

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
January 9, 2008

A public hearing of the Zoning Board of Adjustment was held on Wednesday, January 9, 2008 at 6:30 PM in the Auditorium at City Hall. The meeting was held on Wednesday, instead of Tuesday, due to the NH Primary.

Sean Duffy, Chair, conducted the meeting.

Members present were:

Sean Duffy, Chair  
Jack Currier, Vice Chair  
Robert Shaw  
Bob Carlson  
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. **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].**

**CASE WITHDRAWN BY APPLICANT.**

2. **Energy North Natural Gas, Inc., (Owner) Innovative Engineering Solutions, Inc. (Applicant) 25 Van Buren Street (Sheet 41 Lot 11) requesting special exception to install wells and underground piping within the 75-foot prime wetland buffer of the Nashua River. GI Zone.**

**CASE POSTPONED TO THE APRIL 22, 2008 ZBA MEETING.**

- 3. Paul M. & Scott Levesque (Owners) Absolute Broadcasting, LLC (Applicant) 1081 West Hollis Street (Sheet D Lot 68) requesting special exception to install three AM radio antennas on a portion of the lot. R30 Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Bob Carlson  
Robert Shaw

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that the broadcasting company has the WSMN AM radio station, which has been in Nashua for quite some time. He said the request is to locate three towers on the proposed site. He said the tower in the Millyard is 190 feet tall, and the proposed towers will be similar materials, as it blends in with the sky and surroundings. He said the towers are close to the Town of Hollis town line, it will be in back of the J-Don's property. He said the towers will be behind the storage units, in the 3-3½ acre piece of property.

Atty. Prunier said the location of the towers is important, as it will allow the wattage to be increased from 900 to 5,000, for better reception. The towers will be faced to the northeast, to go towards the City of Nashua. He said a cable must be buried around the three towers. There will also be a small utility building. Further, Atty. Prunier went over all the special exception points of law.

William Weeks, Engineer, 119 Mulberry Lane, Milton, NY. Mr. Weeks said there will be three towers in a line, about 150 to 200 feet tall. He said it does not appear that lighting on the towers will be necessary. He said the AM towers are not conducive to being used for anything but AM radio. It is a single-band station. Federal permits haven't been applied for as of yet.

Discussion ensued among the Board members and the Engineer relative to the tower frequency, tower characteristics, the lease, site topography, and abutting properties.

Mr. Currier asked Atty. Prunier, if the Board, should they be so disposed to approve the case, could stipulate that there will be no lights.

Atty. Prunier said the FCC doesn't require lights, but if we have to, the applicant will come back to the Board.

Mr. Shaw asked about the height of surrounding trees.

Atty. Prunier said they are mostly between 70-90 feet tall. The property has been recently forested.

Mr. Shaw asked where the guy wires would be located.

Atty. Prunier said they would be within the fenced-in area.

Mr. Currier asked about the high kilowatts for the tower, and if it would create any interference for any nearby residents.

Mr. Weeks stated that the FCC requires that within the very strong signal area, any interference to other radio frequency devices have to be mitigated as part of the license restrictions. Theoretically there could be interference, but as a Federal requirement, the licensee would have to mitigate any interference.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

No One.

**MOTION** by Mr. Carlson to approve the special exception on behalf of the applicant. He said it is listed in the Table of Uses, Section 16-26, Table 26-1, #274. 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, it will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of residents.

He stated that the special conditions are that it is for AM Radio only, the antennas and tower are to be maintained within a fully fenced-in area, if lights are to be installed, the applicant must come back before the Board, and if it causes interference to anyone, it must be abated.

**SECONDED** by Mr. Duffy.

**MOTION CARRIED UNANIMOUSLY, 4-0.**

4. **300 Main Street Realty, LLC (Owner) Taco Bell (Applicant) 300 Main Street (Sheet 17 Lot 21) requesting the following variances: 1) to exceed maximum number of wall signs, 3 permitted, 6 proposed; and 2) to exceed maximum wall sign area, 42 square feet permitted, 63.3 square feet proposed. D-3/MU Zone.**

Voting on this Case:

Sean Duffy

Jack Currier

Bob Carlson

Robert Shaw

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that this Taco Bell is located where a Burger King restaurant was located, and is in the location where a Kentucky Fried Chicken was recently approved. He described the site's location.

