

EXPANDED DRAFT MEETING SUMMARY
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ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
November 21, 2006

A public hearing of the Zoning Board of Adjustment was held on Wednesday, November 21, 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.

REQUEST FOR REHEARING:

1. Pitary's Homes, Inc. (Owner) AHEPA National Housing Corporation (Applicant) "L" West Hollis Street (Sheet F Lot 61) requesting special exception to work within a 40 foot "other" wetland buffer to construct an outlet to a proposed stormwater management area. R9 Zone.

MOTION by Mr. Duffy that there is new information submitted by the applicant, addressing the fact that they did not come to the prior meeting, and that there were only four ZBA members present, and that the Board should now be able to hear the case at a date certain.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0. The case will be heard on the first meeting in January.

MOTION By Mr. Duffy to take the rehearing request off the table for a request by abutters for the use variance by AHEPA for a 38-unit elderly housing development.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0 TO TAKE THE REQUEST OFF THE TABLE.

2. Pitary's 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 development. R9 Zone. [approved by the ZBA on 8-22-06]

Discussion ensued by the Board relative to the history of the request, as well whether the request met the stipulations to approve a rehearing.

MOTION by Mr. Duffy to deny the request for rehearing. Mr. Duffy stated that he believed that there was no procedural error in the deliberations, or the process that the City maintains. Mr. Duffy stated that there was no improper notice, denying someone the right to be heard. There was no illegal decision, in fact, the Board did address each of the points of law required for a special exception and/or variance. Mr. Duffy said he understands the discussion relative to a rezoning, but in fact, the ZBA was granting relief because of the unique, or different situations relative to this property that are different from other properties, which was clear in the motion.

Mr. Duffy stated that the request for rehearing did not contain any new information not presented or made available to the Board during the original public hearing, each of the items addressed were clearly and accurate reflections of what transpired during the meeting. He stated that there is nothing submitted that would/could cause the Board to make a different decision, should the rehearing request be granted to go forward.

SECONDED by Mr. Currier.

Mr. Shaw stated that he will not be supporting the motion.

MOTION TO DENY THE REHEARING REQUEST APPROVED 3-2 (SHAW AND TREMBLAY AGAINST MOTION).

PUBLIC HEARINGS:

1. **Norman E. Jr. & Shirley J. Wrenn (Owners) 138 Concord Street (Sheet 55 Lot 94) requesting variance to allow three wall awning signs at a total size of 66 square feet, where no wall signage is permitted. RA Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Normand Tremblay
Rob Shaw
Jeff Anderson

Norman Wrenn, 138 Concord Street and Dennis Buckley, Best Sign & Awnings, 5C Pine Street, Nashua, NH. Mr. Buckley described where the proposed awnings would be located on the building. Mr. Wrenn described the type of signage that existed on the previous building. Various discussion ensued between the applicant, the owner, and the Board.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

Mr. Duffy stated that there was a letter from Beverly McGinley of 141 Concord Street in opposition to the request.

MOTION by Mr. Duffy to grant the variance to allow one wall awning sign with a total size of up to 22 square feet for identification of the business at Shirley's, where no wall sign is permitted. The variance is needed to enable the applicant's reasonable and proposed use of the property, given the condition that this is maintenance of a similar type of property configuration that previously existed with similar awnings, the old sign was actually larger. Mr. Duffy said the benefit of identifying in a reasonable Fashion, which is the name of the business, cannot be achieved by some other method reasonably feasible method other than additional ground signs.

Mr. Duffy stated that it is within the spirit and intent of the ordinance that reasonable use of the property be maintained, it will not adversely affect the property values of surrounding

parcels, given the prior use of the property as a business for many years, it is not contrary to the public interest, and substantial justice is served by allowing the applicant to have directional and identification purposes for their signage.

SECONDED by Mr. Tremblay.

Discussion ensued by the Board relative to the hardship criteria, and whether the applicant met this criteria.

MOTION CARRIED 3-2 (Mr. Shaw and Mr. Currier against motion).

2. Jensen's Inc. (Owner) 3 Waterview Trail (Sheet D Lot 139) requesting the following: 1) special exception to work within the 75 foot prime wetland buffer of the Nashua River, and 2) variance to encroach 10 feet into the 20 foot front yard setback - both requests to replace a mobile home with a new manufactured home. R9 Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Normand Tremblay
Rob Shaw
Jeff Anderson

Chuck MacDonald, Property Manager, Jensens, Inc. Mr. MacDonald gave a history of the property, and stated that they are requesting to replace an older mobile home with a new manufactured home. He said the new home would be placed no closer to the river than the old home. He described various aspects of the new home, including the septic system, which already exists, and was installed in 2001. He said the only area to be disturbed will be the area where the concrete pad will be located for the home. Mr. MacDonald said they met with the Conservation Commission, and said they have no issue with the stipulations, but wish to have the home encroach only 5 feet into the front yard setback, instead of the 10 feet that the Conservation Commission recommended, so that the front steps can be placed off the front of the house instead of the side.

