

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
August 22, 2006

A public hearing of the Zoning Board of Adjustment was held on Tuesday, August 22, 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
Normand Tremblay
Jeff Anderson (6:50)
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. **Eric P. & Suzanne M. Leedberg (Owners) 29 Richmond Street (Sheet F Lot 276) requesting the following variances: 1) to encroach 2 feet into the 6 foot required right side yard setback; and 2) to exceed maximum height within ten feet of property line, 12 feet allowed, 14 feet requested - to construct a 20'x28' detached garage. R9 Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Normand Tremblay

Eric Leedberg, 29 Richmond Street. Mr. Leedberg described his property, and also gave a description of other houses in the neighborhood. Mr. Leedberg went over the variance points of law.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No one.

Discussion ensued between the Board members. The Board members thought that the proposed garage length of 28 feet was excessive, and the applicant agreed to reduce the length.

MOTION by Mr. Duffy to grant the variances (both taken together) to encroach up to 2 feet into the 6 foot required right side yard setback, and to exceed the maximum height within ten feet of the property line, 12 feet allowed, 14 feet requested, to construct a single-story, up to 20'x22' garage. Mr. Duffy said it is needed to enable the applicant's proposed use of the property in the R9 zone. He stated 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, as there are other houses in the neighborhood with smaller lot sizes and some with detached and attached garages. He stated that it is within the spirit and intent of the ordinance that a reasonable request is in keeping with the essential character of the neighborhood be granted. He stated that it should not impact the property values of surrounding parcels, even though there was no expert testimony. Mr. Duffy stated that it is not contrary to the public interest that a single story detached, or attached, garage be pursued, and that substantial justice is served for reasonable development rights on their property.

SECONDED by Mr. Tremblay.

AMENDMENT TO THE MOTION by Mr. Duffy to make it clear that the motion is for up to a 20' x 22' detached garage, single story.

SECOND TO THE AMENDMENT by Mr. Tremblay.

MOTION CARRIED UNANIMOUSLY.

2. **Stephen D. Denison & Elaine M. Lajoie (Owners) 13 Berkshire Road (Sheet 61 Lot 134) requesting variance to exceed maximum accessory use area, 40% maximum allowed - 65% requested - to construct a detached 26'x30' garage. RA Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Normand Tremblay

Stephen Denison, 13 Berkshire Road. Mr. Denison described the physical dimensions of his lot, and explained that the garage will be placed in the back, not impacting any of the neighbors. Discussion ensued between the applicant and the Board relative to the use and location of the garage.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No one.

MOTION by Mr. Tremblay to grant the variance for 13 Berkshire Road to exceed the maximum accessory use area, 40% allowed, 65% requested, to construct a detached 26'x30' garage. He stated that the variance will enable the applicants proposed use of the property with the special conditions of the property. He stated that per testimony that it is an odd shaped lot and there is not any room on the side to put in the garage. He stated that the benefit sought by the applicant cannot be achieved by some other method reasonably feasible to pursue, other than the area variance. He said the spirit and intent of the ordinance is being met and it will not affect property values of surrounding parcels, as the garage is located in the back of a fairly large lot. Mr. Tremblay stated that the request is not contrary to the public interest, and substantial justice is being served.

Mr. Tremblay stated that is for a single story, 26'x30' detached garage, it will have electricity, with no plumbing.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY.

3. 1st New England Mortgage Corp. (Owner) 159 Main Dunstable Road (Sheet E Lot 274) requesting the following variances: 1) to exceed maximum number of ground signs permitted, 1 allowed, one additional ground sign requested (facing entrance ramp to F.E. Everett Turnpike); and 2) to encroach 10 feet into the 10 foot required setback for ground sign. HB Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Jeff Anderson
Normand Tremblay

Tim Sullivan, Barlo Signs, Hudson, NH. Mr. Sullivan described the property and the proposed location of the second ground sign. He went over the variance points of law. Discussion ensued between the Board and the applicant with respect to the proposed sign.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No one.

MOTION by Mr. Duffy to deny the area variances (both taken together), the applicants proposed use can be reasonably achieved in other fashions. He stated that there are no other special conditions to this property. He stated that per discussion, a two-frontage site might exist as a corner lot. Failing this case, the ordinances were just re-ratified, the highway that is there, by definition of the current ordinances, it is clear that it is not a corner lot. Mr. Duffy stated that it is within the spirit and intent of the ordinance that signage is for identification and directional access, the applicant's testimony is that the sign is for advertising use on a very heavily traveled thoroughfare, and there is no testimony about adversely affecting property values.

SECONDED by Mr. Tremblay.

MOTION CARRIED UNANIMOUSLY.

4. City of Nashua (Owner) Lyle Reed Brook at Gilson Road right-of-way (east of Sheet D Lot 342) requesting special exception to work within the 40 foot critical wetland of Lyle Reed Brook to replace existing culverts. R30 Zone.

