

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
September 12, 2006

A public hearing of the Zoning Board of Adjustment was held on Tuesday, September 12, 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
Rob Shaw (7:25)
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. **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 from the 8/22/06 MEETING]**

Voting on this Case:

Sean Duffy
Jack Currier
Normand Tremblay

Mr. Jon Lebrun, Deputy City Engineer, Department of Public Works, City of Nashua. Mr. Lebrun described the area, and indicated why the culvert replacement is necessary. Mr. Lebrun stated that the Conservation Commission approved the request, and he also went over all the relevant points of law. Further discussion ensued between Mr. Lebrun and the Board.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No one.

MOTION by Mr. Duffy to grant the special exception to work within the 40-foot critical wetland of Lyle Reed Brook to replace existing culverts. Mr. Duffy stated that the use is listed in the Table of Uses, Section 16-274 (b). Mr. Duffy stated that applicant has testified that it will not create any undue traffic congestion or impair pedestrian safety, in fact the project should be a two-week project. Mr. Duffy stated it is maintenance work to an area that has had failures in the past, and therefore should not overload public water, drainage, sewer or other municipal systems given the project's short duration. He stated that the special regulations testified to are fulfilled, and it should not impair the integrity or be out of character with the neighborhood or detrimental to the health, morals or welfare of the residents because it is a needed project to an existing culvert system, and the Conservation Commission stipulations dated August 8, 2006, with two items, are agreed to by the applicant.

SECONDED by Mr. Tremblay.

MOTION CARRIED UNANIMOUSLY 3-0.

2. **Stephen & Beth Ann Guertler (Owners) 2 Morse Avenue (Sheet 6 Lot 31) requesting variance to encroach an additional 3'-6" into the 20 foot required front yard setback, 12 feet existing, to replace an existing 8'-6" x 12' porch with a 12' x 28' porch. R9 Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Normand Tremblay

Stephen Guertler, 2 Morse Avenue. Mr. Guertler described the location of the house, the existing porch and the lot dimensions. He went over the variance points of law. Discussion ensued between the applicant and the Board.

SPEAKING IN FAVOR:

Mr. Duffy stated that two letters of support were received, from:

Arlene Geer, 74 Taylor Street
Barbara Messier, 78 Taylor Street

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No one.

MOTION by Mr. Tremblay to grant the variance for 2 Morse Avenue, to encroach an additional 3 feet 6 inches into the 20 foot required front yard setback, 12 feet existing, to replace an existing 8'-6" x 12' porch with a 12' x 28' porch. Mr. Tremblay 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, as the lot is extremely small. He stated that it is within the spirit and intent of the ordinance, it will not adversely affect the property values of surrounding parcels, it is not contrary to the public interest, and substantial justice is served.

SECONDED by Mr. Duffy.

Mr. Duffy stated that it is a single family in the R9 Zone, and the topography and the location of the building on the property add to the special conditions of the property. In addition, he stated that a special condition is that it will be a single-story porch.

MOTION CARRIED UNANIMOUSLY 3-0.

3. DeMoulas Supermarkets, Inc. (Owner) The Mill Stores (Applicant) 8-44 Northwest Boulevard (Sheet I Lots 32 & 33) requesting the following variances: 1) to exceed maximum height of displayed merchandise, 6 feet allowed, up to 9 feet requested, 2) to allow a portion of the outdoor display to be located on an abutting lot, and 3) to allow outdoor display areas to be located on parking spaces needed to comply with the minimum parking requirement for this property. GB Zone.

Voting on this Case:

Sean Duffy

Jack Currier

Normand Tremblay

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier described the nature of the materials stored outside, and that the materials have been stored outside for twelve years. He went over the variance points of law. Discussion ensued between the Board and the applicant.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No one.

MOTION by Mr. Duffy to grant the three area variances (all taken together), the variances needed by the applicant to propose reasonable use of the property in that this store has been in existence for greater than twelve years, and has been a use that has been there. Mr. Duffy stated that the special conditions of the property are the type of the store that this is, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible, other than bumping up the square footage or going out into the building covered space, the up to 9,800 square feet space use is seasonal and temporary. Mr. Duffy stated that it is within the spirit and intent of the ordinance that the applicant be granted reasonable development and continued use of the property, especially given #11 on the certified H.S.I. plot plan dated June 29, 2006. Mr. Duffy stated that the request should not adversely impact the property values of surrounding parcels, other commercial retail uses in the area, specifically the old Decathlon store used to store items outside. He stated that it is not contrary to the public interest and substantial justice is served that an existing use of an existing store on an existing property be able to be brought into compliance by being able to include this on their site plan, which is all subject to Planning Board approval. He stated that the special condition is that the storage be given for shed storage, accessory uses, playground equipment, wooden outdoor furniture, but will not include storage of raw materials, stock or equipment.

