

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
September 25, 2007

A public hearing of the Zoning Board of Adjustment was held on Tuesday, September 25, 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
Bob Carlson
Robert Shaw
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. 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 from 8-28-07 meeting]**

Voting on this Case:

Sean Duffy
Jack Currier
Bob Carlson
Robert Shaw

Jim Petropulos, Hayner, Swanson Inc., 3 Congress Street. Mr. Petropulos stated that they are seeking a special exception to demolish the existing water tank, and construct a new water tank. Mr. Petropulos described the property's location, and stated it's in the Rivier College campus area. He said they are demolishing the south tank, and the new tank will be approximately 24 feet to the east, this location is due to a large guy wire located in the area. He stated that the new tank is 168 feet in diameter, and the existing tank is a 5.3 million gallon tank, while the proposed tank will be a 5.9 million gallon tank. The new tank will have a domed roof, at 55 feet in height to the top of the dome, and is similar in appearance and size to the existing tank.

Mr. Petropulos stated that the steel tank needs to be painted; it needs to be painted once every 15 years. It is more cost effective to replace the tank rather than to paint it. He stated that there will be some tree removal, tree planting and grading work, and they have been coordinating with the College. He went over the special exception points of law.

SPEAKING IN FAVOR:

Don Ware, Pennichuck Water Works. Mr. Ware said this tank was the primary storage for the City of Nashua. It was constructed in 1960, and was repainted in 1985, and is due for a repainting. In 1997, they supplemented the tank with a concrete tank, which does not require painting. He said it will cost about \$2,000,000 to repaint the tank. He said it's less expensive to take the tank down and rebuild a new concrete one in its place. He said it will take about 6-7 months to complete. Mr. Ware described the characteristics of water tanks, and their maintenance.

Discussion ensued between the Board and the applicant.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No One.

MOTION by Mr. Duffy to grant the special exception on behalf of the owners, he said it is listed in the Table of Uses, Section 16-26 Table 26-1 #276. Mr. Duffy stated that it should not create any undue traffic congestion or unduly impair pedestrian safety, this is a pre-existing lot with an existing use that is very similar to this for a 40 to 50 year period, it's in a side of the City that does not impact any traffic during its maintenance on the site. Mr. Duffy stated that it will not overload any public water drainage or sewer, or any other municipal systems, in fact, it's a maintenance procedure and by testimony, will be a potential cost benefit to the water municipal systems for the City of Nashua. Mr. Duffy said the size and scale of the project is reasonable, no special regulations apply, in fact, the maintenance is the minimized use of construction in time and duration, and the process should not involve blasting. Mr. Duffy said it should not impair the integrity of the character or be detrimental to the character of the neighborhood, and the health, morals and welfare of the residents, the applicant has testified that this will be a fenced-in site, and construction is the same size and scale of the existing tank, and the applicant agrees to a re-vegetation

of the sloping - a plan to be submitted with their site plan to the abutters request, will be worked out with the abutters through the entire process will be met, and this business will provide a service to the residents of the City.

SECONDED by Ms. Shaw.

MOTION APPROVED UNANIMOUSLY 4-0.

2. State of New Hampshire - Department of R.O.W. (Owner) Pennichuck Water Works, Inc. (Applicant) 154 Daniel Webster Highway (Sheet A Lot 117) requesting special exception to work within an intermittent stream and its 20-foot buffer to construct a culverted driveway to access a proposed water booster pumping station. RA Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Robert Shaw
Bob Carlson

Mr. Jim Petropulos, Hayner, Swanson, Inc. Mr. Petropulos stated that the property is a 4.3 acre tract, more often known as the Armory site. It is surrounded by roadways on all four sides, as shown on the map. The site has the Armory building, with associated access and parking. He said there is an intermittent stream/drainage swale on site, on the southwest side of the lot, installed there in the 1980's to facilitate storm water from the Tulley auto center, the Shaws development and the F.E. Everett Turnpike above it.

