

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
April 10, 2007

A public hearing of the Zoning Board of Adjustment was held on Tuesday, April 10, 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
Jeff Anderson
Rob Shaw
Claire McHugh
Robert Carlson
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. 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. [TABLED FROM 3-27-07 MEETING]**

Voting on this Case:

Sean Duffy
Jack Currier
Jeff Anderson
Claire McHugh
Robert Carlson

The Public Hearing portion of this meeting was concluded at the March 27, 2007 meeting. Mr. Duffy introduced and welcomed new members Claire McHugh and Robert Carlson. Both Ms. McHugh and Mr. Carlson have reviewed the case information and testimony, and feel they are able to vote on this request.

Additional information was received by the applicant, Atty. Hollis, in which a revised lot layout plan and letters from abutters were submitted. The Board stated that they were pleased that the applicant met with the abutters to work out details of the plan.

Mr. Currier brought up the abutters letter, in which it stated that the houses closest to Broadview Avenue would be a cape with a full dormer, or single-level homes, and wanted clarification on this.

MOTION by Mr. Currier to waive the rules to open the Public Hearing again to allow for specific questions to be answered by the applicant.

SECONDED by Mr. Carlson

MOTION CARRIED UNANIMOUSLY 5-0.

Mr. Currier asked Atty. Hollis to clarify the letter in which it stated that it would be a cape-style house with a full dormer in the rear, which he believed would be a two-story home.

Attorney Morgan Hollis, 39 East Pearl Street, Nashua, NH. Atty. Hollis handed out a picture of the home that was represented to the neighbors.

Mr. Currier asked if single-level homes were to be built, what style would they be.

Atty. Hollis stated that they would be ranch-style homes.

Mr. Carlson asked Atty. Hollis how many neighbors came to the follow-up meeting.

Atty. Hollis stated that they were all invited, but two neighbors came (2 Broadview Avenue). He stated that it was mentioned to the neighbors that a use that is allowed in the zone could be constructed on this lot instead of the proposed plan.

Mr. Carlson asked if the neighbors knew of the meeting with the Board tonight, and Mr. Duffy stated that they were told at the previous meeting.

The Board discussed the request individually, and believed the request was in character with the neighborhood.

MOTION by Mr. Duffy to grant the use variance to allow for six single-family residences on one lot. Mr. Duffy stated that the zoning restrictions as applied interferes with the landowners reasonable use of the property, considering the unique setting of the property in its environment. Mr. Duffy stated that the property is in the GI zone, next to a business district that includes single-family and residential settings that have existed for quite some time. Mr. Duffy stated that there is no substantial relationship between the general purposes of the zoning ordinance and the non-granting of the use variance.

Mr. Duffy stated that the request is within the spirit and intent of the ordinance is that single-family homes exist and are an essential character of the neighborhood, and exist right on the street as abutting uses. Mr. Duffy stated that it should not adversely affect the property values of surrounding parcels, as the applicant submitted an appraisal and one real estate letter. He stated that it is not contrary to the public interest that the property is used for single-family homes are proposed, and already exist on the street, and substantial justice is served that reasonable development be proposed.

Mr. Duffy stated that there are four stipulations as agreed to by the applicants counsel; 1) Prior to making application to the ZBA, it will drop off its landscaping plans off for neighborhood feedback, 2) The housing on the southwest side of the lot backing up to Broadview Avenue will either be capes with a full rear dormer, or single-level homes, 3) the landscape buffer on the southwest side of the lot will be a thick shrub such as forsythia, and 4) during construction, significant effort will be made to ensure little or no rubbish blows into the neighbors yards.

SECONDED by Mr. Anderson.

Mr. Currier stated that he would be amenable to consider a rehearing, considering that none of the neighbors were in attendance to back up what the applicant stated.

MOTION APPROVED UNANIMOUSLY 5-0.

Case 3 was taken in front of Case 2, as Counsel for Case 3 had another meeting in another municipality.

2. **Amorim Jusceli Decales (Owner) 8 Tolles Street (Sheet 42 Lot 121) requesting the following variances: 1) minimum lot depth, 75 feet required - 40 feet proposed; and 2) to exceed maximum floor area ratio, 0.75% allowed, 0.83% proposed - to subdivide one lot into two lots. LB Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw
Claire McHugh
Robert Carlson

Attorney Gerald Prunier, Prunier & Prolman, 20 Trafalgar Square, Nashua, NH. Atty. Prunier described the history of the lots, how they used to be two lots, and were merged together five years ago because they were nonconforming. The current request is to subdivide them to their original configuration. Atty. Prunier went over the area variance points of law.

Discussion ensued between the applicant and the Board.