SPEAKING IN FAVOR:

Louise Winters, 2 Plainfield Lane.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No One.

MOTION by Mr. Anderson to grant the area variance to encroach 5 feet into the front yard setback to replace a mobile home with a new manufactured home. He said the variance is needed to enable the applicants proposed use of the property, given the special conditions that half of the property is covered by a wetlands buffer. He stated that this request will be within the spirit and intent of the ordinance, it will not negatively impact property values, it is not contrary to the public interest, and substantial justice will be served.

SECONDED By Mr. Currier.

Mr. Duffy said substantial justice is served because it is maintenance of a pre-existing use of a mobile home, to be replaced with a similar size and shape manufactured home.

MOTION CARRIED UNANIMOUSLY 5-0.

MOTION by Mr. Anderson to grant the special exception to work within the 75 foot prime wetland buffer of the Nashua River. He stated that it is listed in the Table of Uses, 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 testimony was given about the age and condition of the septic system, special regulations are fulfilled as the request was approved by the Conservation Commission, and it will not impair integrity or be out of character with neighborhood or be detrimental to health, morals or welfare of the residents. Special Conditions are that the applicant is to meet the 7 stipulations from the Conservation Commission in their letter dated November 14, 2006.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

3. Adelard J. & Priscilla Chabot (Owners) Edison Paulino (Applicant) 29 Bridge Street (Sheet 38 Lot 41) requesting use variance to allow a barbershop. GI Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Normand Tremblay
Rob Shaw
Jeff Anderson

Edison Paulino, 525 Amherst Street, and Carlos Baez, 111 Fairview Avenue, Nashua, NH. The applicant described other businesses in the area, and stated that the barbershop will be a good use for the neighborhood. They also discussed the available parking and the size of the use within the building. Discussion ensued between the applicant and the Board.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No One.

MOTION by Mr. Tremblay to grant the use variance for the barbershop, as the zoning restriction as applied interferes with a landowner's reasonable use of the property, considering the unique setting of the property in its environment, no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property, and the variance would not injure the public or private rights of others. Mr. Tremblay said that although the zoning is GI, it is migrating towards a retail area, and this request is consistent in the neighborhood. 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. Special conditions are that the area in the back of the property by Union Street, that the trash be removed.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

4. 110 D.W. Highway Associates, LLC (Owner) Mortgage Concepts (Applicant) 110 Daniel Webster Highway (Sheet A Lot 185) requesting variance to exceed maximum ground sign area, 150 square feet permitted, 196 square feet existing, 232 square feet proposed. HB Zone.

Postponed to the 12-12-06 ZBA meeting.

5. Beebe Rubber Company (Owner) Mark Maynard (Applicant) 22 Marshall Street (Sheet 29 Lot 26) requesting use variance to allow two fast-food restaurants with drive through facilities. GI Zone. [POSTPONED - WILL BE RE-ADVERTISED AT A FUTURE DATE]

Case withdrawn, will be re-advertised at a later date.

6. 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 FROM THE 11-8-06 ZBA MEETING].

Voting on this Case:

Sean Duffy
Jack Currier
Normand Tremblay
Rob Shaw
Jeff Anderson

Discussion ensued by the Board as to the status of the case, and what testimony will be allowed.

Attorney Tom Hildreth, representing T-Mobile. Atty. Hildreth described the previous structure, and said they have further reduced the tower to 105 feet in height, and modified the structure from the external arrays to have it be a "slick stick", meaning that the antennas are brought inside the canister. He said it could be painted a color to match the mature forest in its setting. He said in addition to reducing its height, they have moved it further away from Lutheran Drive, and no trees will be cut for the proposed tower. Atty. Hildreth described further details of the proposed coverage of the tower.

Atty. Hildreth explained what occurred at the balloon test. Further discussion ensued between Atty. Hildreth and the Board.

Atty. Hildreth described the appraisals that he submitted to the Board. He said there are 19 towers in the City of Nashua, and mentioned that there have been no homeowners in the City that have filed for a tax abatement due to being located near a tower.

Atty. Hildreth also submitted a noise analysis, and coverage maps, and a letter from a structural engineer.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

Dave Holden, 137 Coburn Woods Drive.
Sue Pothier, 128 Coburn Woods Drive.
David Kosofsky, 29 Lutheran Drive.
Paul DeCarolis, 38 East Hollis Street.
Bob Keating, 5 Coburn Woods Drive.
Mark Cookson, 18 Inca Drive.
Joseph Zidek, 50 Stanstead Place
Lori Epstein, 116 Coburn Woods Drive.
Nancy Stewart, 166 Coburn Woods Drive.
Ald. Jim Tollner, 1 Sequoia Circle.