Mr. Petropulos said they are planning on constructing a 20'x25' building that will contain a booster pump for enhancement of the local water system. He said that Pennichuck will obtain an easement from the State of NH upon this property. Periodic maintenance will be required, about once per week, after this is built. He said the work will impact about 313 square feet of wetland, and about 1,600 square feet of buffer. A 3'x7' box culvert is proposed to transport water from one side of the driveway to the other. Mr. Petropulos went over all the wetland, and special exception points of law.

Discussion ensued between the Board and the applicant.

SPEAKING IN FAVOR:

Don Ware, Pennichuck Water Works. Mr. Ware described the overall area elevations, the purpose of the pumping station, the available water pressure in the area, and the necessity of having this pump at this location, cost-wise and hydraulically-wise.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No One.

MOTION by Mr. Carlson to approve the special exception request on behalf of the owner and applicant. Mr. Carlson stated that the request is listed in the Table of Uses, it will not create undue traffic congestion or unduly impair pedestrian safety based on the re-configuration away from the highway. Mr. Carlson said it will not overload public water, drainage or sewer or other municipal systems, actually, it will help these systems. Mr. Carlson said the special regulations are fulfilled, relative to the wetlands, and the request will not impair the integrity or be out of character with the neighborhood or be detrimental to health, morals or welfare of the residents. Special conditions are that it will adhere to the four (4) Conservation Commission approved stipulations from August 7, 2007, and the landscaping plan will be accepted as well.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY, 4-0.

3. Peter M. & Patricia A. Brault (Owners) 20 Dora Street (Sheet 111 Lot 196) requesting variance to encroach 7 feet into the 10 foot required right side yard setback to construct a 24' x 28'-4" garage with family room above. R9 Zone. (Tabled from 9-11-07 meeting).

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw
Bob Carlson

MOTION by Mr. Currier to remove this case from the Table, to hear additional testimony.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 4-0.

Peter Brault, 20 Dora Street. Mr. Brault stated that he learned of his neighbors concerns from the last meeting, and has spoken with him about it. They came to an agreement that the 7-foot encroachment was too much, and they are reducing the width another 4 feet, so it would be 20 feet wide. They also will not put any windows on the abutters side (the easterly side).

SPEAKING IN FAVOR:

Dennis Dean, 22 Dora Street. Mr. Dean said that they came to terms with the request, and is in favor of it.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No One.

MOTION by Mr. Shaw to grant this request on behalf of the owner. Mr. Shaw stated that the variance is needed to enable the applicant's proposed use of the property, as testified previously, this will allow them some additional flexibility with their dwelling, and allow some storage and needs that they currently have. Mr. Shaw stated that there is no other reasonable place to locate this structure on the property. Mr. Shaw said the request is within the spirit and intent of the ordinance, there was no testimony that there would be adverse impact to property values of surrounding parcels, it is not contrary to the public interest, and substantial justice will be served. Also, as the Board has learned by testimony, the applicant and the adjoining neighbor have met and a workable agreement has been reached by scaling back the project from the original application and amenable to a stipulation to be added to this variance that no windows would be on the easterly side of the addition on the side that abuts 22 Dora Street.

SECONDED by Mr. Currier.

MOTION APPROVED UNANIMOUSLY 4-0.

4. Dean P. Tsatsa (Owner) 30 Greenlay Street (Sheet 138 Lot 16) requesting variance to encroach 5 feet into the 6 foot required right side yard setback to construct a 14'x16' addition onto an existing 8'x12' shed. R9 Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw
Bob Carlson

Dean Tsatsa, 30 Greenlay Street. Mr. Tsatsa said he wants to put the addition on his shed to store lawn and garden equipment and an ATV. He went over the variance points of law. The existing shed has been there for over 25 years. The driveway is on the other side of the lot.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No One.

MOTION by Mr. Shaw to grant the variance on behalf of the owner. Mr. Shaw stated that this request will allow for storage of various equipment such as lawnmowers and an ATV, and actually will provide storage that will not allow items to be stored outside. Mr. Shaw said it is a reasonable use as proposed, it is within the spirit and intent of the ordinance, there is no testimony regarding any adverse impact to property values of surrounding parcels, there are no issues regarding the public interest, and substantial justice will be served in allowing the use of this property. The special situation is the location of the shed addition is located away from all other abutting residential properties, it is the furthest point away from them.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 4-0.

