

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
November 7, 2007

A public hearing of the Zoning Board of Adjustment was held on Wednesday, November 7, 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 6:50)  
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. Diane M. Heywood (Owner) 1 Conant Road (Sheet C Lot 71) requesting variance to exceed maximum accessory use area, 40% allowed, 42% existing - 66% requested, to construct an 18'x24' garage addition. R9 Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Bob Carlson

Robert Heywood, 1 Conant Road. Mr. Heywood stated that the additional garage is to house a 1928 and 1929 Model T Ford. He stated that the spirit and intent of the ordinance is to keep the structure within the setbacks, and to keep the antique cars out of the rain. He stated that there will be no impact to property values in the area. Mr. Heywood stated that there is a 6-foot high fence to shade the garage. Also, he stated that they are located between two main roadways. He said he is preserving a piece of history with the cars.

Mr. Duffy said one of the special conditions of the lot is the narrow shape, between two roads, Main Dunstable Road and Conant Road.

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Mr. Heywood identified the exact location of the garage addition on the lot. He provided the Board with a drawing that showed the garage proposal. He said it would be one story, and will not have any living space in it. He said he designed it as a gambrel to look more residential.

Further discussion on the garage location and dimensional criteria occurred between the Board and the applicant.

**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 variance on behalf of the applicant. Mr. Duffy stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, the special conditions of the property is the unique size and shape of the lot in the neighborhood, it is on a corner lot, but it's an odd corner lot with curving roadways with a busy two road intersection, but it is a residential area, with a single family use with an accessory use of a garage, also, it is a reasonable use to allow the applicant's pursuit, and there is no other reasonable, feasible method available for the applicant to pursue, other than an area variance.

Mr. Duffy stated that the request is within the spirit and intent of the ordinance, it is a reasonable accessory use to the garage space, for a very large piece of property.

Mr. Duffy said it should not adversely impact property values of surrounding parcels, even though there was no expert testimony.

Mr. Duffy stated that the request is not contrary to the public interest, as the abutters have been contacted, and substantial justice is being served with reasonable development rights.

Mr. Duffy said the special conditions are that the applicant has agreed that there will be no second floor, living space, or second story storage, it is for a one-story garage, also, the

peak height is not going to exceed the parameters of the ordinance.

**SECONDED** by Mr. Carlson.

**MOTION APPROVED UNANIMOUSLY 3-0.**

1. **Area Agency Properties, Inc. (Owner) 140-148 Canal Street (Sheet 41 Lot 70) requesting special exception to expand a non-conforming use by constructing a 558 square foot addition. GI Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Bob Carlson

Charles Okorie, P.M. Mackay. Mr. Okorie presented some drawings to show the location of the addition. He said the area is approximately 19'x29', and will go on an existing foundation wall. He said parking and traffic for the building is fine. The use is for people with developmental problems, and they help a lot of people. He said that environmentally, there are no issues with the construction. He went over the points of law.

Mr. Duffy asked about the dotted line on the map.

Mr. Okorie said they are topographical lines.

Mr. Duffy asked about parking.

Mr. Okorie said there are no problems with parking.

Mr. Currier asked if any of the parking spaces area used by BAE.

Mr. Okorie said no.

Mr. Currier asked if it is a one-story addition.

Mr. Okorie said it is one-story. He said there used to be part of the building in here. He said they are putting back what was there. He said it will be sprinklered and heated.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

**MOTION** by Mr. Currier to approve the special exception on behalf of the applicant. He said the use is listed in the Table of Uses, Section 16-302 (a)(4). The addition, per testimony, will not create any undue traffic congestion or unduly impair pedestrian safety. Mr. Currier stated that the request will not overload public water, drainage or sewer or other municipal systems. He stated that all special regulations are fulfilled, in terms of point #5, whether the use will impair the integrity of the neighborhood, this proposal is not out of character with the neighborhood, and it will add to the existing use in the structure, and is bringing the 558 square feet back into what it was, and believes it meets the five criteria. It is for a 558 square foot addition, one story, as indicated in the plans provided to the Board this evening.

