

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
July 25, 2006

A public hearing of the Zoning Board of Adjustment was held on Tuesday, July 25, 2006 at 6:30 PM in the Auditorium at City Hall.

Sean Duffy, Chair, conducted the meeting.

Members present were: Sean Duffy, Chair
Jack Currier, Vice Chair
Susan Douglas, Secretary
Rob Shaw
Normand Tremblay
Carter Falk, Deputy Planning
Manager/Zoning

Mr. Duffy explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Duffy explained how testimony 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. Duffy also explained procedures involving the timing light.

- 1. Vigilant Properties, LLC (Owner) Mary S. Bellavance Rev. Trust, Maria E. Dube, Mary J. Daly Rev. Trust & Dana P. & Cynthia A. Gaudette (Appellants) L & 22 Edson Street (Sheet 47 Lots 349 & 401) appealing the decision of the Nashua Planning Board regarding approval of a plan where the appellant believes that the lot does not have adequate frontage; approved two lots when the appellant believes there's only one lot; and did not enforce all applicable requirements with respect to road construction, subdivision approval/lot line relocations on Class VI roads. RA Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw
Normand Tremblay
Susan Douglas

Atty. Paul Alfano, Baroff, Alfano & Karoff, Bedford, New Hampshire. Atty. Alfano presented the appellants case, and alleged that there is only one lot on record, explained why the development should not have been approved on a Class VI roadway, and that the property does not have adequate lot frontage. Discussion ensued between Atty. Alfano and the Board.

SPEAKING IN FAVOR OF THE APPEAL:

Joe Bellavance, 44 Raymond Street
Mary Bellavance, 61 Berkeley Street
John Pappas, 20 Edson Street
Mary Daly, 21 Edson Street
Marie Dube, 20 Edson Street
Michael Daly, 21 Edson Street
Paul Corriveau, 9 Edson Street
Roger Johnson, 6 Edson Street
Joe Bellavance Sr., 61 Berkeley Street
Dana Gaudette, 59 Wood Street
Cynthia Gaudette, 59 Wood Street
Jim Donchess, 4 Rockland Street
Suzanne Vail, 2 Rockland Street

SPEAKING IN OPPOSITION OR WITH CONCERNS REGARDING THE APPEAL:

Carter Falk, Deputy Planning Manager/Zoning, City of Nashua, Planning Department. Mr. Falk explained why there are two lots of record, as shown in the warranty deeds, land plan maps, and explained why the GIS system at one time indicated that there was only one lot.

SPEAKING IN FAVOR OF THE APPEAL - REBUTTAL:

Atty. Paul Alfano, Baroff, Alfano & Karoff, Bedford, New Hampshire. Atty. Alfano reiterated that the property is one lot, and it does not have adequate lot frontage.

SPEAKING IN OPPOSITION OR WITH CONCERNS REGARDING THE APPEAL - REBUTTAL:

Carter Falk, Deputy Planning Manager/Zoning, City of Nashua, Planning Department. Mr. Falk stated that he believes that there is adequate frontage, as there are numerous lots in the City that are on cul-de-sacs, curvilinear streets, and are on lots with varied topography.

MOTION by Ms. Douglas to uphold the appellants appeal and vacate the Planning Boards approval. She feels that they did not adequately address the one lot versus two lot issue, and that they do not have adequate frontage and they did not enforce all their requirements. She said she is also concerned about how the Planning Board could approve improvements on a discontinued street.

SECONDED by Mr. Tremblay.

MOTION CARRIED UNANIMOUSLY.

2. Nashua Housing Authority (Owner) 41 Central Street (Sheet 80 Lot 89) requesting variance to encroach 10 feet into the 10 foot front yard setback (on Myrtle Street) to construct two 18'x20' dumpster pads. RC Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw
Normand Tremblay
Susan Douglas

Jeff Merritt, Professional Engineer, Keach, Nordstrom & Associates. Mr. Merritt described the subject property, and what is entailed with the redevelopment of the site, along with the construction of the dumpster pads. He explained how the request meets the relevant points of law for the variance.

Discussion ensued between the applicant and the Board.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No one.

