

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
July 24, 2007

A public hearing of the Zoning Board of Adjustment was held on Tuesday, July 24, 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  
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. **Danny R. & Michele L. Boisvert (Owners) 67 Elgin Street (Sheet A Lot 635) requesting variance to exceed maximum accessory use area, 40% allowed, 51% requested - to install an above-ground pool. RA Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Claire McHugh  
Bob Carlson

Danny Boisvert, 67 Elgin Street. Mr. Boisvert stated that the property at one time had an in-ground pool, and it was filled in before they bought the land. They are requesting to add an 18-foot above-ground pool. He went over the area variance points of law. He said he has owned the property for five years. The in-ground pool was installed in 1978.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

July 24, 2007

Page 2

**MOTION** by Mr. Duffy to grant the area variance. Mr. Duffy stated that the request is needed to enable the applicants proposed reasonable use of the property, an 18-foot round above ground pool is a reasonable sized pool and is not a large accessory use, also, it is a corner lot with a pre-existing condition that this property originally had an accessory use of a pool in the area, and may or may not have included a garage at that point. Mr. Duffy stated that the variance cannot be achieved by some other method reasonably achieved other than an area variance.

Mr. Duffy stated that the request is within the spirit and intent of the ordinance, it is a minor accessory use that could be taken down in the future, it should not negatively affect abutting property values, it is not contrary to the public interest, and substantial justice is served to the applicant for reasonable development rights.

**SECONDED** by Mr. Carlson.

**MOTION APPROVED UNANIMOUSLY 4-0.**

**2. Marc & Pamela M. Beaulieu (Owners) 128 Lille Road (Sheet B Lot 426) requesting variance to encroach 6 feet into the 6 foot required side yard setback to replace a 14'x14' shed with a new 12'x16' shed. R18 Zone.**

Voting on this Case:

Jack Currier

Sean Duffy

Claire McHugh

Bob Carlson

Marc Beaulieu, 128 Lille Road. Mr. Beaulieu stated that they just put in a large addition, and they are taking down a rotten fence and shed, and putting in a new shed. He said he was not aware that he needed a permit for the shed. He said the shed was there since about 1978. The fence will be part of the shed as before.

He said he had a note that his neighbor, Robert MacFarland on Browning Avenue is ok with the request.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

**MOTION** by Mr. Carlson to grant the area variance. Mr. Carlson stated that the variance is needed to enable the applicants proposed use of the property, as the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue.

Mr. Carlson stated that the request is within the spirit and intent of the ordinance, it should not affect property values, is not contrary to the public interest, and substantial justice is served to the applicant.

**SECONDED** by Mr. Currier.

**MOTION CARRIED UNANIMOUSLY 4-0.**

3. Rachel M. & James L. Tebbetts (Owners) 54 Buckmeadow Road (Sheet C Lot 19) requesting the following variances: 1) minimum lot depth, 125 feet required, a mean lot depth of approximately 104 feet proposed; 2) minimum lot frontage, 120 feet required, approximately 60 feet proposed (on Ridge Road); and 3) minimum lot width, 150 feet required, approximately 60 feet proposed (on Ridge Road) - all requests to subdivide one lot into four lots. R40 Zone.

Voting on this Case:

Jack Currier  
Sean Duffy  
Claire McHugh  
Bob Carlson

Rachel Tebbetts, 22 Plain Road, Hollis, NH. Ms. Tebbetts said it should be 2 Ridge Road, and they are only asking for a subdivision of two lots, not four.

Mr. Falk said the City does not have a legal address of 2 Ridge Road, and the advertisement is ok for them to proceed with a two lot subdivision, as it is a lesser request, also, all of the variances apply to only one of the lots.

Ms. Tebbetts said she, along with her sisters, inherited the property from their parents. She said there is a house at the corner of Buckmeadow Road and one further up Buckmeadow Road. She said they would like to sell the property, and keep one

house on each lot. She said one lot would have about one acre, and the other lot would have about four acres. They need the variances because the one large lot would be made more nonconforming, and that's why they need the three variances. Ms. Tebbetts covered the area variance points of law.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

Angie Kopka, 63 Buckmeadow Road. Ms. Kopka stated that she lives right across the street. She said many years ago, the property was farmland with chicken coops. She believes that storage is there now. She wants to know what is going to happen to the buildings, not to the homes. She said she's not objecting to the subdivision of one lot into two. It must retain the residential lots for residential use. She didn't want the chicken coop buildings turned into multi-family use.