**SECONDED** by Mr. Carlson.

**MOTION CARRIED UNANIMOUSLY 3-0.**

2. **John & Michael Forcier (Owners) 65 Sawyer Street (Sheet 93 Lot 46) requesting variance for minimum lot area, 9,474 square feet existing - 24,891 square feet required - to maintain four dwelling units where three are permitted from variance granted on March 25, 1982. RB Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Bob Carlson

Jessica Forcier, 32 Williams Street, Nashua, NH. Ms. Forcier stated that they bought the property in March 2007, and from all aspects, they believed they were buying a legal four-unit building, as that was what was existing. Four units currently exist, and has been that way for quite some time. There are four of all the different types of meters, tanks, etc.

Ms. Forcier said the previous owners owned the property for over 60 years. Even the appraiser said it was four units. However, when we submitted for a building permit, the Building Department indicated it was only approved for three units. She said if all four units are not being rented, the mortgage cannot be paid,

also, there are four families living in the building. She said the building is in excellent condition.

Ms. Forcier described how the units are laid out in the building, on all the floors. She described the entrances to each unit, with their porches and rear exits.

Mr. Duffy asked if the applicant would be amenable to having the Fire Department inspect the building.

Mr. Duffy said the previous owner asked the Zoning Board for three units in 1982, were granted three units, and now an additional unit is being asked for. Someone should take a look in the building to make sure it is safe.

Ms. Forcier said she was concerned, because the building is so old, some of the revisions may be very expensive, she said they may not know what they're getting into.

Mr. Carlson asked Ms. Forcier what the big issue is with having the Fire Department inspect the building.

Ms. Forcier stated that they have a porch that needs to be replaced, and not knowing of this, money is short.

Mr. Currier asked how many parking spaces exist.

Ms. Forcier said there are seven spaces and the garage is not being used for parking, it is for storage.

Mr. Currier asked if vehicles are parked in the street or not.

Ms. Forcier said all vehicles for the units are parked on the property; it is in the lease, that there is no parking on the lawn. She said they want the property to look nice. No stay over guests can park in the street.

**SPEAKING IN FAVOR:**

John Forcier, 32 Williams Street. Mr. Forcier stated he has no problems with the Fire inspection, but wondered if it could require the Codes of today, such as stairways.

Mr. Duffy said it should be for building codes, such as smoke detectors.

Mr. Forcier said the Fire Dept. should be happy with the back porch being repaired.

Discussion ensued between Mr. Forcier and the Board.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

**MOTION** by Mr. Duffy to grant the variance on behalf of the applicant. Mr. Duffy stated that the variance is needed to enable the applicant's proposed use of the property. Mr. Duffy stated that there are no real special conditions of the property, other than the prior owner, without approval, had actually exceeded the building requirements, and the applicant's only alternative is to apply for the variance, as the use has been there for greater than ten years in the neighborhood. Mr. Duffy stated that it is within the spirit and intent of the ordinance, and the neighbors have no concern or issues with an existing structure that's been there, and has been previously approved for a three-unit property.

Mr. Duffy said there will be no change to the structure for foundation or roof height, it is not contrary to the public interest, because there are a couple of multi-unit buildings in the area, and there are multiple uses in the area, and the building appears to be in very good condition, therefore, it is not contrary to the public interest, and substantial justice is served that reasonable development rights are granted, similar to other uses in the neighborhood.

Mr. Duffy said the special conditions are that the applicant pursue an inspection of the building, with the Fire Department, to be completed, and possibly complied with, within 90 days.

**SECONDED** by Mr. Carlson.

**MOTION CARRIED UNANIMOUSLY 3-0.**

3. **Cajun Way, LLC, (Owner) 1 Beauview Avenue (Sheet 59 Lot 136) requesting the following variances: 1) to exceed maximum sign area, 10 square feet permitted - 16 square feet requested, 2) to exceed maximum ground sign height, 6 feet permitted - 9 feet requested, 3) to encroach into the setback from an intersection, 25 feet required - 7 feet requested (on Beauview Avenue) and 10 feet requested (on Manchester Street). RA Zone.**

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Voting on this Case:

Sean Duffy  
Jack Currier  
Bob Carlson

No one was in attendance to present the case. The Board went on to the next case, in case the applicant was caught in traffic, or running late.

- 4. Woody & Michael Realty Investments, Inc. (Owner) 233 Main Dunstable Road (Sheet E Lot 111A) requesting variance to allow an RV sales, repair and service facility in which less than 75% of the building is used for industrial or manufacturing uses. PI Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Bob Carlson

Mr. Duffy reminded Atty. Hollis that there are only three members on the Board this evening.

