

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

A public hearing of the Zoning Board of Adjustment was held on Tuesday, July 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
Claire McHugh
Bob Carlson (6:50 p.m.)
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. Carol A. Farland (Owner) 26 Williams Street (Sheet 20 Lot 2) requesting variance to exceed maximum accessory use area, 40% allowed, 42% requested - to construct a 6'x10' shed. RB Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Claire McHugh

Carol Farland, 26 Williams Street. Ms. Williams said she wants to install the shed to keep her lawn and garden tools in it. She said she checked with her abutters, and none of them had any objections. She went over the variance points of law. She said the shed will be on the other side of the white fence in her rear yard, and there is some land there that is her property. She said the shed will be well within her property boundaries.

SPEAKING IN FAVOR:

Letter read from Mr. and Mrs. Asselin, 95½ Bowers Street.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No One.

MOTION by Mr. Currier to grant the area variance. Mr. Currier stated that the request is needed to enable the applicants proposed use of the property, given the special conditions of the property, per testimony, it is a corner lot and there currently isn't space available to maintain the garden tools, which is the main purpose for the shed.

Mr. Currier stated that the request is within the spirit and intent of the ordinance, he stated that it would not negatively devalue other property values, as the lot will be further cleaned up, it is not contrary to the public interest, and substantial justice is served to the applicant.

SECONDED by Ms. McHugh.

MOTION APPROVED UNANIMOUSLY 3-0.

2. Gary V. & Pamela D. Pedrin (Owners) 6 Jolori Lane (Sheet C Lot 1333) requesting variance to encroach 6 feet into the 30 foot rear yard setback to remove an existing 12'x16' deck (for which variance was granted in May 1986) and replace with a same sized one-story addition with deck above. R9 Zone.

Voting on this Case:

Jack Currier
Sean Duffy
Claire McHugh
Bob Carlson

Gary Pedrin, 6 Jolori Lane. Mr. Pedrin stated that in 1986, he asked for a variance to encroach into the rear yard, and it was granted. He said the hardship was identified, and this addition will go exactly where the deck was. He said the main purpose of this request is to have additional living space for his elderly mother. He went over the points of law.

He said his house is located at the highest elevation on Jolori Lane, and the existing deck is ready to collapse. The proposed plan is to create the living space for his mom, and to put the deck above the room. He said there will be no blasting to put in the addition. He said the footprint is the same size as the deck, which is 12' x 16'. The outside of the foundation will be the same as the deck. The deck will be on top of the addition, and the house is a split-level home. It will have no plumbing, and no kitchen in the addition room. The deck will be open, with no roof.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No One.

MOTION by Mr. Duffy to grant the area variance. Mr. Duffy stated that the variance is needed to enable the applicants proposed use of the property, as the facts of this case are similar to the facts of this case approved in 1986, so the variance continues to go with the land. The applicants benefit cannot be achieved by some other method reasonably feasible other than the area variance, as the request is a reasonable incursion of a 12'x16' addition.

Mr. Duffy stated that the request is within the spirit and intent of the ordinance, as it is a reasonable construction to change an accessory use into living space.

Mr. Duffy stated that the request should not affect property values per testimony, and is not contrary to the public interest, and substantial justice is served for reasonable development rights.

Mr. Duffy stated that the special conditions are that the applicant is very aware that the foundation is not to exceed 12' x 16', and that the use of the deck above is for an open deck with living space below.

SECONDED by Mr. Carlson.

MOTION CARRIED UNANIMOUSLY 4-0.

3. **Forecast Nashua Ltd Partnership c/o Staples, Inc. (Owner) 252 Daniel Webster Highway (Sheet A Lot 212) requesting variance to allow a single-lane drive through stacking lane distance of 60 feet, where 160 feet is required. HB Zone.**

Voting on this Case:

Jack Currier

Sean Duffy

Claire McHugh

Bob Carlson

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that the proposal is to install a drive-thru window for orders. He mentioned where the window and drive-thru would be located. He stated that this is a new concept in the office supply business. It will be a good way for small orders, and it could be ready when they come to pick it up. It will be, if approved, the first one in the country.

Atty. Prunier said it is designed for the customer who has a shopping bag full of items, it is not for large items like a computer chair. It is another way to serve the customer.

Atty. Prunier said drive-thru's are used mainly for fast food restaurants and banks, but this is a new idea. The Zoning Ordinance requires 160 feet for a drive thru, but they believe the 60 foot distance would be sufficient, as a maximum of three to five cars per hour would be good. He stated that the ordinance allows drive-thru's.

Atty. Prunier said they would be losing fifteen parking spaces, but they are adding green space to the project. He said that 88 parking spaces are required under the ordinance, and the site would have 109. All other dimensional criteria under the ordinance are met.

Atty. Prunier said this is a reasonable use, and is a service that the customers will appreciate and use. Atty. Prunier went over the points of law.

