

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
September 26, 2006

A public hearing of the Zoning Board of Adjustment was held on Tuesday, September 26, 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
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.

Mr. Duffy explained that Case 2 will be heard first.

2. Five N Associates (Owner) Fright Fest NH (Applicant) 12 Simon Street (Sheet 87 Lot 252) requesting use variance to allow a temporary indoor Halloween-themed amusement attraction. PI Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Normand Tremblay
Rob Shaw
Jeff Anderson

Tim Dunne, 38 Lincoln Avenue, Nashua, NH. Mr. Dunne described how the proposed use is the same thing as what was approved in 2005. He went over the variance points of law as stated in their application. Discussion ensued between the Board and Mr. Dunne.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No one.

MOTION by Mr. Duffy to grant the use variance to allow a temporary indoor Halloween-themed amusement attraction. Mr. Duffy stated that the current zoning ordinances allow by use variance being granted a special use of the property that is temporary, like a circus, temporary in nature, and occurring once a year in an existing site, which can already handle that it can have the event. He said it is within the spirit and intent of the ordinance that a temporary use is a reasonable use of the property and the general purposes of the zoning ordinances. He stated that there is no testimony about the request negatively affecting property values, however, abutters and nearby business entities are supportive of the event, and it had no major complaints from last year, therefore, it is not contrary to the public interest, and substantial justice that a temporary use is reasonable in this zone, and they have shown that they can operate in a safe and amenable manner. Special Conditions are that this is a temporary, one year approval, good for 12 months and is good for this use only, and the hours of operation are as stated in item #4 (b) for the 19 days as stipulated, along with the hours of operation stated in the testimony.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

1. 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.

Voting on this Case:

Sean Duffy
Jack Currier
Normand Tremblay
Rob Shaw
Jeff Anderson

Attorney Tom Hildreth, McLane Law Firm, Manchester, NH. Atty. Hildreth explained the reasons why the tower is necessary for cell phone coverage for this area of the City. Atty. Hildreth described the relevant special exception points of law. Atty. Hildreth stated that T-Mobile would be willing to reduce the height of the tower from 150 feet to 112 feet, and to continue the case to notify abutters and interested parties to see a balloon floated at 112 feet. Discussion ensued between the applicant and the Zoning Board.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

Tim Bauman, 40 Lutheran Drive
David Taub, 42 Lutheran Drive
David Kosofsky, 29 Lutheran Drive
Kelly Bauman, 40 Lutheran Drive
Cheryl Lindner, 9 Stonybrook Drive
Paul LaFlamme, 28 Lutheran Drive
Gay Rosenfeld, 133 Coburn Woods Drive
Phyllis Shapiro, 42 Lutheran Drive
Steve Hattamer, 27 Lutheran Drive
Joseph Guiliano, 46 Lutheran Drive
Ann Phillips, 44 Lutheran Drive
Bill Thompson, 36 Lutheran Drive
Monica Dove, 4 Deacon Drive
Howard Malin, 3 Barisano Way
Julia Robert, 38 Lutheran Drive
Tammy Littleton, 35 Lutheran Drive
Keith Morehauf, 31 Lutheran Drive
Scott Robert, 38 Lutheran Drive

Attorney Morgan Hollis, 39 East Pearl Street, representing John & Virginia Stabile, 48 Lutheran Drive

Attorney Jeff Spear, Orr & Reno, Concord, NH, representing John & Virginia Stabile, 48 Lutheran Drive

Mr. Duffy suggested tabling this case, given the additional information submitted at the meeting. Mr. Duffy also suggested that a balloon test be done.

Mr. Currier suggested that the Board hear from the applicant before the case is tabled.

Mr. Anderson stated that there is too much information submitted to make a decision this evening.

Mr. Tremblay stated that the case should be continued because there is a lot of information to digest to make a rational decision.

Mr. Shaw mentioned that a memo was submitted by Corporation Counsel which speaks to the many issues that have been brought up, and that the public hearing can be continued or deferred to another meeting.

Further discussion ensued between the Board members relative to tabling the case.

MOTION BY Mr. Duffy to table the public hearing at this time subject to a review of a significant amount of information that was presented and the applicants and abutters agreement that a balloon test to be set up for a date in agreement, be proposed that would be allowed by abutters, applicant, and members of the Board and for the purpose of continuing the public hearing to the October 24, 2006 meeting, unless it's agreed to by the applicant and abutters that that needs to be pushed up further.

Mr. Shaw was concerned about how the date of the balloon test was going to occur, and who exactly agrees to the date of the test.

Mr. Falk stated that if there are three or more ZBA members at the balloon test, it is considered a public hearing, and all proper legal notification must be given, since three members present at one time would constitute a quorum.

Further discussion ensued about the logistics of the balloon test.

Mr. Duffy suggested that the motion be amended to include the applicant and other parties and abutters, as well as members of the Board should they so choose, and the balloon test is requested by this Board to be set up for a reasonable amount of time to be reviewed by the parties that are interested, with the correct legal notification.