Delores Renaud, 61 Buckmeadow Road. Ms. Renaud wanted to know where the new lot line would be located.

**SPEAKING IN FAVOR - REBUTTAL:**

Rachel Tebbetts. Ms. Tebbetts stated that there are no plans for the buildings, whomever buys the lot will address them. The land is large enough to build another house somewhere else on the lot. The lot line will be approximately in the location where the lot will be over 40,000 square feet in size, it hasn't been exactly decided upon yet. She said the chicken coops will be staying in their present location.

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

Angie Kopka. Ms. Kopka understands it will be subdivided into two lots, with a house at each end, and wants to see it be single-family, and doesn't want the chicken coop building to be multi-family.

Mr. Duffy suggested a special condition that the existing house must stay in its present location.

Ms. Tebbetts stated that if someone wanted to buy the lot, take down the existing house, and relocate it, they should be allowed to do so, and would not want a special condition that the house must stay in it's present location.

Mr. Falk said that three variances were requested, and the points of law must be met for those three. If the applicant wishes to move the house to another location on the lot, as long as it meets setbacks, they could do so with an approved building permit. If they need a variance for setbacks, they could apply for them.

**MOTION** by Mr. Currier on behalf of the owners to grant the three variances. Mr. Currier stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property. He stated that the special conditions are that it is a long narrow strip of land, and has been that way for at least since the 1940's. Mr. Currier said there's no proposed changes to the configuration of the lot other than subdividing off a minimum of 40,000 square feet, which is required for the zoning, and believes the applicant's five criteria are met.

Mr. Currier stated that he believes the request is within the spirit and intent of the ordinance to allow the subdivision, it will not adversely affect property values of surrounding parcels, it is not contrary to the public interest, and substantial justice is served to the applicant.

**SECONDED** by Ms McHugh.

Mr. Duffy said one of the special conditions is that it will be one single-family house on this lot.

**MOTION CARRIED UNANIMOUSLY 4-0.**

4. **Madeleine R. & Gerard R. Bergeron (Owners) 23 Gosselin Road (Sheet C Lot 68) requesting the following variances: 1) minimum lot frontage, 75 feet required, 16 feet proposed; and 2) minimum lot width, 90 feet required, 16 feet proposed - to subdivide one lot into two lots (previously approved by ZBA on 9/27/05). R9 Zone.**

Voting on this Case:

Jack Currier

Sean Duffy

Claire McHugh

Bob Carlson

Attorney Brad Westgate, 111 Concord Street. Atty. Westgate described the property location, and pointed out the lot on a map. He said they are requesting two variances, in order to

subdivide one lot into two lots, and identified how the two lots would be laid out. One new single-family home would be built in the rear, and he pointed out where the driveway would be located. Atty. Westgate stated that the house would be favorably situated on the lot.

Atty. Westgate said the owner requested a variance a couple years ago for a three-lot subdivision, which was denied, and subsequently, they asked for a two-lot subdivision, which was approved in September 2005, as shown on the map. However, Mr. Bergeron never went to the Planning Board, because he believed that a better lot configuration could be created, and the request has lapsed.

Atty. Westgate went over all the area variance points of law. Further, he submitted a letter from Realtor Randy Turmel in favor of the property values.

Atty. Westgate identified the uncut buffers on the proposed lot, as approved and stipulated the last time this case was approved. He also identified a proposed foundation area for the new lot and stated it will be in the best position possible on the lot, with respect to the neighboring properties.

**SPEAKING IN FAVOR:**

Pete Weeks, Cuoco & Cormier. Mr. Weeks identified the proposed driveway; it will be 12 feet wide with 2-foot shoulders. It will be designed to the City Engineers specifications, and water will drain off into a catch basin in the street. Subdivision regulations will ensure that drainage will not go on any of the abutter's properties.

Mr. Weeks said there will not be any setback issues to the old, existing barn, and the barn, with the proposed subdivision, will not impact the barn.

Atty. Westgate stated that some modifications would have been necessary to the barn if the old lot line were kept. Snow storage can be possible somewhere along the driveway if the Board desires. He also stated that Mr. Bergeron is amenable to saving additional trees in the upper corner of the proposed lot 68-B.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

Letter from Mr. and Mrs. Stone, 5 Hazel Avenue.

