

**ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
November 9, 2005**

A public hearing of the Zoning Board of Adjustment was held on Wednesday, November 9, 2005 at 6:30 p.m. in the Auditorium at City Hall.

Sean Duffy conducted the hearing.

Members present were: Sean Duffy, Vice Chair
Normand Tremblay
Jack Currier

Also present, Carter Falk, Deputy Manager/Zoning

Mr. Duffy 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 that 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.

Mr. Duffy said three affirmative votes of the Board were needed for granting a variance or special exception. He said only three members are present tonight. He said since there isn't a five member Board present, any applicant has the option to defer their case to a meeting in the future.

Changes to Agenda announced by Mr. Falk:

Postponed to 11/22/05 Meeting:

- 1. One Parke Place, LLC (Owner) 120 Coliseum Avenue (Sheet E Lot 1548) requesting special exception to allow a 20 unit elderly housing building on a portion of existing lot. RC Zone.**
- 2. Mobil Oil Corporation (Owner) Armand Sancier (Applicant) 267 Main Street (Sheet 97 Lot 13) requesting the following**

special exceptions: 1) to allow a 2-bay automatic car wash with exterior car vacuums, and 2) to allow for a reduction of the 25-foot required buffer strip adjoining a residential district to not less than 10 feet. GB/MU Zone.

3. Andreas Nikitas (Owner) 9 Simon Street (Sheet 87 Lot 307) requesting variance to encroach 7 feet into the 10 foot rear yard setback to construct a 7'x14' walk-in cooler addition. GB Zone.

5. Jeffrey M. Hirsch (Owner) Regency Centers (Applicant) 550 Amherst Street (Sheet H Lots 181, 184 & 646) requesting the following variances: 1) to exceed maximum height of luminaires, 6 feet allowed, 30 feet proposed, and 2) to exceed 0.2 footcandles at external property boundary. GB Zone.

7. Arthur W. & Patricia F. Gamache (Owners) 47 Gilson Road (Sheet D Lots 31 & 263) requesting the following variances: 1) minimum lot frontage, 105 feet required, 20 feet proposed, and 2) minimum lot width, 130 feet required, 20 feet proposed, to allow for a lot line relocation to access lot 263. R30 Zone.

11. AS-VR Realty Trust LLC (Owner) Wal-Mart Real Estate Business Trust (Applicant) 420 Amherst Street (Sheet H Lot 485) requesting special exception to work within an "other" and critical wetland buffer to construct a 146,951 square foot retail store and associated site improvements. AI Zone.

Withdrawn

10. MacThompson Realty Inc. (Owner) 3 Marmon Drive (Sheet A Lot 349) requesting the following variances: 1) to exceed maximum number of ground signs, 1 permitted, 2 existing - 1 additional ground sign proposed; and 2) to exceed maximum ground sign area, 150 square feet allowed, 84 square feet existing - an additional 100 square feet proposed. HB Zone.

=====

4. Mohan & Sumalatha V. Yechoori (Owners) 2 Brinton Drive (Sheet 49 Lot 219) requesting variance to encroach 15 feet into the 25 foot required front yard setback (on Concord Street) to construct an attached 8'x12' breezeway and 24'x24' garage. RA

Zone. (Tabled from 10/11/05 Meeting)

MOTION by Mr. Currier to remove from the table.

SECONDED by Mr. Tremblay.

MOTION CARRIED UNANIMOUSLY

Nobody came forward to do a presentation. Since this was the fourth case, the applicant may not have arrived yet so the chair indicated they would leave it off the table and continue with the rest of the cases.

6. Donna I. Perry (Owner) Gary Francoeur (Applicant) 22 Damon Avenue (Sheet 49 Lot 129) requesting variance to exceed maximum building area, 20% allowed - 23% requested, to construct a 16'x14' sunroom and a 12'x16' deck. RA Zone.

Donna Perry, 22 Damon Avenue & Gary Francoeur, 24 Damon Avenue. Mrs. Perry said it is reasonable to want to sit in a protected area at night and enjoy the fresh air or to look out and watch the birds at the feeder during the day. The sunroom and deck will allow for a safe area to barbecue. The structure will also provide for a stable landing to and from the handicap ramp that is also part of this variance.

The sunroom/deck is an extension of the back of the house. It will not obstruct the neighbor's view or any surrounding landscape. Therefore, she does not believe it will be an intrusive structure.

