

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
May 8, 2007

A public hearing of the Zoning Board of Adjustment was held on Tuesday, May 8, 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
Claire McHugh
Rob Shaw
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. Bible Baptist Church (Owner) 117 Fairview Avenue (Sheet 105 Lot 5) requesting variance to exceed maximum area for a ground identification sign, 12 square feet allowed - 20 square feet requested. R9 Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw
Claire McHugh
Robert Carlson

Pastor Steve Bates, 62 Caldwell Avenue. Pastor Bates described the property, and mentioned that the previous code allowed 20 square feet for ground identification signs, and now the code allows 12 square feet, and they are asking for 20 square feet. Pastor Bates addressed the points of law for an area variance. He stated that this is the smallest sign available that will be read by oncoming traffic. He said that the sign is only six inches larger on all sides. Pastor Bates stated that they have had positive discussions with the neighbors. He said that they have had a smaller sign on the property for many years. He said the operation of the church is not a 24-hr, 7-day per week operation. He said that most of the neighbors believe the building is a residence.

Discussion ensued between the Board and the applicant. The applicant discussed why they believe the requested size is important.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No One.

MOTION by Mr. Duffy to grant the variance, it is need to enable the applicant's reasonable use and operation of a church, a non-retail, non-24 hour/7-day per week operation, non commercial, the benefit sought by the applicant is not reasonably feasible to have a non-standard sign cost for identification and access. It is within the spirit and intent of the ordinance, it will not adversely impact property values, it is not contrary to the public benefit, and substantial justice is served that the applicant has reasonable identification of their property.

SECONDED by Mr. Carlson.

Mr. Shaw indicated that the sign should be for the Caldwell Avenue frontage.

MOTION CARRIED 4-1 (Mr. Currier).

2. Alan M. & Denise L. Maistrosky (Owners) 97 Wellington Street (Sheet 65 Lot 148) requesting variance to encroach 15 feet into the 25 foot required front yard setback (on Columbia Avenue) (per pending Ordinance O-07-83) to construct a 15'x20' garage addition. RA Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw
Claire McHugh
Robert Carlson

Brian Lavoie, 17 Andrews Avenue, Hudson, NH. Mr. Lavoie described how they wish to enlarge the garage closer to the Columbia Drive right-of-way. He mentioned the proposed ordinance that will have the setbacks go back to what they originally were. Mr. Lavoie went over all the relevant area variance points of law. He described other similar additions within the neighborhood.

Discussion ensued between the Board and the applicant.

SPEAKING IN FAVOR:

Alan Maistrosky, 97 Wellington Street. Mr. Maistrosky described the proposed garage addition, and stated that they meet all the requirements in the current ordinance, but not the proposed ordinance. He said all the neighbors are in agreement with their plan, and said it will be a one-story garage, with nothing up above. He said there will be personal problems relative to this request if this case is delayed or denied.

Letter from the Maistrosky's written to several neighbors was read into the record, and all are in favor of the request.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No One.

MOTION by Mr. Shaw to grant the area variance on behalf of the applicant. Mr. Shaw stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, which is on a corner lot, it is a small lot, with a small buildable area to work with, and there are no other feasible alternatives to work with. He stated that it is within the spirit and intent of the ordinance, it will not adversely affect the property values of surrounding parcels, and there was no testimony against property values, it is not contrary to the public interest, and substantial justice is served. This is to be a single-story garage addition.

SECONDED by Mr. Carlson.

MOTION CARRIED UNANIMOUSLY 5-0.

3. Hampshire Chemical Corporation (Owner) PDNED Nashua, LLC (Applicant) 2 East Spit Brook Road (Sheet A Lot 218) requesting special exception to fill a wetland and to work within the 75-foot prime wetland buffer of the Merrimack River for both temporary and permanent impacts associated with site redevelopment. GB/MU Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Robert Shaw
Claire McHugh
Robert Carlson

Ms. McHugh asked if the Town of Hudson should be classified as an abutter.

