

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
December 11, 2007

A public hearing of the Zoning Board of Adjustment was held on Tuesday, December 11, 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  
Robert Shaw  
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.

**REHEARING REQUESTS:**

1. **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. [DENIAL FROM 11-07-07 MEETING].**

Mr. Duffy asked if the Board believed there was a procedural error, or if someone was denied the right to be heard.

The members collectively said "no".

Mr. Duffy asked if it was an illegal decision, in other words, did the Board address each of the points of law required for a special exception or a variance.

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

December 11, 2007

Page 2

Mr. Duffy said no, because the applicant did not show up on time, or attend the meeting.

Mr. Duffy asked if the request for rehearing contains any new information not presented or available.

Mr. Duffy said the letter did indicate that they were not present due to no fault of their own, it was a family medical issue. He said that the Board usually gives people the benefit of the doubt if they don't attend.

Mr. Duffy asked the Board if there is anything to cause them to come to a different decision.

Mr. Currier stated that in the rehearing request, there was a medical emergency, and they were not in the area. He said in the past, the Board has been open to granting rehearing requests in situations like this.

Mr. Shaw said there is a special circumstance here; they had a valid reason for not attending.

Mr. Falk said the case would have to get re-notified, and it would have to start all over again. The abutters would get another notification.

Mr. Duffy stated that should a motion be granted for approval, it will be the first item on the agenda.

**MOTION** by Mr. Currier, on behalf of the owner, Cajun Way, LLC, to grant the rehearing, as the applicant has presented new information which was that there was a medical emergency that came up at the last minute, and they couldn't attend the meeting, this is new information. The Board typically grants rehearsings in which the applicant does not attend.

**SECONDED** by Mr. Shaw.

**MOTION APPROVED UNANIMOUSLY 3-0.** (Mr. Carlson not arrived yet)

**OTHER BUSINESS:**

**MINUTES:**

November 20, 2007:

**MOTION** by Mr. Duffy to waive the reading and place these minutes on file.

Mr. Shaw suggested that the minutes should clarify at the beginning of the meeting; the motion that was passed 3-0 was prior to Mr. Carlson's attendance at the meeting, he was a couple minutes late.

Mr. Currier said he puts on the voting sheets what time someone arrives if they are late. He said the minutes should reflect what time Mr. Carlson arrived.

Mr. Falk said he will make the appropriate revision to the minutes.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 3-0.**

**REGIONAL IMPACT:**

Mr. Falk stated that the application deadline is today. He mentioned that two cases are submitted so far, and there may be a few more that Staff will accept a day later. He said the ones he's seen do not qualify for regional impact.

Mr. Duffy said Mr. Shaw and Mr. Currier are going through the process for full-time member and re-appointment with the Board of Aldermen, which will be greatly appreciated.

Mr. Duffy said in January, the Board will review the By-Laws, and this is when any revisions or updates will occur, and they will be posted in the City Clerks office. Also, a vote for Officers will take place.

Mr. Duffy asked about the calendar and schedule of meetings for next year.

Mr. Falk will send the By-Laws out in the next package.

The Board took a recess to wait for Mr. Carlson to arrive.

The Board said the New Hampshire Primary is the same date as their next meeting, which is January 8, 2008.

Mr. Duffy stated that the meeting should be changed to Wednesday, January 9, 2008, instead, after the Primary.

- 2. Crossway Christian Church of Hillsborough County, Inc. (Owner) 503 Main Dunstable Road (Sheet C Lot 184) requesting variance to exceed maximum ground identification sign area, 12 square feet allowed - 24 square feet proposed. R40 Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Bob Carlson  
Robert Shaw

Attorney Jeffrey Zall, 221 Main Street, Nashua. Atty. Zall that the church was previously located at 115 Northeastern Boulevard for the past 12 years, and has just moved into their new building at 503 Main Dunstable Road. He said they were unaware of the size that they wanted would need a variance. He said the requested sign is 44 inches by 76 inches, which is approximately 24 square feet in area. He said a picture of the proposed sign is attached to the application.

He said the property is located in the R40 zone, which allows for an identification sign up to 12 square feet. The variance will allow the church to install the sign at 24 square feet. All the other requirements of the variance will be satisfied. Atty. Zall said the property is about 12 acres in size, with substantial roadway frontage, about 760 feet. He described the sign's location. He stated that due to the large size of the site, and the rural character and significant frontage, a sign of the size proposed is a reasonable request.

