

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
January 9, 2007

A public hearing of the Zoning Board of Adjustment was held on Tuesday, January 9, 2007 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. 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.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Normand Tremblay  
Jeff Anderson  
Rob Shaw

Jim Petropulos, Professional Engineer, Hayner & Swanson, Inc.  
Mr. Petropulos gave some background information about the site, and described the proposed stormwater management system. Mr. Petropulos described the special exception points of law, as well as the wetland points of law in reference to the buffer. Discussion ensued between the Board and the applicant.

**SPEAKING IN FAVOR:**

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

Joan Morse, 677 West Hollis Street.

Matthew Morse, 9 Heidi Lane

Linda Milot, 5 Heidi Lane

Michael Morse, 20 Parker Drive

**SPEAKING IN FAVOR - REBUTTAL:**

Mr. Jim Petropulos, Hayner & Swanson, Inc.

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

Linda Milot, 5 Heidi Lane.

**MOTION** by Mr. Duffy to grant the special exception, it is listed in the Table of Uses, Section 16-271, Table 271-1, it should not create undue traffic congestion or unduly impair pedestrian safety, as the projects duration is minimal and should be completed in approximately one month, it appears as if it will not overload public water, drainage, sewer or other municipal systems, per testimony on the topography of the land, and the duration of the project will only be one month, and the system proposed is a best methods practice, with a minimum incursion of about 400 square feet. Mr. Duffy stated that the special regulations of the nine wetland conditions are met per testimony. Mr. Duffy stated that there are no special conditions, and it should not impair the integrity or be out of character of the neighborhood. The special conditions are that the applicant has agreed to the October 17, 2006 Conservation Commission stipulations.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**2. Ida B. Lavoie (Owner) 75 Linwood Street (Sheet 103 Lot 202) requesting special exception to add an accessory (in-law) dwelling unit. RB Zone.**

Voting on this Case:

Sean Duffy

Jack Currier

Normand Tremblay

Jeff Anderson

Rob Shaw

Mr. Thomas Lavoie, 122 Bowers Street, Nashua. Mr. Lavoie stated that he is representing the case for his mother. Mr. Lavoie described the house and property, and went over all the relevant special exception points of law. Various discussions ensued between the applicant and the Board, including the accessory dwelling unit points of law. The Board was satisfied that all the conditions are satisfied.

**SPEAKING IN FAVOR:**

Charles Okorie, CBD Design.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

**MOTION** by Mr. Currier on behalf of the owner to grant the special exception. Mr. Currier said the request is listed in the Table of Uses, Section 16-61. He stated that per testimony, there will be no undue traffic congestion or unduly impair pedestrian safety. Mr. Currier stated that per testimony, the request will not overload public water, drainage or sewer or other municipal system. Mr. Currier said per testimony, special regulations are fulfilled, and the Board finds that the request will not be out of character with the neighborhood, or be detrimental to the health, welfare or morals of the neighborhood, in fact, it will probably increase the values in the neighborhood.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**3. Stanley P. & Eleanor M. MacDougall (Owners) 1 Long Avenue (Sheet E Lot 82) requesting special exception to add an accessory (in-law) dwelling unit. RA Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Normand Tremblay  
Jeff Anderson  
Rob Shaw

Mr. Stanley MacDougall, 1 Long Avenue. Mr. MacDougall presented information relative to their request, including the special exception points of law. Discussion ensued between the applicant and the Board.

**SPEAKING IN FAVOR:**

Paul Mizara, 3 Long Avenue.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

**MOTION** by Mr. Anderson on behalf of the owner to grant the special exception. Mr. Anderson said the request is listed in the Table of Uses, Section 16-61. He stated that per testimony, there will be no undue traffic congestion or unduly impair pedestrian safety. Mr. Anderson stated that per testimony, the request will not overload public water, drainage or sewer or other municipal system. Mr. Anderson said per testimony, special regulations are fulfilled, and the Board finds that the request will not be out of character with the neighborhood, or be detrimental to the health, welfare or morals of the neighborhood, in fact, it will probably increase the values in the neighborhood.

