

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
June 26, 2007

A public hearing of the Zoning Board of Adjustment was held on Tuesday, June 26, 2007 at 6:30 PM in the Auditorium at City Hall.

Jack Currier, Vice Chair, conducted the meeting.

Members present were: Jack Currier, Vice Chair  
Rob Shaw  
Claire McHugh  
Bob Carlson (7:30 p.m.)  
Carter Falk, Deputy Planning Manager/Zoning

Mr. Currier explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Currier explained how testimony would 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. Currier also explained procedures involving the timing light.

- 1. City of Nashua (Owner) 16 Riverside Street (Sheet E Lot 2191) (Mine Falls Park) requesting special exception to work within the 75-foot prime wetland buffer of the Nashua River to restore the Mine Falls Park Dam Gatehouse, including installing a handicap ramp and the correction of sinkholes. PI & R9 Zones.**

Voting on this Case:

Jack Currier  
Rob Shaw  
Claire McHugh

Amy Prouty Gill, Engineer, City of Nashua Department of Public Works. Ms. Gill described the location of the Gatehouse, and gave a history of its past use. They received a grant from HUD to do some building renovation, and to repair some sinkholes in front of the gatehouse. She said that a portion of land near the gatehouse had water running underneath it, but was filled to allow for a roadway to access the site.

Ms. Gill said the Conservation Commission has approved the project. Silt fences will be used during construction. She mentioned that when this project is complete, it will allow for the public to enter the building and see the past history of the building.

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

June 26, 2007

Page 2

Ms. Gill went over all the special exception points of law, and also went over the wetland buffer points of law. She said the building will be improved, as well as the buffer area. She said the hydraulic consumption will remain the same.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

**MOTION** by Mr. Shaw to grant the special exception. Mr. Shaw stated that the special exception is listed in the Table of Uses, Section 16-271, Table 271-1. By testimony and by application and the discussion, there is no likely impact on traffic congestion or any impact on pedestrian safety, and actually there is a slight improvement in the pedestrian safety because of the fact that the sinkholes will be eliminated and there will be the handicap ramp installed.

Mr. Shaw stated that there will be no overloading of public water, drainage or sewer, or any other municipal systems. He stated that the special regulations are fulfilled, and by testimony the nine wetland conditions are satisfied. He stated that there will be no impact on the integrity and character and will have no negative impact on other aspects of health, morals or welfare of residents.

Mr. Shaw stated that the special conditions as defined in the three stipulations in the Conservation Commission letter dated June 10<sup>th</sup>, 2007 also have been agreed to, and will be part of this motion.

**SECONDED** by Ms. McHugh.

**MOTION APPROVED UNANIMOUSLY 3-0.**

2. Pennichuck Water Works, Inc. (Owner) 39 Orchard Avenue (Sheet 1 Lot 60) requesting special exception to demolish an existing water tank, and construct a new water tank upon an existing utility lot. R9 Zone.

[POSTPONED TO THE JULY 24, 2007 MEETING]

3. Alex & Maria Ortiz (Owners) 3 Old Coach Road (Sheet C Lot 983) requesting special exception for major home occupation for an in-home day care for up to 6 children. R9 Zone.

Voting on this Case:

Jack Currier  
Rob Shaw  
Claire McHugh

Maria Ortiz, 3 Old Coach Road. Ms. Ortiz stated that she wants to open a private day care in her home. She went over all the points of law in her application.

She mentioned that she has a fenced-in back yard and described where the children would play, and where they would be located inside the house. She said she already has her license from the State, and this is her last step in the process. She said she has talked to all her neighbors about this.

Mr. Shaw described the major home occupation points of law, and Ms. Ortiz said she meets all the requirements. She said she'll meet all the State requirements as well.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

**MOTION** by Mr. Shaw to grant the special exception. He said it is listed in the Table of Uses, Section 16-67 (b) and 16-92 (b). He said per testimony and discussion, there is no significant traffic congestion or pedestrian safety that will be impacted by the day-care.

Mr. Shaw stated that there is no significant impact on public water, drainage or sewer or other municipal systems. He stated that the special regulations are fulfilled, per testimony, both the criteria from the major home occupation and the day-care.

Mr. Shaw said it will not be out of character with the neighborhood, and there is no obvious change that this activity will be occurring.

**SECONDED** by Ms. McHugh.

Mr. Currier said he'd like to add a stipulation that it will have a maximum of six children, and the hours will be 7:00 a.m. to 5:30 p.m., Monday through Friday.