Attorney Prunier indicated that the railroad is actually the abutting property to the east, and they are not an abutter.

Mr. Currier stated that the Board decided that this case was not one for Regional Impact, and believes that it was notified correctly, and the case should be heard.

Ms. McHugh asked about the definition of an abutter.

Mr. Shaw indicated that the railroad is the abutter to the east.

Mr. Falk said the railroad is the abutter, and the river is approximately 1,500 feet away. He also mentioned numerous cases along Daniel Webster Highway in which the Town of Hudson was not notified.

Attorney Prunier stated that abutters, by law, are within 100 feet of the property line.

Ms. McHugh asked if the abutters have all been notified.

Mr. Falk said that all the property owners have been notified, east, north, south and west of the subject lot.

Ms. McHugh asked about the Regional Impact, and said there are two water resources that use our drinking water, one is Pennichuck Water Works, and the other is Lowell Water Works. She asked if they have been notified for this case.

Mr. Currier said the Board should go forward with this request, as the Conservation Commission has already gone over this application and has addressed all relevant issues with downstream water runoff.

Mr. Duffy stated that the City and applicant have done proper due diligence with notification.

Ms. McHugh believes that Lowell Water Works should be contacted.

Mr. Currier stated that the Board should go forward with the application.

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that they are working in the buffer, only on a temporary basis. He stated that they are relocating a sewer line, and cleaning up the area. They are following all the Conservation Commission's stipulations, and went to them three times.

Atty. Prunier said the site was occupied by Hampshire Chemical, and must be developed very carefully. It has been cleaned up to meet the State standards. He stated that the vote was unanimous in favor for this request.

Atty. Prunier went over all the relevant special exception points of law. He stated that the proposed development will be retail stores. Atty. Prunier also went over the wetland points of law. He stated that they will not need to do a lot of digging, and there will not be any cellars. Atty. Prunier said that area "C" may not even be a wetland, but to be conservative, they identified it as one.

Jim Gove, Gove Environmental Services. Mr. Gove did the wetland delineation plan, and filled out the Dredge & Fill Application. Mr. Gove identified the areas of contamination on the site. He identified where the culvert will be redone, so that it will protect the river. He described the three different wetland areas. He described the flow of the aquifer, and said there will be no impact to the aquifer. He said they are working in other wetland buffers.

Discussion ensued between the Board and Mr. Gove.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

Barbara Pressley, 11 Orchard Avenue, Nashua. Ms. Pressley stated that she learned of this meeting just a couple days ago, so is relying on her memory, and doesn't have exact dates and times. She said her recollection is correct, believes this site has been discussed for the train station, and it had the least objections, and was therefore the favorite site. She stated that it is also her recollection that city staff requested of the Aldermen a major zoning change, allowing for this type of usage to take place.

Ms. Pressley said it was understood at that time that it was to accommodate the railroad station. She said she doesn't see it as part of the plan, in fact it is sort of interesting that there's been very little mention of that along the way, so she said she wasn't sure, if this site is approved, is the train station eliminated as a station at this time unless there is an alternate site at this time, but the public is aware that this 42 acres needed to be rezoned in order to put the rail station in, and now they got the rezoning in, but we have no rail station in.

Mr. Duffy asked if her question is regarding the rail station or the TIF that was created.

Ms. Presley stated that she was asking about the TIF and the rezoning. She said that with the rezoning, many of the issues that were brought up are no longer brought up by this Board, such as traffic, so the issues that would have been brought up, if they hadn't gone for the TIF, would be before you now. She said she doesn't know who's handling the traffic, but stated that a major, major development is scattered among the Boards, and there's no one Board that's dealing with the whole thing. She said she found it interesting that this whole project was facilitated because they went to get a TIF for the railroad station and we didn't get the railroad station.

Mr. Currier stated that his memory was that the very southerly parking lot for this site was going to be the place for the rail station, with a crossover, and the tracks would be on the easterly side. He stated that he didn't believe the whole site would be the railroad station, but certainly this part of the site would be.