Attorney Morgan Hollis, Gottesman & Hollis, Nashua, NH. Atty. Hollis passed out some information to the Board that he will be referring to. Atty. Hollis introduced the site, and has highlighted its location at the dead-end of Main Dunstable Road.

Atty. Hollis said they propose to use the site to sell and repair RV campers, much like the old Campers Inn use. He pointed out some maps in the package as well, including an aerial photo.

Atty. Hollis went over the rest of the package that was submitted. The Land Use Code identifies this use as a Conditional Use, subject to Planning Board approval. In order to get to the Planning Board, and to be considered a Conditional Use, your use can only occupy 25% of the structure, the gross floor area. The other 75% has to be occupied by a permitted use in the industrial/manufacturing category. He said if you turn to the following pages, there are other uses that he'll refer to as similar uses - automobile storage and towing, use number 143, it's permitted in the zone, and use number 190, which is transportation equipment, all of those could be put on that site as permitted and they are also industrial. He said that three-quarters of the building, which is a 5,000 square foot building, would have to be dedicated to that type of use. He said they

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are going to use the whole building for RV's. It will be sales and service of RV's. City staff said they need an area variance.

Atty. Hollis went through the conditions to meet the area variance, and discussed the points of law. He said the previous use was the yellow school buses, which had a variance in 1986. This use will be less non-conforming, because it's permitted by Conditional Use. He said the special conditions are the previous use, and the building itself.

Atty. Hollis stated that the RV's will occupy the majority of the site. He said the use is appropriate for this area, especially since uses 143 and 190 are permitted uses in this zone, and this site. He said they will generate about 360 sales per year, so there will be very little traffic generated by the use. He said it's going to be a sales center, not a major service center, and it will have three bays for service.

Atty. Hollis said if the use is granted, it will pose no harm to the abutters.

Mr. Duffy asked Atty. Hollis if he was aware of the letter from an abutter.

Atty. Hollis said they are aware of it, and have worked with Mr. McCulloch's attorney, and have addressed a drainage issue by proposing a leaching catch basin, and have done a survey, so we're aware of the property boundaries. Also, buses were washed on a regular basis, where the RV's will get washed when they're going out the door in a sale, or, if they're sitting there a long time collecting dust. He said this is probably a site plan issue.

Atty. Hollis said the applicant has a similar use in Maine, and wants one closer to Massachusetts.

Mr. Duffy said he's concerned that the use will go out to the edge, and is concerned with open space, lighting, banners, flags, and it's not a commercial area.

Atty. Hollis stated that the motor traffic has changed in the area. It is not a park industrial building, it doesn't have any presence. The proposed use will work well at this site, they do not want to be on Daniel Webster Highway. RV's do not want to be out with that type of traffic. With the long driveway, it's good for them. Campers Inn moved out of the Amherst Street area.

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Atty. Hollis said the Planning Board will go over setbacks, buffers, trees, and other site issues with the Conditional Use. He said there is significant setback from the roadway, from the taking. He said the taking is actually inside the fence. He reminded the Board that this site does not abut a residential neighborhood, like the Auto Village, and this site will not encroach onto anyone's property.

Mr. Duffy asked about signage, and what is proposed.

Atty. Hollis said at the next meeting, they are proposing a variance to allow another ground sign. He stated that they tried to get all of the requests on one agenda, but it didn't work out with getting all the applications in at the same time. He said they'll get the use approved first, and the signage later.

Mr. Carlson asked how many units will be parked on site.

Nicole Duquette, TF Moran, Bedford, NH. Ms. Duquette stated they will have approximately 180 vehicles, with between 10-20 percent being motor homes, the rest will be the towable units that you can attach to your truck.

Mr. Carlson asked what the operating hours are.

Ms. Duquette said it's listed in the application, and is listed in the site plan, too.

Mr. Carlson said it's dark out there at night, what type of lighting is proposed.

Atty. Hollis said this will be addressed at the Planning Board. He said there is a lot of buffer between this site and any of the residences across the highway.