Atty. Zall pointed out that in the package, he identified many other churches in the City, in residential zones, with signs as large, or larger, than the one proposed. He identified the sign that Crossway Church had at their previous location. He said it's not unreasonable to have a sign the size of the one that's proposed. Atty. Zall went over all the relevant points of law.

Mr. Duffy asked what the acreage is of the properties mentioned with larger ground signs.

Atty. Zall said he was only concerned with the signs in residential zones. He said most all of them will be on smaller lots, with less street frontage as well.

Mr. Shaw asked about the base of the sign, and if it will have any text on it, also, he asked what type of lighting it would have.

Atty. Zall said the bottom portion of the sign will not have any text. It will spotlights in the ground shining up at the sign, and they will be shut off after church hours.

Mr. Shaw said that the upward lighting should be kept to a minimum.

Atty. Zall said they would welcome that as a stipulation.

Mr. Currier asked if the list of signs for churches is a comprehensive list for all of Nashua.

Atty. Zall said it is not, they tried to focus on churches in residential areas.

Further discussion ensued between the Board and applicant.

**SPEAKING IN FAVOR:**

Pastor Ron Kastens, 6 Century Road, Nashua. Pastor Kastens said the part of the sign on the bottom is siding that matches the church, and there is no way to put text on it. He said they will be very careful with regards to lighting, and not lighting up the sky. They got a lot of good abutter and neighborhood feedback with respect to lighting. He said the speed limit here is 30 mph, and they had to move their entryway to get better sight lines entering the site. He said 24 square feet is a reasonable sized sign, it doesn't need to be huge, the size proposed is reasonable.

Mr. Carlson asked what the size of the congregation is.

Pastor Kastens said about 400 members.

Mr. Carlson asked where they drive from.

Pastor Kastens said mainly from the general area, but some come

from farther distances.

Mr. Currier asked how often they have weddings and other large, special events.

Pastor Kastens said it's hard to tell, because they're moving into a nice new building and space, as compared to their old warehouse location, so, these events may be more often.

Mr. Shaw asked if the applicant would be amenable to a stipulated time when the lights would be turned off.

Pastor Kastens said it's not unreasonable to have a time limit. He said they don't want to have the sign lit after hours, anyways. He said some of their events do go into the evening, and didn't anticipate any of the functions going past 11 p.m.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

Chris Lynch, 500 Main Dunstable Road, Nashua. Mr. Lynch said his concerns are with the placement of the sign. He said he lives directly across the street, and is the only person that can see the sign. He said being an abutter, he'd rather have it be what the Code allows. He said the site is very well lit. He said the proposed sign is much nicer looking than the temporary sign. He doesn't believe anyone has any problems finding the site, it is very visible.

**SPEAKING IN FAVOR - REBUTTAL:**

Pastor Ron Kastens. Pastor Kastens stated that he agrees that they will place the sign in a better location than the temporary sign. He said the frontage is very large, and the sign is the same size as what they had at their other location. He said 24 square feet is a reasonable size. He said it would be rare for any event going past 11 p.m.

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

Chris Lynch, 500 Main Dunstable Road, Nashua. Mr. Lynch stated that he didn't see the benefit of having a larger sign, people will see the sign either way. No one will miss the sign.

Discussion ensued by the Board members.

**MOTION** by Mr. Duffy to grant the variance on behalf of the applicant for up to 24 square feet in size. He said the variance is needed for the applicant's reasonable proposed use of the property, given the special conditions of the property. He said the property is a significantly sized lot, 12.66 acres in an R40 zone, the property and setback of the building is significant for the property, and the benefit sought by the applicant is both proportional and directional, and identification purposes of the property, he said it is not for advertising or intrusive to the neighborhood, so it is a reasonable use, feasible for the applicant to pursue.

Mr. Duffy said the request is within the spirit and intent of the ordinance for signage to be able to identify the site, he said the sign is static, and fixed, and is not a moving sign with a lot of busy information on it.

Mr. Duffy said it should not adversely affect the property values of surrounding parcels, even though there was no expert testimony, and the sign is in the public interest, and substantial justice is served to allow a sign for identification and direction for their property.

Mr. Duffy said the special conditions are that the applicant is aware of the lighting issues in the neighborhood, so they will work to have the lighting shut off as early as possible. They will work with the neighbors to allow a reasonable lighting cycle, it is function driven, and the applicant will pursue abutter input on this issue. The special condition is a two-sided sign, placed perpendicular to the roadway.