Ms. Pressley said she has never seen these plans, and assumes there would be many of them, in fact, that is a good issue and thinks the public should be more involved as they get going, and the public purpose of the railroad station is a high priority for myself and others.

William Mosher, Main Dunstable Road. Mr. Mosher said his concern is similar to Ms. Pressley's. He said there was considerable changes planned on Spit Brook Road to accommodate the additional traffic for the railroad station. He said the project seems to be going ahead without it. He is anticipating a very well done plan, and the logical place is to have a rail station at the southern end of the property.

Mr. Duffy said the Community Development Department has in the past worked very hard to get the rail station to go in this location. He said there are a lot of Planning Board issues involved with this.

SPEAKING IN FAVOR - REBUTTAL:

Attorney Prunier said he needed a few minutes to address the innuendos that Ms. Pressley has brought up against his client. He said that she, as well as anybody, should know that she could have called Kathy Hersh, Steve Williams, she knows who to call about the railroad. Atty. Prunier said we should step back a couple years. This plan didn't come to you or come up about in the last six months. This plan has been going on for two years, maybe two and a half years at this point in time. The first thing my client did was to sit down with Nashua Planning Staff, Kathy Hersh and her staff, the NRPC and Steve Williams and his staff, and all the consultants, and there were many consultants, working for the City or the NRPC, regarding the railroad and there has been an awful lot of work done, there has been federal money that's been able to be obtained for this, we sat down with them, and for months, we worked on how we could incorporate the railroad building, the railroad station in this plan. For months, and we spent tens of thousands in engineering and architectural drawings, we still have those drawings, they won't do us any good, but we still have them. We spent that money because we were working with the City, and then it became time to put up, or it was over, and am not going to go over the reasons why the City couldn't go forward. The city came to us

as said that you've done everything that has been asked. You've met with us and have done everything you can do to try to make this work, so go ahead with your own plans and we're not going to be able to put the rail station in that area.

He stated that we didn't ask what their reasons were, we're sorry, and we went ahead with our plans. It was only after that that we went ahead with the zoning change through the Board of Aldermen, not through any variance, but through the Board of Aldermen in public hearings. He said we weren't using a train station to get the rezoning, it was done at that point in time, there was no train station, we went in and had the public hearings on that, and said that we're sorry we had to go through all that, but if you talk to Kathy Hersh, Steve Williams or the other people that were involved for the many months of trying to, everyone was trying to, to put the train station here, because it would have been a benefit to my client to have the train station there, and to bring people there in that area.

He stated for someone now, to give innuendos that we got a rezoning and didn't put the train station there, is outrageous, and is indignant that someone even brought that up. We did everything we possibly could, we have drawings, we have architectural, schematics, everything - it was through no fault of our own, and all we've got is a support from the Nashua Planning Staff to go ahead with our project for the City of Nashua's benefit.

Mr. Duffy asked the project's duration.

Atty. Prunier said as soon as they get their permits, they will be breaking ground. He said in the disturbance area, it will be about a year and a half. He said he wanted to make it clear, that we worked with the Planning Staff when we were incorporating the plan, that it is through no fault of my client that that train station is off the table at this site.

SPEAKING IN OPPOSITION OR WITH CONCERNS - REBUTTAL:

Barbara Pressley, 11 Orchard Avenue. Ms. Pressley stated that she is formally asking for a verbatim record of what was just made, she wants it in writing. She said she serves on the Mayor's Commuter Rail Advisory Committee, as does Mr. Mosher.

She said we have been asking at every meeting, if we could see the plans for this site. We have been told repeatedly as the Railroad Advisory Committee that we were not allowed to see them. These meetings that he is referencing are all closed to the public, as far as I know.

