

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
July 11, 2006

A public hearing of the Zoning Board of Adjustment was held on Tuesday, July 11, 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  
Rob Shaw  
Normand Tremblay  
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. **Kathleen A. DeMello (Owner) 2 Hammar Road (Sheet C Lot 160) requesting the following variances: 1) Proposed Lot 2972: lot frontage, 75 feet required, 21.09 feet proposed (on Cobble Hill Rd), and 2) lot width, 90 feet required, 37 feet proposed (on Cobble Hill Rd); 3) Proposed Lot 2973: lot depth, 90 feet required, 60 feet proposed - all requests to subdivide one lot into three lots. R9 Zone. (Postponed from June 27, 2006 Meeting)**

Voting on this Case:

Sean Duffy  
Jack Currier  
Rob Shaw  
Normand Tremblay  
Jeff Anderson

Atty. Gerald Prunier, 20 Trafalgar Square, Nashua. Atty. Prunier presented the case, and explained the points of law for the three variances. 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 three variances (all taken together) for 2 Hammar Road. He said the area variances for a single family use is a permitted use in this district, the application is reasonable and it enables the applicants proposed use of the property given the special conditions of the size of the lot and the abutting neighborhood and essential character of the neighborhood are multiple sized and shaped lots and is abutting on a unique access road that is only used for emergency purposes and not future building purposes, and the applicants testimony is that there will be conforming to all other aspects of zoning requirements for setbacks and building on this property. He said the spirit and intent of the ordinance is met. It should not affect the property values of surrounding parcels, even though there was no expert testimony. It is not contrary to the public interest that three single family homes be on this property, and substantial justice is served.

**SECONDED** by Mr. Currier.

**MOTION CARRIED UNANIMOUSLY.**

**2. James E. & Rachel A. Marcella (Owners) 3 Ashby Circle (Sheet D Lot 289) requesting special exception for a major home occupation for in-home day care for up to 10 children. R9 Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Rob Shaw  
Normand Tremblay

Jeff Anderson

Rachel Marcella, 3 Ashby Circle. Mrs. Marcella described the proposed daycare operations, including hours of operation and State of New Hampshire regulations. She described the relevant points of law for a special exception, as well as the major home occupation criteria. Further discussion and testimony ensued between the applicant and the Board.

**SPEAKING IN FAVOR:**

Juan Canales, 4 Ashby Circle. Mr. Canales said he is in favor of the proposed use.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

Further discussion on the proposed daycare operations ensued.

**MOTION** by Mr. Currier on behalf of James and Rachel Marcella of 3 Ashby Circle to grant the special exception for a major home occupation for an in-home day care for up to ten children. By the applicants testimony, the major home occupation criteria has been met, all ten criteria. The use is listed in the Table of Uses. Per testimony, there will not be undue traffic congestion on the dead-end, cul-de-sac road, also, pedestrian safety will not be impaired. It will not overload water, drainage or sewer, or other municipal systems. By testimony, the special conditions will be fulfilled. The only change to the house will be the addition of a fence, which will not impair the integrity or be out of character with the neighborhood.

Mr. Currier stated that he is proposing one change to the application is that for the nighttime daycare from 7:00 p.m. to 6:00 a.m., instead of seven days per week - should be limited to a maximum of five days per week.

**SECONDED** by Mr. Anderson.

Mr. Shaw stated that the request should be restricted to

one non-resident employee. The Board stated that more than one nonresident employee will require an additional variance.

Further discussion ensued relative to the days and nights of operation.

**MOTION CARRIED UNANIMOUSLY.**

3. **Richard Bertrand (Owner) Aqualite (Applicant) 130 Northeastern Boulevard (Sheet 140 Lot 28) requesting variance to exceed maximum number of ground signs per premise, 1 permitted, 1 existing - 1 additional 48 square foot ground sign requested. PI Zone.**

Voting on this Case:

Sean Duffy

Jack Currier

Rob Shaw

Normand Tremblay

Jeff Anderson

Don Reid, Barlo Signs, Hudson NH. Mr. Reid stated he is representing Aqualite. Mr. Reid described the physical dimensions of the property, and went over the points of law for a variance to allow an additional ground sign.

Discussion ensued with the Board and the applicant with respect to the tenants of the building, as well as other uses in the general neighborhood.

**SPEAKING IN FAVOR:**

Mike Monks, 2 Townsend West. Mr. Monks described the uses in the building, and offered testimony relative to traffic and access to the building, and why the additional sign would be a benefit.

Richard Bertrand, former building owner. Mr. Bertrand described traffic with the prior uses in the building, and stated that the proposed sign will help alleviate traffic issues with clearer direction to the building.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No one.