**SECONDED** by Mr. Tremblay.

**MOTION CARRIED UNANIMOUSLY 5-0.**

4. Linear Retail Nashua #1, LLC (Owner) 221 Daniel Webster Highway (Sheet A Lot 761) requesting the following variances:
  - 1) to exceed maximum number of wall signs, 3 permitted, 7 proposed;
  - 2) to exceed maximum wall sign area, 233 square feet permitted from 4-28-98 ZBA decision, an additional 243 square feet proposed;
  - 3) to exceed maximum area on a nonconforming ground sign, 150 square feet permitted, 241 square feet existing, an additional 24 square feet proposed;
  - and 4) to exceed maximum number of ground signs, 1 permitted, 1 additional 56 square foot ground sign requested. GB & HB Zones.

Voting on this Case:

Sean Duffy  
Jack Currier  
Normand Tremblay  
Jeff Anderson  
Rob Shaw

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier identified and described the property. He mentioned that a new tenant, La-Z Boy, is proposing to move into the DW Plaza in the space previously occupied by Kitchens Etc. Atty. Prunier explained that a previous variance was granted for three wall signs at 233 square feet, and stated that four additional wall signs were proposed on each face of the clock tower.

Discussion ensued between the applicant and the Board. After further discussion, the applicant stated that they would eliminate the four additional wall signs on the tower, but wanted to pursue the additional ground sign requests.

**MOTION** by Mr. Duffy to grant the area variances to exceed the maximum area on a nonconforming ground sign, 150 square feet permitted, 241 square feet existing, an additional 24 square feet proposed; and to exceed the maximum number of ground signs, 1 permitted, 1 additional 56 square foot ground sign requested. Mr. Duffy stated that the request is reasonable, given the applicants special condition of the property. There will be redevelopment of this area, and some additional ground sign identification and directional access to the area as the construction proceeds, the benefit sought by the applicant cannot be achieved by other alternatives. Mr. Duffy stated that the request is within the spirit and intent of the ordinance that the existing building be allowed to proceed with this signage.

At this point, the Board discussed the total square footage being approved in relation to the advertisement and the changes proposed by the applicant. A total of 23 additional square feet is proposed. Mr. Duffy stated in Item #3, that the permitted three wall signs will be increased by a total of 23 square feet. Mr. Duffy stated that #1, which is the old #3, #2 is now #4. The last item is that 3 existing signs will have an additional 23 square feet proposed. Mr. Duffy stated that he mis-spoke on the

size of the ground sign, it should be that an additional 24 square feet is proposed, not 25 square feet. Mr. Duffy said the request is within the spirit and intent of the ordinance that retail is an approved use within this zone, it is an existing building that has been there for many years, and it should not affect the property values of surrounding parcels, in fact, the redevelopment should positively affect property values, and it is not contrary to the public interest, and substantial justice is granted to the applicant.

**SECONDED** by Mr. Tremblay.

Mr. Currier discussed the motion, and would rather the request come back and have it re-advertised with the updated square footages.

Mr. Duffy stated that the motion is to be able to exceed the maximum area on a nonconforming ground sign, 150 square feet permitted, 241 square feet existing, add an additional 24 square feet as proposed. Mr. Duffy said it is also proposed to exceed the maximum number of ground signs, 1 permitted, 1 additional 56 square foot ground sign proposed. Mr. Duffy said that an additional 23 square feet is proposed in addition to the existing 3 wall signs.

Mr. Falk explained the motion, and the exact square footages of the wall signs.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**5. Kim M. Sutcliffe (Owner) 2 Keats Street (Sheet B Lot 281) requesting variance for minimum lot area, 18,000 sq.ft required, 17,445 sq.ft proposed, to subdivide one lot into two lots. R18 Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Normand Tremblay  
Jeff Anderson

The applicant agreed to pursue with four ZBA members voting on the request, as Mr. Shaw recused.

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier described the request, and went over the points of law relative to the granting of a variance.