[POSTPONED TO THE SEPTEMBER 12, 2006 MEETING]

5. Pitarys Homes, Inc. (Owner) AHEPA National Housing Corporation (Applicant) L West Hollis Street (Sheet F Lot 61) requesting use variance to allow a 38-unit elderly housing building. R9 Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Jeff Anderson
Normand Tremblay

Atty. Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier requested that the minutes, plans and evidence of the previous May 9, 2006 meeting for this case be incorporated into this meeting. Atty. Prunier stated that they removed the 3rd floor from the previous plan. He described the letters in a package he distributed to the Board. He described the property, and the proposed building plan. He indicated that the organization that will be operating this facility is AHEPA, a charitable organization. Atty. Prunier went over the variance points of law. Discussion ensued between the Board members and Atty. Prunier about the elderly housing proposal.

SPEAKING IN FAVOR:

Judith Walker, 701 West Hollis Street
Pat Francis, Westgate Village
Father Tom Cheminiz
Nicholas Callen, 21 Danbury Street, Merrimack
Samuel Kouchalakos, 9 Danbury Road

SPEAKING IN OPPOSITION OR WITH CONCERNS:

Michael Grace, 21 Heidi Lane
Henry Voorhis, 16 Heidi Lane
Joan Morse, 20 Parker Drive
Cheryl Turgeon, 3 Heidi Lane
Theresa Cronin, 7 Heidi Lane
Matthew Morse, 9 Heidi Lane
Linda Milot, 5 Heidi Lane
Michael Morse, 20 Parker Drive

SPEAKING IN FAVOR - REBUTTAL:

Atty. Gerald Prunier, 20 Trafalgar Square, Nashua, NH

SPEAKING IN OPPOSITION OR WITH CONCERNS - REBUTTAL:

Michael Morse, 9 Heidi Lane

MOTION by Mr. Tremblay to deny the use variance for the 38-unit elderly housing development. Mr. Tremblay stated that the zoning restriction interferes with the landowner's reasonable use of the property considering the unique setting of the property in its environment, and no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property, and the zoning restriction will not injure the public or private rights of others. Mr. Tremblay stated that based on the testimony by the neighbors, and the Boards discussion, that the proposed use would have some effects on those rights. He said there are no unique conditions established on this property in its current zoning type. He stated that the application is not within the spirit and intent of the ordinance, and will adversely affect property values with a change in character to the neighborhood, and is contrary to the public interest, and substantial justice is not served.

SECOND - No second.

MOTION NOT CARRIED.

MOTION by Mr. Duffy to grant a use variance for AHEPA, L West Hollis Street, for a 38-unit elderly housing development for unique setting of the property, which is a substantial narrow piece of property truncated by not only wetlands, but a lake and unbuildable area in back of the lot. Mr. Duffy stated that it is amenable to have lower intensity reasonable use in an isolated environment of a one structure building up to two living stories with the applicant's testimony that the height of the roofline will not exceed 32 feet, and that is in compliance with a reasonable general purpose of the zoning ordinance, and should not injure the public or private rights of others. Mr. Duffy stated that it is in the spirit and intent of the ordinance to know that something will be going into the property which is zoned R9. He stated that it should not adversely affect the property values of surrounding parcels and in the prior case there was some expert testimony on the record that there was no additional information submitted this evening, and

that the concerns of the public interest were heard by the applicant from the single family residential homes in the area, which are located in a similar density per living area of the proposed development, and substantial justice is served for reasonable development rights. Special conditions: 1) for the property to the west, a 6 foot high vinyl fence be provided up to the hill, with a chain-link 6 foot high fence going to the end of the property, 2) that the applicant and the abutter to that side agree to the selection and removal of dangerous trees of greater than 2½ to 3 feet in diameter, and 3) on the front piece of property on West Hollis Street, that a similar fencing line or landscaping plan be agreed upon by the applicant and the property owner along the rear of that property.

Further discussion ensued amongst the Board members relative to potential stipulations, but it was decided that the issues discussed were the purview of the Planning Board.

SECONDED by Mr. Anderson.

MOTION CARRIED 3-1 (Mr. Tremblay).

6. Boulder Park, LLC (Owner) 3 Kessler Farm Drive (Sheet G Lot 454) requesting use variance to allow accessory storage units to be used by non-residents. RC Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Jeff Anderson
Normand Tremblay

Atty. Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier described the property, and stated that the storage units were built with the Kessler Farm complex. He stated that approximately half of the units are used by residents and that there will be no exterior changes to the units. Atty. Prunier went over the variance points of law. Discussion ensued between Atty. Prunier and the Board.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No one.

MOTION by Mr. Anderson to grant the use variance to allow accessory storage units to be used by non-residents at 3 Kessler Farm Drive; a zoning restriction as applied interferes with a landowner's reasonable use of the property, this use has been going on for some period of time, there is no substantial relationship between the general purposes of the zoning ordinance, and using the storage units by former residents will not injure the public or private rights of others. Mr. Anderson stated that the request is within the spirit and intent of the ordinance, and although there was no testimony given, there is no current adverse impact on property values of surrounding parcels, it is not contrary to the public interest, and substantial justice is served. Special Conditions: 1) No signage for the storage units, and 2) no more than 50% of non-residents of the apartment complex may rent the storage units.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY.

