is Federally funded 75% and the City is pitching in 25%. The total budget at this time is \$800,000.

Mr. Newman said after soliciting interest from various engineering firms, the City retained VHB. Design has been proceeding, including all the various permitting issues. The City recently appeared before the Conservation Commission and obtained their approval. The City has also appeared before DES in Concord for wetlands and shoreline permitting.

He said bridges are permitted as Item #16 in the zoning permitted

use table for the City of Nashua. No filling is proposed, although that is a special exception in all zones. He said they do not expect that there will be any significant affect on congestion. The users will be pedestrians. There is no change in utilities or public sewer or drainage. The only utility that will be involved is power for some lighting on the bridge.

He said there is the issue that if the bridge is left "as is" in terms of public safety it is rather deteriorated in terms of a number of structural components. It was originally a covered bridge and with exposure some of the cords have rusted and will be replaced during this process. At some point some party or parties apparently sought to dismantle the bridge. There are a number of structural elements - cross members on the top span of the bridge were cut and some of the diagonals in the bay at the far north end of the bridge. It does potentially represent a hazard, if not to people, to the river itself from collapse.

He said as to whether it is in character with the neighborhood or district - it is an existing structure. The bridge deck upon which people will eventually be able to walk on with the new deck is approximately 10' above the riverbank on the south side and about 12' on the north side. In order to provide accessibility to those who have mobility problems there will be both a stair and a ramp in compliance with Americans With Disabilities Act.

He said the footprint on the riverbank will sit on an area that is currently level grass area. The riverbank here is not truly riverbank, but a structured engineered stone wall that was built, no doubt at the time the mills were built back in the 1820's. There is adequate room between the existing emergency access lane and the stone wall to construct the ramp and stair. The only impervious surface on the ground will be the landing pad where people will make their way to the start of the ramp and the stairwell. It measures about 20'X10' or thereabouts. It will have a brick surface.

Mr. Newman proceeded to address Section 16-575 of the review standards. The first point is whether the activity proposed cannot reasonably be avoided. He said the access to the bridge is not practical by other means. He said they contemplated a lift or

elevator, but it's not practical. It would be an unsupervised situation.

He said the second criterion is that the least damaging route and methodology have been selected. He said the ramp is designed to meet the required ADA slope and it takes up no more room than the solution requires.

He said the next criterion is that any impact mitigation measures have been incorporated where necessary. He said no adverse impacts have been identified. There will be a temporary impact in the river itself during the construction. It is necessary to support the bridge while it's repaired. He said it will be about 70 square feet for temporary pilings.

He said the next criterion is that the overall impact is necessary for the productive use of the land. He said it is necessary to make this accessible to the public.

He said there have been no rare or endangered species that have been identified.

He said adequate erosion and control measures will be incorporated during the construction.

Mr. Jenkins asked if the work is going to be done from a barge.

Mr. Newman said the actual technique by which the bridge is supported temporarily in order to repair the deteriorated sections ultimately will be up to the contractor.

Mr. Jenkins asked if this becomes part of the river walk when the work is finished.

Mr. Newman said it is. He said it's a crucial element of the loop around the westerly side of the Main Street Bridge.

Mr. Jenkins said he saw a staircase that exits off prior to going to the concrete structure on the side opposite from Nashua Corporation.

Mr. Newman said he doesn't know of any way to get from the riverbank up to the bridge without going through the building.

Mr. Jenkins asked if the staircase and ramp will only be on the Clocktower side.

Mr. Newman said this is correct.

Mr. Jenkins said when you cross over where are you going to go.

Mr. Newman said the expectation is that the building on the north side will ultimately be redeveloped. It has been on the market and there is an option to purchase by a local non-profit to redevelop the entire property. He said as they got into the preliminary engineering on this project and that prospect arose during that time it became apparent that the most practical way to deal with the north side access is when that happens.

Mr. Newman said the obstructions to getting to the riverbank on the north shore are substantial. He said there's an abutment of the bridge that sits on the north side bank and there is another short span of bridge from that abutment to the building, which is an enclosed structure. To do this now would require some acquisition, but the expectation is with redevelopment the incremental structure plus some of the bins that sit along the embankment would be removed. Right now it would require a ramp that would skirt around those and would be overly long to settle down on the bank toward the Main Street Bridge side.

Mr. Jenkins said effectively it goes nowhere.

Mr. Newman said they like to call it an observation deck in the meantime. It will be a dramatic place to look at the millyard from. It will be posted as City parks are that it will be closed at dark. He said he has been there with a lieutenant from the Police Department some weeks back and they did not express any particular concern other than the usual concerns in any urban environment.

Mr. Jenkins asked if there would be any type of lighting.

Mr. Newman said the intent is not to illuminate the walkways because they are closed at dark. There are also trying to avoid intrusive lighting because there are residences at Clocktower Place and eventually the north shore residents. The only lighting intended at this time is to outline some of the structural elements that will only be visible from the Main Street side.

Mr. Jenkins said he assumes that the Federal grant has an expiration date.

Mr. Newman said this is correct. The Department of Transportation agency that is funding this is okay with this in a phased manner.

