

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
October 23, 2007

A public hearing of the Zoning Board of Adjustment was held on Tuesday, October 23, 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 (arrived at 7:05)
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.

Mr. Duffy said they are going to take the first three cases together, as they are all similar cases. No one in the audience was present, besides the applicant, to speak in favor or in opposition.

1. EZ Mini Storage, LLC (Owner) Sprint/Nextel (Applicant) 1015A West Hollis Street (Sheet D Lot 47) requesting special exception to modify an existing telecommunications tower site to add three antennas, cables, and cabinets inside an existing shelter. R30 Zone.
2. State of New Hampshire (Owner) Sprint/Nextel (Applicant) 505 Amherst Street (Sheet H Lot 146) requesting special exception to modify an existing telecommunications tower site to add three antennas, cables, and cabinets inside an existing fenced compound. R18 Zone.
3. City of Nashua (Owner) Sprint/Nextel (Applicant) 830 West Hollis Street (Sheet D Lot 54) requesting special exception to modify an existing telecommunications tower site to add three antennas, cables and cabinets inside an existing fenced compound. R30 Zone.

Voting on these Cases:

Sean Duffy

Jack Currier

Bob Carlson

Gregory Mercier, representing Sprint/Nextel. Mr. Mercier said that the type of service that this will provide is 4G Mobile Broadbands, which will provide high-speed wireless internet access to the City. The technology is called Wi-Max, which is completely wireless.

Mr. Mercier said that it is a low power transmission, and it will provide additional coverage to the City, approximately an extra 15%.

Mr. Mercier said each of the applications is slightly different. For all of them, there will be no change to the heights. They all have existing antenna mounts, which the antennas will be mounted on. He said there will be changes to the external equipment shelters on the ground. He said the equipment will be inside the shelters at the 1015A West Hollis Street site. He said for the other two sites, there will be additional equipment on the ground, for the 505 Amherst Street site and the 830 West Hollis Street site, both have existing antenna mounts with Sprint's antennas, which is where an additional antenna is proposed.

Mr. Duffy said should the need arise for an expert to do coverage assessments or something by the City, would the applicant be amenable to paying for any independent advice.

Mr. Mercier said he could consult with the client.

Mr. Carlson asked about the wind rating of the towers.

Mr. Mercier said he doesn't have an engineer present with him to identify this.

Mr. Duffy asked if the proposal is adding weight to the towers.

Mr. Mercier said it is, but an engineer did perform a structural analysis to test the strength of the tower, and it did pass.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No One.

Discussion ensued amongst the Board members.

MOTION by Mr. Duffy to grant the special exception for EZ Mini Storage, located at 1015A West Hollis Street, it is listed in the Table of Uses, Section 16-26 (#274), it should not create undue traffic congestion or unduly impair pedestrian safety, in fact, this is an addition to an existing tower for more than a number of years in the City of Nashua. Mr. Duffy stated that it should not overload public water, drainage, sewer or other municipal systems, it is a wireless tower. Mr. Duffy stated that there's been no change in the area for the structure and the foundation of the shelter or tower, there are no special regulations to be fulfilled, and it should not impair the integrity or be out of character with the neighborhood, or be detrimental to the health, morals or welfare of the residents, because this is an existing structure.

Mr. Duffy said the special conditions are that proof of an engineering structural integrity be placed on file for the incremental weight added to the tower before the permits are issued, and that in the future, should the City of Nashua require any current or future need for an expert, an independent expert witness about coverage or any other cell tower issues, the applicant is amenable to any costs related to this.

SECONDED by Mr. Currier.

MOTION APPROVED UNANIMOUSLY 3-0.

MOTION by Mr. Duffy to grant the special exception for 505 Amherst Street, it is listed in the Table of Uses, Section 16-26 (#274), it should not create undue traffic congestion or unduly impair pedestrian safety, in fact, this is an addition to an existing tower for more than a number of years in the City of Nashua. Mr. Duffy stated that it should not overload public water, drainage, sewer or other

municipal systems, it is a wireless tower. Mr. Duffy stated that there's been no change in the area for the structure and the foundation of the shelter or tower, there are no special regulations to be fulfilled, and it should not impair the integrity or be out of character with the neighborhood, or be detrimental to the health, morals or welfare of the residents, because this is an existing structure.

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SECONDED by Mr. Currier.

MOTION APPROVED UNANIMOUSLY 3-0.

