

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
January 23, 2007

A public hearing of the Zoning Board of Adjustment was held on Tuesday, January 23, 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
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. Boulder Park, LLC (Owner) 18-24 Kessler Farm Drive (Sheet G Lot 454 & 468) requesting variance to encroach 6 feet into the 6 foot rear yard setback for an accessory pergola/trellis structure for a clubhouse pool area. RC Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Normand Tremblay
Rob Shaw

Kurt Shillington, Boulder Park, LLC, Lowell, MA. Mr. Shillington gave some background information about the site, and described the proposed pergola structure, which will go in the area of the clubhouse pool and patio. He went over the variance points of law.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No One.

MOTION by Mr. Duffy to grant the variance on behalf of Boulder Park, LLC. Mr. Duffy stated that the variance is needed to enable the applicants proposed use of the property, it is a reasonable use, and given the special conditions of the property, that the applicant is its own abutter, and there is an odd shape to the lot structure, and the existing use of the pool structure is already an incursion into the area. Mr. Duffy stated that the accessory use of the pergola/trellis structure is a very reasonable feature to the property, and is not permanent in nature, and is a reasonable accessory feature for the applicants property.

Mr. Duffy stated that the request is within the spirit and intent of the ordinance, it is a reasonable use, it is very minor in size compared to the entire property. It should not adversely affect the property values of surrounding parcels, even though there was no expert testimony. Mr. Duffy stated that the request is not contrary to the public interest, and substantial justice is served with reasonable development rights.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 4-0.

2. Andre E. & Nicole R. Laliberte (Owners) 7 Badger Street (Sheet 86 Lot 59) requesting variance to encroach 17 feet into the 20 foot rear yard setback to construct a 12'x16' second story bedroom addition on a portion of an existing first floor. RC Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Normand Tremblay
Rob Shaw

Mr. Dan Laliberte, representing his parents. Mr. Laliberte explained where the addition would be located on the house, which will be a bedroom on an existing footprint of the house, located in the rear of the property. Mr. Laliberte went over the variance points of law. Various discussion ensued between the Board and the applicant.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

Wes Carlson, 6 Badger St. [Letter read into record].

SPEAKING IN FAVOR - REBUTTAL:

Mr. Dan Laliberte.

SPEAKING IN OPPOSITION OR WITH CONCERNS - REBUTTAL:

No One.

MOTION by Mr. Duffy on behalf of the owner to grant the variance. Mr. Duffy stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property. The applicant's rear abutter is the cemetery, the abutter directly next door is a two-story, and other structures along the rear property line that this applicant shares all predate the zoning ordinance, and all encroach into the setbacks. Mr. Duffy stated that benefit the applicant is seeking cannot be achieved by some other reasonable feasible method, in fact, the applicant is adding to an existing incursion on the structure, and is not adding additional footprint, thereby keeping with the character of the neighborhood. The applicant has stated that the house is a single-family structure, and has testified that it will not be used for a multi-family structure, therefore, is in keeping with the spirit and intent of the ordinance. Mr. Duffy stated that the applicant intends to keep the garage next door, which should not adversely impact the property values of surrounding parcels, and although there was no expert

testimony on this, it is a reasonable addition. Mr. Duffy stated that the request is not contrary to the public interest, and substantial justice is served for reasonable development use of a bedroom addition on an existing single-family house.

SECONDED by Mr. Tremblay.

MOTION CARRIED UNANIMOUSLY 4-0.

3. Robert N. Jr. & Charles P. Atwater (Owners) 104 Pine Street (Sheet 84 Lot 110) requesting the following: 1) use variance to allow a child day care facility, and the following variances: 2) to allow primary access for the arrival and departure of children to be from a street that is not a collector or arterial street (Palm Street), 3) minimum number of parking spaces, 12 spaces required - 0 spaces proposed; and the following variances are requested if the existing building is to be torn down and rebuilt: 4) minimum open space, 35% required - 10% proposed, 5) minimum side yard setback, 7 feet required - 5 feet proposed, and 6) minimum rear yard setback, 20 feet required - 7 feet proposed - all requests to allow a child day care facility and offices on the first floor, and two residential units on the second floor, whether in the existing building or a new, rebuilt building. RC Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Normand Tremblay
Rob Shaw

Attorney Brad Westgate, 111 Concord Street. Atty. Westgate stated that he, as Secretary of Marguerite's Place, is presenting the case this evening. Atty. Westgate identified the overall mission of Marguerite's Place, and went over all the points of law for the use variance and area variance requests. Discussion ensued between the applicant and the Board.

SPEAKING IN FAVOR:

Sister Sharon Walsh, 273 Lake Street.
Sister Elaine Fahey, 273 Lake Street.
Klaas Nijhuis, 70 Concord Street.