5. City of Nashua (Owner) 2 Sawmill Road (Sheet 5 Lot 26) requesting the special exception to expand existing treatment plant building by 373 square feet to accommodate a generator for the wet weather plant. GI Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw
Bob Carlson

Bill Keating, DPW, City of Nashua. Mr. Keating said the existing generator was built in the 1970's, and the new generator will power the wet weather plant. The existing generator cannot handle the addition, so the new generator is proposed. It will be in a 16'x23' addition. He said it will not create any additional traffic. Mr. Keating went over all the special exception points of law.

Discussion ensued between the Board and the applicant.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

Scott Fordin, 3 Ohio Avenue. Mr. Fordin expressed his concerns about the on-going noise at the plant, with a humming noise, and wanted to know how much more would be added with this addition. He said the odor emanating from the plant is another concern.

SPEAKING IN FAVOR - REBUTTAL:

Bill Keating, DPW. Mr. Keating said there will be acoustical panels within the building, which will minimize noise as much as possible. All efforts will be made to keep the noise down. Contractors building the building will enter the same driveway as is used now. They are trying to absorb as much odor as they can from the air. He said the emergency generator only goes on between 6 to 10 times per year during overflow events.

SPEAKING IN OPPOSITION OR WITH CONCERNS - REBUTTAL:

Scott Fordin, 3 Ohio Avenue. Mr. Fordin said he's not complaining about the noise, it is mainly about the odor, and making sure that this addition does not add to it.

MOTION by Mr. Shaw to grant the special exception on behalf of the owner. Mr. Shaw stated that the use is listed in the Land Use Code, Section 16-302 (a)(2). Mr. Shaw said it will not create undue traffic congestion or unduly impair pedestrian safety, this request by itself will not cause any difference in the parking or traffic associated with the treatment plant. It will not overload public water, drainage or sewer or other municipal systems, in fact, it will have positive benefit by being able to allow better treatment by avoiding the CSO issue associated with these large events. Mr. Shaw stated that special

regulations are fulfilled, and it will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of the residents, as this is a very limited scope project in terms of this generator being utilized about 6-10 times per year during special wet weather events, and its in a building with a certain amount of soundproofing and should be a very limited impact to the surrounding neighbors.

SECONDED by Mr. Carlson.

MOTION CARRIED UNANIMOUSLY 4-0.

6. Alfred M. & Lori G. DeLeo (Owners) 19 Upstone Drive (Sheet 138 Lot 448) requesting: 1) Special exception to allow an accessory (in-law) dwelling unit, and the following variances: 2) to exceed maximum driveway width, 16 feet existing, 34 feet proposed, and 3) to allow a driveway 23 feet from an intersecting right-of-way - minimum of 50 feet required. R9 Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw
Bob Carlson

Lori DeLeo, 19 Upstone Drive. Ms. DeLeo stated that they are requesting a special exception for the in-law apartment, and described how the rooms would be oriented. She went over all the special exception points of law, and described the variance points of law as well. She said the traffic is limited at their location. This would be for her mother-in-law to move in with them. There is no other location to put the garage.

Discussion ensued relative to traffic between the Board and Ms. DeLeo. Ms. DeLeo said there is a gravel drive off of Denver Drive. She said they have a need to park four vehicles in the driveway. She said there are no sidewalks in the front of their house. Ms. DeLeo said the size of the addition, at 684 square feet, is large, but it will increase the property values in the neighborhood.

Mr. Duffy asked if they really need the 34-foot wide driveway, or if they'd be amenable to decreasing the size.

Ms. DeLeo said they could, to be within the ordinance, but they'd still be too close to the intersection.

With Mr. Currier's assistance, Ms. DeLeo went over the accessory dwelling unit criteria to the Board's satisfaction.

Further discussion ensued between the Board and the applicant.

SPEAKING IN FAVOR:

Mr. Aime Nadeau, 17 Upstone Drive. Mr. Nadeau said he's reviewed the plans, and feels the request will be fine. He said most of the traffic is on Upstone, not Denver.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No One.