Mr. Jenkins asked if the Conservation Commission had any issues or any special conditions that they mandated.

Mr. Newman said "no."

Mr. Currier asked if they were asking for a temporary or a permanent disturbance.

Mr. Newman said it's both temporary and permanent. The permanent is the location of the ramp and the stairs within the 75' wetland buffer.

Mr. Currier asked if they were doing Option #2 or leaving the options open. He said in the package they have it says Option #2, but he thought he heard testimony that the contractor was going to do it "at will" when it was being done.

Mr. Newman asked if he meant in terms of the temporary support and Mr. Currier said that is what he thought.

Christopher Baker. Mr. Baker said the Dredge and Fill application the Wetlands Board requested all the potential options are put in and that the likely option is indicated. The contractor will actually submit to the engineer their requested method and means of construction for approval. He said they have spoken to half a dozen contractors and they've indicated that the very small impact support system to temporarily raise up the truss while they rehabilitate it is probably the likely option. He said they wanted

to leave open the possibility that the contractor would opt for a less expensive barge, if that was in his best interest.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Coffey to grant the special exception to work within the 75' prime wetland and wetland buffer of the Nashua River to rehabilitate the Cotton Transfer Bridge located at 2 Clocktower Place & 30 & 36 Front Street. It is listed in the Table of Uses, 16-575 (b)(2). There is no filling that will take place within the area. It will not create any undue traffic congestion or unduly impair pedestrian safety. It will not overload any public water, drainage, sewerage, or other municipal systems. No special regulations are needed at this time. It will not impair the integrity or be out of character with the neighborhood. There will be no outward changes of any significance to the structure. Special Condition: Options #1, 2, & 3 are open for construction purposes because they don't know which way the bridge is going to be constructed or reconstructed.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY

5. William M. Houle (Owner) Marris Associates, LLC (Applicant) 67-69 Allds Street (Sheet 19 Lot 19) requesting the following variances: Proposed Lot 1: 1) minimum lot area, 6,000 sq.ft required - 5,509 sq.ft proposed, and 2) maximum building area, 20% allowed - 28% proposed; Proposed Lot 2: 3) minimum lot area, 6,000 sq.ft required - 3,999 sq.ft proposed; 4) minimum lot width, 60 feet required - 41 feet proposed; and 5) maximum building area, 20% allowed - 34% proposed - all requests to subdivide one lot into two lots and change use of commercial building to a single family residence. RB Zone.

Voting on This Case:

Tom Jenkins
Jay Coffey
Jack Currier
Richard Rondeau
Don Berthiaume

Atty. Gerald Prunier, Nashua. Atty. Prunier passed out some material to the Board. He said this building had been used as a bakery many years ago. He said from the pictures he passed to the Board you can't tell what it is. It is a stone commercial building. They are trying to bring it into the residential area.

He said the second picture and the draft shows where this is located and it shows the surrounding lots. He said the lots are all different sizes. There are two medical office buildings across the street and there are some condos as well. He said the fourth draft shows the plan of the property and how it is subdivided. The fifth shows that it's going to be completely sided, renovated and remodeled.

He referred to the memorandum from Alderman Lori Cardin indicating she is in support of this request. He indicated that are six pages of all the different sized lots. It all comes down to the fact that this is a mixed use area as far as sizes and uses.

He said as this presently exists there are two buildings on one lot, which is non-conforming. In addition, it is a commercial use. He pointed out that one lot would be 5500 square feet and the other 4000 square feet. Just by the fact that there is a building on the lots is going to take away the maximum building area on the lot. The first lot will have a 28% maximum buildable area and the other lot will be 34%. Also, Lot 2 will not meet the dimensional requirement for the width.

He said this is an attempt to provide affordable housing in an area that has a mixed use and has multi-family housing in it with smaller sized lots.

He said they can't do anything other than this except to knock down the buildings. The buildings have existed here for at least fifty years. They are a fixture in the neighborhood.

Atty. Prunier said they could still use this for a commercial use, but it is felt that it would be a benefit to try to get it into a residential use.

He said the buildings on both lots can be good affordable housing.

He said this meets the spirit and intent of the ordinance because they are taking it out of commercial use and putting it into residential use. He said it will not adversely impact the surrounding property values. In fact, once the work is done, it will fit in well with the neighborhood.

Mr. Jenkins said that they can agree that the buildings pre-date zoning.

He asked Atty. Prunier is the building on Lot #2 has a foundation that is structurally sound.

Atty. Prunier said "yes."

Mr. Jenkins asked about the parking on Allds Street.

Atty. Prunier said there isn't any parking on the street.

Mr. Jenkins said he would like to see the commercial light on the side of the building removed. It overlooks the two homes behind it.

Atty. Prunier said thinks he can convince his client to get rid of that light.

Mr. Jenkins asked if the chimney is going to be taken down.

No answer was heard, but apparently the attorney indicated it was because the next statement by Mr. Jenkins made was that the light and chimney would be gone and that the building would be rehabilitated to look totally residential and be in character with

the neighborhood and bring up the property values of the homes beside it.

