

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

A public hearing of the Zoning Board of Adjustment was held on Tuesday, March 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
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. **David W. & Gail S. Freund (Owners) 3 Smithfield Terrace (Sheet 56 Lot 128) requesting variance to encroach 9 feet into the 20 foot required front yard setback to construct an in-ground swimming pool. RA Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Normand Tremblay
Jeff Anderson

David Freund, 3 Smithfield Terrace. Mr. Freund identified the location of his property, and described the proposed location of the in-ground pool. He also described where a fence would be placed. Mr. Freund went over all the variance points of law. Discussion ensued between the applicant and the Board, relative to the location of the fence in relation to the property line. The Board discussed vehicle visibility going around the corner.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No One.

MOTION by Mr. Tremblay to grant the area variance for the request at 3 Smithfield Terrace. Mr. Tremblay stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property. Mr. Tremblay stated that there is an easement on the rear of the lot, and that the property is a corner lot, with two front yard setbacks. Further, 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.

SECONDED by Mr. Anderson.

MOTION FAILS 2-2 (Mr. Duffy and Mr. Currier).

MOTION by Mr. Duffy to deny the area variance, as the special condition of the property was known by the applicant, and was pre-existing in the sale of the property, and accessory uses and other potential reasonable uses can be achieved by some other methods reasonably feasible to pursue, other than an area variance.

SECONDED by Mr. Currier.

MOTION FAILS 2-2 (Mr. Tremblay and Mr. Anderson).

2. Dennis W. & Sherry A. Jette (Owners) 29 Meadowbrook Drive (Sheet B Lot 795) requesting to amend a special condition from a special exception granted by the ZBA on 12-9-03 for an in-home daycare; changing the hours of operation from 7:00 am to 8:00 pm - to allow children to stay overnight. R9 Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Normand Tremblay
Jeff Anderson

Dennis and Sherry Jette, 29 Meadowbrook Drive. Mr. Jette described the operations of their daycare, and stated that they have had previous ZBA approval for this use. The children that are watched are all special needs children. This request is solely to allow for two children to stay overnight, as their parent is working a 3rd shift job. Everything else connected to the daycare will remain as it has been.

The Board discussed the daycare operations with the applicant, and asked about the basketball hoop on the side street. Mr. Jette mentioned that the hoop is not used often, and when it is, the children are supervised.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

The Nadeau Family, 5 Linjay Circle. The Board mentioned that they wrote a letter of concern, which addressed the safety of the children when they are playing basketball.

SPEAKING IN FAVOR - REBUTTAL:

Dennis Jette, 29 Meadowbrook Drive

SPEAKING IN OPPOSITION OR WITH CONCERNS - REBUTTAL:

None.

MOTION by Mr. Duffy to amend the special condition from a special exception granted by the ZBA on 12-9-03 for an in-home daycare. The hours of operation is granted from 7:00 a.m. to 8:00 p.m. to allow children to stay overnight.

Mr. Duffy stated that it is listed in the Table of Uses, Section 16-67 (b), all the testimony and information given, including visits to the site, indicate that there is no significant change, so all the conditions noted in the 2003 meeting remain the same, so all the conditions of traffic, water, special regulations, and the issues of the character of the neighborhood are the same as from the original case.

Mr. Duffy stated that the special conditions will be that there will be no outside play before 9:00 a.m., nor after 8:00 p.m. Mr. Duffy stated that the hours of operation are 7:00 a.m. to 8:00 p.m., Monday through Friday, and the third special condition is that up to two children may stay after the hour of 8:00 p.m. Monday through Sunday, to allow for additional flexibility. This is an in-home day care for up to eight children.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 4-0.

- 3. Edward Kissell, Sr. (Owner) Angel Galvis (Applicant) 5 Spruce Street (Sheet 37 Lot 15) requesting variance for minimum lot area, 5,310 square feet existing, 7,000 square feet required, to convert a single-family dwelling into a two-family dwelling unit. RC Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Normand Tremblay
Jeff Anderson

Mr. Angel Galvis, 30 Windham Road. Mr. Galvis stated that the intent of this request is to blend into the neighborhood, with another dwelling unit. Mr. Galvis went over the points of law for the variance. Mr. Galvis stated that there will be only changes to the interior of the building. He stated that it has been a single-family since the 1920's or 1930's. The Board and applicant discussed the available parking spaces. Mr. Galvis stated that there is room for four cars. Mr. Galvis described the front and rear doors for each of the units, and mentioned that there will be a second staircase to the proposed unit. He described the number of rooms in each of the units.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

Harold Hellinger, 98 Temple Street (business address). Mr. Hellinger said he is here for the neighbor that is abutting the subject lot. He asked if the property is going to be owner-occupied, to which the Board stated that the applicant will answer. Mr. Hellinger questioned the number of cars that would be parked there, as well as the driveway and other parking space issues.

Hilda Brisebois, 3 Spruce Street. Ms. Brisebois asked if there would be any structural changes to the house, as there isn't a lot of room. She also believed that there is inadequate parking for the proposed additional residential unit.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Angel Galvis, 30 Windham Street. Mr. Galvis stated that there will be no changes to either side of the property. He said on the left side of the house, he may have to add some new pavement to have four paved parking spaces. He said he will be living there, and family members will be living in the other unit. He said the only access in the rear is a first floor door, but there may be a building/housing code requirement to add a stairway to the second story. He said the left side will be for parking, and the right side will be a yard.

