

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

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

**CASE WAS WITHDRAWN PER LETTER SUBMITTED BY APPLICANT.**

2. David A. Ramalho Sr. (Owner) 22 Cambridge Road (Sheet C Lot 328) requesting variance to encroach 10 feet into the 30 foot required rear yard setback to construct a 12'x14' sunroom. R9 Zone.

Voting on this Case:

Sean Duffy  
Jack Currier  
Normand Tremblay  
Jeff Anderson

Jeff Steele, 230 Ballardvale St, Wilmington Ma. Mr. Steele introduced himself as the owners contractor. Mr. Steele said the three-season porch will be replacing an open deck, it will be the same size and same location. Discussion ensued between the Board and the applicant.

**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 applicant 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. Mr. Anderson stated that the request is within the spirit and intent of the ordinance. He stated that there will be no adverse impact to property values of surrounding parcels, it is not contrary to the public interest, and substantial justice is served.

Mr. Tremblay added a special condition that the sunroom will have no water and no heat.

**SECONDED** by Mr. Anderson.

**MOTION APPROVED AMENDMENT TO ADD SPECIAL CONDITION APPROVED UNANIMOUSLY 4-0.**

**MOTION TO APPROVE UNANIMOUSLY 4-0.**

3. Connie A. Bosold (Owner) 37 Tenby Drive (Sheet B Lot 1259) requesting variance to encroach 3 feet into the 10 foot required left side yard setback to construct a 19'x26' attached garage. R9 Zone.

Voting on this Case:

Sean Duffy  
Jack Currier  
Normand Tremblay  
Jeff Anderson  
Robert Shaw - RECUSED

Connie Bosold, 37 Tenby Drive.

Mark Fallon, Contractor, 10 Coventry Road, Nashua, NH. Mr. Fallon described the property and the location of the proposed garage, and went over the variance points of law. He stated that many homes in the neighborhood have garages such as the one proposed.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

**MOTION** by Mr. Tremblay to grant the variance. He stated that the variance is needed to enable the applicants proposed use of the property, given the special conditions of the property, which is that the house is located off to one side, and that the driveway is problematic for current use. He stated that 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 stated that the request 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 to the applicant.

**SECONDED** by Mr. Currier.

**MOTION CARRIED UNANIMOUSLY 4-0.**

4. **One Parke Place, LLC (Owner) 120 Coliseum Avenue (Sheet E Lot 1548) requesting special exception for a temporary impact within the 75-foot prime wetland buffer of the Nashua River for removal of a portion of an asphalt tennis court and the planting of trees within a currently mowed area. RC Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Normand Tremblay  
Jeff Anderson  
Robert Shaw

Richard Maynard, Maynard & Paquette, Nashua, NH. Mr. Maynard described that they are removing an asphalt tennis court that is partially located within the 75-foot wetland buffer of the Nashua River, and will replace it with plantings and trees as shown on the submitted plans. Mr. Maynard went over the special exception points of law. He also went over the wetlands special regulations, and stated it has received all necessary approvals. Mr. Maynard said the project will take a couple weeks to complete.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

**MOTION** by Mr. Anderson to grant the special exception. Mr. Anderson stated that the use is listed in the Table of Uses, Section 16-271, Table 271-1. He stated that 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. He stated that the special conditions are met, the request was approved by the Conservation Commission, and the use will not impair the integrity or be out of character with neighborhood or be detrimental to health morals or welfare

of residents. Special conditions will be that the applicant will conform with the 9 Conservation Commission stipulations from the October 23, 2006 letter, as well as the 14 NHDES conditions dated November 27, 2006.

**SECONDED** by Mr. Currier.

**MOTION CARRIED UNANIMOUSLY 5-0.**

5. Theresa G. Trottier (Owner) Richard Raisanen (Applicant) "L" Catherine Street (Sheet 126 Lots 148 & 158) requesting special exception for a temporary impact within the 75-foot prime wetland buffer of Salmon Brook for removal of an existing waste pile containing asbestos. RA Zone.

Voting on this Case:

Sean Duffy  
Jack Currier  
Normand Tremblay  
Rob Shaw  
Jeff Anderson

Mr. Richard Maynard, Maynard & Paquette, Nashua, NH. Mr. Maynard described the purpose of removing the pile of debris, and reviewed the special exception points of law. He said they are remediating a potential public safety issue, and the area will be restored. Mr. Maynard went over the wetland buffer special regulations. Mr. Maynard said the pile is a surface pile, probably located there since the 1970's. Mr. Maynard said it is common practice to not carry the materials away, as it is cost prohibited. It will get documented in the property deeds, and the area of the lot will be in a "no-dig" zone, and the asbestos is an inert material, it will not migrate to the surface.