Barbara Dutra, 24 Gosselin Road. Ms. Dutra asked why the City has guidelines, and believes the request is excessive. She has recently purchased her property, and there have been two additional houses built right near her, both big houses on a small street. She said most all the neighbors are not in favor of this request. She said she didn't believe the request was in the public benefit, but is more for just the owner.

**SPEAKING IN FAVOR - REBUTTAL:**

Atty. Brad Westgate. Atty. Westgate stated that the new configuration helps towards the Hazel Road area. The new house will be somewhat deeper into the lot. Also, Mr. Turmel's letter indicates the new house location will be better towards property values. He said the 20-foot no-cut buffer should still apply, and a snow storage easement as approved by the Planning Board is appropriate, and there will be a no-cut area in the northern corner of the lot. Atty. Westgate said that the proposed lots will not be out of character, size-wise, with what is already there, as shown on the GIS map. He also stated that the request will not be contrary to the public interest.

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

Barbara Dutra, 24 Gosselin Road. Ms. Dutra said just because the lot is big enough to have a house on it, it doesn't mean it should. She said on paper it may be ok, but in real life, when you look at the size of it, it is different and will be large, and does not conform to the neighborhood.

**MOTION** by Mr. Currier to grant the area variances on behalf of the owner, both taken together. Mr. Currier stated that this case is somewhat analogous to the application approved by the ZBA on September 27, 2005. Mr. Currier stated that the special conditions are that the 20-foot undisturbed vegetated buffer as stipulated on the prior 2005 application remain in effect on the southwesterly side of Lot 68-1. The second stipulation is that an undisturbed vegetated buffer would be maintained on the northeasterly side of the lot as spoken about by Counsel for the applicant, the specific size will be stipulated between the applicant and the Planning Board. The third would be an easement between Lot 68 and 68-1 for snow removal and storage. The fourth stipulation for drainage isn't needed to be stipulated, but no drainage off the site can be increased. With these four stipulations, this will allow the applicant the proposed use of the property with the four special conditions, which is that it is a much larger lot than the R9 zone requires.

Mr. Currier stated that the request is within the spirit and intent of the ordinance to allow a variance such as this, we do have expert testimony that it will not adversely affect property values of surrounding parcels, and is not contrary to the public interest, and substantial justice is served.

**SECONDED** by Ms. McHugh.

**MOTION APPROVED 3-1 (Mr. Carlson).**

5. **Digital Voice Systems, Inc. (Owner) Michael Perkins (Applicant) 78 Northeastern Boulevard (Sheet C Lot 2026) requesting variance to allow a locksmith company in which less than 75% of the building is used for industrial or manufacturing uses. PI Zone.**

Voting on this Case:

Jack Currier  
Sean Duffy  
Claire McHugh  
Bob Carlson

Attorney Gerald Prunier, 20 Trafalgar Square. Atty. Prunier said the company has been in business for over 30 years, and now wishes to purchase a condo at the subject location. He said it is an allowed use, but is allowed as a Conditional Use. He said the reason they are here, is that the Code now allows uses with the little "number 1" subscript as a Conditional Use. He said that they don't have over 75% of their floor space used for an industrial or manufacturing use. Atty. Prunier went over the variance points of law. He said this property is mostly office uses. Atty. Prunier identified two other uses that received approval by the Board that were similar cases.

Mr. Falk went over the origin of this code provision, and discussion ensued.

**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 area variance is needed to allow the applicants

proposed use of the property, given the special conditions of the property. Mr. Duffy stated that the applicants special conditions are that their full use of the existing building in an industrial park area for warehouse and service uses which is not the small retail use of a locksmith which is granted, but is within the spirit and intent of the ordinance for a use of this nature and this zone, given the area variance would be granted. There is no other method reasonably feasible for the applicant to pursue, other than an area variance. Mr. Duffy stated that the request should not adversely affect the property values of surrounding parcels, even though there was no expert testimony, as full use of the building is used, and the parking requirements for vehicles are all in line, therefore, it is not contrary to the public interest, and substantial justice is served that the applicant has reasonable use of their property for a use that is conditionally approved.

**SECONDED** by Mr. Carlson.

**MOTION APPROVED UNANIMOUSLY 4-0.**

6. 22 Marshall Street LLC (Owner) Lin Ron, Inc. (Applicant) 22 Marshall Street (Sheet 29 Lot 26) 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 use and area variance denied by the ZBA in February 2007, and, if so, requesting; 2) use variance to allow one fast-food restaurant building with drive through facilities. GI Zone.