Mr. Currier said recently when this was a golf shop if it was associated with the house next to it.

Atty. Prunier said the people who owned the home also owned this building and they rented it out to the golf shop.

Mr. Currier asked how long the people owned the lot.

Atty. Prunier said he did not know.

Mr. Berthiaume ???? asked the square footage in the commercial building.

Atty. Prunier said 1350 square feet.

SPEAKING IN OPPOSITION

No One.

SPEAKING IN FAVOR

No One.

Mr. Jenkins said this is a great use for the property. It will help to increase the property values, especially the homes behind it on Rita Street. All the homes here are on small lots and none of them meet the zoning regulations in the first place.

MOTION by Mr. Jenkins to grant the variances Lot 1: 1)minimum lot area, 6,000 square feet required - 5,509 square feet proposed 2) maximum building area, 20% allowed - 28% proposed; Proposed Lot 2: 3) minimum lot area, 6,000 square feet required - 3,999 square feet proposed 4) minimum lot width, 60 feet required - 41 feet proposed 5) maximum building area, 20% allowed - 34% proposed to subdivide one lot into two lots and change the use of commercial buildings into single-family residence at 67-69 Allds Street. Granting the variances enables the applicant reasonable use of the property and gives the lot individual use, more residential in

appearance and residential in character. There is no parking on Allds Street so it really isn't suitable for commercial use. It will also increase the property values on Rita Street and McKean Street. It will not adversely affect the property values of surrounding parcels. It is not contrary to the public interest. Substantial justice will be met by granting the request. Special Condition: Lot #2 will remove the commercial light and chimney that currently exist on the building.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

At this point Mr. Jenkins commented that there were people in the audience and he assumed that they knew that the other cases on the agenda had been postponed.

An audience member said they had some questions and Mr. Jenkins said that they could address those now if it was something that could be taken care of now.

Donna Cohen, 1 Kendall Way, Nashua (Hadley Woods Development).

Mrs. Cohen said there seems to be some confusion about where Homes by Paradise is planning their development.

Mr. Jenkins showed the map he has and explained where it is located. He said the meeting on this case has been postponed to April 12.

Request for Rehearing

Walter W. & David Anderson, Trustees, (Owners) 539 Amherst Street (Sheet H Lot 88) requesting the following variances: 1) to exceed maximum number of ground signs per premises, one allowed, one existing - one additional 50 square foot ground sign proposed; and 2) to encroach 20 feet into the 20 foot required front yard setback for proposed ground sign. HB Zone.

Mr. Jenkins asked if everyone had a chance to look this request over. He said he didn't see any new information in the request. The only thing he did see is the fact that there was a misunderstanding about the date for the hearing. He said he knows that Mr. Falk called Barlo Signs and asked them to present the information he had requested at an earlier hearing. Mr. Falk told him that the response was that Barlo Signs was going to contact Mr. Anderson.

He said he doesn't know how they didn't know about the date for the next hearing because the night of the hearing he said to come back to the next meeting with the information that was being requested.

He asked if there was a procedural error, including improper notice denying someone the right to be heard.

He said he guessed that this could fall under that category if it was the right to be heard if there was some confusion of the date. He was under the impression the next hearing was March 22 and not February 22.

There was some discussion about how there were a number of cases the same night that were postponed to different dates and there may have been some confusion.

MOTION by Mr. Currier to grant the request for rehearing for 539 Amherst Street. He said he does not believe there was a procedural error, however, the applicant claims there was some miscommunication on his part and he feels they should provide the opportunity to have the case heard.

SECONDED by Mr. Anderson.

MOTION CARRIED UNANIMOUSLY

Durette Realty Trust (Owner) 20 Smithfield Terrace (Sheet 56 Lot 139) requesting the following variances: 1) to encroach 6 feet into the 25 foot rear yard setback; and 2) to exceed maximum

building area, 20% allowed, 21.3% requested - to construct an 8'x14' home addition. RA Zone.

Mr. Jenkins asked if everyone had read this request for rehearing.

He asked the Board if there were any procedural errors, including improper notice denying someone the right to be heard.

None of the Board felt that this is the case.

Mr. Jenkins asked if any of the Board members felt an illegal decision was made - in other words did the Board fail to completely address each point of law required for a special exception or variance.

The Board did not feel that this was the case.

Mr. Jenkins asked if the request for rehearing contained any new information not presented or available to the Board at the time of the original hearing.

The Board did not feel that this was the case.

Mr. Jenkins asked if there was anything that would cause the Board to make a different decision.

The Board did not feel this was the case.

MOTION by Mr. Berthiaume to deny the request for 20 Smithfield Terrace. There was no procedural error. There was no illegal decision. There was no new information. There is no reason to believe that the Board would come to a different decision.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

MINUTES

2/22/05

MOTION by Mr. Rondeau to accept the minutes of 2/22/05, waive the reading, and place them on file.

SECONDED by Mr. Berthiaume.

MOTION CARRIED UNANIMOUSLY

ADJOURNMENT

Mr. Jenkins called the meeting closed at 7:22PM

Michael Yeomans
Acting Clerk

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Taped