

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
August 14, 2007

A public hearing of the Zoning Board of Adjustment was held on Tuesday, August 14, 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  
Claire McHugh  
Robert Shaw  
Bob Carlson  
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 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. Currier also explained procedures involving the timing light.

1. **Steven J. & Regis M. Donohue (Owners) 375 Main Street (Sheet 109 Lot 82) requesting the following: 1) use variance to convert 1 unit (on first floor) of an existing 3-unit multi-family building into professional office space; and 2) variance to exceed maximum ground sign area in residential zone, 10 sq.ft allowed - 12 sq.ft requested (Previously approved by the ZBA on 3-8-05). RA Zone.**

Voting on this Case:

Jack Currier  
Claire McHugh  
Rob Shaw  
Bob Carlson

Steven Donohue, 375 Main Street, Nashua, NH. Mr. Donohue stated that he is asking for a use variance to allow the first floor of a three-family structure to use as an insurance agency. Mr. Donohue went over all the use variance points of law. He described the abutting uses, and other uses in the nearby neighborhood. He said that his business doesn't generate traffic; most all the clients are served at their location.

Mr. Donohue said after they originally got approval from the Zoning Board, they did not obtain a building permit within 12 months, so they are back before the Board.

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

August 14, 2007

Page 2

Discussion ensued about the size of the proposed sign, where 10 square feet is allowed, and 12 square feet is requested. Mr. Donohue said he shares his office with another associate, and they would share the sign area.

**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 requested use of the first floor for the insurance agencies specializing in employee benefits with very little walk-in type of business on the premises versus primarily use that is office space for conducting business to go out to visit clients, the intensity of the use is in line with what this unit would be as a dwelling, and, through testimony, and also citing the nature of the hours of the business versus a round-the-clock residence, there is no greater flow of traffic in or out of the space.

Mr. Shaw said this request will allow a fair and reasonable use of the property by the owner, and there is no apparent implication of any injury to the public or private rights of others by the use of the property in this manner.

Mr. Shaw said this request is within the spirit and intent of the ordinance, and is actually less intensive than other surrounding properties, there will be little to no change in appearance of the property itself, and no apparent affect on property values on surrounding properties, it is not contrary to the public interest, and by testimony, will provide a service to residents of the city, and substantial justice will be served.

Mr. Shaw stated that the testimony of the applicant, the agreement of stipulation of the hours and days of operation to be Monday through Friday, from 9:00 a.m. to 5:00 p.m.

**SECONDED** by Mr. Carlson.

**MOTION APPROVED UNANIMOUSLY 4-0.**

**MOTION** by Mr. Shaw to grant the area variance for the 12 square foot ground sign. Mr. Shaw stated that the current restriction

of 10 square feet, per testimony from the applicant, is in the nature of the sign lettering of the two agents that will be operating in the insurance agency at the premises, there will be very little traffic in and out of this property for actual clientele, which there is still a need to identify.

Mr. Shaw said the request is within the spirit and intent of the ordinance and will allow proper identification for this office usage, and is similar, and in fact less intensive than some of the other surrounding signs in the immediate area.

Mr. Shaw said there is no testimony for or against the property values being affected negatively, this request is not against the public interest, and substantial justice will be served allowing a reasonable sign for this business.

Mr. Shaw said he wanted to add the willingness of the owner to add a limitation of the lighting of the sign; it will not be on past 10:00 at night.

**SECONDED** by Mr. Carlson.

**MOTION FAILS 2-2** (Ms. McHugh and Mr. Currier against Motion).

**2. John F. & Susan A. Burnham (Owners) 3 Hutton Street (Sheet B Lot 2324) requesting variance to encroach 5 feet into the 25 foot required front yard setback (on Robinson Road) to construct a 24'x24' attached garage with a family room above. RA Zone.**

CASE POSTPONED TO THE AUGUST 28, 2007 MEETING.

**3. James A. & Marilyn H. Forest (Owners) 131-139 Daniel Webster Highway (Sheet A Lot 747) requesting to amend previously approved variance to allow for a ground sign height of 90 inches, where 72 inches was approved by the Zoning Board on 6-12-07. GB Zone.**

Voting on this Case:

Jack Currier  
Rob Shaw  
Claire McHugh  
Bob Carlson

Tim Sullivan, Barlo Signs, Hudson, NH. Mr. Sullivan stated that they are asking to increase the overall height of the sign to 90

inches. The bottom panel of the sign, if not for this request, would be behind the guardrail, and wouldn't be seen. The original survey, done in March, there was snow on the ground and they thought the original height of 72 inches would be fine.