MOTION by Mr. Duffy to grant the special exception for 830 West Hollis Street, it is listed in the Table of Uses, Section 16-26 (#274), it should not create undue traffic congestion or unduly impair pedestrian safety, in fact, this is an addition to an existing tower for more than a number of years in the City of Nashua. Mr. Duffy stated that it should not overload public water, drainage, sewer or other municipal systems, it is a wireless tower. Mr. Duffy stated that there's been no change in the area for the structure and the foundation of the shelter or tower, there are no special regulations to be fulfilled, and it should not impair the integrity or be out of character with the neighborhood, or be detrimental to the health, morals or welfare of the residents, because this is an existing structure.

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SECONDED by Mr. Currier.

MOTION APPROVED UNANIMOUSLY 3-0.

4. Lisa Michaud, Trustee, Maurice & Joan Vigneault Rev. Trust (Owner) 48 Fairmount Street (Sheet 127 Lot 50) requesting the following variances: Existing Lot: 1) minimum lot width, approx. 58 feet existing - 60 feet required (on Fairmount Street), 2) minimum lot area, approx. 5,800 square feet existing - 6,000 square feet required, 3) minimum lot depth, approx. 58 feet existing - 80 feet required (from Carver Street); Proposed Lot: 4) minimum lot area, approx. 5,000 square feet existing - 6,000 square feet required, and 5) minimum lot width, approx. 50 feet existing - 60 feet required. RB Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Bob Carlson

Lisa Michaud. Ms. Michaud stated that this property was originally two lots, as shown in the attachments. She said there would be no adverse impacts to the adjoining properties with this request, as sewer and other utilities are already in place. She said the variance for the depth from the street corner shouldn't be a problem, as it's a very quiet neighborhood on a dead-end street.

Mr. Currier asked what document showed it as two lots.

Ms. Michaud said the Hillsborough County Registry of Deeds, Plan 522, as well as the deed that was attached.

Mr. Duffy stated that the deeds indicate the two lots taken together, where usually they list separate lots.

Ms. Michaud said from the original plan, the property had a hen house on the lot, which was torn down.

Ms. Michaud said the neighborhood would benefit by having another reasonably priced home, it is a quiet neighborhood. She mentioned that the lot next door is 50 feet wide.

Ms. Michaud said there's plenty of room for a house on the lot.

Mr. Currier said he's concerned with the size of the lot.

Ms. Michaud said she's here with her brother, and they grew up in the existing house. She said her parents have owned the house for 45 years.

Mr. Currier asked if the property had always been used as one lot.

Ms. Michaud said it has been, the house has always been on one lot, and the other lot had always been separate, it had been used for a garden.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

Don Lindof, 47 Fairmount Street. Mr. Duffy read into the record a letter dated October 18, 2007 from Mr. Lindof, that they're not in favor of the proposal, believing that a subdivided property resulting in a postage-sized parcel will be an eyesore to the neighborhood.

Alan Ferman, 43 West Hollis Street, 54 Cross Street and 52 Fairmount Street. Mr. Ferman said the lot size is only about 10,821 square feet to begin with. If this is subdivided, there will be 17 properties in a one block radius that have more property than 10,821 square feet, in which all these properties may want to also subdivide, so everyone has a 6,000 square foot lot. The yard will be small. Many lots in the area have much larger lots. He listed some nearby lots with their lot sizes.

Sandy Belknap, 40 Fairmount Street. Ms. Belknap stated that she has a double lot as well. She said she's opposed to this because of the subdivision that took place at the corner of Fairmount Street and Intervale Street a couple years ago. That development has ruined the neighborhood. She said the neighborhood has been changing, more houses are for rent and more families are living in the existing houses. She said she also has safety concerns with the traffic, since more people are moving into the neighborhood. Traffic has increased. The bridges must be repaired to be two-way bridges. She stated that there was

a recent fire at the Mohawk Tannery, and the major reason why the fire had a hard time to be put out was that there is not adequate water pressure at this end of the neighborhood.

SPEAKING IN FAVOR - REBUTTAL:

Lisa Michaud. Ms. Michaud said she appreciates how the neighbors feel about the neighborhood, but feels it's unrealistic to think that this neighborhood is not going to change, as it already has. This property has been in our family for 45 years, and it is, or was, two lots, and we want to put it back to what it was.

Mr. Duffy said he looks at both the setbacks and the essential character of the neighborhood, and also the accessory uses. He said the ordinance addresses not only the principal house, but accessory structures such as garages, pools, decks. He said he looks to see if someone is adding something that may be more nonconforming to what is already there.