**SECONDED** BY Mr. Carlson.

**MOTION CARRIED 3-1** (Mr. Currier).

**REHEARING REQUEST:**

2. **DHG Associates (Owner) 104 Walnut Street (Sheet 82 Lot 49) appealing decision of the administrative officer relative to the approved number of dwelling units in the building. RC Zone. [DENIED AT THE 10-09-07 MEETING]**

Mr. Duffy asked if the Board saw any procedural error, including improper notice, or denying someone the right to be heard, or any other items of procedural nature.

The Board members collectively said "no".

Mr. Duffy asked if it's an illegal decision, in other words, did the Board fail to completely address the points of law as required for a variance or special exception.

Mr. Currier asked if there was some discussion in the four page letter towards that.

Mr. Duffy said he didn't believe they stated in the letter that the Board failed to cover that.

Mr. Falk said the request wasn't a variance or a special exception, it was an Appeal of an Administrative Decision, which doesn't go over the points of law.

Mr. Shaw said the last major bullet said the deliberations by the ZBA were non-substantive and insufficient as a matter of law to support the ZBA's decision, etc.

Mr. Currier said in regards to that last bullet, he felt that the Board did consider the full extent of the request, and we went over it line-by-line. He said there were many repeat points, which we didn't cover, but by and large, we did a thorough job in covering that, so, while there's a claim here by Attorney Callen that the Board did not completely address each point of law, believes that the Board did.

Mr. Duffy said the review of the package included the timeline of documents that each of had a chance to look at, as well as the file. This information is available to the public in the City offices. He said he personally felt that the applicant should show, and document for us, where the number of units were required to be made. He said the testimony that we heard that was presented, as well as our review of the case information, was substantive enough, and the motion was clear enough for us to come up with our specific conclusions. He said some point about the minutes that demonstrated a failure of the ZBA not reviewing and evaluating the evidence - the minutes we prepare are not verbatim, and never have been during my tenure on the Board, and didn't see how the minutes reflect a failure to review, but does indicate what we did try to review.

Mr. Shaw agreed, he said the Board spent quite a bit of time not only in our normal preparation of the meeting, but also quite a

bit of time at the meeting going through various items that were discussed, and it was a pretty thorough discussion. It may have been confusing to keep track of all the different information and testimony given, but he said the answer to number two, is no.

Mr. Duffy asked if the rehearing information contained any new information not available or presented during the original public hearing.

Mr. Currier said that is the crux of this argument. He said paragraph two is the basis for this request is simple, there is some new information. He said the exhibit 2, and the claim is that while exhibit 1A and 1B were provided to the applicant, exhibit 2 was not.

Mr. Currier said in exhibit 2, you have this planning and subdivision check and zoning check saying ok, ok, and therefore Attorney Callen claims this is acknowledgement on behalf of the City that this is ok for ten units. He said this is the crux of Attorney Callen's argument here. He said this is nothing we haven't seen before, because just when this property changed hands, it was on record for eight, and there was a ten with two unused, which doesn't change on exhibit 1A or 1B. He said for Exhibit 2, it says it's for interior renovations, two units first floor, 1 unit second floor. He said he doesn't see this validating ten units from exhibit 1A or 1B.

Mr. Duffy said regarding any new information not presented or available to the Board at the original public hearing, he said the applicant, in their cover letter, kind of indicates the crux's of their argument, saying that the basis for this request is simple, based upon recent discovery by my client, he said he's not convinced by this argument because all of these documents that we looked at, as well as the building file, there's tons of documents and documentation about all of the information about this property, and said he's not convinced that the applicant might not have had access to this information. The access to these documents are available at City Hall. He said a building permit checklist is not a land use application, the permit was for an interior renovation. He said exhibit 1A and 1B are not new, exhibit 2 is a new document, but it's not a building permit checklist, it's not a building permit application, or a land use application, or a land use hearing, it is a document that is like a permit to do some work.

Mr. Duffy said this didn't hold much water with this, just like a residential electrical permit in exhibit 3, this was in the files. He said he didn't see anything of a substantive nature in these documents that he wasn't somewhat aware of or leads credence to the recent discovery. He said these things were aware of to him when he began his review.

Mr. Currier said paragraph 2, exhibit 2, was seemingly just brought into the public domain, where it was hidden, and said he agrees with Mr. Duffy that this building permit checklist in no way is a zoning approval, and it's not persuasive testimony whatsoever. He said that Attorney Callen then goes on, and, in his opinion, brings in other exhibits, most of which we've seen before, all of which, on one hand, by strict interpretation of rehearing, we shouldn't be hearing that, because what we're looking at is the new information, and the only thing new that wasn't provided before, or wasn't discussed explicitly, was exhibit 2, however, Attorney Callen goes on and makes more arguments with existing exhibits.