She said if she understands Atty. Prunier correctly, they meet in a room, there's no notice of this, it's not open to the public, so it appears as if this has been a private arrangement made by the City staff and this project. So much so, that the City, by Kathy Hersh, went before the Board of Alderman asking for a zoning change, she invited our Committee to go to speak in favor of it, because we would really be supporting a railroad station. So, it appears as if both of us have been misled.

Mr. Duffy said to see Mr. Falk for a record of the proceedings. He also asked if our considerations of looking at the wetland buffers should include a railroad station.

Ms. Pressley said this is part of the problem. This is part of the problem, is that these plans get scattered among the Boards, so some of the questions raised bring the issues to the forefront, so who will worry about the traffic for any site of this magnitude. She said it will be the Planning Board, because of the zoning change. She said if she offended Atty. Prunier, that she personally must defend herself, and if she had known that you were involved with doing this plan, a lot of us from the Railroad Committee would have been very pleased and honored to sit with you and how we could discuss this plan for the betterment of the City and the community. We have been asking Mrs. Hersh and Mr. Williams repeatedly. She said this site is one in which we have a lot of interest in, and said the problems coming out from this are really significant, and there may be many more issues besides this project.

She said that Gerry Prunier has been a friend of hers for many years, and had I known that he were involved with this I would have called him, and believe he would have called me also.

Discussion ensued among the Board members.

Ms. McHugh said she still has doubts of the abutters, and that the Conservation Commission looked at this application closely

enough. She said her concern is about Lowell, because they're downstream, and concerns her. She doesn't think it's been worked out fully.

MOTION by Mr. Duffy to grant the special exception on behalf of the applicant to fill a wetland and to work within the wetland for site redevelopment. He said it is listed in the Table of uses, Table 271-1, and 274-b. It should not create undue traffic or unduly impair pedestrian safety. The Planning Board and items discussed tonight are not the purview of this Board tonight, but they will be addressed in the future. The work in the wetland and in the 75-foot buffer area should not overload public water, drainage or sewer or other municipal systems, we have heard testimony to remediation and the infrastructure. The impact areas of Areas A, B and C have been worked out with the State's involvement. The special regulations have been worked out. It should not impair the integrity or be out of character with the neighborhood or be detrimental to health, morals or welfare of residents. Work in this area has been reviewed for runoff, drainage and stormwater management and sewer systems. The special conditions are that the applicant has agreed to all sixteen stipulations from the Conservation Commission.

SECONDED by Mr. Carlson.

Mr. Currier said the nine wetland special conditions are fulfilled by testimony.

Mr. Duffy said the conditions are agreed to as applicable.

MOTION GRANTED 4-1 (Ms. McHugh).

4. 45 Pine Hill Road Real Estate Development, LLC (Owner) NHCG, LLC (Applicant) 45 Pine Hill Road (Sheet E Lot 44) requesting use variance to allow charitable games of chance. R9 Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Claire McHugh
Robert Carlson
Rob Shaw - recused

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier said there has been wrestling, boxing, bingo, antique and craft shows at this location. There have been a multitude of uses at this location.

Atty. Prunier passed out some letters on behalf of the charities involved with this use. Atty. Prunier went over all the use variance points of law. He said that the charities and the City benefit greatly by the use proposed at this site. He said it is a very good re-use of the property. He said that no exterior changes will be made, except for some landscaping. He said that other zones allow this use as permitted.

Discussion ensued between the Board and the applicant.

Atty. Prunier said that NHCG is the organization that will be running this operation. He said that it will be open every day.

SPEAKING IN FAVOR:

Jim Rafferty, President, NHCG, 2266 Ocean Blvd, Rye, NH. Mr. Rafferty said that the operator schedules the games to start at 11 am, and the bigger tournaments start later in the day. There is a maximum of \$250 play-in, and 75% is kept by the operator. There are prizes throughout the day. Under state law, it is a max of \$250 per tournament. There could be 20 players per table, with first, second and third place prizes.