**MOTION** by Mr. Duffy to grant the variance to exceed up to 48 square foot ground sign requested, the variance is needed to enable the applicants proposed use of the property given the conditions of the property that it was originally one use with two driveways, and two entrances and exits now with multiple uses. He stated that the applicant cannot achieve an alternative method that is reasonably feasible other than this application, given the size of the two signs together are below the total signage allowed in a PI zone for a pylon sign. The application grants a directional and identification to the property. It is within the spirit and intent of the ordinance that businesses should have directional and identification purposes. Mr. Duffy stated that the application should not affect the property values of surrounding parcels, it is an extremely busy intersection and area, both historically and in the future. Mr. Duffy stated that the request is in the public interest and substantial justice is served for signage that is consistent with the character of the neighborhood.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY.**

**4. Nashua Corporation (Owner) The Stabile Companies (Applicant) 30 & 36 Front Street (Sheet 78 Lot 87) requesting special exception to work within the 75-foot prime wetland buffer of the Nashua River to redevelop the site by removing existing structures and constructing a 160-unit multi-family development. GI/MU Zone.**

Voting on this Case:

Sean Duffy

Jack Currier

Rob Shaw

Normand Tremblay

Jeff Anderson

Jim Petropulos, Engineer, Hayner Swanson, Inc. Mr. Petropulos described the property's location, physical dimensions and history of the site. He described the

proposed residential buildings, parking and access to the site. Mr. Petropulos described the proposed impacts within the wetland buffer, and stated it was approved by the Conservation Commission. Mr. Petropulos went over all the points of law for both the special exception, and the wetlands ordinance special requirements. Discussion ensued between the applicant and the Board. Also, there was discussion about the feasibility of re-using the existing Cotton Transfer building.

**MOTION** by Mr. Currier on behalf of the applicant to grant the special exception to work within the 75-foot prime wetland buffer of the Nashua River to redevelop the site by removing existing structures and constructing a 160-unit multi-family development. Mr. Currier stated that the request is listed in the Table of Uses, Section 16-271, Table 271-1. He stated that by testimony, there will not be undue traffic congestion created by the extra exit/entrance being proposed over the railroad, and that it will not impair pedestrian safety. He stated that it will not overload public water, sewer, drainage or other municipal systems, and by testimony, the separation should improve the sewer system and improve the drainage into the Nashua River. Per testimony, special regulations are fulfilled, given the nature of Clocktower Place right across the river, this will be right in character with the redevelopment of the neighborhood, and will not be detrimental to the health, morals or welfare of residents. He stated that the wetlands special conditions, per testimony, have all been met. Also, Mr. Currier stated that on file with the application is the June 30th letter from the Conservation Commission that there are ten stipulations, that the applicant will meet.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY.**

5. Lee B. Sr. & Lee Jr. Whittemore (Owners) Nicholas DeRaleau (Applicant) Gottesman & Hollis, P.A. (Appellants) 19 Harbor Avenue (Sheet 30 Lot 46) appealing the administrative officer's decision that a proposed change from a previously approved vacuum cleaner repair store to a bakery/catering business is a significantly different use. RC Zone.

Voting on this Case:

Sean Duffy  
Jack Currier  
Rob Shaw  
Normand Tremblay  
Jeff Anderson

Morgan Hollis, Attorney, 39 East Pearl Street, Nashua, NH. Atty. Hollis described the history of the property, and of the proposed bakery/commercial kitchen. He described why the applicant believes that the prior uses have not been discontinued, and that they are a substantially similar use to the previously approved use of a vacuum cleaner repair store.

Carter Falk, Deputy Planning Manager/Zoning. Mr. Falk stated that it is the Planning Department's position that the proposed use is not substantially similar to the previous use, and that the applicant must apply for a use variance and, if approved, submit a site plan to the Planning Board.

**SPEAKING IN FAVOR - REBUTTAL:**

Morgan Hollis, Attorney, 39 East Pearl Street, Nashua, NH. Atty. Hollis described the difference between an abandonment of use, and a discontinuance of use. He stated that the proposed use should be grandfathered, and the owner has been trying to get a tenant for quite some time.

**SPEAKING IN OPPOSITION OR WITH CONCERNS - REBUTTAL:**

Carter Falk, Deputy Planning Manager/Zoning. Mr. Falk reminded the Board that the issue is whether the previous and proposed uses are substantially similar, and it is the Planning Department's position that they are substantially different.

Discussion ensued relative to the proposed use.

**MOTION** by Mr. Duffy to uphold the administrative officer's decision in that the different uses discussed and heard testimony about are significant enough in terms of process and products, fixtures and deliveries, and the use of the

property may or may not be less intensive but the use is different, and whether the uses that were there by right, or discontinued or abandoned, as well as the passage of time, and that the ordinances and past practice by the City of Nashua have been consistent and diligent by requiring site plans.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY.**

**MOTION FOR REHEARING:**

**1. Pitarys Homes, Inc. (Owner) AHEPA National Housing Corporation (Applicant) L West Hollis Street.**

The Board discussed the proposed rehearing request, and whether the request is substantially different, or if there is new information that would cause them to grant a rehearing.

**MOTION** by Mr. Currier to deny the rehearing, as the Board believes that the rehearing request is a substantially different application, and should be presented as a new application.

**SECONDED** by Mr. Anderson.

Mr. Shaw requested an amendment to the motion that the Board agrees that this is a substantially different application, and that there was no procedural error, that the decision was legal, and that the Board completely addressed the points of law, and that there was no new information that was submitted that was not available at the original public hearing to make the Board come up with a different decision.

**AMENDED MOTION SECONDED** by Mr. Anderson.

**MOTION APPROVED 4-1** (Mr. Duffy against).

**MINUTES:**

June 13, 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.**

**REGIONAL IMPACT:**

**MOTION** by Mr. Duffy that none of the cases were determined to have regional impact.

Mr. Duffy stated that from now on, the Zoning Board minutes will be shortened considerably, due to budget restraints. However, the motions will be verbatim.

**ADJOURNMENT:**

Mr. Duffy called the meeting closed at 9:38.

Jack Currier  
Acting Clerk

CF

Taped Hearing