Mr. Sullivan said the sign will not impede or block any vehicular line of sight, it is in the same footprint as what was approved, and actually, it may be better, because the sign will be a little bit higher.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

**MOTION** by Mr. Shaw on behalf of the owners to grant the area variance. Mr. Shaw stated that through testimony, and from the application, it's become apparent that the ability to have properly and appropriately define the exact height of the sign and the placement of the images on the sign relative to the actual topography of the property and the guardrail specifically, that it is necessary to allow for the greater height of the sign to have reasonable use of the sign. In this case, it does allow for reasonable use of the property, there are special conditions as were previously discussed regarding the nature of the application regarding ingress and egress of the property and the identification through this entrance for the businesses that are through this driveway, and it's necessary for the sign placement and height to properly reflect the sign lettering and identification of businesses.

Mr. Shaw stated that the request is within the spirit and intent of the ordinance for identifying the businesses here, it is a highly commercial area where there's no likely apparent or negative impact on property values, it is not contrary to the public interest, and even previous testimony regarding the identification of the businesses in the hopeful aid in negotiating by traffic going into the site, and substantial justice will be served by allowing for the correction of the sign height to property identify the businesses.

**SECONDED** by Mr. Carlson.

**MOTION CARRIED UNANIMOUSLY 4-0.**

4. **Vigilant Properties, LLC (Owner) 22 Edson Street (Sheet 47 Lot 349) requesting the following variances: 1) minimum lot frontage, 60 feet required, 0 feet proposed, and 2) minimum lot width, 75 feet required, 0 feet proposed - to construct a single-family home (Previously approved by the ZBA on 1-25-05). RA Zone.**

Voting on this Case:

Jack Currier

Rob Shaw

Claire McHugh

Bob Carlson

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that he wanted the minutes of the meeting of January 25, 2005 be incorporated into tonight's meeting, which was the meeting where this request was approved.

Atty. Prunier said when this case was approved to place one house at the end of Edson Street, thereafter, there was an attempt to put two lots there, which was denied by the Board, as there were some private restrictions that did not allow for that. Also, the time limit expired for the one house, so we are back here seeking approval. The applicant is again seeking one lot, with one house. Atty. Prunier said the end of Edson Street is not a public street, the pavement ends right at the beginning of the subject lot, so there is no frontage. The proposed driveway will be on the side of the street, leading to the house. Atty. Prunier went over the area variance points of law. Atty. Prunier said the house will be a colonial, over 2,000 square feet.

Further discussion ensued about the end of the right of way, and whether the applicant actually has some right of way with the abandoned street.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

Kevin Daly, 21 Edson Street. Mr. Daly said he and his mother live at 21 Edson Street. Mr. Daly said he has concerns about

where the snow will be piled, as currently it is put at the end of the street. He also questioned where the runoff for rain will go.

**SPEAKING IN FAVOR - REBUTTAL:**

Atty. Gerald Prunier. Atty. Prunier stated that the driveway will only be about 10-12 feet wide, not 25 feet. There will be plenty of room for snow storage on each side of the driveway. Atty. Prunier said there is a requirement that you cannot drain any more water off of your property after you build a house that does now. There will not be any drainage on the neighboring properties. Drainage will stay on the lot. Atty. Prunier said there will be no snow removal onto 21 Edson Street.

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

Kevin Daly, 21 Edson Street. Mr. Daly asked how the City can allow someone to put a driveway at the end of a dead-end street, and put a house at the end of the property. He said the trash trucks, the plow trucks, need to get around at the end of this street.

Mr. Currier said that this request is not a "flag lot", and every request is looked at independently, with no precedence, and all the points of law must be met.

Mr. Shaw said it may be necessary to contact the Department of Public Works, as they may have to alter the way they plow snow at the end of this street.

**MOTION** by Mr. Shaw to grant the area variances on behalf of the owner. Mr. Shaw stated that the variance request is two-fold, one for minimum frontage, 60 feet required, 0 feet proposed, and for minimum lot width, 75 feet required, 0 feet proposed, to construct a single-family home on the property, and this variance request was previously approved by the ZBA on January 25, 2005.

Mr. Shaw stated that by the nature of this property, and the history of the Edson Street reverting back to not being a developed portion of the street, and accepted by the City as a city street, this property has the hardship now, with the lack of direct access with frontage to the street. Mr. Shaw said this use of property is otherwise a standard single-family home, on a fairly large lot for the area, so the usage of the property

would be in keeping with the character of the neighborhood, so it allows a reasonable use of the property. The special condition being the access issue, and there is not another reasonable feasible method for gaining access to this property other than through more excessive means.