Mr. Currier said this place will be like a new car dealer, and it's a drastic change. He said that auto storage and towing is allowed, and there was a use like this off of Congress Street, but it wasn't like a car dealer. Even though use 143 is permitted, he said he's glad the zoning laws are written that way. He said he's concerned with the erosion of industrial land between exit 4 and exit 5. He said he's also very concerned with any sign variance. He also wants to see some photos of their use in Maine.

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Atty. Hollis said it'll be more sales, but there will be service, as they'll have three bays. They are not setting up to be a service area. Also, they are not as large as the Campers Inn. It's also limited by lot size and lot layout, as it's a flag lot. He mentioned the MacLaughlin use, Boston Billiards, and other uses along the highway, they are not prime industrial sites. He said there will not be a Campers Inn there.

Mr. Currier said the buses were off-peak for school as compared to other drivers. He said the RV places are busier; they are moving the traffic time to make it potentially worse.

Atty. Hollis said they are a commercial use, and this site has multiple ways for ingress. The trucks have figured out the traffic. This use will spread out the traffic.

Atty. Hollis said a lot of the Board's concerns, aside from the strict hardship points, have been met, or will be met at the Planning Board. Traffic should not come into play for the proposed use. Conditional uses are done by the Planning Board.

Mr. Duffy asked about the parking, and display areas.

Ms. Duquette said some of the spaces are very large, to allow for the RV's, some of them are 50 feet deep, these are not average sized spaces.

Mr. Duffy asked if there will be any parking on the long driveway area.

Atty. Hollis said the whole site is already covered, and will be like that when the RV use is in there. He mentioned where the display area will be, probably over 50% of the site.

Atty. Hollis said they are here for the percentage of the building being used, the use is still allowed as a Conditional Use, but 75% of the building has to be used for an industrial or manufacturing use.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

Ray Durand, 66 Haines Street. Mr. Durand stated he is a partner with others that own the building that Custom Manufacturing is located at. He asked about when the next meetings will be. He submitted a photograph to the Board, which shows the fence that runs between the two properties. He said the bus company tore the fence down to store more buses. He said they had the property surveyed, and it showed that they were parking buses on our property, and when told about it, he said that's one of the major reasons why the bus company moved out.

Mr. Durand said one of their concerns is vandalism, as the new use will have more traffic coming to the property. He said they are also concerned with snow plowing, and drainage. He also wanted to know if they will be parking in the long driveway area, and they are also concerned about signage. He also asked if there is any environmental study had been done, as there were a lot of buses parked on the property.

Mr. Currier said it is not permissible for someone to plow snow on someone else's property. He said the plan shows a leaching catch basin at the lowest point of the property, and the drainage onto his property should be drastically improved.

Susan Beem, 44 Wood Street, President of Custom Manufacturing. She said her big concern is that it will become a retail building, with strangers coming to the site all the time, especially at night. There will be a lot of expensive motor homes, and there have been vandalism issues in the neighborhood. She asked where the public will park when they're not around.

Mr. Duffy said a lot of these issues will be Planning Board issues.

Ms. Beem said this use will change the area. It will bring strangers to the property all the time. The previous use was a more private use.

**SPEAKING IN FAVOR - REBUTTAL:**

Atty. Hollis agreed with the Chair's comment that a number of the issues discussed this evening are site plan issues, but felt it was in the Board's prerogative to impose whatever conditions they want. He stated that it is their hope that if the variance is granted, that we need to sit down with the neighbors before the Planning Board, because they'll be there to go over these site issues such as fencing and drainage. He said although they

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haven't done their homework, many of the issues brought up are typically site plan issues.

Atty. Hollis said there is a property line shown on the plan, there's also the identification of a parking easement, that is on BD & P's property side of that line, so there's some issue of easements in the registry so they want to establish where that is and if a fence is the best thing to talk about. He didn't know if this is something the Zoning Board should weigh in on.

Atty. Hollis said the neighbors bring up a good point, which is vandalism. He said that this gets back to his argument that due to the unusual nature of this lot, whatever use goes in there, it doesn't have any direct access, nor does it have any direct ability for people to look what's going on, they can see it, but it's not frontage. They have a driveway, and a back parking lot, which is a real concern in all industrial parks. Atty. Hollis said by granting the variance, the Board will introduce an element that will upgrade security on the site, with additional lighting, and people coming and going, and assets in need of security, and a seven day per week operation. He said it won't be like typical manufacturing firms, where everyone is gone on Friday afternoons, it will have a 324 foot long driveway. He said if granted, the use will have better security and lighting, which will be a benefit.