Mr. Shaw said he accepts the revision.

**MOTION CARRIED UNANIMOUSLY 3-0.**

4. Jeffrey V. Currier (Owner) 38 Pine Hill Road (Sheet E Lot 247) requesting variance to exceed maximum accessory use area, 40% permitted, 85% existing, 110% proposed - to install an above-ground pool. RC Zone.

Voting on this Case:

Jack Currier

Rob Shaw

Claire McHugh

Jeff Currier, 38 Pine Hill Road. Mr. Currier said he's requesting this approval to install a swimming pool. With the Board's assistance, he went over the variance points of law to the Board's satisfaction.

Mr. Shaw stated that the garage is detached, and is large, which is the main reason why the owner is asking for this variance.

Mr. Falk stated that if the garage were attached, it wouldn't count against the accessory structure rule.

Mr. Jeffrey Currier said the garage holds his bicycles and lawn and garden tools and equipment, and his land use application was denied.

Mr. Jack Currier said the pool wouldn't be seen very well by neighbors.

**SPEAKING IN FAVOR:**

Jennifer Currier, 38 Pine Hill Road. Mrs. Currier said they have four children, and one has disabilities. The pool will be easier for them, as they can contain the child easier.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

**MOTION** by Mr. Shaw to grant the variance. Mr. Shaw indicated that the variance is needed to enable the applicants proposed use of the property, which is the installation of an above-ground pool, and by the nature of the fact that there is a large garage, but free standing, and that is part of the significant

contribution to the accessory use area calculation, which forces this variance for the pool. Mr. Shaw said due to the nature of this issue, there is no way to overcome this due to the freestanding nature of the large garage.

Mr. Shaw said it is within the spirit and intent of the ordinance, in that it will allow the property in a reasonable manner. By testimony and by all indications, there will be no negative impact on property values, it is not contrary to the public interest, and will be beneficial by testimony, and substantial justice is served by allowing the applicant this use of their property.

**SECONDED** by Ms. McHugh.

**MOTION CARRIED UNANIMOUSLY 3-0.**

5. **Scot A. Aurenz (Owner) 7 Thompson Road (Sheet 120 Lot 1) requesting variance to encroach an additional 9'-9" into the 25 foot required front yard setback, 20 feet existing, to construct a 9'-9" x 10'-10" deck with front steps. RA Zone.**

Voting on this Case:

Jack Currier

Rob Shaw

Claire McHugh

Mr. Scot Aurenz, 7 Thompson Road. Mr. Aurenz described his property, and that they have a retaining wall that has cracked and is in disrepair. Also, some of the roots have gone into the wall. He believes the contractor has designed a wall and deck to not only repair the work, but to make it look good as well. The old wall had to be removed.

Mr. Aurenz said the front of the house is already encroaching into the setback, and the previous owners received a variance many years ago for the house to encroach. Mr. Aurenz went over all the variance points of law.

**SPEAKING IN FAVOR:**

Andy Jalbert, ANC Construction, 250 Wallis Road, Bedford NH. Mr. Jalbert said the wall is a frost wall, and without this wall, there is no frost protection. The old bushes and shrubs were destroying the wall. He mentioned that the old stairs used to go directly to the street, and they were concerned about safety.

He stated that the new stairs go to a new 2-car driveway, and the stairs lead to the driveway, which is much safer.

He stated that the work began before obtaining a building permit, but they needed to start the work for safety purposes.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

**MOTION** by Mr. Shaw to grant the area variance. Mr. Shaw stated that the variance is required to enable the applicants proposed use of the property, and there are a number of special conditions to this property; the front of the house already encroaches into the front 25-foot setback, and it will actually improve the amount of encroachment from the previously existing stone/concrete stairs had prior. Mr. Shaw said it is within the spirit and intent of the ordinance, there is no testimony that there will be any negative impact on property values of surrounding parcels, and by testimony there will be some improvement to property values with the safety improvement with the steps going into the driveway. Mr. Shaw said it is not contrary to the public interest, and substantial justice is served to the applicant by the completion of the project.

**SECONDED** by Mr. Currier.

**MOTION CARRIED UNANIMOUSLY 3-0.**

6. Joseph Aceto (Owner) "L" Kinsley Street (Sheet 89 Lot 93) requesting the following: 1) a determination whether a material change of circumstances affecting the merits of the application has occurred, or that the application is for a use that materially differs in nature and degree from the prior application for a variance denied by the ZBA in February 1998, and, if so, requesting the following variances: 2) minimum lot area, 7,500 sq.ft required, 7,100 sq.ft proposed, and 3) minimum lot width, 75 feet required, 71 feet proposed - to construct a single-family home on a nonconforming lot of record. RA Zone.