**SPEAKING IN FAVOR:**

Letters read into the record from Jeanne Dunphy, 57 Lawndale Avenue; Virginia Lizzie, 58 Lawndale Avenue; and Deb Chisholm, Community Development Department, City of Nashua.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

**MOTION** by Mr. Tremblay to grant the special exception. Mr. Tremblay stated that the request is listed in the Table of Uses, 16-271 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. Mr. Tremblay stated that the special regulations are fulfilled, and it will not impair integrity or be out of character with the neighborhood or be detrimental to health, morals or welfare of residents. Mr. Tremblay stated that the special conditions are the Conservation Commission minutes of November 14, 2006, and that the asbestos site removal they will use a qualified DES inspector.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY 5-0.**

6. **Miguel E. & Francisca Serrana D'Oleo (Owners) 34-34½ Lake Street (Sheet 100 Lot 37) requesting use variance to convert one unit of an existing 3-unit multi-family building for a grocery store. RC Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Normand Tremblay  
Rob Shaw  
Jeff Anderson

Edwin D'Oleo, 67 Bowers Street, Nashua NH. Mr. D'Oleo stated that the applicants wish to change one of the residential units to a small grocery store. The applicant stated that it would be a benefit to be close to the school. The Board and applicant had discussion relative to how the use would fit into the neighborhood, including traffic, pedestrian and safety issues.

**SPEAKING IN FAVOR:**

The Board stated that there were letters of support from 34 Lake Street, 36 Lake Street, 32-A Lake Street, and 138 Chestnut Street.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

The Board described potential issues with traffic and parking at the proposed location. Also, the Board thought the request would be out of character with the neighborhood, which is primarily residential.

**MOTION** by Mr. Currier to deny the use variance request. Mr. Currier stated that a zoning restriction as applied does not interfere with the landowners reasonable use of the property, it has been a multi-family for many years, and serves the landowner fine in its setting. Mr. Currier stated that as discussed, per testimony, that it is not within the spirit and intent of the ordinance because of the existing residential character of the neighborhood, and without the proper crosswalks and ability to control traffic. The Board makes no claim as to the impact of surrounding parcels, but given the discussion, a grocery store at this location would not be in the public interest.

**SECONDED** by Mr. Tremblay.

**MOTION CARRIED UNANIMOUSLY 5-0.**

7. Harper Nashua, LLC & Grace Fellowship of Nashua (Owners) 14-16, 18, 20-28, 34, 53 & 55 Franklin Street and "L" and 21 Front Street (Sheet 68 Lots 26 & 53, and Sheet 78 Lots 40,41,42,86,90,91 & 94) requesting special exception to work within the 75-foot prime wetland buffer of the Nashua River to make improvements to the public right-of-way, parking lot and power transfer station. GI/MU & D-1/MU Zones.

Voting on this Case:

Sean Duffy  
Jack Currier  
Normand Tremblay  
Rob Shaw  
Jeff Anderson

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty Prunier stated that they are only working within the buffer area, which is already disturbed, to make improvements to a public right-of-way. Improvements will be made to sewer, drainage, roads and sidewalks. Atty. Prunier said the work will help traffic flow in the area, and improve the sewer systems. Atty. Prunier went over the special exception points of law, and stated that the request was approved by the Conservation Commission with stipulations, and they agree with all of them.

**SPEAKING IN FAVOR:**

Steve Lehmann, Engineer, VHB, Bedford, NH.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

**MOTION** by Mr. Duffy to grant the special exception. Mr. Duffy stated that the use is listed in the Table of Uses, Section 16-271, Table 271-1. He stated that the use should not create undue traffic congestion or unduly impair pedestrian safety, the refinements and maintenance done to this area will be in an area with prior disturbance, the 7,000 square foot buffer impacts are in a narrow depth range, up to 5 feet. He stated that the request should not overload public water, drainage or sewer or other municipal systems, in fact, in the buffer zone there will be substantial improvements made to the area. He stated that the special regulations are fulfilled, including the nine wetland criteria items. He stated that the use was approved by the Conservation Commission, and should not impair the integrity or be out of character with neighborhood or be detrimental to health, morals or welfare of residents, actually, this project is in agreement with,

and supports, the Downtown Master Plan. The applicant has testified that they will accept all the seven (7) stipulations from the December 5, 2006 letter, and that number six (6) will be reworded that the applicant will pursue discussions with the Public Works Department regarding the placement of vortechnic units in the roadway or on the site to make more efficient and effective stormwater management the ultimate goal.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**8. 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. [TABLED FROM THE 11-21-06 ZBA MEETING].**

**NOTE: THIS CASE IS A PUBLIC MEETING, NOT A PUBLIC HEARING.**

The Board had extensive discussion relative to all the points of law in the public meeting. A written motion was prepared by Mr. Currier, which the Board reviewed at length, made some revisions to, and agreed upon.

**MOTION** by Mr. Currier to Deny the Special Exception to allow a 105' monopole communications tower with related support equipment.