Ms. Michaud said there are plenty of 5,000 square foot lots in Nashua, so it's not unrealistic to think you can't fit a back yard and everything else on a 5,000 square foot lot. Also, there are other lots with that same width. She said she just doesn't see it as that small, and the lot has plenty of room for a house and a driveway and a back yard. It would be a single-family house, and would add only one or two cars to the street.

SPEAKING IN OPPOSITION OR WITH CONCERNS - REBUTTAL:

No One.

Mr. Currier said he feels that the proposed house is on a smaller lot than many of the others, but you can make an argument either way - it can be seen as the one house that is the straw that breaks the camel's back, but every house is a little more impact on the neighborhood. He said in general, the zoning laws are there to prevent overcrowding in the neighborhood, and it's been used as a single-family home on one lot for 45 years, and is there a need to change it now, and feels uncomfortable with the application, especially with the neighbor's testimony.

Mr. Carlson said the neighborhood has changed, and there is a warranty deed for the two lots. The deed is very clear. Also, will the request have a negative impact on the area, and property values.

Mr. Duffy said the deeded lot information provided to the Board, from August 1961, does pre-date zoning. The applicant had had that use of the property, and he said he tried to look at this as a special condition to the property, meaning, when we look at the essential character of the neighborhood, but in driving up and down those streets, where there multiple mixed uses of deeded pieces of property of this size in the neighborhood, and he said he didn't notice many.

Mr. Carlson said if you look at the plot plan carefully, there are three other properties that are similarly divided. He said 41 Fairmount and 64 Fairmount, and on Brigham, there are 4 parcels that appear to be of the same general size. He asked if this in keeping with the character of the neighborhood. In a 3-block radius, there are other lots with similar lot sizes.

Mr. Currier asked Mr. Falk about 64 Fairmount Street, whether it is a dual lot.

Mr. Falk said sometimes the Assessing Department in the past, have removed a lot line between two lots. He mentioned several lots that look as if they are double lots. He said without doing some added research, it is hard to say.

MOTION by Mr. Duffy asked to suspend the rules to ask the applicant about their tax bill.

MOTION CARRIED UNANIMOUSLY 3-0.

Lisa Michaud, 88 Hazelton Road, Thornton, NH. Ms. Michaud said it is currently taxed as one lot.

Mr. Duffy said it's one lot, and now they're asking to put it back into two lots.

Ms. Michaud said the second lot isn't being used as anything; it is a lawn. She said there is a lot on Brigham Street that has a 50-foot wide lot.

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

October 23, 2007

Page 9

Mr. Carlson said the deed conveyance is for two lots, but the tax structure would be higher for two lots than one.

Mr. Duffy said the Brigham Street lots are on a paper street.

Mr. Carlson said they've enjoyed the taxation as one lot, and now they're coming back to have it become two lots.

Mr. Duffy said any request needs three votes for acceptance.

Mr. Carlson said the Board should look at 41 and 64 Fairmount Street.

Mr. Duffy said there are plenty of older lots that are already carved up with 50 feet of frontage. Mr. Duffy suggested tabling the case to check out some of the other similar sized lots in the neighborhood.

Mr. Currier said he's uncomfortable with the application.

MOTION by Mr. Currier to deny the request, all taken together. Mr. Currier stated that the first point the applicant must meet is 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 his opinion, and the Board's opinion should be that it's been taxed and served as a single lot for at least 45 years, the deed, and taxed as a single lot, while the deed conveys it as two lots, but is not convinced it's actually a two-lot property. He stated that he also feels like the applicant has used it for at least 45 years as a single-family home and there's no reason why it doesn't serve fine as a single-family home.

Mr. Currier stated that by dividing this and making it the smallest, if not one of the smallest lots in the neighborhood is not within the spirit and intent of the ordinance. He stated while there's been no professional testimony one way or another, he's persuaded by testimony that by having this smaller lot would impact property values of surrounding parcels. He stated that this is contrary to the public interest.

SECONDED by Mr. Duffy.

Mr. Duffy stated that in the neighborhood, and in the significance of the neighborhood itself, there seems to be structures of different sizes, but is afraid to do something more nonconforming as far as lot sizes and shapes, you'd be creating what's called an area in transition, so instead of having a certain amount of development, you'd be creating this change that's going to happen in the neighborhood, and will have more of a dramatic effect to the essential character of the neighborhood.