Mr. Rafferty said this is a brand new venture. He said that Sharkey's does this since the Governor signed the bill last year. He mentioned three other sites in the state that do this. This location will have 25 tables.

Mr. Rafferty said that the biggest one in the State is at Seabrook, and they have about 45 tables. Rockingham Park has about 35 tables. Hinsdale has a room with about 15 tables. Lakes Region has poker, too, which is at Belmont, which will have about 10 tables. He said Sharkeys has 18 tables, and the one at the Elks table has 16 tables on DW Hwy.

Mr. Rafferty said they are one of about 15 operators, all with Texas Hold-em, which is the game.

Mr. Rafferty said they anticipate 200-300 people a day on Saturday, with about 100 a day during the week. He said poker players don't drink that much, they are looking to win the games. He said the payout to the charities will be about \$1,000 to \$1,500 per day, and they have expenses to pay, which are significant. It won't be a significantly profitable venture. It depends on how many people come to the tournaments. Some of the games are "sit and go". Mr. Rafferty went over other operations of the games, and how they run.

Patricia Francis, 1 Redwood Circle. She said she represents one of the charities associated with NHGC. She said there is a growing number of services in the City, but not enough money for most budgets. She said it may not be for anyone, but it benefits local charities. Local charities benefit, and they need to keep their programs running. She said they rely on outside sources for funding. These things are very well regulated by the State, and are very concerned that the charities get their due. She said there are 36 organizations that will benefit by this use. She said this use is quiet, and will not be loud and obnoxious.

David Villiotti, Executive Director, Nashua Childrens Home, 125 Amherst Street. Mr. Villiotti described his operation. He is pleased with this opportunity that they will receive funds from this. They are a non-profit organization. He said the opportunity to take in \$10,000 from this is great for their operation. He said this is an attractive use that is endorsed by the Governor and the legislature. They rely on funds to make their operation run more smoothly.

Richard Maynard, Professional Engineer, 39 East Pearl Street. Mr. Maynard said this has always run as a function hall. He said it will be half the level of activity that St. Stans had, which will be half the infrastructure demand. He said they will upgrade the landscaping and interior renovations. He said the traffic will be spread out over the day, not all coming and leaving at the same time. He said the traffic will be minimal, because it will be spread out, and will be substantially less than before. All parking will be on-site, none on Pine Hill Avenue, but if there's a problem, they can expand their parking lot.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

Jim Myles, 19 High Pine Avenue. Mr. Myles said the parking will not work, because people will park on the street. Emergency vehicles have a hard time getting through this street. He said employees will take up about 25 spaces. He said he isn't against charity, but 65% will go into the operators pocket, it's not all for charity. There are a lot of children at play, and this is a residential neighborhood. He said Seabrook and Hinsdale are isolated locations, away from residential areas. He said young children are sleeping at 1 am. They may also need a sign variance, because the existing sign is small, about 3'x4'.

Kristin Sweeney, 66 Pine Hill Road. Ms. Sweeney said she is shocked by this, the substantial change of use is a big factor. Traffic on the street will increase. The impact on property values is a concern, too.

Glenn Rosenberg, 16 High Pine Avenue. Mr. Rosenberg is vehemently opposed to the proposed use. He said the people involved are all involved with gaming, and as consultants, they are interested in making money. He is concerned about the social stigma associated with gambling. He said this is a casino. It will draw people from all over to play these games. He is concerned about the impact to the residential area.

Sue Bates, 12 Alice Drive. Ms. Bates said she just heard about the project. She said it is operating during school hours, and has concerns about on-street parking. She said it will have a restaurant and liquor, and will draw a lot of people to the building.

Kathy Myles, 19 High Pine Avenue. Ms. Myles said you have to wait a lot for traffic to pass, especially when they used to have antique shows. There is a lot of cars on the road, and fire trucks cannot pass. She said she is concerned about traffic.