Mr. Duffy asked how the 60 feet is measured, and asked how the use meets the purpose of the ordinance, as it doesn't address this type of use.

Atty. Prunier said this use will exclusively be for office products, not for fast food uses.

Mr. Jim Petropulos, Hayner/Swanson, Inc. Mr. Petropulos identified the location of the proposed drive-thru on the map. He pointed out how the stacking lane distance is measured. He said the drive-thru window must be located at the proposed portion of the building due to how the store is laid out, as all the cashiers are located at the front of the store.

Mr. Petropulos stated because the window is at this location, it affects the length of the stacking space. He pointed out where vehicles access the site driving north on Daniel Webster Highway, and they go directly into the parking lot. He said with proper signage, cars will see where they need to go.

Mr. Duffy stated that he had concerns with the location of the window and the drive-thru.

Mr. Petropulos stated that the drive-thru lane needs to be where it is, as it is on the drivers window side. He said there will be a maximum of three to five cars per hour.

Discussion ensued between the applicant and the Board about the logistics of the location of the window and the drive-thru.

Mr. Petropulos stated that the cars stacking will not impede other drivers in the parking lot.

SPEAKING IN FAVOR:

James Guillemette, Staples, Framingham, MA. Mr. Guillemette said the corporate office said they believe this is a viable option for customers, and they want to differentiate this business, and customers will like this. He said if two or three cars were waiting at one time, that would be a lot. He said it is designed for small business owners, for a quick shopping trip.

Mr. Duffy asked if this could be revised if it turns out to be very successful, and a lot of customers use the drive-thru.

Mr. Guillemette said they would look at the issue if it becomes that. Most customers will spend approximately \$50. He said they want to handle the transactions very smoothly. He said the orders will be staged right at the window. He said the orders will already be ringed up before the customer gets there. They will utilize the same staff, no other new hires will be necessary.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No One.

Mr. Currier said he's ok with the proposal, and likes the stipulation that it is only for an office supply store.

Ms. McHugh said she is not comfortable with the traffic flow, and the safety of people in the parking lot.

Mr. Carlson said the idea of the drive-thru is interesting, and the stacking issue is a concern, but if the speed to the window is slow, it could be an issue. However, if traffic is a problem, they will have to address it. Plus, they are adding

green space. He said that Staples is a market leader, and other similar stores may ask for this use as well.

Mr. Duffy said this is a new idea, and this site may have additional space for stacking, and they may have 100 feet of stacking they could use. He stated that 60 feet is for three cars, but would feel more comfortable with more.

Further discussion ensued on the logistics of the drive-thru lane.

Mr. Currier stated that there are over 100 spaces on site, but has never seen the parking lot to capacity. He said most cars park in the front and walk straight in. He believes the testimony is credible about their expectations.

Mr. Carlson didn't believe this use really benefits the community.

Mr. Duffy suggested that maybe a 100-foot stacking lane would work better.

Mr. Falk said the Board shouldn't try to design the site. He stated that if the window were placed further to the south, it could create additional safety issues, as cars come in from Daniel Webster Highway into the parking lot and there may be additional traffic conflicts, as the window would be closer to Daniel Webster Highway. Even if they provide additional stacking space, technically, it would be a lesser request, but it would affect traffic circulation near the entryway, so it should be re-advertised with a new plan and application.

MOTION by Mr. Currier on behalf of the applicant to grant the variance. Mr. Currier stated that the variance is needed to enable the applicant's proposed use of the property. He said that a key special condition of the variance is that the drive-thru is permitted only for an office supply store, and believes that the Board and the City is protected from encroachment into the 160 feet and other applications, also, by testimony, if that stacking lane of 60 feet does not prove to be sufficient, it would not create any issue on a public way.

Mr. Currier stated that he believes the request is within the spirit and intent of the ordinance, it will not adversely affect property values of surrounding parcels, and may pick it up with the additional green space, therefore, it is not contrary to the public interest, and substantial justice is served to the applicant, as shown in their June 4, 2007 plan.

SECONDED by Mr. Duffy.

Mr. Carlson asked if anything else should be added to the discussion, before the vote.

Ms. McHugh said they can't add anything after a motion has been made.

Mr. Carlson said maybe the other representative from Staples can add to the testimony.

Mr. Duffy said he assumes the applicant is not amenable for the Board to table the motion to re-designing the plan, and they probably want this plan to go forward as submitted.

Ms. McHugh said she'd love another design, but they need to re-advertise.

Mr. Duffy said he's considering withdrawing his motion to second the case.

Mr. Carlson said this case is precedent-setting, nothing against Staples, but many other uses may want this. He said that the Staples reps know exactly what they expect from this. He said that will show what the actual level of traffic volume will be.

Mr. Duffy said if we deny this proposal, the applicant can come back with another application.

Mr. Falk said the Board must vote on the plan and application as presented.

Ms. McHugh said it's highly unusual for the applicant to come back and testify after we've already discussed it and closed the Public Hearing.