Mr. Shaw identified a technical issue, in that the advertisement should read 75% of the lot allows a floor area ratio, instead of 0.75%. It should read 0.75, or 75% is allowed.

SPEAKING IN FAVOR:

Richard Maynard, 39 East Pearl Street. Mr. Maynard reiterated that the area is already being used as a parking lot, and that the building in the rear will have its own parking spaces, and will have a cross-access easement to the southern lot. He stated that some of the parking will be used for the Brazilian restaurant.

Barbara Tabor, 42 - 42½ Canal Street. Ms. Tabor states that she owns the property where the restaurant is located, and is in favor of the request.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

None.

MOTION by Mr. Carlson to approve.

Mr. Duffy stated that when making a motion, it is required to go over the points of law with respect to the application.

MOTION by Mr. Currier to approve the request on behalf of the applicant. Mr. Currier stated that the request is for two variances, one for minimum lot depth and the other is for the maximum floor area ratio. Mr. Currier said the variance is needed to enable the applicants proposed use of the property, given the special conditions of the property. He stated that the special conditions of the property is that the lot pre-dates zoning, and the 40 foot depth is defined by streets on both sides of the lot, also, by testimony, prior to the lots being merged, they were separate lots. Mr. Currier said that the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue.

Mr. Currier stated that because of the lot conditions, he believes that the request is within the spirit and intent of the ordinance, and the Board does not believe this request will adversely impact property values of surrounding parcels, and there is testimony that this request should help other nearby parcels.

Mr. Currier stated that the request is within the public interest, and substantial justice is served.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

3. Vandaley Industries, LLC. (Owner) 83½ Kinsley Street (Sheet 86 Lot 74) requesting the following variances: 1) to locate ground sign in front yard setback, 10 feet required - 4.5 feet proposed, 2) to locate said ground sign within minimum setback from intersection, 25 feet required - 9 feet proposed, and 3) to exceed maximum ground sign height, 6 feet permitted - 12 feet proposed. LB Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Jeff Anderson
Claire McHugh
Robert Carlson

Mr. Gerry Repucci, 83 Kinsley Street. Mr. Repucci described the property, and went over all the points of law for area variances. He described the individual variances requested. He stated that he's owned the property for a long time, and has studied the most optimal location for the ground sign. He stated that he is very concerned with site safety, and believed the height of the sign will not impair anyone's view. He stated that the temporary sign is exactly where the proposed new sign will go. He believes the proposed sign will be the best overall fit for the site. He described that there is no land available to meet the ground sign setbacks. He said the only change from the temporary sign to the proposed sign is that it will have only one post instead of the two that are there now. Discussion ensued between the applicant and the Board, relative to lighting, materials, and height.

SPEAKING IN FAVOR:

Letter from Robert Tremblay, 85 Kinsley Street.

Mr. Richard Maynard, 39 East Pearl Street. Mr. Maynard stated that they would accept a stipulation that the sign would be lit on only one side. Mr. Maynard stated that the size and height of the sign is optimal for identification.

Mr. Maynard said they are very concerned about site safety, and this sign should not create any problems for drivers.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No One.

Further discussion ensued from Board members.

MOTION by Mr. Duffy to grant the requests, to enable the applicants reasonable proposed use of the property, given the special condition that this is an area of residential uses, and the applicant, by the sign ordinance, is allowed some directional and reasonable informational use of identifying their property. He stated that the height is for line of sight and safety considerations on a one-way street.

Mr. Duffy stated that it is in the spirit and intent of the ordinance that the applicant will have a sign lit to one side, facing Kinsley Street, to identify the property. He stated that it should not affect the property values of surrounding parcels, as reasonable signage is allowed by the ordinance. Mr. Duffy stated that the request is not contrary to the public interest, and substantial justice is served with reasonable rights.

SECONDED by Mr. Anderson.

Mr. Falk asked about the special condition.

Mr. Duffy said the special condition, per the applicants testimony, is that the sign will be lit facing on-coming traffic from Kinsley Street.

MOTION CARRIED 3-2 (Ms. McHugh and Mr. Currier)

REHEARING REQUESTS:

None.

MINUTES:

March 27, 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. Currier.

MOTION CARRIED UNANIMOUSLY 5-0.

REGIONAL IMPACT:

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

The Board discussed Ordinance O-06-63, and stated that since there are two brand new ZBA members, with other members possibly

Zoning Board of Adjustment Public Hearing and Meeting
April 10, 2007
Page 8

joining the Board soon, that the minutes will not be updated. However, the Board is aware of the Ordinance, and will adhere to it, as the Ordinance takes precedence over the ZBA By-Laws.

ADJOURNMENT:

Mr. Duffy called the meeting closed at 8:52 p.m.

Jack Currier
Acting Clerk

CF
Taped Hearing