**SPEAKING IN FAVOR:**

Attorney Paula Philbrook, Keller Williams Realty

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

Joseph Foster, 9 Keats Street  
Bruce Gilbert, 1 Keats Street  
Karl Klarman, 20 Kipling Street  
Edith Klarman, 20 Kipling Street  
Chris Mullin, 18 Shelley Drive  
Ferdinand Baumeister, 32 Shelley Drive  
Nancy Kelley, 10 Shelley Drive  
Paul Kelley, 10 Shelley Drive  
Daniel Hansberry, 20 Shelley Drive  
Pete Brazinski, 10 Keats Street  
Mark LaFrance, 16 Keats Street  
Virginia Hallisey, 16 Keats Street  
Marissa Baltus, 9 Keats Street  
Charlie Budris, 2 Shelley Drive

**SPEAKING IN FAVOR - REBUTTAL:**

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH

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

Joseph Foster, 9 Keats Street

**MOTION** by Mr. Duffy to table the request to the next meeting to talk about the discrepancies heard this evening relative to lot size calculations.

**NO SECOND - MOTION FAILS.**

**MOTION** by Mr. Currier to deny the variance request for minimum lot area, as the property is demonstrated that it is available for a reasonable use now, which is for one lot. Mr. Currier stated that the request is not within the spirit and intent of the ordinance, it will adversely impact property values, is contrary to the public interest, and a reasonable use is there now.

**SECONDED** by Mr. Anderson.

**MOTION FAILS 2-2** (Mr. Duffy and Mr. Tremblay)

**MOTION** by Mr. Duffy to grant the area variance, as the request is reasonable given the special conditions of the property, and it is a predetermined lot of record, which predates two zoning ordinance changes, and the wetland ordinance being initiated. Mr. Duffy said a single family home is an approved use in the R18 zone, and that the unique and special conditions of this property are in this neighborhood, sewer easements and wetland buffer areas and a corner lot, in which the spirit and intent in the past has shown that reasonable use of a single family home dwelling in this case may not adversely impact property values of surrounding parcels, and it is in the public interest, and substantial justice will be served to the applicant that they can build a single family house comparable to others in the area.

**SECONDED** by Mr. Tremblay

**MOTION FAILS 2-2** (Mr. Anderson and Mr. Currier)

6. **Mile High Real Estate, LLC (Owner) 23 Ridge Road (Sheet C Lot 171) requesting variance for minimum lot area, 40,000 sq.ft required, 37,926 sq.ft proposed, and 2) variance for minimum lot area, 40,000 sq.ft required for a lot to be serviced by an individual sewage disposal system, 37,926 sq.ft proposed - both requests to subdivide one lot into two lots. R40 Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Normand Tremblay  
Jeff Anderson  
Rob Shaw

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier described the property, and went over the variance points of law. Discussion ensued between the Board and the applicant.

The applicant brought up the fact that the advertisement and the actual square footage of the lot were different, and the Board agreed to proceed. If an aggrieved party brings up this issue, the case can be re-advertised with the correct lot size. The advertisement indicated the lot was 37,926 square feet, when in reality, the lot is 37,539 square feet.

**SPEAKING IN FAVOR:**

Richard Maynard, Professional Engineer, Maynard & Paquette.

**SPEAKING IN OPPOSITION OR WITH CONCERN:**

No One.

**MOTION** by Mr. Tremblay to grant the variance, the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, 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, per testimony, the lot is surrounded by City owned property. 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 5-0.**

**REHEARING REQUESTS:**

None.

**REGIONAL IMPACT:**

The Board determined that none of the cases have regional impact.

**MINUTES:**

November 21, 2006 and December 12, 2006

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

**SECONDED** by Mr. Shaw

Mr. Currier stated that there is a correction to the 12-12-06 minutes. Mr. Falk will correct them and bring them back to the Board.

**ELECTION OF OFFICERS:**

Sean Duffy will remain as Chair, and Jack Currier will remain as Vice Chair and Acting Clerk. Mr. Shaw, Mr. Tremblay and Mr. Anderson are Alternates, and therefore, cannot hold positions as Chair, Vice Chair or Clerk.

**ADJOURNMENT:**

Mr. Duffy called the meeting closed at 10:55 p.m.

Jack Currier  
Acting Clerk

CF

Taped Hearing