

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
August 8, 2006

A public hearing of the Zoning Board of Adjustment was held on Tuesday, August 8, 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
Rob Shaw
Normand Tremblay
Jeff Anderson
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. **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. (Postponed from 7/25/06 Meeting)**

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw
Normand Tremblay
Jeff Anderson

Atty. Gerald Prunier, Prunier and Prolman, P.A., 20 Trafalgar Square, Nashua, NH. Atty. Prunier submitted a handout, which explained a brief history of the project, and materials submitted by the applicant during the building permit process. He then went over the criteria for the four points of law to be considered for an equitable waiver.

Further discussion ensued between Atty. Prunier and the Zoning Board.

SPEAKING IN FAVOR OF THE APPEAL:

Steve Bonnette, 22 Kehoe Avenue. Mr. Bonnette explained what a story, and a half-story is. He described the type of roofs and houses that may have a half-story. He also described how the existing structure was assembled. Further discussion ensued between Mr. Bonnette and the Zoning Board.

John Picard, 189 Kinsley Street.

SPEAKING IN OPPOSITION OR WITH CONCERNS REGARDING THE APPEAL:

Susan Russo, 8 Donna Street.

Paul Johnson, 44 Browning Avenue.

Ernest Jette, 187 Main Street (representing Diane Lavoie)

Suzanne Vail, 2 Rockland Street.

Diane Urquhart, 2 Ferson Street.

Brian Fox, 7 Delta Drive.

Louis Miccolo, 66 Cox Street.

Ruth Lyons, 6 Catherine Street.

SPEAKING IN FAVOR - REBUTTAL:

Atty. Gerald Prunier, Prunier & Prolman, 20 Trafalgar Square. In response to Mr. Duffy's questions, Atty. Prunier explained what a municipal estoppel entails, and how it differentiates between an equitable waiver. Also, Atty. Prunier explained what he believed was the standing of persons wishing to testify before the Zoning Board. Atty. Prunier reiterated that the applicant submitted plans for what was ultimately approved by the City, and that they are trying, through the equitable waiver, to get the building permit reinstated. Further discussion ensued between the Board and Atty. Prunier.

SPEAKING IN OPPOSITION OR WITH CONCERNS - REBUTTAL:

Atty. Ernest Jette, 187 Main Street, Nashua, NH. Atty. Jette explained the points of law to be considered for municipal estoppel, and explained how these points do not apply in this case. Atty. Jette explained how any citizen should have the right to speak for or against any request before the Board. Atty. Jette pointed out that all of the points in RSA 674:33-a must be satisfied. Further discussion ensued between the Board and Atty. Jette.

MOTION by Mr. Duffy to deny the equitable waiver that the violation was noticed after the structure was noticed on the one day the building was put up, and that may have been substantial completion, but it was a one day process of the public being able to be made aware, but the violation was not an outcome of ignorance of the law, but was caused by a failure to inquire and interpret the Nashua ordinances for this zone, and the physical dimension result is not in the spirit and intent of the two variances that were granted for this property by this Board and the cost of correction may or may not outweigh the benefit that is equitable and have documentation of that process, and that the Board was clear in its deliberations and clear in its motions, and respectful of both the developer and property owners in the area.

SECONDED by Mr. Tremblay.

Mr. Currier stated that he would like to add to the motion that he believes that the physical/dimensional violation is a public nuisance and may diminish property values in the area, and interfere with uses of such property, as stated in RSA 674:33 (c), and that this violation does not meet this test.

SECOND TO THE AMENDMENT TO THE MOTION by Mr. Tremblay.

Mr. Duffy said he did not feel comfortable identifying this as a violation, he feels it is an outcome that happened as a result of a process, and sees it as a result that occurred was estoppeled.

Mr. Currier suggested changing the word "violation" to "outcome".

Mr. Tremblay said the process always needs to be reviewed, and believes that this is a good faith error, and didn't think that the person who signed the permit intended to overturn a decision of the Zoning Board.