MOTION by Mr. Currier to grant the special exception on behalf of the owner. Mr. Currier stated that the use is listed in the Table of Uses, Section 16-61. The special exception to allow the in-law apartment will not create undue traffic congestion or unduly impair pedestrian safety, and that addition will not overload public water, drainage or sewer or other municipal systems. The special regulations are fulfilled, and the in-law dwelling unit will not be out of character with the neighborhood, there are other ones in the neighborhood, nor will it be detrimental to the health, morals or welfare of the residents. The six criteria for an accessory dwelling unit, by previous testimony, have been met and will be adhered to.

SECONDED by Mr. Carlson.

MOTION CARRIED UNANIMOUSLY 4-0.

MOTION by Mr. Duffy to grant the area variance to exceed the maximum driveway width from 16 feet to 24 feet, that is, 16 feet existing, 24 feet allowed. The motion is to grant, that a reasonable use of the property includes a driveway that is in keeping with the character of the neighborhood, given that the pedestrian and vehicle traffic in the area are at different times of the day.

Mr. Duffy said it is in the spirit and intent of the ordinance that this area variance be granted because it may impact the sight lines and the sight lines in the area. Mr. Duffy said it should not adversely impact property values of surrounding

parcels, it is not contrary to the public interest, and substantial justice is served so that the applicant will allow reasonable development rights of their property.

SECONDED by Mr. Shaw.

Mr. Currier said he's ok with the in-law, and is marginally in favor, but not the 34 foot width, he's comfortable with supporting the 24-foot width.

MOTION CARRIED UNANIMOUSLY 4-0.

MOTION by Mr. Shaw to grant the area variance on behalf of the owner. Mr. Shaw stated that this is required due to the placement of the garage, on a corner lot, and this is the only real opportunity for carrying through with the addition as proposed on the property to go towards this corner of the property due to the placement of the garage and the width of the driveway, by all practicable means, its not feasible to be out of the 50-foot requirement to the intersection, so, there's no other feasible method available to the applicant to satisfy.

Mr. Shaw said the request is within the spirit and intent of the ordinance to allow this request, it is not going to be against the property values of surrounding parcels, it is not contrary to the public interest, the concern is the entrance to and from the intersection will try to meet the normal distance back, but this is, by testimony, a fairly lightly traveled side street with few residences directly on Denver Drive, so there's no apparent issues, and substantial justice is served.

SECONDED by MR. Currier.

MOTION CARRIED UNANIMOUSLY 4-0.

MOTION by Mr. Shaw to remove case 7 off the table.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 4-0.

7. Peter M. Bonnette (Owner) "L" Edgewood Avenue (Sheet 60 Lot 38) requesting authorization pursuant to RSA 674:41 II to erect a single family home where access thereto will be by a private drive. RA Zone. [TABLED FROM 8-28-07 ZBA MEETING].

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

September 25, 2007

Page 11

Mr. Duffy stated that this case is only the Public Meeting, the Public Hearing portion of the case is completed. He indicated that there is a correspondence from Corporation Counsel dated September 12, 2007 to the Board, and given to each of the members.

Mr. Currier said one of the reasons why this case was tabled was to get some information from Corporation Counsel, because a lot of the debate was whether or not this case would distort the official map, and whether or not this would fall under planning and zoning law, as well as the Master Plan, and the other question as well.

Mr. Currier said that from Corporation Counsel's e-mail, that orderly growth is implicated with the Master Plan, and this should include having adequate frontage, so he didn't believe this proposal meets the test of number 1. Mr. Currier stated that he doesn't believe that this proposal meets the test of number 2 in carrying out the Master Plan, and Corporation Counsel states that the local zoning ordinance has a more stringent frontage requirement that is reasonable to apply, and we do have a more stringent frontage requirement which the driveway doesn't meet, so he didn't think it met number 2, and number 3, Corporation Counsel stated that it would include the city services as opposed to the abutter. He thought it would meet number 3, but not 1 and 2.

Mr. Shaw stated that in the context of the Master Plan, he thought it would not meet the character of the neighborhood issue. He stated that he thought that was a potential issue with number 2, related to the Master Plan with the frontage issue.