Letters of support were received from:

Nashua Soup Kitchen & Shelter, 42 Chestnut Street
Mary Nelson, Dept. of Public Health, 18 Mulberry Street
Rivier College, 420 Main Street
Dept. of Health & Human Services, Concord, NH
MRCS, Milford, NH
Greater Nashua Council on Alcoholism, Pine Street Ext.
Harbor Homes, 45 High Street
Pine Motor Parts, 106 Pine Street
Adult Learning Center, 4 Lake Street
Youth Council, 112 West Pearl Street
Jane Plummer, 103 Pine Street
Arturo Costa, 81-83 Palm Street
Dan Durant, 3 Whitney Street

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No One.

MOTION by Mr. Duffy on behalf of the owner to grant the use variance for Marguerite's Place. Mr. Duffy stated that this is a non-profit agency that wishes to use the land for a use that is not allowed in the zoning ordinance, and this interferes with the landowners reasonable use of the property. A childcare facility that has been granted a use variance in the past in this area since 1994 is just a relocated use to the abutting landowner, therefore, the use has been approved in this area. Mr. Duffy said there is no fair or substantial relationship between the general purposes of the zoning ordinance and the specific restriction on the property, because of the fact that Marguerite's Place is somewhat different from other non-profits, in that they are trying to offer on-care facilities to the clients that they serve. Mr. Duffy stated that the request meets the spirit and intent of the

ordinance, as the applicant is not making a more nonconforming use of the property, it is a similar use and not more intensive than the current use. Mr. Duffy stated that although there was no expert testimony on property values, should not be negatively impacted. Mr. Duffy stated that the request is not contrary to the public interest, and substantial justice is served.

Special conditions are that the replacement structure will be limited to two stories, as testified by the applicant. Also, up to 40 children may be served on this site for the existing building if there is no razing of the building, the applicant has testified that there will be no additional change to the foundation of the structure. If the applicant is replacing the structure, the applicant's testimony is that they understand and would be amenable that they will need to come back before the Board if anything up to the existing foundation area is required.

SECONDED by Mr. Tremblay.

MOTION CARRIED UNANIMOUSLY 4-0.

MOTION by Mr. Tremblay to grant the area variances for items #2-6 as listed above. Mr. Tremblay stated that the variance is needed to enable the applicants 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, as the neighborhood is congested. Mr. Tremblay stated that the request is within the spirit and intent of the ordinance, it will not negatively 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.

Mr. Duffy suggested that since the use is a nonprofit, recommended that the applicant have up to 18 months in which to secure a building permit, instead of 12 months.

SECOND TO THE AMENDMENT by Mr. Tremblay.

AMENDED MOTION CARRIED UNANIMOUSLY 4-0.

MOTION APPROVED UNANIMOUSLY 4-0.

REHEARING REQUESTS:

Rehearing Request submitted by Omnipoint Communications, Inc., by it's attorneys, McLane, Graf, Raulerson & Middleton, P.A.

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. [DENIED AT THE 12-12-06 ZBA MEETING].

Voting on this Case:

Sean Duffy
Jack Currier
Normand Tremblay
Rob Shaw

The Board discussed the relevant points in which to consider for rehearing requests. The Board discussed the points raised by the applicant

MOTION by Mr. Currier to deny the rehearing request, in that the Board determined that there was no procedural error. Also, the Board determined that the decision was legal, and they completely addressed all the points of law required for the special exception. Further, the Board believed that the request did not contain any new information not presented or available to them at the original meeting. The Board stated that they did a good faith due diligent discussion on this request, and they were very succinct and made a clear decision, and that there was nothing in the rehearing request that would or could cause them to make a different decision

AMENDMENT TO MOTION by Mr. Shaw, stating that the Board decided that there was not a violation of the Telecommunications Act of 1996, and the Board has not erred

in its decision.

SECOND TO THE AMENDMENT by Mr. Duffy.

MOTION APPROVED UNANIMOUSLY 4-0.

Rehearing Request submitted by Jordan, Maynard and Parodi, PLLC:

2. **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. [DENIED AT THE 12-12-06 ZBA MEETING]**

The Board discussed the relevant points in which to consider for rehearing requests. The Board discussed the points raised by the applicant.

MOTION by Mr. Currier to deny the rehearing request, in that the Board determined that there was no procedural error. Also, the Board determined that the decision was legal, and they completely addressed all the points of law required for the special exception. Further, the Board believed that the request did not contain any new information not presented or available to them at the original meeting. The Board did not believe that there was any relevant new information submitted in the rehearing request. The Board stated that they deliberated clearly on these points, and there was no clear or compelling evidence to grant a rehearing and that there was nothing in the rehearing request that would or could cause them to make a different decision.

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SECONDED by Mr. Tremblay.

MOTION CARRIED UNANIMOUSLY 4-0.

REGIONAL IMPACT:

The Agenda for the 2-13-07 was not ready for the Board to review. Mr. Falk stated that there were approximately two cases on the next agenda, and it was his determination that they were not cases of regional impact.

MINUTES:

None.

ADJOURNMENT:

Mr. Duffy called the meeting closed at 10:09 p.m.

Jack Currier
Acting Clerk

CF

Taped Hearing