She said permitting this variance would promote the spirit and intent of the zoning ordinance. She said her mobility challenged father would no longer be subject to the painful task of mounting and dismounting the staircase. She said her father lives with her. She said the sunroom/deck not only makes for his personal enjoyment, but for his safety as well.

She said the sunroom/deck are well within the setback limitations on

the property and will cause no burden on the existing infrastructure.

Mrs. Perry said the sunroom/deck would be an integral part of the existing structure. It will not diminish the integrity of the existing homes. The sunroom will be tastefully designed so that it blends in with the existing homes in the area and it will appear as if the sunroom/deck was an original part of the home.

She said granting the variance would increase the property value of the existing home, increase tax revenue for the City of Nashua and also the resale property value of the neighborhood.

She said granting the variance would enhance her father's quality of life. He will be able to experience fresh air without having to worry about physically leaving the home. In the event of an emergency he will have an easier route by which to evacuate the home.

She said the sunroom/deck provides for a safer and quieter place to entertain guests. Barbequing would be done at the back of the house on a solid surface in a private setting versus in the front of the house outside the garage and driveway.

She said this is a single-family ranch style home. The property surrounding the home is currently lawn and the sunroom/deck is planned where the existing lawn is.

Mr. Duffy asked if this is a reasonable use of the property because other buildings and houses in the area have decks.

Mrs. Perry said that several of her neighbors have decks - one on the right side of her and one on the left side of her.

Mr. Duffy said there aren't a lot of fences in the area.

Mrs. Perry agreed.

Mr. Currier said when he looked at Mrs. Perry's house he didn't believe anyone would be able to see the sunroom/deck from the street. He asked if she had talked with any of the other neighbors, other than Mr. Francoeur.

Mrs. Perry said she did see a couple of neighbors who mentioned that

they had received notices from the City and they had no objections to her request.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

Mr. Duffy said this house is a little larger than some of the others in the neighborhood, but he felt this was a reasonable request.

Both Mr. Currier and Mr. Tremblay said they had no problems with the request.

MOTION by Mr. Currier to grant the variance request to exceed the maximum building area, 20% allowed, 23% requested at 22 Damon Avenue to construct a 16'X14' sunroom and a 12'X 16' deck. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. There's testimony that this deck will likely increase the property values of surrounding parcels. It is within the spirit and intent of the ordinance. There's no reason to believe that this will be contrary to the public interest. Substantial justice will be served.

SECONDED by Mr. Duffy.

MOTION CARRIED UNANIMOUSLY

8. Bobbie J. Veligor (Owner) 21 Fairview Avenue (Sheet 89 Lot 60 & 61) requesting variance to encroach 5 feet into the 25 foot required front yard setback to construct a second-story dormer. RA Zone.

Eric Parent, Contractor, 105 Chestnut Street. Mr. Parent said the setback is 25' and the footprint of the existing house is already in that setback so the hardship already exists. They want to build up an extra two feet on a dormer.

He said this request does not violate the spirit and intent of the

ordinance because they are following the same footprint of the house.

He said the value of the house is not diminished; it will actually increase the property values in the area because this makes it a bigger house. He said the house is very small on the lot so making it bigger will help the values.

He said by allowing the construction of the dormer, it will allow the owner to stay in their home and not sell the property to a contractor to build another multi-family on a double lot.

He said substantial justice will be served as the owner will be able to sleep comfortably without hitting her head when she gets up in the morning because the dormer is so low.

Mr. Parent said they are not changing the footprint. He said if you look at the other houses in the area they are already encroaching 10' - 20' onto the setback. What they are asking for is very minimal.

Mr. Currier agreed. He said this is not out of character with the neighborhood at all.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Duffy to grant the variance to encroach 5' into the 25' required front yard setback to construct a second story dormer at 21 Fairview Avenue. The variance is needed to enable the applicant's proposed use of the property. It is a reasonable request given the position on the property and it's existing footprint. This is a minor adjustment to the building. It cannot be obtained through any other method. It is within the spirit and intent of the ordinance that a minor adjustment of this nature would not be out of character with the essential character of the neighborhood. Although there was no expert testimony on property values, this is a very minor addition to the property. It is, therefore, not contrary to the

public interest. The dormer use on a single-family home is approved in this zone. Substantial justice will be served.

SECONDED by Mr. Tremblay.