Mr. Carlson said the Master Plan identifies the continuity of neighborhoods and continuity of development, which would take into consideration concerns of neighbors, concerns of people within the growth area. Based upon that, he stated that he does not believe meet segment 1. He stated in segment 3, relative to financial hardship to future purchasers. He said he wasn't clear whether it's for current or future purchasers of the property or for abutting properties. He stated that if it's a hardship to abutters, he'd have to go against it. He said the Master Plan calls for very specific amount of street frontage, relative to municipal growth and relative to number of people in a specific area. This request would be creating a dwelling that could house four, six or eight people. He said he can't see it impacting the Master Plan in that area. He said the first

position in RSA 674:41 II, it doesn't pass because of the orderly growth issue relative to abutters. He said in number 2, it would meet the standards, but in number 3, it would cause hardship to individuals that are abutting the property as they claim, so it wouldn't meet point 3.

Mr. Duffy said he re-read all the applications, and re-visited the property, and re-read the ordinance, and looked into other case law components that might have set precedent, and didn't find anything dramatic or significant other than some very rural cases. He said he also did a review of what other zoning boards minutes, and if any others had this issue.

He stated that he looked at this in context with our city ordinances for zoning, and felt it didn't stand the test of what's applicable in this case. He said he didn't see the connection because even though this was a 1978 transaction decided for a piece of parcel that's in the situation it was, the people knew it may have predated the existing ordinance at the time, but he said he didn't see the connection.

Mr. Currier said he sees the hesitation in approving this so far. He said he hears the connection, or rationale, to deny this request amongst the other members. He said there is one common thread, in that Corporation Counsel and all of us here believe that there's some bearing of resemblance between whether you call it the official map or the Master Plan and our zoning laws for street frontage, and this doesn't meet that test, so, to move this along, is inclined to make a motion based upon that common thread of what we all agree on.

MOTION by Mr. Currier to deny the request, on behalf of the owner, Peter Bonnette, for authorization pursuant to RSA 674:41 II to erect a single-family home where access thereto would be by a private drive. The first test is whether the issuance of the permit or erection of the building distorts the official map, and as advised by Corporation Counsel, the official map does take into consideration orderly growth, and finds that orderly growth, part of that is not only square footage of the lot, but street frontage of the lot, and with this very small street frontage, and the house being in the back yard of other houses, this Board finds that that is not orderly growth and therefore does not meet test #1.

Mr. Currier stated that for point #2, does the issuance of the permit increase the difficulty of carrying out the Master Plan, he stated that the Board has been advised that local zoning

ordinances should be considered if it's more stringent frontage requirement which we have, and therefore, believe that this Board should be more respectful and take in consideration of the street frontage when considering RSA 674:41 II, and therefore, believe that this application does not meet point #2.

Mr. Currier stated that this Board is a bit conflicted of point #3, does the erection of the building or issuance of the permit cause hardship to future purchasers or undue financial impact on the municipality, clearly one Board member here, believes that it does, Corporation Counsel has advised that it does not. There is a mixed review on this, so will leave it as there's mixed opinion, by this Board on whether this point is taken, and will not go beyond that, as points 1 and 2 are not met, and will close on this motion to deny.

SECONDED by Mr. Carlson.

Mr. Duffy stated that in 1978, there were transactions of this property that occurred, kind of indicate that there may not be hardship. The property may have other reasonable uses.

MOTION CARRIED UNANIMOUSLY 4-0.

REHEARING REQUESTS:

None.

MINUTES:

September 11, 2007.

MOTION by Mr. Shaw to approve the minutes, with no changes, to waive the reading and place them in the file.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 3-0 (Mr. Duffy not voting).

REGIONAL IMPACT:

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

The Board discussed the Court case decision for 74 Cox Street. After further discussion on the history of this case, Mr. Falk will update the Board at the next meeting.

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

September 25, 2007

Page 14

Mr. Carlson brought up a development on West Adelaide Street, in which some houses are under construction, and the builder has gone bankrupt and has left the site unfinished, and is a safety and aesthetic issue. Mr. Falk will notify Code Enforcement, and update the Board at the next meeting.

ADJOURNMENT:

Mr. Duffy called the meeting closed at 9:16 p.m.

Jack Currier
Acting Clerk

CF
Taped Hearing