**Listed in the Table of Uses:** The proposed use is listed in the table of uses 16-26 Table 26-1 #274

**Will not create undue traffic congestion or unduly or unduly impair pedestrian safety:** The ZBA believes that the tower will not create undue traffic congestion or unduly impair pedestrian safety. While evidence was presented on several dramatic cell tower failures, the ZBA believes that communication towers would be constructed of adequate means, with a significant factor of safety, to withstand normal environmental excursions, without placing pedestrians and passer-bys at risk. The proposed tower will

interrupt some of the pedestrian use of the area. The ZBA finds information provided by the professional engineer, which substantiates the overall safety of communication tower construction, to be credible.

The applicant has demonstrated that the application will not overload public water, drainage, or sewer or other municipal system.

Special Regulations are Fulfilled: Through testimony, the ZBA received explanations why nearby available locations co-locations, tall structures or a distributed antenna system are unfeasible for this particular coverage gap., although they seem to be as much for economic as technical reasons.

Will not impair integrity of be out of character with neighborhood or be detrimental to health, moral or welfare of residents: The plans for Coburn Woods were provided to, and accepted by the City of Nashua with the stipulation that the plan be strictly adhered to, as part of a prior variance request. A component of this plan was that the common areas would be left in their natural state for the aesthetic & recreational enjoyment of the residents. The ZBA believes that by placing a commercial use on a common area is a clear violation of the Spirit & Intent of the common land as granted by an earlier ZBA decision.

The proposed change of a portion of the common area from passive recreation to commercial, in this case, impacts not only the Coburn Woods association members, but also the abutters in the adjacent Chapel Hill area.

The City of Nashua has numerous cluster developments, all with dedicated common areas. The integrity of a common area, which was clearly intended to remain in a natural vegetated state, is impaired by a commercial use, such as the proposed cell tower, even if the tower is a 'scaled down' version of a common tower, as was eventually proposed by the applicant.

The applicant readily complied with a request to perform a second 'balloon test', to determine the visual impact. Overall, the ZBA concludes that while the tower would be 'difficult' to see from a public way, the tower would be visible to the direct abutters and nearby property owners, which leads the ZBA to conclude that the visual impact is out-of-character with the neighborhood.

The ZBA makes no comment on the aural impact of the cell tower. Written data was provided that the noise level would be un-audible, but conflicting testimony was provided. The ZBA finds this inconclusive to make a judgment.

Even though the applicant has made considerable effort to minimize the effect of the tower, including height & design, a tower is out of character within an overwhelmingly residential neighborhood.

**Impact on Property Values:** The applicant has provided numerous property value assessments that, in summary, conclude a cell tower does not negatively impact property values. Abutters have provided testimony, and professional assessments, which claim their property value will be negatively impacted by the cell tower.

The ZBA included in its discussions all testimony that was presented, and is persuaded that property values could be negatively impacted. None of the assessments forwarded by the applicant provide a reasonable duplication of the proposed tower at Coburn Woods. Numerous abutters, including many residents of Coburn Woods, have provided testimony that a significant attraction leading to the purchase and premium price on their homes is the natural common area. The ZBA finds this testimony to be credible.

**SECONDED** By Mr. Duffy, as corrected by the Board.

**MOTION CARRIED UNANIMOUSLY 5-0.**

9. 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. [TABLED FROM THE 11-21-06 ZBA MEETING]

**NOTE: THIS CASE IS A PUBLIC MEETING, NOT A PUBLIC HEARING.**

The Board had extensive discussion relative to all the points of law in the public meeting. A written motion was prepared by Mr. Currier, which the Board reviewed and discussed at length.

At this point, a verbal motion was suggested.

**MOTION** by Mr. Currier to deny the Use Variance to allow a 2-story banking center, with drive-through, in an R-9 zone.

Hardship: The applicant has reasonable use of the property and is not prohibited with the existing cluster zoning. The applicants have not demonstrated unnecessary hardship.

Spirit & Intent: The spirit & intent of the ordinance is to have a residential area on this parcel, the board finds that the proposed commercial property is not with the spirit & intent of the ordinance.

**SECONDED** by Mr. Tremblay

**MOTION CARRIED 4-1 (Mr. Anderson)**

**MOTION** by Mr. Duffy to deny the special exception, due to the fact that the Use Variance was denied.

**SECONDED** by Mr. Tremblay.

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**MOTION CARRIED 4-1 (Mr. Anderson)**

**MOTION by** Mr. Duffy to deny the area variances, due to the fact that the Use Variance was denied.

**SECONDED** by Mr. Tremblay.

**MOTION CARRIED 4-0 (Mr. Anderson abstained)**

**REHEARING REQUESTS:**

None.

**REGIONAL IMPACT:**

The Board did not have the agenda for 1-9-07 yet, so no determination was made.

**MINUTES:**

None were given to the Board.

**ADJOURNMENT:**

Mr. Duffy called the meeting closed at 10:59 p.m.

Jack Currier  
Acting Clerk

CF

Taped Hearing