Mr. Currier said in paragraph 6, or, page 2, where it says previously only the first page was made available to my client. He said that's where the electrical permit is discussed in exhibit 3 and 4. He said that is information that the Board has seen before, exhibit 3 is. He said it's interesting, in that exhibit 3 in here, which shows, I think, ten meters, it's completely unclear, and who knows what it originally said, and in some of the other information provided, there are several electrical permits for other meters to be added. He said in wrapping up Attorney Callen's argument, that these meters were added or these apartments were added and some other year it's other meters and other apartments, and perhaps the applicant said in their mind that they have the ten units, and over the years you string it all together, and they have ten units, but each of these permits are kind of small, and step-wise, some were done because of fire damage, so when they're approved, what's being approved is this certain apartment, so from paragraph 6 on, Attorney Callen pulls in several exhibits to make the point that nine, or maybe ten, but nonetheless, it's an argument that he said he doesn't buy, it's too disjointed, and it's not a zoning approval, it's just various permits with the apartment numbers assigned by the applicant. He said for ten new, and two unused apartments, in regulatory controlled agencies, if you have something that's unapproved, it doesn't

mean that its there and can be approved at any time, you have to go through the proper steps, so he stated that he didn't see this as different from the initial review the Board did. He said he didn't buy Attorney Callens arguments going on from paragraph six.

Mr. Duffy said he's not persuaded by page 2, paragraph 2, where the footnote says the City failed to produce requested documentation in it's internal procedures for the review and approval of land use permits. He said there is no evidence in this rehearing request, the letter indicates that the client asserts each of the required necessary signoffs - there's no documentation of a time or a period where the applicant was not made available of any document when we did our review, or any past history, since 1980, or anything that we re-reviewed on our timeline.

Mr. Duffy said the Board is very aware of all the documents and ordinances that occur, and that a land use application needed to be submitted, and the onus is on the applicant to prove there was a land use review and approval, there would have to be parking approval, many approvals for dwelling units. There would also have to be a site plan required, subject to approval by the Planning Board, and there is no evidence of a site plan approved for this property. All the permits were procedural building permits, they do not take the place of land use approvals, or through the hearing process. He said he had all this information, and feels very comfortable in their original decision, and sees nothing substantial in this request of what we included, or didn't include.

Mr. Currier said he feels compelled to discuss the bullets.

Mr. Duffy said the items on page 3, the part where it mentions nine apartments, he said he perceives that as nothing more than a re-iteration of what the Board has reviewed and already gone through and talked about, with substantive reference to some of these documents, and tried to indicate to the applicant, and try to garner information that these were permitting processes, and not land use approval applications.

Mr. Currier said on page 3, paragraph 8, it says the C.O. references on it's face, to see plans, plans are submitted on three sheets, on exhibit C, he said he completely disagrees with the argument, it says to see plans, references the ten

apartments, and if you look at exhibit D1 to D3, there's ten apartments there, but when you look at exhibit C, the certificate, it says internal renovation of six apartments, two on each floor, so exhibit C does not correlate with exhibit D1, D2 and D3 and there's nothing in exhibit C that ties into specifically exhibit D1, D2 and D3. He said he takes exhibit C at face value, which is the internal renovations of six apartments, two on each floor. He said paragraph 8 does not hold any water, it's confusing and doesn't hold together.

Mr. Currier said in paragraph 9, it says at that point, nine apartments had been inspected, renovated and permitted. He said that is valid if the argument made in paragraph 7 is accepted for a valid argument, but as Mr. Duffy already stated, he doesn't think paragraph 7 is a valid argument and therefore, the arguments made in paragraph 9 is invalid.

Mr. Currier said then we get into the bullets.

Mr. Duffy said these permits were for renovations, nothing for a site plan, or any land use approval at all. There was no new information.

Mr. Currier said in the letter, in paragraph 10, it said that the ZBA didn't put all the permits together. This is just not the case, it was put together. Different apartments were discussed at different levels over the years, but that does not equal, or tie together, the apartments. He said the argument is not valid, and he agrees with Staff's interpretation.

Mr. Duffy said it just isn't Mr. Falk's interpretation, it's the prior enforcement officials throughout the years that have put together a consistent and helpful bit of information, in trying to communicate with the applicant, and they believed at the time were positions that were legal.