Voting on this Case:

Jack Currier

Rob Shaw

Claire McHugh

Bob Carlson

Cheryl & Joseph Aceto, 3 Euclid Avenue. Mrs. Aceto said in 1998, there were single family homes, and there has been substantial growth, including the Audi dealership, 192 and 189 Kinsley Street developments, the St. Joseph hospital 60,000 square foot expansion with parking garage, the rail trail, and some new single-family homes at the exit 5 ramp. She said there is substantial expansion, development and redevelopment in the immediate area.

The Board discussed the Fisher v. Dover criteria with respect to this application. Discussion included the history of this site, and what has been developed in the area. The Board discussed whether the neighborhood has significantly changed, or whether it's just normal redevelopment and infill. The Board decided that overall, in the immediate area, there has been enough development and redevelopment to determine that the neighborhood has significantly changed.

Mrs. Aceto stated that she believed that with all the changes in the neighborhood, and that the previous owner sold the lot separately, that they meet the Fisher v. Dover standards.

Mr. Carlson said there have been substantial commercial changes in the neighborhood.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

**MOTION** by Mr. Carlson to rehear the case (Fisher v. Dover issue).

**SECONDED** by Ms. McHugh.

**MOTION CARRIED 3-1 (Mr. Currier).**

Mrs. Cheryl Aceto, 3 Euclid Avenue. Mrs. Aceto stated that they wish to construct a 1,540 sq.ft single family home, with a two-car garage that is built into the dwelling, to take up less land space. She said it is a nonconforming lot, it is 7,100 sq.ft, and 7,500 sq.ft is required.

Mrs. Aceto said the new house will blend in nicely with the street, and will not add any undue stress to the utility systems. She went over the points of law, and further added that it won't be a problem with adding traffic stress to the street. She said there is very clear visibility of the street so that cars will see the lot.

Mrs. Aceto said the design of the home in the package is the one that they propose to build, and the garage is incorporated into the house. It will be a two-story home, with two bedrooms and one bathroom on the second floor. It will absolutely be a single-family home, no multi-family. She said they park some cars in the lot now because a lot of drivers cut through the lot.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

Discussion ensued by the Board members.

**MOTION** by Ms. McHugh to grant the area variance. She stated that the applicants have proven that the variance is needed for the request, it is within the spirit and intent of the ordinance; it will not adversely impact the property values of surrounding parcels. It is not contrary to the public interest, and substantial justice is served.

Ms. McHugh stated that the applicant has agreed to put a fence in the back and on at least one side of the property, and that they would pay attention to the request of being able to make a parking lot that makes for an easy entry and exit.

**SECONDED** by Mr. Carlson.

Mr. Shaw stated that the request is actually on "L" Kinsley Street.

Mr. Currier said they should add a clarification that the house design is as provided in the application.

**MOTION CARRIED UNANIMOUSLY 4-0.**

7. **Mary Ann Picard (Owner) 381 Main Street (Sheet 109 Lot 7) requesting use variance to use a portion of an existing office building for a feline veterinary care service. RA Zone.**

Voting on this Case:

Jack Currier

Rob Shaw

Claire McHugh

Bob Carlson

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier said that he reserves the right to have this case heard by a full Board of five members. He also said he'd like to reference the previous cases for hardship, as enclosed in the package.

Atty. Prunier said the building is about 6,000 square feet, and has 14 parking spaces, and is attached to another building in the rear. He said that substantial improvements have been made to the building. He said the veterinarian use is a professional use. He said this use is for cats only, not dogs or kennels, everything is contained within the building office. Cats would stay overnight if they need an operation. There will be no more than 20 cats, all in soundproof rooms.

Atty. Prunier said there will be no impact on the neighbors, and the use will be quiet. He said that veterinarians are professionals, and should fall under the earlier use variance.

Atty. Prunier said although the application states that the cats would not stay overnight, actually, they could. No more than 20 cats, including boarding.

Atty. Prunier said that when the office was used by the real estate office, there was a lot more traffic, the proposed use will have less traffic. Total traffic will be less than what the real estate office had.

Dr. Christine Griffith, DVM, Mason, NH. Dr. Griffith said there will not be a veterinarian on the premises at all times, they will use the Animal Emergency Hospital at exit 5 as their emergency backup. They will be used after 5:00 p.m. and later, and on weekends. While the office is open, she said she will be there.