MOTION CARRIED UNANIMOUSLY 3-0.

5. Victor I. Bazzani & Lisa M. Lanzara-Bazzani (Owners) 168 Amherst Street (Sheet 61 Lot 149) requesting the following: 1) special exception to expand a nonconforming use by constructing a 7-space parking lot to accommodate an existing chiropractor office, and the following variances: 2) minimum open space, 52% existing, 50% required - 40% proposed, 3) to encroach 15 feet into the 25 foot front yard setback (on Mount Vernon Street) for parking spaces, 4) minimum parking space depth, 20 feet required - 18 feet requested; and 5) drive aisle width, 24 feet required - 18 feet proposed. RA Zone.

Voting on this Case:

Sean Duffy

Jack Currier

Bob Carlson

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH.

Atty. Prunier stated that Dr. Bazzani is proposing to remove the garage/carport, and a stockade fence is being proposed on one side of the building to match the stockade fence on the easterly side of the building, and will allow the owner to have seven parking spaces.

Atty. Prunier said they are not going to get more space in the building to operate the chiropractor business. It is a nonconforming use, and it is a parking lot for a nonconforming use.

Atty. Prunier said the cars parking on the street as a result of the practice will now have a parking lot to park in as a result of this. It will be adequately landscaped,

and it will look better. There is available parking at the old Hammar Hardware site for the employees, this is just for the patients, so they don't park on the street. Neighbors have been good, and we want to make sure parking will be better in this area.

Atty. Prunier presented two letters in favor of the request. He said they live on Mount Vernon Street, a narrow street, and allows parking on one side, this will allow all the patients to park in a parking lot.

Mr. Carlson asked how people with special needs, such as being driven in a van, park there.

Dr. Victor Bazzani, 168 Amherst Street. Dr. Bazzani stated that the parking lot will be much improved for access and egress.

Mr. Falk said one handicapped space is required for parking lots between 5-25 spaces.

Atty. Prunier said since this will need to go to the Planning Board, it will probably go from seven to six spaces with one handicapped space for a van.

Mr. Duffy said the letters are from 4 and 5 Mount Vernon Street, one is directly behind the site.

Atty. Prunier said there is a letter from a Mr. Zeloski. He is not affected by any of the parking. In reading his letter, it appears as if he thought we were enlarging the practice, but all we're doing is adding parking.

Mr. Duffy said Mr. Zeloski is located at 166 Amherst Street.

Atty. Prunier said that we will match the existing stockade fence with the other side.

Mr. Duffy asked about snow plowing and snow removal, and trash removal.

Atty. Prunier stated that snow plowing is available, there is landscaped areas at the end, the plows will plow the snow to the end of the parking space. If it gets to be too much, it will have to be removed.

Mr. Currier asked how many non-resident employees are there now.

Atty. Prunier said it's Dr. Bazzani, his wife, one employee that doesn't live there, but because of the length of the hours worked, they shift, so you could have a very short period of time when there are two employees there. Only one is there besides the two Dr. Bazzani's.

Mr. Currier asked whether there could be a stipulation that the employees must park across the street at the Hammar Hardware site.

Dr. Bazzani said his employees have never parked on the street, they've always parked on the lot where the Hammar Hardware building is. When one comes in, the other comes out. The employees are receptionists, they answer the phone, and there is one chair.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No One.

Discussion ensued amongst the Board members.

MOTION by Mr. Carlson to grant the special exception as advertised. Mr. Carlson stated that the use is listed in the Table of Uses, Section 16-302 (a)(4). He stated that it will not create undue traffic congestion, or unduly impair pedestrian safety. It will not overload public water, drainage or sewer or other municipal systems, special regulations are fulfilled, and it will not impair the integrity or be out of character with the neighborhood, or be detrimental to health, morals or welfare of residents.

SECONDED by Mr. Duffy.

MOTION CARRIED UNANIMOUSLY 3-0.

MOTION by Mr. Carlson to grant the variances. Mr. Carlson stated that the special condition is the pre-existing use since the year 2000, it is reasonable growth of the

business, and therefore is within the spirit and intent of the ordinance, it will not adversely affect the property values of surrounding parcels, it is not contrary to the public interest, and substantial justice is served.

SECONDED by Mr. Duffy.

MOTION CARRIED UNANIMOUSLY 3-0.