Mr. Duffy said he respectfully disagrees, and that testimony was heard that they didn't look at the variances that were granted, and he interpreted the ordinances of the City of Nashua that this was an approved structure of 2 1/2 stories with a multi-unit structure, and asked if it is a good faith error or a failure to inquire and understand the ordinances.

Mr. Tremblay said he was referring to the clerk downstairs.

Mr. Duffy said the City made an error, the developer made an error, the builder made an error, it was a continuum of errors.

Mr. Currier stated that he wants to remove the word violation and outcome, basically there are two reasons as Mr. Duffy had mentioned - one is a failure to clarify the difference between the variance granted for two stories and the permit issued for three stories, and the other point is that the builders interpretation that this constitutes two stories, which the Board does not agree with. He also stated that the physical outcome is a public nuisance and may diminish the values of other properties.

SECONDED by Mr. Tremblay.

AMENDED MOTION APPROVED 4-1. Mr. Shaw opposed to amendment.

MOTION TO DENY EQUITABLE WAIVER CARRIED 5-0.

2. Robert M. Silva (Owner) 6 Hamilton Street (Sheet 100 Lot 36) requesting variance to exceed maximum driveway width, 24 feet permitted, 19.6 feet existing - one additional 15 foot wide driveway proposed. RC Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw
Normand Tremblay
Susan Douglas

Robert Silva, 6 Hamilton Street. Mr. Silva went over the points of law required to have the variance approved. He described the property and why the additional driveway width was needed.

Discussion ensued between the applicant and the Board.

SPEAKING IN FAVOR:

Julie Silva, 6 Hamilton Street.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No one.

MOTION by Mr. Shaw to approve the area variance for 6 Hamilton Street to exceed maximum driveway width, 24 feet is permitted, 19.6 feet is existing and another 15 foot wide driveway is proposed. He stated that due to the special nature of this property, there is an inability to provide sufficient usage of the property with off-street parking because a driveway cannot be built on either side of the house. This will allow for additional parking on the premise. He said the spirit and intent of the ordinance is met, that there will be no impact on property values on surrounding parcels and there may be some positive effect on property values. He stated that the request is not contrary to the public interest, and substantial justice is served.

SECONDED by Mr. ANDERSON.

MOTION CARRIED UNANIMOUSLY.

3. **Corey Bouyea (Owner) Nichole Veilleux (Applicant) 16 Denise Street (Sheet 138 Lot 136) requesting special exception for a major home occupation for an in-home day care for six children. R9 Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw
Normand Tremblay
Jeff Anderson

Corey Bouyea, representing Nichole Veilleux, 16 Denise Street. Mr. Bouyea described the property and went over the special exception points of law. Mr. Duffy assisted Mr. Bouyea with the major home occupation points of law, which were all met per testimony.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No one.

MOTION by Mr. Tremblay to grant the special exception for a major home occupation for an in-home day care for six children. He said it is listed in the Table of Uses, Section 26-1. He stated that per testimony of the applicant, it will not create undue traffic congestion or impair pedestrian safety, as there will be staggered times of arrival and departure. He stated that it will not overload public water, drainage, sewer or other municipal systems. He said that all the special regulations are being fulfilled, and that the use will not impair the integrity or be out of character with the neighborhood.

SECONDED by Mr. Shaw.

Mr. Currier asked to add the hours and days of operation.

Mr. Duffy said that this is not necessary, as the hours of operation for outdoor play is in the ordinance now.

Mr. Shaw said he would be in favor of adding in the hours of operation into the motion.

AMENDMENT TO MOTION by Mr. Currier to add a special condition for the hours of operation for 7:00 a.m. to 6:00 p.m. Monday through Friday.

SECOND TO THE AMENDMENT by Mr. Tremblay.

MOTION TO SECOND THE AMENDMENT CARRIED UNANIMOUSLY.

MOTION CARRIED UNANIMOUSLY.

