

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
February 27, 2007

A public hearing of the Zoning Board of Adjustment was held on Tuesday, February 27, 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  
Jeff Anderson  
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. Beebe Rubber Company (Owner) Mark Maynard (Applicant) 22 Marshall Street (Sheet 29 Lot 26) requesting the following: 1) use variance to allow two fast-food restaurants with drive through facilities; and 2) variance to allow a stacking lane to cross a pedestrian accessway. GI Zone. [POSTPONED FROM 2-13-07 MEETING].**

Voting on this Case:

Sean Duffy  
Jack Currier  
Normand Tremblay  
Rob Shaw  
Jeff Anderson

Attorney Gerald Prunier, Prunier & Prolman, Nashua, NH. Atty. Prunier identified the location of the property, and described the proposed two fast-food restaurants on the lot. He also described the variance for proposed pedestrian accessway that would cross the drive-thru stacking lane. Atty. Prunier went over all the relevant points of law. Discussion ensued between the Board and the applicant.

**SPEAKING IN FAVOR:**

Mark Maynard, 115 Vine Street, Nashua.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

**MOTION** by Mr. Duffy to grant the use variance for **one** fast-food restaurant, with drive-thru facilities, on the lot. Mr. Duffy stated that the zoning restriction at this point is the GI zone, it interferes with the landowners reasonable use of the property, given that directly across the street as an abutter, and in the neighborhood there are pieces of property with fast-food restaurant use. He stated that there are no specific restrictions on this property that will allow for this or any uses, but this is the application before the Board.

Mr. Duffy stated that it is within the spirit and intent of the ordinance that the applicant be able to have development rights and a reasonable use, given that this is directly abutting an 80-unit low income density housing, with potential buffering issues, the stacking lanes and the parking areas might at some level adversely affect the property values of surrounding parcels, even though there was no testimony on this issue. There are vehicles parked within five to six feet of a property line, even though it may be buffered.

Mr. Duffy stated that it is in the public interest that the applicant have reasonable development rights, it is similar to other uses in the neighborhood, and substantial justice be granted. He stated that even though the East Hollis Street Master Plan, the applicant has tried to explore this through the site plan. Mr. Duffy stated that the special conditions are that the applicant's proposal is one entrance/exit to the site from Marshall Street.

**SECONDED** by Mr. Anderson.

Discussion ensued relative to the motion. After further consideration, Mr. Anderson withdrew his vote to "second" the motion, and Mr. Duffy withdrew his motion to grant the use variance.

**MOTION** by Mr. Tremblay to deny the use variance request. Mr. Tremblay stated that the zoning restriction does not interfere with the landowners reasonable use of the property, it is not

within the spirit and intent of the ordinance, it will adversely affect the property values of surrounding parcels, it is contrary to the public interest, and substantial justice is not served.

**SECONDED** by Mr. Currier.

**MOTION APPROVED 4-1** (Mr. Shaw).

Motion for the area variance became a moot point, due to the fact that the use variance was denied.

2. **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, 217 square feet proposed. HB Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Rob Shaw  
Jeff Anderson  
Normand Tremblay - **RECUSED**

Attorney Gerald Prunier, Prunier & Prolman, Nashua, NH. Atty. Prunier presented the case, and described the proposed sign. Atty. Prunier went over all the area variance points of law.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

**MOTION** by Mr. Duffy to grant the area variance on behalf of 110 D.W. Highway Associates, LLC. 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, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other

than the area variance. Mr. Duffy stated that the area is well developed, and is located in a high traffic area and business identification and direction is important. He stated that there are many other comparable signs in the area.

Mr. Duffy stated that the request is within the spirit and intent of the ordinance, as adding identification and directional signs and is very minimal in size.

Mr. Duffy stated that the request will not adversely affect the property values of surrounding parcels, it is not contrary to the public interest, and substantial justice is served with reasonable development rights.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**3. John Lehoullier (Owner) 61 Pennichuck Street (Sheet 49 Lots 48 & 49) requesting variance to encroach 4 feet into the 10 foot left side yard setback to construct a single-family home. RA Zone.**

Voting on this Case:

Sean Duffy

Rob Shaw

Jeff Anderson

Normand Tremblay

Jack Currier - had to leave the meeting

Mr. John Lehoullier, 61 Pennichuck Street. Mr. Lehoullier described the history of the property, and stated that a survey has been done, so that all infrastructure has been located. Mr. Lehoullier went over all the relevant points of law for the proposed area variance.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

**MOTION** by Mr. Duffy to grant the area variance for 61 Pennichuck Street. Mr. Duffy stated that the owner has received variances in the past year, and that pending the finding of a sewer interceptor and other utility easements and structures has made it necessary for the owner to apply for the current request. Mr. Duffy stated that it is a minor incursion into the railroad side yard 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 the area variance.

Mr. Duffy stated that the request is within the spirit and intent of the ordinance, it should not adversely affect the property values of surrounding parcels, it is a minor incursion into the side yard setback. Mr. Duffy stated that it is not contrary to the public interest, and substantial justice is served with reasonable development rights.

**SECONDED** by Mr. Shaw.

**MOTION APPROVED UNANIMOUSLY 4-0.**

4. 45 Pine Street Associates, Inc. (Owner) 43 Pine Street (Sheet 85 Lot 62) requesting variance for lot area, 15,434 square feet existing, 28,000 square feet required - to add two dwelling units on the third floor in an existing mixed use building containing 6 dwelling units, a convenience store and a social club. RC Zone.

Voting on this Case:

Sean Duffy  
Rob Shaw  
Jeff Anderson  
Normand Tremblay

Mr. Edward Chaviano, Engineer. Mr. Chaviano described what was inside the building on each floor, and went over the area variance points of law. Further 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 area variance on behalf of 45 Pine Street Associates. Mr. Anderson stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, it is an existing building and will be brought up to the current Building Code. 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 the area variance.

Mr. Anderson stated that the request is within the spirit and intent of the ordinance, it will allow for additional inner city affordable housing.

Mr. Anderson stated that the request will not adversely affect the property values of surrounding parcels, it is not contrary to the public interest, as it will allow for more affordable housing. Mr. Anderson stated that the request will allow substantial justice to the applicant.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**MINUTES:**

February 13, 2007:

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

**SECONDED** by Mr. Shaw.

The Board stated that Mr. Anderson's name was inadvertently left off the list of members present. Staff will make the correction.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**REHEARING REQUESTS:**

None.

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**REGIONAL IMPACT:**

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

**ADJOURNMENT:**

Mr. Duffy called the meeting closed at 8:30 p.m.

Jack Currier  
Acting Clerk

CF

Taped Hearing