Mr. Duffy said he wants to have a definitive decision, and explore as many options as possible in the discussion phase.

Mr. Duffy said he'll leave his second there.

Mr. Currier said he's happy with his motion.

Mr. Currier asked if they are going to suspend the rules and have additional testimony.

Mr. Duffy said not at this time.

Mr. Carlson said he'd like to hear more testimony if possible.

Mr. Duffy asked if he meant to suspend the rules and ask someone to testify that hasn't testified earlier.

Ms. McHugh said the case is over. In Parliamentary procedure, you can't go back.

Mr. Currier said often times, in the public service we provide, that sometimes certain points need to be clarified better, and the opportunity to hear something said is in the spirit and intent of what the Board does.

Ms. McHugh said the discussion part should be over.

Mr. Falk said he agrees, there was a duly heard and advertised public hearing, it was closed, then came the public meeting, and the Board should vote on what the testimony presented entailed. He said if it's a 2-2 vote, the motion fails, and they'd have to come back with a different plan and application.

MOTION by Mr. Duffy to suspend the rules and ask the applicant to answer questions that Mr. Carlson has.

SECONDED by Mr. Currier.

MOTION CARRIED 3-1 (Ms. McHugh).

Mr. Carlson asked Atty. Prunier exactly how much traffic that Staples targets for the drive-thru, how much volume will be generated at the window.

Mr. Carlson asked how much traffic is anticipated for this drive-thru window, a specific number, or target.

Mr. James Guillemette, Staples. Mr. Guillemette stated that their best guess is 2-3 cars per hour. They really don't know what to go on as far as an exact number, but based upon their customer base, it will only be a few customers that will actually like this method of transaction, that is their most sincere estimate.

Mr. Carlson said that over a twelve-hour day, they anticipate about 36 cars using the drive-thru window.

Mr. Guillemette said the drive-thru customers would be a swap, as they wouldn't come into the store, but go to the drive-thru instead.

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Mr. Carlson said it's an expensive proposition, and what if it's a hundred cars? He stated that it may set a precedent, and will it generate a much greater number of cars per hour, but stated his question is answered about the parking and stacking.

Mr. Duffy said if 2-3 cars per hour are proposed, and if it is significantly more, it will impact their traffic flow, and they would come back to the Board.

Mr. Guillemette said yes, if they see an issue with traffic flow, they will address it, because they want their customers to be satisfied.

Mr. Duffy said he feels comfortable with his seconding the vote at this point. He said the Board has looked at other reasonable methods, and if this becomes a double or triple the amount of traffic, they can't leave it that way, they will not be able to allow it. This is a test case, and he said he doesn't know if it sets a precedent, it does, but the Board has to be careful, and just because the Board grants one variance, it doesn't preclude the Board granting others, as if another type of use wanted one, we have to look at each site individually. He said he feels comfortable, it is a lower intense use like a pharmacy, but we'll have to watch it, and if it does become a problem with the volume, we have the responsibility to pull them back to revisit the request.

Mr. Currier stated that the past few court decisions, there is always discussion about the testimony. While this could be interpreted as a precedent-setting case, the Board should be able to stand on good ground with any other similar type of drive-thru use.

Mr. Carlson said there is a growing trend in drive-thru and to-go requests.

Atty. Prunier said this request still needs to get approval by the Planning Board. He said the Dunkin' Donuts on West Hollis Street had to get re-designed.

MOTION APPROVED 3-1 (McHugh).

Ms. McHugh said she's opposed to the way the meeting was conducted, and wants Corporation Counsel to see if what was done is legal.

Mr. Falk said he'll ask Corporation Counsel to meet with the Board to discuss various legal issues.

REHEARING REQUESTS:

None.

MINUTES:

June 12, 2007

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

SECONDED by Mr. Currier with no changes, as presented.

MOTION CARRIED UNANIMOUSLY 4-0.

REGIONAL IMPACT:

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

OTHER BUSINESS:

Ms. McHugh said there is legal precedent, that the Board cannot redesign plans.

Mr. Duffy said it is up to the Board about exploring other methods reasonably feasible in area variances.

Mr. Carlson said the laws are open to interpretation.

Mr. Currier said sometimes they've approved a "step-down" request, like if someone wants to convert a single-family into a three family unit, and the Board has approved two units, but there's no physical changes to the outside of the building, but there's no change in design, this is a reasonable middle-ground type of decision.

Mr. Falk said in the past, people have requested a large wall sign, the Board has approved it, but a somewhat smaller sign area.

Ms. McHugh said she wants to discuss the process. She said it should be up to the applicant to prove that there is no other alternative reasonable method to pursue, other than the area variance.

Mr. Duffy said he believes it is up to the Board to ask this.

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Mr. Currier said it may be better to be debated with Attorney Connell.

ADJOURNMENT:

Mr. Duffy called the meeting closed at 8:14 p.m.

Jack Currier
Acting Clerk

CF
Taped Hearing