Mr. Currier said for the first bullet, he disagrees that there were ten dwelling units when the applicant bought it, it was clearly on record for eight, with two unused, or six.

Mr. Duffy said based on the March 1, 1979 information, the applicant provided no deed or other informational data in this rehearing request, or anything from the original files, or anything that said ten at all.

Mr. Carlson said the real issue is that no one has come before zoning to ask for ten apartments, regardless of what position, or assumptive, we've put together three here, and four there, and five there, it doesn't make a whole loaf of bread, and said the purpose is that no new information is being presented, no application process, no submission to the standard process that the city would go through to approve ten apartments, other than a legal letter that we have nine here, eight here, ten there, ten, ten, ten, if Mr. Walsh, or someone else formerly employed by the City says that there's ten apartments, it doesn't mean zoning says there's ten apartments, there could be ten apartments and they may not be legal, the purpose of the entire meeting was that regardless of how many apartments one would perceive are there, they were not zoned, they were not approved through the zoning and planning process, and they're not there. He stated that all these points to twist, turn and tie these units together, the net here is that it's not on the books as ten.

Mr. Currier said he agrees, and if the Board feels compelled to go over each point, that's fine. He said he's considered each point, and doesn't buy it.

Mr. Carlson said same here, if he gets a permit for a deck at his house, and if he makes it go all around the house, it'll show that there is a permit for the deck, but not to the extent that it's built. He said he doesn't buy the argument in the letter. This process is over, if they want to come before the ZBA and request ten units, then it's something to be considered

Mr. Carlson said he feels like the letter is the same stuff we've heard over and over again at the meeting, just written in a different format, there may be one or two new points in there, but the bottom line is that he specifically remembers that documentation, one said six, one said eight, one said nine, one said ten, you can't pick and choose how many units you have.

Mr. Duffy said the letter is a re-hash of all the information that was presented, and someone is trying to say there's ten units, when one is a photograph of a picture of a plan, the other is something that specifically says what we've already talked about.

Mr. Carlson said there's no new information presented, if they want to come forward saying they want a variance for ten units,

that's fine, and will be considered.

Mr. Shaw said there's no new information, we've already covered all these points, and is ready to discuss item number four.

Mr. Duffy asked if there's anything submitted that would/could cause the Board to make a different decision.

Mr. Carlson said in application of that question, to the ruling that we previously made, no there is not. Given the current scenario, all due diligence has been given.

Mr. Currier said no.

**MOTION** by Mr. Duffy on behalf of DHG Associates, 104 Walnut Street, the motion is to deny the rehearing request for the 10-9-07 denial of the Administrative Decision relative to the number of dwelling units in the building. The Board finds that there was no procedural error in our deliberations, and none is presented in the rehearing request, in fact, the City did do the proper notice, and no one's rights were denied. He said it was not an illegal decision, in other words, the Board did completely address the points of law required for the variance request in reference to the argument presented by Counsel for the applicant, it's just a re-hash and a restatement. Mr. Duffy stated that there was no evidence presented on an allegation or statement that grounds for appeal with the zoning made no apparent efforts to examine or discuss specific evidence, in fact, the Board did that, the applicants request that the City failed to produce requested documentation, there's no evidence at all in this documentation of that kind of a statement. He said the deliberations by the ZBA were not substantive or insufficient in a matter of laws to support the ZBA's conclusion, in fact, the applicant has the requirement to present his information or her information, that can sway to the ordinances in the process that was there in 1985, the City has been consistent with its communications with the applicant, and there are no new points of information presented in this document, it's a re-exhibit and a re-discussion of documents that have in some instances no correlation to the facts behind them, and the conclusions drawn by looking at one or two documents together, specifically item C and D, or B, that doesn't reference ten units, item C they request six and D1 which the applicant was trying to provide examples that the original hearing was reasonable and no new information was

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

December 11, 2007

Page 15

presented, there is not anything that we found by this rehearing request that is substantial in nature that would have changed the process that would have been in place at the time where a request for hearing of this nature would have been sought by a land use application that would have required a site plan review considering parking and other items of a review, and not a permitting process, so the motion is to deny, because this Board would not make any, or be cause any different decision that reached that night of the hearing.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**ADJOURNMENT:**

Mr. Duffy called the meeting closed at 8:22 p.m.

Jack Currier  
Acting Clerk

CF  
Taped Hearing