MOTION CARRIED UNANIMOUSLY

9. Jose M. & Filomena Ferreira (Owners) 4 Derry Street (Sheet 53 Lot 73) requesting special exception for in-home day care for an additional 3 children (6 children approved by ZBA on 7-13-04). R9 Zone.

Jose Ferreira, 4 Derry Street. Mr. Ferreira said they are requesting three more children for their in-home day care. They will be part-time because they are older children. They are pretty much siblings of the children that they already have in their care. This is to help out the parents on snow days and school vacations. He said they would only be with them for a period of time during the day, not the entire day. He said there would be no change to the property itself.

He said the traffic is going to be the same because it will be the same parents who will be dropping off two or three of their children instead of only one.

Mr. Duffy asked if Mr. Ferreira was willing to stipulate that any testimony given at the previous meeting on July 13, 2004 be part of his presentation.

Mr. Ferreira agreed.

Mr. Duffy said the last time Mr. Ferreira came to the Board they asked for twelve children and at the time the Board gave them some feedback about the limitation on the 300 square feet limitation for the home occupation. He said he didn't see anything in the application that might have changed since July, for example the footprint. He said the Board was pretty clear at the previous meeting that six was about the limit.

Mr. Ferreira said at the time they had a lot of problems because some of the neighbors were very reticent about having the daycare here. They probably thought it was going to turn into a big zoo or

something. He said at the time they had asked for the entire basement to be a day care. At that time the members of the Board told them that they could only use 300 square feet of the house for an in-home business. They had to close off part of the basement to limit the space to 300 square feet. He said as far as the State of New Hampshire is concerned, the size was not the problem. The problem comes from the City because of the 300 square feet limit on size.

There was a discussion about the building permit and the fact that the Building Inspector has inspected and verified that the square footage of the day care operation is only 300 square feet.

Mr. Currier asked if the plan depicts the basement.

Mr. Ferreira said this is one part of the basement. He said there is a whole other part to the basement. He said there's a fire door on one of the exits and on the other side is where they have a laundry room, a TV room and where his wife has her office.

Mr. Currier asked if the "Exit" shown on the diagram the Board has goes to the back yard.

Mr. Ferreira said the one that has the steps going up is the exit where the parents come in with their children. He said the other exit actually goes to the other side of the basement.

Mr. Currier asked if the garage is used as a garage.

Mr. Ferreira said "yes." He stepped away from the microphone and explained where the parents come with their children.

Mr. Duffy asked if the hours of operation are going to be the same as what was stated in the previous meeting.

Mr. Ferreira said "yes."

Mr. Duffy asked how many children they have of their own.

Mr. Ferreira said they have two boys. One is 16 and the other is 12.

Mr. Duffy asked if the outdoor play times and all the other special

conditions were going to stay the same.

Mr. Ferreira said they are going to be the same.

Mr. Currier said when Mr. Ferreira came to the Board before it seemed like the abutters were alarmed about what this might be or what it might turn into. He said they've been running this for a while now. He asked if Mr. Ferreira had talked to any of the neighbors and what they had to say about this request.

Mr. Ferreira said before they came to the Board they actually wrote a letter to the neighbors telling them that this hearing was going to take place. He said the only neighbors that talked to them were the neighbors on 3 Derry Street, which is across the street. He said the lady that lives in that house said that she would never know there was a day care here.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

Mr. Duffy said they have a letter dated November 6, 2005 from Michael & Karen Sgro, 6 Derry Street stating their opposition to the request for the additional three children.

SPEAKING IN FAVOR - REBUTTAL

Mr. Ferreira read the letter. He said that his wife is pretty good with children. He said when and if they have the three additional children they are requesting they will be older children. Danger to them is significantly less than to the other children. He said she is allowed to have two toddlers and the other four are between the ages of two and five. At around the age of five they usually go to school.

He said there isn't going to be an increase in the traffic. It's going to be the same vehicles coming in and out.

He said he could not imagine that this would affect the property values. He said the City just assessed their house and it went up considerably. He said he can't imagine that the neighbor's house would look any worse because he and his wife are going to have three more children in the house on a snow day or during school vacation.

SPEAKING IN OPPOSITION - REBUTTAL

No One.

Mr. Tremblay asked if this was granted if it would stay with the property forever.

Mr. Duffy said it stays with the land.

Mr. Tremblay asked if the number of children is within the Board's purview.