Mr. Shaw stated that there is an ability for all the ZBA members to view the balloon without it constituting a public meeting.

Mr. Falk suggested doing this simple - have it flown for a couple of agreed upon days, say a weekend and a weekday, so that everyone can view it.

Mr. Shaw said it is in the applicants best interest to make this as accessible to the abutters as possible.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

3. **Emilio & Araceli Hernandez (Owners) 32 Dexter Street (Sheet 102 Lot 107) requesting the following variances: 1) Lot 107: minimum lot area, 12,446 square feet required, 8,266 square feet proposed to maintain an existing two-family dwelling; and 2) Proposed Lot 107A: minimum lot area, 6,000 square feet required - 5,234 square feet proposed - both requests to subdivide one lot into two lots. RB Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Normand Tremblay
Rob Shaw
Jeff Anderson

Bill Keating, Cuoco & Cormier Engineering Associates, Nashua, NH. Mr. Keating described the characteristics of the property, as well as other existing lots in the neighborhood. Mr. Keating went over the required variance points of law. Discussion ensued between the Board and the applicant.

Architect Louann Fornataro, 207 Main Street, Nashua, NH. Ms. Fornataro stated that the house is approximately 95 years old.

SPEAKING IN FAVOR:

Bob Cormier, Cuoco & Cormier Engineering Associates, Nashua, NH. Mr. Cormier described what he saw as a hardship in the land, in that there is a lot of space on the property.

Zoning Board of Adjustment Public Hearing and Meeting
September 26, 2006
Page 6

Julian Gomez, 207 Main Street
Araceli Hernandez, 32 Dexter Street

SPEAKING IN OPPOSITION OR WITH CONCERNS:

Letter from Lorraine Duval, 39 Dexter Street
Emails from Kenneth Latour, 40 Dexter Street

Merilyn Carnes, 39 B Street, Hudson, NH
Mike Richer, 48 Nagle Street
John Levesque, 50 Nagle Street
Glen Ouellette, 30 Dexter Street
Diane Haley, 50 Dexter Street
George St. Laurent, 46 Nagle Street

SPEAKING IN FAVOR - REBUTTAL

Bob Cormier, Cuoco & Cormier Engineering, Nashua, NH.

SPEAKING IN OPPOSITION OR WITH CONCERNS - REBUTTAL

Mike Richer, 48 Nagle Street

MOTION by Mr. Tremblay to deny the variances (all taken together), the area variances are needed to enable the applicants proposed use of the property given the special conditions of the property, which according to testimony as shown does not exist. The benefit sought cannot be achieved by some other method reasonably feasible for the applicant to pursue other than an area variance. Mr. Tremblay stated that it is not within the spirit and intent of the ordinance, it will not affect the property values of surrounding parcels, not contrary to the public interest, and substantial justice is served.

SECONDED by Mr. Currier.

Mr. Duffy stated that for the spirit and intent of the ordinance, the request would be to convert one conforming lot into two nonconforming lots fails the spirit and intent point of law. Also, reasonable, feasible methods may exist, as two other alternatives may be done.

MOTION CARRIED UNANIMOUSLY 5-0.

4. **John Lehoullier (Owner) 61 Pennichuck Street (Sheet 49 Lot 48) requesting variance to exceed maximum number of principal structures on one lot, one permitted, one additional single family house proposed. RA Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Normand Tremblay
Rob Shaw
Jeff Anderson

John Lehoullier 61 Pennichuck Street. Mr. Lehoullier described how he received a variance in May 2006, and after further investigation, cannot do that plan because a sewer interceptor is located directly through the middle of the property. Mr. Lehoullier explained that there will be two small single family homes on the lot, which is the same density as what was previously approved. Mr. Lehoullier went over the variance points of law. Further discussion ensued between Mr. Lehoullier and the Board.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No one.

MOTION by Mr. Anderson to grant the variance, the variance is needed to enable the applicants proposed use of the property, given the special conditions of the property, which is the sewer interceptor easement through the middle of the contiguous lots. Mr. Anderson stated that the benefit sought by the applicant cannot be achieved by some other method reasonably feasible to pursue, which he has with the plan for the duplex and that plan was interfered with from the sewer easement. He stated that it is within the spirit and intent of the ordinance, it will not adversely affect property values of surrounding parcels, in fact most of the surrounding parcels in the immediate area are the same 50'x100' lots, it is not contrary to the public interest, and substantial justice is served.

Zoning Board of Adjustment Public Hearing and Meeting
September 26, 2006
Page 8

SECONDED by Mr. Currier.

MOTION CARRIED 4-1 (Mr. Tremblay).

MINUTES:

September 12, 2006:

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

SECONDED by Mr. Tremblay.

MOTION CARRIED UNANIMOUSLY 5-0.

REGIONAL IMPACT:

The Board did not find any cases of regional impact.

ADJOURNMENT:

Mr. Duffy called the meeting closed at 10:27 p.m.

Jack Currier
Acting Clerk

CF

Taped Hearing