SECONDED by Mr. Tremblay.

MOTION CARRIED UNANIMOUSLY 3-0.

4. City of Nashua (Owner) "L" Farmington Road [Farmington Road CSO Outfall] (Near Sheet A Lot 1001) requesting special exception to work in the Merrimack River prime wetland and the prime wetland buffer of the Merrimack River and unnamed brook associated with a prime wetland - to replace a collapsed culvert with two 42 inch wide pipes. R9 Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Normand Tremblay
Rob Shaw

Amy Prouty Gill, CSO Stormwater Engineer, Division of Public Works, 9 Riverside Drive. Ms. Gill stated that the application is to work in a prime wetland and a prime wetland buffer. She described the property's location, and went over the history of the site. Ms. Gill described the required points of law. Discussion ensued between the applicant and the Board.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No One.

MOTION by Mr. Duffy to grant the special exception; it is listed in the Table of Uses, Section 271-1, it should not create undue traffic congestion or impair pedestrian safety as it is not in an area that has traffic on the riverbank. Mr. Duffy stated that it should not overload public water, sewer, drainage or other municipal systems, in fact, failure to maintain and work on this project will create a greater hazard to the river and the area. He stated that all special regulations are fulfilled, wetland special conditions are all agreed to and understood by the applicant, and it will not impair the integrity or be out of character with the neighborhood or be detrimental to health, morals or welfare of residents and due diligence has been done so the City, the region and the State may do the maintenance to the river area for the CSO project.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 4-0.

5. 111 Coburn Association (Owner) Omnipoint Communications, Inc. (Applicant) 111 Coburn Avenue (Sheet F Lot 79) requesting special exception to construct a 150-foot high monopole communications tower with related support equipment. R18 Zone.

[Postponed to the September 26, 2006 meeting.]

MOTION FOR REHEARING:

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.

Mr. Duffy asked from the application, numbers one through thirteen, if there was any procedural error, including improper notice or denying someone the right to be heard?

The Board members said "no".

Mr. Duffy asked if it was an illegal decision, in other words, did the Board fail to completely address each of the points of law required for a special exception or a variance?

The Board members said "no".

Mr. Duffy asked if the request for rehearing contains any new information not presented or available to the Board at the original Public Hearing?

Mr. Currier said he didn't believe that there was any new information, there were some additional points raised, numbers 3 and 4, but believed the motions covered all the bases and were succinct, and in general, the owner should have been responsible from the beginning to the end of maintaining the two-story stipulation overall.

Mr. Duffy asked about item number 7 by the applicant, and numbers 8 through 13, and the Board members did not believe there was anything that would cause them to make a different decision.

MOTION by Mr. Duffy to deny the rehearing request for the 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. Mr. Duffy stated that there was no procedural error, and the testimony and deliberations and the meeting minutes and testimony heard that evening clearly stipulate that we deliberated diligently and carefully on all the testimony that was presented, that it was not an illegal decision, in other words, the Board did not fail to completely address any of the points of law, and the applicant's rehearing request items number seven, eight, nine, ten, eleven and twelve were items that were deliberated and talked about during the process and included in the meeting of August 8, 2006. The rehearing request does not contain any new information not presented or available for the Board during the original hearing, and the applicant's advertisement for the application was for a two-story facility, and there is not anything that would/could cause the Board to make a different decision.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 4-0.

REGIONAL IMPACT:

Mr. Tremblay asked if the proposed telecommunications tower had regional impact.

Mr. Falk said that staff notifies municipalities within twenty miles according to the RSA's.

The Board did not find any cases of regional impact.

MINUTES:

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

SECONDED by Mr. Currier.

Mr. Shaw asked for clarification on the Amendment to a Motion for 189 Kinsley Street.

Mr. Falk said he would amend the minutes on Page 4, to say that the case was denied 5-0 (amendment was denied 4-1).

MOTION CARRIED UNANIMOUSLY 4-0.

August 22, 2006:

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

SECONDED by Mr. Tremblay.

MOTION CARRIED UNANIMOUSLY 3-0 (Mr. Shaw abstained).

ADJOURNMENT:

Mr. Duffy called the meeting closed at 8:09 p.m.

Jack Currier
Acting Clerk

CF

Taped Hearing