Mr. Shaw stated that the request is within the spirit and intent of the ordinance allowing use of the property, active use, there is no testimony that there will be any negative affect on property values of surrounding parcels, but by the nature and use of the property as a single-family home of typical character, it's not likely there will be any negative affect.

Mr. Shaw stated that the request is not contrary to the public interest, and substantial justice will be served, allowing the owner reasonable use of the property.

**SECONDED** by Ms. McHugh.

**MOTION APPROVED UNANIMOUSLY 4-0.**

5. Vatche N. Manoukian (Owner) 35-37 Courtland Street (Sheet 66 Lot 30) requesting variance for minimum lot area, 16,598 sq.ft existing - 37,337 sq.ft required - to add two additional multi-family dwelling units to an existing 4-unit multi-family dwelling (Previously approved by the ZBA on 12-14-04). RB Zone.

Voting on this Case:

Jack Currier  
Rob Shaw  
Claire McHugh  
Bob Carlson

Attorney Gerald Prunier, 20 Trafalgar Square. Atty. Prunier stated that he wanted the minutes and evidence presented on December 14, 2004 be incorporated by reference into this meeting. Atty. Prunier gave the Board a handout, the purpose of which states that the applicant did many things since the approval. There was a site plan that was approved, as shown in Exhibit 1, after the site plan was approved, there was some site work done, they had to bring in the sewer and water into the carriage house. They also re-did the parking lot, and got permits and approvals for all of this.

Atty. Prunier said the Jennings transmittal is Exhibit 2, stating that the work was done. Atty. Prunier said the other three exhibits are the main exhibits that were presented at the time the variance was granted.

Atty. Prunier said the first plans submitted for the building permit were not approved, and the applicant had to hire an Architect, who also had some difficulty meeting the building requirements. At this point in time, the year had gone by, and the approval had expired.

Atty. Prunier said nothing has changed from the original plan, but there has been a lot of work done so far on the premises. Atty. Prunier went over the variance points of law, and believe they meet them.

Discussion ensued about the parking spaces. Atty. Prunier stated that the project meets the minimum required parking space requirement. The garage will be used for one parking space; it will not be used for storage.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

John Konselman, 40 Courtland Street. Mr. Konselman stated that his concern is the parking situation. He believed that there were always about six cars parked in the lot.

**SPEAKING IN FAVOR - REBUTTAL:**

Atty. Gerald Prunier, 20 Trafalgar Square. Atty. Prunier stated that there are 11 parking spaces, and it meets the ordinance.

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

John Konselman. Mr. Konselman stated from the audience that he's ok, as long as it meets the ordinance.

**MOTION** by Mr. Shaw to grant the area variance on behalf of the owner. Mr. Shaw stated that this property has gone through extensive testimony and application previously, and the Board was favorable to this request, and much of the work has been done, and the applicants use of the property has not changed

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

August 14, 2007

Page 9

regarding what has been done, the requirements for appropriate parking and other conditions have been met, this does allow for use of the property similar to many other properties in the area, it was and will be a multi-family building. Mr. Shaw stated that this area variance is required to enable the applicants proposed use of the property as proposed.

Mr. Shaw stated that the request is within the spirit and intent of the ordinance, the property values - there has been no testimony that there will be any negative impact to surrounding parcels, it is not contrary to the public interest, and substantial justice is served to the applicant.

**SECONDED** by Mr. Carlson.

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

**REHEARING REQUESTS:**

None.

**REGIONAL IMPACT:**

The Board did not find that any of the cases have regional impact, however, did discuss whether the proposed hotel at 407 A&B Amherst Street would be a regional impact.

**MINUTES:**

July 10, 2007

July 24, 2007

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

Mr. Shaw stated that for the July 10, 2007 meeting, on cases 2 and 3, it should be Mr. Duffy voting, and not Mr. Shaw. Also, for the July 24, 2007 meeting, it should be Mr. Duffy voting on all cases, not Mr. Shaw.

Mr. Falk said he will make the changes and place the hard copies in the files.

**MOTION** by Mr. Carlson to accept the changes/corrections to the minutes from July 10<sup>th</sup> for cases 2 and 3.

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

August 14, 2007

Page 10

**SECONDED** BY Ms. McHugh.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**MOTION** by Mr. Carlson to accept the changes/corrections to the minutes from July 24<sup>h</sup>.

**SECONDED** BY Ms. McHugh.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**ADJOURNMENT:**

Mr. Currier called the meeting closed at 8:25 p.m.

Jack Currier  
Acting Clerk

CF  
Taped Hearing