Mr. Falk said the State issues the license. The Zoning Board is responsible for determining that the applicant meets the major home occupation criteria. He said there really isn't a number in the regulations. Some in-home day care operations have more children. A lot depends on the site.

He said if the owners of this property sell the property to someone else and they don't have an in-home day care, the use from the land is gone and if it's gone for more than a year in a residential zone, it would have to be re-established.

Mr. Currier said he did a site walk to this area and the house looked like all the others. He said there doesn't appear to be a lot of opposition as there was the first time. It's been in operation for a little while now so it seems like the applicants are minding the shop pretty well.

Mr. Duffy said this is off of Dublin Avenue, which has a lot of traffic. There are some other day cares in that region towards Birch Hill. He said this is a pretty large house and he didn't think traffic was as significant. Even though the applicant feels there will be a similar number of cars because they are similar families, they would be granting nine children, so there could be other cars in the future. He said the times he's visited up in the

area there's usually not a lot of traffic on that road.

Mr. Tremblay said the house is very well maintained. It is a narrow street and he could see where traffic could become a problem during pick-ups and drop offs. He said they couldn't guarantee that the other three children would always be from the same families. It could be three additional families that would be dropping off children, which would then increase the traffic.

Mr. Falk said it's probably going to be ever changing because they may have three cars coming right now. Next year it might be four families dropping off their children. Six months later it could be nine cars. Some kids might come only certain days of the week. It's not like there would be nine cars coming at once and nine cars leaving at once. It's probably going to be somewhat staggered so you aren't going to notice the peak of cars dropping off and picking up kids.

Mr. Duffy said the way he looks at this is that this is a residential street and someone could start a bridge club in one of the houses and have cars coming and going. There are also people who might have Girl Scout Troops and sports type of get togethers in their homes.

Mr. Falk said he has a sixteen year old son who drives and the amount of cars that come in the driveway every day with his son's friends coming over is sometimes much more of an issue because it's at all hours of the day and night and on weekends.

Mr. Currier said the fact that this has been in operation and the place looks good and there's only one letter in opposition and that doesn't say they are having problems. It's stating that maybe there will be problems. He said he felt there was a demonstration of good performance here. He said he is favorable to the request.

MOTION by Mr. Duffy to grant the special exception for an in-home day care for an additional three children at 4 Derry Street (6 children previously approved). This is listed in the Table of Uses, Section 16-397 and 16-208. All the testimony and information from the prior case have relatively stayed the same concerning traffic congestion, utilities, special regulations, and the integrity of the essential character of the neighborhood not being detrimental. All

the other major home occupation criteria stays the same. They have limited the day care operation to 300 square feet, as required by the Nashua Ordinance. They have shown through their operation that they are able to comply and keep the essential character of the neighborhood residential and in a positive setting for children that is safe.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY

Mr. Duffy announced (for those who arrived late) and listed those cases that were postponed due to the fact there were only three members present tonight.

4. Mohan & Sumalatha V. Yechoori (Owners) 2 Brinton Drive (Sheet 49 Lot 219) requesting variance to encroach 15 feet into the 25 foot required front yard setback (on Concord Street) to construct an attached 8'x12' breezeway and 24'x24' garage. RA Zone. (Tabled from 10/11/05 Meeting)

No one came forward to provide testimony.

MOTION by Mr. Currier to deny the request for variance at 2 Brinton Drive to encroach 15' into the 25' required front yard setback on Concord Street to construct an attached 8'X12' breezeway and 24'X24' garage. There has been no testimony that the variance should be moved forward with.

SECONDED by Mr. Tremblay.

MOTION CARRIED UNANIMOUSLY

Request for Rehearing:

- 1. 7-7C Paige Ave, Sam Katz**
- 2. 74 Cox Street, Andrea J. Harding**

Mr. Duffy said they also have two rehearing requests and given that they have a new member tonight and only two members have seen these cases, he suggested that they be tabled to the next meeting.

Neither Mr. Tremblay nor Mr. Currier had any objection to this.

MOTION by Mr. Duffy to table 7-7C Paige Avenue & 74 Cox Street to the 11/22/05 Meeting.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY

Regional Impact

The Board discussed the agenda for the next meeting. They did not see any regional impact.

Minutes

10/27/05

MOTION by Mr. Duffy to approve the minutes of 10/27/05, waive the reading and place on file.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY

ADJOURNMENT

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

Jack Currier
Acting Clerk

lt
Taped