Barbara Pressley, 11 Orchard Avenue. Ms. Pressley said this is a huge change for the community. The fact that the State has allowed these uses, they may change the laws at any time. This type of charity has been in town before, at the Holiday Inn, but only occasionally. Most of the locations where these take place have another major function, such as horse racing. She said there should be much more public awareness.

Ald. Mark Cookson, 18 Inca Drive. Mr. Cookson said his concerns have all been addressed by his constituents. He said there should be more public input and awareness on this issue. He said he is concerned that this would go in a residential zone. He said there are other zones where this may be better suited for this as opposed to a residential area, which will drastically change. He said that traffic will be an issue, and even Charron Avenue gets backed up frequently. He said there are some very mature trees on the lot, and they would be removed, to new seedlings, which is not in character with the neighborhood. He had concerns that none of the charities would benefit Ward 1.

SPEAKING IN FAVOR - REBUTTAL:

Atty. Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier said all the people talking tonight are not abutters. None of the direct abutters showed up, and they got noticed. He said they are trying to make use of an existing building.

He said there will be 25 tables, and the percentage given to charities is by State Statute, 35% go to the charities. He said the charities are city-wide, not by Ward. He said they don't want to take down more trees than are necessary, as it is cheaper to leave what's there.

Atty. Prunier said they don't have a problem with people from High Pine Avenue coming here, but thinks its important that the people from Pine Hill Avenue are not here.

The building, location, size, use is consistent. The operator gets a profit, and the charities get something. It is sharing, and the 65% pays for all the other expenses.

Mr. Currier asked about the sign, and Atty. Prunier said the existing sign size is sufficient to meet their needs.

Ms. McHugh asked about the 35% charity includes the operators fees and salaries.

Atty. Prunier said it comes off the top goes to the charities.

Atty. Prunier said all the charities, and all people involved with them that are in favor with this request.

SPEAKING IN OPPOSITION OR WITH CONCERNS - REBUTTAL:

Jim Myles, 19 High Pine Avenue. Mr. Myles said maybe some of the abutters may be sick, elderly, or out of town. He said that the people involved with this are from out of town. He said this is a residential area, and it does not need a gambling casino in our neighborhood.

Discussion ensued by the Board members relative to the management of the operation, traffic, emergency vehicle access, and the appropriateness of this use at this location.

MOTION by Ms. McHugh relative to the applicant for charitable games of chance, the variance would be contrary to the public interest. The benefits of the entertainment that it would provide some people and the charitable donations, compared that to the possible addiction that could come from it, and all the social ills that come from addictions, for example, writing bad checks, bankruptcy, family breakdowns, household foreclosures, heartaches, discouragement, demoralization, these people could be spending more than they are earning, and being completely out of control.

She believes the special conditions do not exist so that literal enforcement of the ordinance results in unnecessary hardship. There are two function halls, just one block away from them, or one lot away from them. The ordinance as applied does not interfere with the owners reasonable use. The function hall is not unique, on the contrary, it would be unreasonable to permit this in a zone that is for residences, and this diagram or layout does not even show the houses they would be evaporated on the south side, but that's all intensely.

She said there is a fair and substantial relationship between the general purposes of the ordinances and the specific restriction on the property. The purpose of the ordinance and the City's Master Plan is to protect the character of the existing neighborhood. People have not been used to, and probably are unaware of the proposed use. They are used to antique shows, cub-scout meeting, so gambling does not compare to the previous uses of that function hall. She said there are no residences that she knows of that would appreciate a bar and gambling establishment across the street from them. She said the variance would injure the public and private rights of

others as the community deals with increased police calls, welfare, foreclosure and bankruptcies, and thinks that there would be possible difficulty with fire trucks, ambulances, and school buses getting through.

She said the variance is inconsistent with the spirit of the ordinance, which is intended to keep neighborhoods free of people that may be attracted by this activity that would be a different sort than the residences. She said she is concerned about alcohol and increased drugs. She said substantial justice would be served to deny or avoid social problems, and Ward 1 seems to carry all the burden, and nothing is coming back to them. The value of these properties will plummet, all the other function halls that have games of chance are on DW Hwy, Sharkeys in Manchester, the Mill building and at the racing establishments, they are not residential, it is unreasonable to put this use in a residential area, so I move to deny this application for this purpose.