REBUTTAL FOR THE REQUEST:

Atty. Tom Hildreth, McLane Law Firm.
David Ouellette, Engineer, T-Mobile.

REBUTTAL AGAINST THE REQUEST:

Atty. Paul DeCarolis, 38 East Hollis Street, Nashua, NH.

The Board discussed general issues relative to the case and how they should proceed. The Board agreed that this case is important, and with the volume of materials submitted, thought it would be fair to both sides to spend more time to fully digest the information.

MOTION by Mr. Duffy to table the special exception for a 105 foot high slick-stick telecommunication tower of optional color and variation to the end of the December, 2006 meeting, so that we have time to review all the information presented.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 5-0.

Further discussion relative to the processing of this case ensued.

7. Bonnette & Picard LLC (Owner) 502 West Hollis Street (Sheet E Lot 83) requesting the following: 1) to amend a previously approved special exception for a single-family cluster development by reducing the number of units from 40 to 37, and the acreage from 12.07 to 10.75 acres; and the following variances: 2) use variance to allow a two-story bank with a drive-through, 3) to exceed maximum ground sign area, 10 sq.ft permitted, 75 sq.ft. proposed, 4) to exceed maximum ground sign height, 6 ft. permitted - 10 feet proposed, and 5) to allow three wall signs, where wall signs are not permitted. R9 Zone. [POSTPONED FROM THE 10-24-06 ZBA MEETING]

Voting on this Case:

Sean Duffy
Jack Currier
Normand Tremblay
Rob Shaw
Jeff Anderson

Attorney Robert Parodi, Jordan Maynard & Parodi, Nashua, NH. Atty. Parodi described the modification requested of the cluster special exception granted previously by the ZBA. He also described the points of law relating to the use variance and the area variances. He pointed out the location of the property on a map, and identified all the residential and non-residential uses in the area. He described the traffic in the area, and lighting on surrounding uses.

Atty. Parodi mentioned that there is a team of professionals working on this request, and introduced them for further questioning if necessary.

The Board asked Atty. Parodi questions from the exhibit he submitted relative to traffic counts. Atty. Parodi mentioned that there is an appraisal in the packet, and mentioned that the report indicates that property values should increase with this proposal. Also, further discussion ensued between Atty. Parodi and the Board.

SPEAKING IN FAVOR:

Letter from Mayor Bernard Streeter
Morris Simard, President & CEO, Triangle Credit Union
Roberta Woitkowski, (Speaking for Adam Gurekis) 17 Lee St
Lucy Jenkins, 2 Crestwood Lane
Louise Winters, 2 Plainfield Lane
Dick Lavoie, V.P. Marketing, Triangle Credit Union
Bruce Hansen, 5 Trombley Terrace

SPEAKING IN OPPOSITION OR WITH CONCERNS:

Letters from Ald. Michael Tabasco, Ald. Brian McCarthy, and Ald. Fred Teeboom, and Mary Daly.
Donald Dyer, 16 Briarcliff Drive
Charles Friou, 14 Althea Lane
Paul Johnson, 44 Browning Avenue
Paula Johnson, 15 Westborn Drive
Robert Desharnais, 36 White Plains Drive
Marilyn Pizzolon, 22 Pitarys Drive
Vicky Meager, 62 Heather Court
George Miller, Ledgewood Hills
Chris Seibert, 28 Heather Court
Warren Gilman, 20 Briarcliff Drive
Ed Nussbaum, 26 Dogwood Drive
Ald. Fred Teeboom
Ann-Marie Gaudet, 13 White Plains Drive
Robert Gaudet, 28 White Plains Drive
Kathy Rivard, 26 Briarcliff Drive

The Board discussed whether they wanted to table the rebuttal period to the next meeting, and decided to finish it this evening.

REBUTTAL FOR:

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Atty. Robert Parodi, Jordan, Maynard & Parodi, Nashua, NH. Atty. Parodi addressed concerns relative to parking, use, hardship, traffic and signage.

REBUTTAL AGAINST:

Charles Friou, 14 Althea Lane. Mr. Friou addressed traffic issues, use of land, various points of law, and accidents in the area.

MOTION by Mr. Currier to table the Public Meeting to the December 12, 2006 ZBA meeting.

SECONDED by Mr. Anderson.

MOTION CARRIED UNANIMOUSLY 5-0.

REGIONAL IMPACT:

The Board reviewed the agenda for the next meeting and determined that there were no cases of Regional Impact.

MINUTES:

November 8, 2006

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

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 5-0.

ADJOURNMENT:

Mr. Duffy called the meeting closed at 12:15 p.m.

Jack Currier
Acting Clerk

CF

Taped Hearing