SPEAKING IN OPPOSITION OR WITH CONCERNS - REBUTTAL:

Hilda Brisebois, 3 Spruce Street. Ms. Brisebois asked about the stairway in case of an emergency. The Board said that this is the jurisdiction of the Fire Department, so that there will be safe ingress/egress to the second floor. Mr. Duffy stated that per testimony, the applicant will be keeping the same foundation size and same roof line.

MOTION by Mr. Currier to grant the variance on behalf of the applicant at 5 Spruce Street. Mr. Currier stated that he variance is needed to enable the applicant's proposed use of the property, which is the conversion of a single-family to a two-family property. Mr. Currier stated that the request is within the spirit and intent of the ordinance, this is a very mixed-use neighborhood, with some single, but many two-family homes right within the immediate vicinity. Mr. Currier stated that there is no professional testimony, but it the testimony provided Zoning

indicates that there will be no adverse affect of property values of surrounding parcels. Mr. Currier stated that the request is not contrary to the public interest, and finds that substantial justice is served with two conditions: 1) that there are no exterior alterations to the foundation or to the roof line, and that 2) there will be a minimum of four off-street paved parking spaces provided, preferably on the left (southerly) side of the house.

SECONDED by Mr. Anderson.

The Board stated that the building is over 80 years old in the neighborhood, and that the applicant submitted a very complete package of information, and the actual tax property cards of the area indicate a mix of uses in the area.

MOTION CARRIED UNANIMOUSLY 4-0.

4. Bradford J. Hill & Richard H. Belanger (Owners) Sequel Development (Applicant) 4-6 Fox Street (Sheet 61 Lots 67 & 68) requesting use variance to allow six detached single-family residences on one premise where no residential use is allowed. GI Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Normand Tremblay
Jeff Anderson

Attorney Morgan Hollis, 39 East Pearl Street, Nashua, NH. Atty. Hollis submitted a handout to the Board, and went over all the tabs/information in the handout. Atty. Hollis described the present use and dimensions of the property, and stated that they intend to construct six detached single-family homes on the lot, and described how they would be oriented on the lot. He said they would be two-stories, with a private driveway, and would require Planning Board approval. Atty. Hollis also provided a density study indicating lot sizes/uses within the neighborhood. Atty. Hollis went over all the use variance points of law. Discussion ensued between Atty. Hollis and the Board.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

Louisa Goyait, 8 Fox Street. Ms. Goyait indicated that she had concerns because Fox Street is a short and narrow street, with children at play, and to add six additional homes would be too much to handle for traffic. She believes that this plan will change this neighborhood for the worse, and six new houses will be too much.

Christine Downing, 6 Broadview Avenue. Ms. Downing mentioned that she has a document with concerns to submit to the Board. She mentioned that she had concerns about the density in the neighborhood. Her concerns are traffic, parking, overcrowding, and others mentioned in the handout she submitted to the Board.

Dave Downing, 6 Broadview Avenue. Mr. Downing mentioned that the residents in the neighborhood have come together, and most everyone is against the proposed plan. They said they are not against some houses, but they are against six proposed homes on the one lot. The neighbors are concerned about parking, lighting, traffic. Fox Street is a short, narrow road and parking is an issue. Sewerage is also an issue, as water overflow is a question, as the street cannot handle what is there now.

Tom Daigle, 5 Fox Street. Mr. Daigle said the neighborhood isn't against residential, but they have an issue with the amount of houses proposed. Mr. Daigle said they may have issues with snow removal.

Hector Perez, 2 Fox Street. Mr. Perez said the neighborhood is nice and private. He mentioned many of the same issues as the other abutters, and believed that four new homes would be less of an impact than six new homes.

SPEAKING IN FAVOR - REBUTTAL:

Atty. Morgan Hollis, 39 East Pearl Street. Atty. Hollis stated that there is a duplex on the property now, and they are going

from two to six homes, all owner occupied. He stated that the traffic will not go to Broadview Avenue, they will stay on Fox Street. He stated that the density of the proposed development will be less, per acre, than the existing house lots. Atty. Hollis stated that a lot of the issues will be addressed by the Planning Board, such as drainage, snow removal, sewage, fencing. Atty. Hollis stated that procedures were followed correctly with respect to advertising, and having the plans on record, and mentioned why they hired a property appraiser and real estate agent.

SPEAKING IN OPPOSITION OR WITH CONCERNS - REBUTTAL:

Christine Downing, 6 Broadview Avenue. Ms. Downing stated that the appraisal was from someone who doesn't live in the neighborhood, and doesn't see why they need to place six homes.

The Board discussed the request, and in consideration of the information submitted at the meeting by the abutters, that they would like to review the information and look at the neighborhood again.

MOTION by Mr. Currier to Table this application to the April 10, 2007 meeting, to allow the Board to review the information presented this evening, and will be first on the Agenda. It will only be for the Public Meeting, there will be no other testimony.

SECONDED by Mr. Anderson.

MOTION CARRIED UNANIMOUSLY 4-0.

MINUTES:

March 13, 2007:

For Case #5, Mr. Anderson was not at the meeting, and therefore not voting, it should have listed Mr. Currier. Mr. Falk will make the change.

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

SECONDED by Mr. Anderson.

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MOTION CARRIED UNANIMOUSLY 4-0.

REHEARING REQUESTS:

None.

REGIONAL IMPACT:

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

ADJOURNMENT:

Mr. Duffy called the meeting closed at 9:29 p.m.

Jack Currier
Acting Clerk

CF
Taped Hearing