SECONDED by Mr. Carlson.

Mr. Currier asked about the lengthy motion, and had concerns that some of the comments made were not germane to the points of law.

Mr. Currier made a revised motion to Ms. McHugh's motion, to deny, as it is contrary to the public interest, and literal enforcement of the zoning law does not result in undue hardship on this property, because its in a residential zone, a fair and substantial relationship exists between the zoning laws and maintaining the current use. By granting this use variance, the Board believes that fire and public services will be challenged, and that the variance is inconsistent with the spirit and intent of the ordinance due to the increased activity, and the Board is persuaded that residential values will be negatively impacted by this use variance.

Ms. McHugh agreed with Mr. Currier's revised Motion.

Ms. McHugh withdrew her motion, and said that Mr. Currier's revised motion captured the essence of what she was trying to say.

Mr. Duffy thought the Board should table the request to further go over the case information and points of law.

SECONDED revised Motion by Mr. Carlson.

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

MOTION by Mr. Duffy to table the request to the end of the next regularly scheduled meeting to review and revisit testimony and notes to see if there is a zoning restriction that would indicate an unreasonable restriction considering the unique setting of the property in its environment, and no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on this property. He stated that he'd like to revisit any specific restrictions on the property and the spirit and intent.

SECONDED by Mr. Currier.

MOTION FAILS 2-2 (Ms. McHugh and Mr. Carlson)

The case for "L" Fowell Avenue was tabled from the previous meeting:

Michael R. & Sara G. Boucher (Owners) "L" Fowell Avenue (Sheet 108 Lot 48) requesting the following variances: 1) lot area, 7,500 square feet required - 5,622 square feet proposed, and 2) lot width, 75 feet required - 70.97 feet proposed, both requests to transfer common ownership between two contiguous non-conforming lots. RA Zone.

MOTION by Mr. Currier to take this request off the table.

SECONDED by Ms. McHugh

MOTION CARRIED UNANIMOUSLY 5-0

Voting on this Case:

Sean Duffy
Jack Currier
Bob Carlson
Claire McHugh
Rob Shaw

Mr. Currier did not believe this case met the hardship test. He stated that it is a long-standing single family home, with the property bisected by a driveway going to the garage.

Mr. Currier stated that there would be a negative impact on the surrounding property values, and by subdividing the property, it removes the only parking space that is available, and this would have an impact on abutters, and by adding another lot and home would magnify the problems.

Ms. McHugh supports Mr. Curriers comments.

Mr. Carlson also agreed.

Mr. Shaw also had similar conclusions, and is not favorable.

MOTION by Mr. Currier on behalf of the owners to deny the variance requests, as the variance is needed to enable the applicants proposed use of the property, however, the Board finds that the applicant already has reasonable use of the property without a variance, given that the house and lot in its current configuration has been long-standing in this condition as evidenced by the current driveway and garage bisecting the property. He stated that the Board finds that there will be a negative impact on property values, and parking on the street is challenged, and by creating another driveway to eliminate the very little on-street parking that's currently permissible. He stated that the public interest and the spirit and intent are related, in that Fowell Avenue in this location is very narrow and does not permit adequate passage of vehicles, especially with another home and driveway on a substandard sized lot, will magnify the conditions. The Board finds that the proposed two variances are not in the public interest.

SECONDED by Mr. Shaw.

Mr. Duffy thought the square footage proposed was too small.

MOTION CARRIED UNANIMOUSLY 5-0.

MINUTES:

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

Ms. McHugh had some comments, and will identify them and notify the Board for staff to update. It was about the request on 103 Temple Street.

No Second.

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 11:40 p.m.

Jack Currier
Acting Clerk

CF
Taped Hearing