MOTION by Mr. Shaw to approve the area variance for 41 Central Street to construct two 18'x20' dumpster pads. He stated that the variance will enable the applicants proposed use of the property in a more efficient manner. He stated that the site is very densely populated site and the dumpster proposal would not impact the usable recreation space. He said the spirit and intent of the ordinance is met, as this a usage for waste facilities. He stated that testimony was given that there will be no impact on property values on surrounding parcels, and the placement of the dumpster pads is such that they are out of sight lines for adjacent properties. He stated that the request is not contrary to the public interest, and will serve the public and the mission of the Nashua Housing Authority is to provide public housing, and substantial justice is served by this variance to include two 18'x20 enclosed dumpster pads.

SECONDED by Mr. Duffy.

MOTION CARRIED UNANIMOUSLY.

3. **Crossway Christian Church (Owner) 503 Main Dunstable Road (Sheet C Lot 184) requesting special exception to work within a 40 foot "other" wetland buffer for sitework improvements associated with the construction of a proposed church. R40 Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw
Normand Tremblay
Susan Douglas

Jim Petropulos, Professional Engineer, Hayner Swanson, Inc.
Mr. Petropulos described the property and the manmade pond in the center of the property. He discussed the curb cuts, access to the property, and the proposed building and parking lots. He discussed the impacts to the "other" wetland buffers, as well as the proposed utilities to the site. Mr. Petropulos testified to all the relevant points of law for a special exception to work within the wetland buffer.

Discussion ensued between the Board and the applicant with respect to the wetland buffer.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

Armand Circharo, 491 Main Dunstable Road.

SPEAKING IN FAVOR - REBUTTAL:

Jim Petropulos, Professional Engineer, Hayner Swanson, Inc.

SPEAKING IN OPPOSITION OR WITH CONCERNS - REBUTTAL:

No one.

MOTION by Mr. Currier on behalf of Crossway Christian Church, 503 Main Dunstable Road, to grant the special exception to work within the wetland buffer for sitework improvements associated with the construction of a proposed church. He stated that per testimony of the applicant, it is listed in the Table of Uses, Section 16-271, Table 271-1. Per testimony of the applicant, it will not create undue traffic congestion or impair pedestrian safety, the proposed church will have operations primarily on Sunday, but low operations other than that with a net traffic being lower than other potential uses for the property. He stated that it will be hooked up to public water and sewer, it will not overload public water, drainage, sewer or other municipal systems. He stated that per testimony, the

special regulations are fulfilled, this is a permitted use and a church in the neighborhood will not be out of character with the neighborhood, or be detrimental to the health, morals or welfare of the residents. He stated that the wetlands regulations are all met per previous testimony. He stated that the five stipulations from the June 30, 2006 Conservation Commission meeting are incorporated and the applicant will meet those five criteria per testimony.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY.

4. Mary Ann Picard (Owner) 189 Kinsley Street (Sheet 122 Lot 15) requesting a waiver for number of stories pursuant to RSA 674:33-a, Equitable Waiver of Dimensional Requirements, to maintain a 3-story townhouse structure - when the Zoning Board of Adjustment made a stipulation of 2 stories on 5-10-05. RA Zone.

[This case has been postponed to the 8-8-06 Zoning Board meeting].

MOTION FOR REHEARING:

1. Christopher Dunn (Owner) L Kinsley Street (Sheet 87 Lot 196) requesting the following: 1) special exception to construct a two-family dwelling, and 2) variance for minimum lot area, 14,520 square feet required - 11,121 square feet proposed. RA Zone.

MOTION by Mr. Duffy to deny the rehearing request for the variance and special exception [both taken collectively]. The Board did not believe that there was any procedural error, including improper notice or denying someone the right to be heard. The Board did not believe the decision was illegal, and believed they completely addressed each of the points of law required for the variance and special exception. Also, the Board did not believe there was any new information not presented or available to the Board at the original hearing. Further, the Board did not see

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anything that would or could cause them to make a different decision.

SECONDED by Mr. Tremblay.

MOTION APPROVED UNANIMOUSLY.

MINUTES:

June 27, 2006

MOTION by Mr. Tremblay to accept the minutes, waive the reading, and place them in the file.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY.

REGIONAL IMPACT:

MOTION by Mr. Duffy that none of the cases were determined to have regional impact.

ADJOURNMENT:

Mr. Duffy called the meeting closed at 9:15.

Jack Currier
Acting Clerk

CF

Taped Hearing