OTHER BUSINESS:

Mr. David Gleneck, 34 Tampa Street, DHG Associates. Mr. Gleneck is submitting a letter requesting that the minutes from the previous meeting not be accepted, as there are errors, misstatements and omissions. He said he has the corrections.

Mr. Gleneck said he'll need a copy of all the documents that were provided to the City, as a reference, including the letter from Ald. Teeboom.

Mr. Duffy said Mr. Falk can give him a copy of all the documents that were sent to the Board.

Mr. Gleneck said he never got a copy of the 1979 letter that was recorded at the Hillsborough County Registry of Deeds.

Mr. Currier said he'll leave a copy of all his documents that were sent to him in his package relative to Mr. Gleneck's case this evening in a plastic bag on his doorstep.

Mr. Falk said the minutes are not done "verbatim".

Mr. Duffy said he knows the minutes are not "verbatim", as the budget does not allow for this. He said there are "wav" files on the city website. He said he doesn't see a problem with looking at Mr. Gleneck's letter, but didn't see anything in his request that had anything to do with any bearing on the case.

Mr. Falk said that any applicant can write the minutes themselves if they so desire.

Mr. Duffy said he didn't have a problem with looking at the letter to see if the typing was correct or not.

Mr. Carlson said he'd like to table this and have Corporation Counsel to review everything, as he feels this is an intiguous situation, and wants the discussion on it to end.

Mr. Currier said that if Mr. Gleneck's comments are correct, but if the edited minutes match what's on the tape, we can get it changed. The assertions were all at the end of the discussion. He said he has a slight preference to review the minutes, and focus on the items that he's talking about, and if he's correct, then change the minutes. He thought it was just noise on the substance of the case.

Mr. Carlson said in his experience, this should be passed onto the attorneys and go on to the next project. This has been going on for over 20 years, and it's been grinding for so long.

Mr. Currier said that's more valuable taxpayer money being put to waste, and this is just checking some minutes.

Mr. Falk said what stands up in court as the true minutes to any case is what the Secretary of the ZBA writes down for the results and voting.

Mr. Carlson said Mr. Gleneck has been arguing this case for 20 years, and he's not giving up.

Mr. Currier said he didn't think Mr. Gleneck has been arguing the case for 20 years, it's been only recently the City has been trying to enforce it, and he's gotten away with it. It's been on the back burner until he went to refinance it, and it's come to the front.

Mr. Currier said he'd be willing to make a motion to accept the minutes as presented, in lieu of this letter, because the minutes are edited minutes, and the actual reading of the minutes are available in a .wav file, and that this Board unanimously finds that the issues brought up by Mr. Gleneck have no bearing on the case, and therefore, to approve the minutes as stated, and to put the letter on file as stated, and should it proceed to court, Mr. Gleneck can point out those deficiencies and how they're relevant to the case.

MOTION by Mr. Currier to accept the minutes from October 9, 2007, as presented, these minutes are edited minutes, to capture the important points of each case. The entire case is recorded in the .wav file, and is on file as such. The several assertions that Mr. Gleneck brings up in his letter that was presented to the Board tonight, in my opinion, have no substantial bearing to the case that was heard last week, and therefore, should not hold up the approval of these minutes.

SECONDED - No One.

Mr. Falk said that the minutes are not done verbatim, the main points, as well as who made motions and seconded those motions, and the votes.

Mr. Currier said none of these assertions were relevant to the case, Mr. Falk said he'd revise the minutes for these 5 or 6 assertions, but then there could be 5 or 6 more next week, and it'll never end, and none of these are important to the case.

MOTION by Mr. Duffy to waive the reading, and place on file the minutes of the October 9, 2007 meeting, subject to the corrections that may be indicated in the October 23rd letter by the applicant, and if they are in fact correct, that the City will make those changes into the official record, and that this matter has been taken care of.

SECONDED by Mr. Currier and Mr. Carlson.

MOTION CARRIED UNANIMOUSLY 3-0.

REGIONAL IMPACT:

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

Mr. Carlson asked about the new Ordinance relative to Board training.

Mr. Duffy said when any conference/workshop information becomes available, it will be forwarded on to the Board.

Mr. Falk reminded the Board to review the 2008 Meeting Dates.

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

October 23, 2007

Page 16

REHEARING REQUESTS:

None.

ADJOURNMENT:

Mr. Duffy called the meeting closed at 8:43 p.m.

Jack Currier
Acting Clerk

CF

Taped Hearing