7. James D. Allard (Owner) 17 Merrill Street & 10 Alstead Avenue (Sheet 10 Lots 6 & 95) requesting the following variances for Lot 6: 1) minimum lot area, 6,000 square feet required, 5,308 square feet proposed, and 2) minimum lot depth, 80 feet required, 71 feet proposed - to allow for a lot line relocation between two contiguously owned lots. RB Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Jeff Anderson
Normand Tremblay

Atty. Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier described the subject lots, and what the applicant wishes to do with respect to the lot line relocation and variances. Atty. Prunier described the variance points of law. Discussion ensued between Atty. Prunier and the Board.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

John Legee, 15 Merrill Street.

MOTION by Mr. Tremblay to grant the variance for 17 Merrill Street and 10 Alstead Avenue to allow for a lot line relocation between two contiguously owned lots 1) minimum lot area, 6,000 sq.ft required, 5,308 sq.ft proposed, and for 2) minimum lot depth, 80 feet required, 71 feet proposed (both taken together). The area variance is needed to enable the applicant's proposed use of the property, which is to swap one nonconforming lot for another. Given the special conditions of the property, 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. Mr. Tremblay said it is within the spirit and intent of the ordinance, it will not affect the property values of surrounding parcels, it is not contrary to the public interest, and substantial justice is served. Special condition - 1) a 6 ft high vinyl fence for Mr. Legee going from the end of the current fence to the to the rear of the structure.

SECONDED by Mr. Currier.

AMENDMENT TO THE MOTION by Mr. Tremblay that only a single family home, an approved use in the RB Zone, can be put on the new lot.

SECOND TO THE AMENDMENT by Mr. Duffy.

AMENDMENT TO THE MOTION CARRIED UNANIMOUSLY.

MOTION CARRIED UNANIMOUSLY.

8. Maurice L. Dumont (Owner) 7 Sherwood Drive (Sheet E Lot 894) requesting special exception to work within the 40-foot critical wetland buffer of Spectacle Brook to maintain a 4-foot high concrete retaining wall. R9 Zone. [REMAND from Superior Court].

Voting on this Case:

Sean Duffy
Jack Currier
Jeff Anderson
Normand Tremblay

Attorney Gerald Prunier, 20 Trafalgar Sq, Nashua, NH. Atty. Prunier went over the history of this case, and reminded the Board that this case was remanded back to the ZBA from Superior Court. He stated that the case was approved by the Conservation Commission. Atty. Prunier went over the points of law for a special exception, including the wetland special conditions.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

Letter from Mr. Coco is in the public record.

MOTION by Mr. Currier on behalf of Maurice Dumont, 7 Sherwood Drive, to grant the special exception. The work is listed in the Table of Uses, Table 271-1, it will not create undue traffic congestion or unduly impair pedestrian safety, it will not overload public water, drainage or sewer or other municipal systems. As stated by testimony from the applicant's attorney, special regulations are fulfilled, and the request will not impair integrity or be out of character with neighborhood or be detrimental to health, morals or welfare of residents. As spoken by the attorney for the applicant, all nine special wetland conditions will be fulfilled. In summary, with the stipulations stated by the Conservation Commission in their letter dated January 26, 2006, in particular with the placement of easement to offset the buffer area that has been taken up by the wall, the motion is to approve. Special condition - that the easement is to be on file by December 31, 2006.

SECONDED by Mr. Anderson.

MOTION APPROVED 3-1 (Mr. Duffy).

9. Kathleen J. Redman (Owner) 852 West Hollis Street (Sheet D Lot 91) requesting use variance to expand a previously approved child daycare using one-half of the house to the entire house. R30 Zone.

Voting on this Case:

Jack Currier
Jeff Anderson
Normand Tremblay

Sean Duffy - is recusing from this case. Mr. Currier will act as Acting Chair.

Kathleen Redman, 852 West Hollis Street. Ms. Redman described the property, as well as the history of uses. Discussion ensued between the applicant and the Board.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

Robert Brown, 848 West Hollis Street.

MOTION by Mr. Currier on behalf of Kathleen Redman, 852 West Hollis Street, to grant the use variance, as the zoning restriction as applied interferes with the landowners reasonable use of the property considering that this property has been used for over twenty years for a daycare center, and there is going to be no exterior changes, just modifications inside the house. Mr. Currier stated that he believes it's within the spirit and intent of the zoning ordinance, and it will not adversely affect the property values of surrounding parcels, it will not be contrary to the public interest, testimony given stated that it will help the public interest in the need for a day care center in Nashua, and substantial justice is served with this application.

SECONDED by Mr. Tremblay

MOTION CARRIED UNANIMOUSLY.

Mr. Duffy assumed the Chair.

REGIONAL IMPACT:

Mr. Duffy stated that an agenda is not ready yet, as there is still another week before the advertising deadline.

MOTION FOR REHEARING:

None.

MINUTES:

July 25, 2006

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

SECONDED by Mr. Anderson.

MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT:

Mr. Duffy called the meeting closed at 10:12 p.m.

Jack Currier
Acting Clerk

CF

Taped Hearing