Dr. Griffith said that in terms of animal waste, it will be disposed in the dumpster, and the medical waste will be taken by a medical waste company. Euthanasia's will be taken care of a proper facility.

Dr. Griffith said she is qualified to work on non-domesticated felines, as long as they are allowed by the ordinance. She said she has a State license and has all other required permits and approvals.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

**MOTION** by Mr. Shaw to grant the use variance. Mr. Shaw stated that the zoning restriction as applied does interfere with the landowners reasonable use of the property, in this case it's a similar but different use in that there are previously was an approval for a professional office, and that although veterinary care is a noble profession, it is a different type of usage, by testimony, all proper considerations have been taken into account for the use of this facility by meeting all necessary code issues, and there is no evidence that the public or private rights of others will be injured by this use.

Mr. Shaw stated that the use is within the spirit and intent of the ordinance to allow this use, there will be no change in the exterior to the property, and there will be no negative impact to property values, and it is within the public interest, as the use will provide a needed service by many residents of the city, and substantial justice is served.

**SECONDED** by Mr. Carlson.

**MOTION CARRIED UNANIMOUSLY, 4-0.**

8. JP Morgan Chase Bank NA (Owner) Sisyphus Realty, LLC (Applicant) 87 Chestnut Street (Sheet 84 Lot 118) requesting the following: 1) use variance to use the garage portion of an existing single-family structure for a painting contractor business, and 2) area variance for minimum lot area, 4,788 sq.ft existing, 6,970 sq.ft required - to convert the single-family dwelling into a two-family dwelling. RC Zone.

Voting on this Case:

Jack Currier

Rob Shaw

Claire McHugh

Bob Carlson

Michael Noonan, along with three other Noonan Brothers, make up Sisyphus Realty, LLC, which owns the property. Mr. Noonan said the property is an eyesore, with the idea of renovating it and making a useful property. He said it is known as a single-family home, and it used to have a bus parts company in the garage area. He said the prior owner tried to make it a two-family, but never completed it.

Mr. Noonan said they want to use the residential portion of the structure as a two-family, and use the garage part as a painting contractor business. He said that many other structures in the area are multi-unit rental properties.

Mr. Noonan said the painting company has no real need for office space, except for a small office area. They intend to store ladders, scaffolds, and other supplies. Customers will not come to the property; the work will be done at the customer's site. There will be no retail operation at the building.

He said the roof is shedding shingles onto an abutting property, and they will replace the roof and upgrade the building to code. He said traffic coming to the building will be minor, and the business will not be used at night. He said the parking lot has ten spaces that are lined, but said that more likely eight spaces are reasonable, and maybe only five or six spaces are needed, as no customers will be coming to the site. He said the public will be greatly pleased with the renovations to the property, as well as the tax base.

He said the bus parts company used the double doors, and the first floor door will be turned into a single door.

Discussion about the site and the proposed business ensued, including the business operations, cleaning of painting materials, deliveries, and the prior use of the bus parts company. He said it is about 900 square feet per floor.

Mr. Falk said the City has no record of any prior variances, most likely the non-residential uses were there for many decades, and is probably grandfathered. He said it is an RC zone, which allows single family and multi-family. He said they

are short on the land area, hence the variance for the land area. He said there is also no record of previous variances for the two units. He mentioned the previous uses, some of which had building permits.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

Glenn Lyon, 31-33 Kinsley Street. Mr. Lyon identified the location of his house. Mr. Lyon said the building was once a carriage shed to his property. He said that the ad for the single family structure may be incorrect, as he's always known it to be non-residential.

He said it's been unoccupied for many years, and he's not totally against the project, and would like to see it renovated at the least. He said he'd like to see the neighborhood enhanced, and is concerned about the structural integrity of the building. He said he didn't think the building is big enough for a two-family, as long as it's done correct, and would rather see a single-family home. He said he's not opposed to the painting company.

Charles Boilard, 35 Kinsley Street. (Letter read into the record. Mr. Boilard's concerns are that he's against changing the building to a two-family, and at no time was it a single family. Safety is a concern to him, and it's in disrepair. He stated that he's against absentee landlords, and it is a problem in the inner city. However, he stated that he's not against the painting company.

Donna Blute, 6 Buck Street. Ms. Blute said she's right next to the proposed building. She said there's no buffer to his building, and she would look directly into their windows. She said there were no privacy issues with the bus company, as they left at 5:00 p.m. She is concerned about her privacy with two units right there. Ms. Blute said she's concerned that there's no buffer there. She is grateful that they will repair the roof.