Voting on this Case:

Jack Currier

Sean Duffy

Claire McHugh

Bob Carlson

Mark Fougere, 253 Jennison Road, Milford, NH. Mr. Fougere posted some plans on the bulletin board. Mr. Fougere said that a use variance was denied in February 2007, and they are back with a revised request. The initial request was denied because the Board determined that the request was too much for the site. The application is resubmitted, and there is only one building on the site now, instead of two.

In addition, the area variance is no longer needed. They believe that the new request meets the Fisher v. Dover requirement, as

it is one building instead of two, and it will be much less intense. The proposal is for a Kentucky Fried Chicken, and there is no lease for a Taco Bell at this time. Mr. Fougere said there is a lot less parking, and the activity level will be less intense as well, as one building with its drive-thru has been removed.

Ron Giles, 22 Channel Cove, Biddeford, Maine. Mr. Giles said he has 11 stores, of which 7 are combined with KFC and Taco Bell. Mr. Giles said with two buildings, you would have more traffic. He said the day is stronger with Taco Bell, and the evening traffic is stronger with KFC.

Ms. McHugh asked what is being planned for the area that is left vacant where the other building was proposed.

Mr. Fougere said there are no plans for this area; perhaps it will be a small detention area for drainage. Mr. Fougere said there is now only one entryway to the property, where the other proposal had two entryways.

**SPEAKING IN FAVOR OF "MATERIAL CHANGE":**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS FOR "MATERIAL CHANGE":**

No One.

**MOTION** by Mr. Duffy that the new application does not present any material changes of circumstances that affect the merits of the application, but the use and nature of the degree, going from two buildings to one, with one entrance and one drive-thru and one building verses two is significant enough to hear the case on the merits for a use variance.

**SECONDED** by Mr. Currier.

**MOTION CARRIED UNANIMOUSLY 4-0.**

Mr. Fougere stated that they believe that the existing GI zoning district interferes with their reasonable use of the property, it is a unique setting, and the adjoining uses are all commercial, such as McDonalds, Wendy's, a motorcycle repair, a Mobil Station, and they think the use is compatible with the neighborhood.

Mr. Fougere went over the other points of law, and they believe the proposed use is not out of the character with the neighborhood. He said it is a commercial use, surrounded by other commercial uses, and it should enhance the values of the neighborhood. It should add to a diversity of uses on East Hollis Street. The proposed use will meld within the texture of the neighborhood.

Ms. McHugh asked if the lot could be improved, as it has a blighted look to it.

Mr. Fougere said a multi-family development is approved right in back of the present proposal, and with our request, the site will be improved with new buildings and new landscaping. The front of the site will be maintained nicely. It will be looking nice.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

**MOTION** by Ms. McHugh to grant the use variance. Ms. McHugh stated that the restriction applied interferes with a landowner's reasonable use of the property, considering the unique setting of the property in its environment, no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property, and the variance would not injure the public or private rights of others. Ms. McHugh stated that right next to the property are two other fast food restaurants, and there is a pizza restaurant nearby.

Ms. McHugh stated that it is within the spirit and intent of the ordinance, it will not adversely affect the property values of surrounding parcels, as a matter of fact, it should enhance the values; it is not contrary to the public interest, and substantial justice is served. Special condition is that the part of the land that is not being occupied will be beautified, in the spirit of the East Hollis Street Area Master Plan.

Mr. Duffy suggested the whole property should be in keeping with the spirit of the East Hollis Street Area Master Plan.

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

July 24, 2007

Page 12

**SECONDED** by Mr. Carlson.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**REHEARING REQUESTS:**

None.

**MINUTES:**

June 26, 2007

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

**SECONDED** by Mr. Carlson.

**MOTION APPROVED UNANIMOUSLY 3-0** (Mr. Duffy not voting on Minutes).

**MOTION CARRIED UNANIMOUSLY 4-0.**

**REGIONAL IMPACT:**

No agenda is ready yet, there was an extra week in the schedule for advertising, but Mr. Falk said there are five cases scheduled so far.

**ADJOURNMENT:**

Mr. Duffy called the meeting closed at 9:25 p.m.

Jack Currier  
Acting Clerk

CF  
Taped Hearing