Mr. Currier asked if under the previous code, would this use be permitted.

Atty. Hollis said no, no such use was allowed, and there were no Conditional Use criteria. The Planning Board must look at the Conditional use criteria, which is a lot of engineering and site issues. He said these criteria are not the type that the Zoning Board looks at, it is almost like a step beyond the special exception criteria.

Mr. Currier asked what type of storm does the leaching catch basin take care of.

Ms. Duquette said the abutter was worried more about the water that was washing the buses. The leaching basin isn't to catch the stormwater, and there have been big storms recently, the site has A and B soils, and perk very well. She said they are not increasing any impervious areas, and the leaching catch basin will catch the first blush of runoff, it's more of a treatment device rather than a detaining device, although it will allow for a 2-inch storm to recharge into the groundwater.

Mr. Currier asked where it is on the property, and where the outflow is.

Ms. Duquette said it doesn't have an outflow, the outflow is the exfiltration into the ground. It is a perforated pipe, in a stone trench, 3 by 3, that allows the water to store there, until the ground allows it to perk through. She said it's an open trench. She said the pipe is wrapped in fabric.

Mr. Carlson said it is a state requirement that the selling of RV's requires at least one service bay.

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

Ray Durant, 66 Haines Street, Nashua. Mr. Durant said their main concern is with the security and the drainage issues. He said that Hayner Swanson has done a survey of the property, and the plan showed that they paved into our land. He said they really want to have the fence reconstructed.

Mr. Currier said he's uncomfortable with the request, but feels like he needs to do a little more diligence on it. He feels like it should be tabled for two weeks, so it can go together with the sign variance application as one package.

Mr. Duffy said he needs a little more time, too. He said he's not as concerned with tying the sign variance in with this request, although it would be wonderful. He said he'd like to revisit a couple other sections in the code, and believes that these types of uses will connect to a change in the adjoining uses.

Mr. Carlson said there are many other uses with limited commercial use within the area; so asking for a change to commercial use is an issue. One of the things that happens is that success breeds success, then other available lots would be encouraged to open commercial use, and that could significantly change the area.

Mr. Currier said if it's tabled, the Board should open the public hearing to all, as it's all fair game again. Plus, there should be all four members here. He said the applicant should be in favor of tabling this, as their chances for approval increase with another member present.

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Mr. Falk said the public hearing was closed, the Board would have to re-open it. He said he'd send any additional information to Mr. Shaw the next morning.

Mr. Duffy said he's amenable to keeping the public hearing open, and they'd vote on the different requests individually.

**MOTION** by Mr. Duffy to Table the application to the next meeting and it will be the second item on the agenda.

**SECONDED** by Mr. Carlson.

Mr. Currier thanked the applicant for bringing in the aerial photo view of the property, and asked if they could bring in one for the place they have in Maine.

**MOTION CARRIED UNANIMOUSLY 3-0.**

The Board said they are going to open the Public Hearing for Case Number 4.

Mr. Duffy asked what the normal procedure is if someone doesn't show.

Mr. Falk said they have 30 days in which to ask for a rehearing, and then the Board must decide whether to grant one or not.

Several neighbors to this case were in the audience.

**MOTION** by Mr. Duffy to deny the request, as the applicant is not present to make a public presentation.

**SECONDED** by Mr. Carlson.

**MOTION CARRIED UNANIMOUSLY 3-0.**

**OTHER BUSINESS:**

Several neighbors to the request in Case number 4 asked questions about the procedure if an applicant doesn't show for the public hearing.

Mr. Falk described the procedure, with the Code Enforcement Department being involved.

Discussion ensued between the Board and the neighbors relative to Code Enforcement and procedural issues.

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**MINUTES:**

None.

**REGIONAL IMPACT:**

Mr. Falk didn't have the agenda, but there are only two cases, one is an area variance that looked relatively straightforward, and the other case is the sign variance for 233 Main Dunstable Road.

**REHEARING REQUESTS:**

None.

**ADJOURNMENT:**

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

Jack Currier  
Acting Clerk

CF  
Taped Hearing