4. Carl G. Stancik (Owner) 705 West Hollis Street (Sheet F Lot 58) requesting variance to exceed maximum number of principal structures on one lot, one permitted, six requested - to subdivide one lot into two lots and allow the proposed homes to have access via a private 24 foot wide driveway. R9 Zone. [Previous ZBA approval on 5-10-05 has expired - current request is for re-approval of same plan]

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw
Normand Tremblay
Jeff Anderson

Atty. Gerald Prunier, Prunier and Prolman, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that the plan has expired, and requested that all the previous minutes of the original case be attached, along with the same conditions of approval. The plan is the exact same. Atty. Prunier went over the previous conditions of approval. Discussion ensued between Atty. Prunier and the Board relative to the conditions.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No one.

MOTION by Mr. Duffy to grant the variance for 705 West Hollis Street to exceed maximum number of principal structures on one lot, one permitted, six requested and to subdivide one lot into two lots and allow the proposed homes to have access via private 24-foot wide driveway. Mr. Duffy said the motion will read exactly as it was in the original minutes, with a special condition that were included in that meeting, with the clarification that the applicant and the abutter are to work out the type and density of the 6-foot vinyl fence because there has been no substantial change to the area, and the applicant has stated that the application has just lapsed for time purposes, and there is no other method reasonably feasible for the applicant to pursue the variance.

SECONDED by Mr. Anderson.

MOTION APPROVED UNANIMOUSLY.

5. **Tamposi Limited Partnership (Owner) Brian Zagorites (Applicant) 55 Northeastern Boulevard (Sheet 140 Lot 61) requesting variance to allow an electrical design company in which less than 75% of the building is used for industrial or manufacturing uses. PI Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw
Normand Tremblay
Jeff Anderson

Atty. Gerald Prunier, Prunier and Prolman, 20 Trafalgar Square, Nashua, NH. Atty. Prunier said he is representing Arc Light. Atty. Prunier stated that this request is similar to the one heard recently for Charron Avenue. He described the business operations, and went over the variance points of law. Discussion ensued between the applicant and the Board.

Mr. Currier stated that he believed the ordinance is well stated the way it is, and was concerned about a proliferation of non-manufacturing uses.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No one.

MOTION by Mr. Anderson to grant the variance to allow an electrical design company in which less than 75% of the building is used for industrial or manufacturing uses. He stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance. He stated that the request is within the spirit and intent of the ordinance, and will not adversely affect the property values, is not contrary to the public interest, and substantial justice is served.

SECONDED by Mr. Shaw.

Mr. Currier stated that he believes the area between exit 4 and 5 is a park industrial area, and that the ordinance is worded well, and a general change to retail from park industrial is an Aldermen's concern. He stated that he is very supportive of the success and expansion of the business, but not in this area.

Further discussion among the Board members ensued relative to the uses in this zone.

MOTION APPROVED 4-1 (Mr. Currier).

REGIONAL IMPACT:

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

MINUTES:

July 11, 2006

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

SECONDED by Mr. Shaw.

Mr. Duffy said due to budget constraints, the minutes will be much more brief. They will list the full case description and the verbatim motion, but many other details will be left out. The audio and videotapes will be available.

MOTION CARRIED UNANIMOUSLY.

MISCELLANEOUS:

Mr. Duffy suggested adding a portion to allow for public input after the meeting should anyone have any questions of the Board. Further discussion ensued between members of the Board relative to public comment.

Mr. Currier said that he has prepared a letter addressed to Ald. Mark Plamondon about issues relative to parking concerns of the neighborhood for the proposed dog park. The letter is communication between the Boards.

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Mr. Tremblay stated that he has talked with Community Development Director Kathy Hersh about the Master Plan. Mr. Falk said he will talk with her and set something up before an upcoming meeting.

ADJOURNMENT:

Mr. Duffy called the meeting closed at 10:15.

Jack Currier
Acting Clerk

CF

Taped Hearing