**SPEAKING IN FAVOR - REBUTTAL:**

Michael Noonan. He was not aware of the privacy issues that Ms. Blute raised. He's not sure what they can do, but they are happy to work with her to make it more private for her. He said the roof will be repaired.

**SPEAKING IN OPPOSITION OR WITH CONCERNS - REBUTTAL:**

Glenn Lyon, 31-33 Kinsley Street. Mr. Lyon said that the property was only marketed as a commercial use, not residential, and the property was used for a carriage shed.

Discussion ensued by the Board members about the proposed use. The general discussion was that the Board was not against the painting company, but were not in favor of the two-family use.

Mr. Falk stated that even though the ad was for going from a single-family to a two-family, whether there was one unit there in the past really doesn't matter, as they correctly applied for a two-family with respect to the land area.

**MOTION** by Mr. Shaw to grant approval for the use variance. Mr. Shaw stated that it is for the garage portion of the structure, and the property has been used for other commercial uses, and it will allow the owner to continue use of the property as it previously has been. He stated by testimony, the usage will not be one of retail, or have a significant amount of traffic, and there will not be a significant amount of paint, just ladders. He said traffic will be very limited.

Mr. Shaw said the proposed use is within the spirit and intent of the ordinance, per testimony, there will be no impact to property values, and the property will be improved with repairs. He said it is not contrary to the public interest, and substantial justice will be served with the usage of this facility.

**SECONDED** by Mr. Currier.

**MOTION APPROVED 3-1 (Ms. McHugh).**

**MOTION** by Mr. Currier to deny the area variance. Mr. Currier stated that this property has been on record for commercial for many years, and by approving this variance, will bring the property into further nonconformity with the required land area, and while some immediately abutting properties might be just as nonconforming, right now as the structure is approved by having a single-family dwelling with a business on the side is a reasonable use.

Mr. Currier stated it is within the spirit and intent of the ordinance and by having a single-family home there, versus a two-family home will not adversely affect the property values of

surrounding parcels. He said he doesn't believe a single-family would be contrary to the public interest, and substantial justice is served.

**SECONDED** by Mr. Carlson.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**REHEARING REQUESTS:**

1. **Claire Howorth - re: 2 East Spit Brook Road - Rehearing Request relative to special exception that was approved for Hampshire Chemical Corporation on May 8, 2007.**

The Board discussed the decision, and the rehearing request. The Board believed that the rehearing request tried to tie in the proposed rail station, which was not what the special exception entailed.

Ms. McHugh believes that the case had regional impact, but this request did not address the special exception. She said she is still concerned about the contamination issues.

**MOTION** by Mr. Carlson to deny the Rehearing Request. He stated that the Board did not believe there was any procedural error, including improper notice, denying someone the right to be heard, as many people were heard. Also, the Board did not fail to completely address each of the points of law required for the special exception and/or variance. Also, the Board believed that there was no new information not presented or available to the Board at the original public hearing, and the Board did not see any evidence that would cause them to make a different decision.

**SECONDED** by Mr. Shaw.

**MOTION APPROVED UNANIMOUSLY 4-0.**

2. **Estate of Francis Alling - 15 Overhill Avenue & 16 Metropolitan Avenue - Rehearing Request relative to denial of area variances denied on April 24, 2007.**

The Board discussed the rehearing request in detail. Mr. Shaw stated that the Board should determine whether the request was submitted in a timely manner, which is 30 days. The request was postmarked on the 30<sup>th</sup> day, and not received until the 35<sup>th</sup> day.

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

June 26, 2007

Page 15

The Board believed the applicant met the intent and criteria, as even the Post Office and the IRS takes items by postmarked dates, and believes they should err on the side of caution and consider the rehearing request.

**MOTION** by Mr. Shaw to deny the rehearing request. He stated that the Board did not believe there was any procedural error, including improper notice, denying someone the right to be heard, as all criteria were looked at. Also, the Board did not fail to completely address each of the points of law required for the special exception and/or variance, as all points of law were addressed, and no evidence was presented that it was illegal. Also, the Board believed that there was no new information not presented or available to the Board at the original public hearing, and the Board did not see any evidence that would cause them to make a different decision.

**SECONDED** by Ms. McHugh.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**MINUTES:**

None.

**REGIONAL IMPACT:**

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

**ADJOURNMENT:**

Mr. Currier called the meeting closed at 10:08 p.m.

Jack Currier  
Acting Clerk

CF  
Taped Hearing