Atty. Prunier said they are proposing six wall signs, which will be on three building elevations, each will have the Taco Bell text and the Bell symbol. He said that about 42 square feet is allowed, and they are asking for 63 square feet of signage. He said that many other tenants at this shopping center have received variances for signage.

Mr. Carlson asked if the signage is consistent with corporate standards.

Atty. Prunier said they are, and are the minimum size they could use.

Mr. Duffy asked about other signage, such as directional signs.

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

January 9, 2008

Page 5

Atty. Prunier said they will have some directional signs, all of which will comply with the Ordinance.

Mr. Currier asked if this request needs to go to the Planning Board, since it's in the Downtown Master Plan.

Atty. Prunier said the restaurant building will go to the Planning Board. They will look at lighting, circulation, etc.

Mr. Currier asked staff if the Planning Board would have any say in the signs if they are internally illuminated.

Mr. Falk said the request before the Board is only for the number and area of the proposed wall signs. The Planning Board would review design issues such as the windows, doors, awnings, and the overall building elevations.

Mr. Currier asked if the applicant would be amenable to a stipulation that, should this request be approved, that it would be for these specific signs only, no one else.

Atty. Prunier said yes.

Mr. Shaw asked if it were possible to have a smaller set of signs installed on the building.

Atty. Prunier said this is a national franchiser, and it would be virtually impossible to get anything smaller. The signs are their logo; it's who they are. It would be difficult to get it changed. The signs are very important to them.

Mr. Currier asked if the proposed sign sizes are the minimum mandatory image package for the corporation.

Atty. Prunier has been asked to go with the package that is the least amount that they can go with. He said it is a minimal package.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

No One.

Mr. Duffy said the signage is tastefully done, and is in keeping with the rest of the shopping center, and they are not intrusive.

Mr. Carlson said that the proposed sign sizes are minimal, and believes that they won't even move to this location if their sign package is not supported.

Mr. Shaw said although he'd like to see the signs on two sides of the structure, but thought the position of the structure is unique on the property, and is comfortable with the signage. Part of the signage is the corporate image, and part of it is text, and the size of the text is minimal.

Mr. Falk said that this building will be perpendicular to Main Street, and the shorter end of the building is adjacent to the street, which limits the area of wall signage that is allowed. The former Burger King restaurant, and the proposed Kentucky Fried Chicken restaurant, were both positioned parallel to the street, which would account for more sign area.

**MOTION** by Mr. Duffy to grant the two area variances, one for up to six wall signs, and up to 63 square feet of internally lit signs, on behalf of Taco Bell at 300 Main Street. He stated that the variance is needed to enable the applicants proposed use of the property given the special conditions of the property, that are a bit unique in that the redevelopment of this site, given considerations to a three-sided building, it backs in a fashion from the main street from the main drive-thru areas allow the benefit sought by the applicant cannot be achieved by another method reasonably feasible, this is a reasonable step a little above the basic sign ordinance, so it's not an increment of three to four, or seven times the request they might have asked for by an applicant, so this area variance is reasonable area variance, it is partly text, partly logo, and no electronic messaging.

Mr. Duffy said the request is within the spirit and intent of the ordinance that the applicant has directional and identificational sign usage of the property. He said it should not adversely affect the property values of surrounding parcels, it is a commercial area, non-residential, and is not contrary to the public interest, and substantial justice is served that the applicant has reasonable development rights.

Mr. Shaw asked if there should be a special condition that this approval should only be for these Taco Bell signs, not some other future company.

**SECONDED** by Mr. Carlson.

Mr. Duffy said that's more of a design issue, this request is just for Taco Bell.

Mr. Falk said the variance would run with the land, it is for the number of wall signs, and to exceed the wall sign area.

Mr. Duffy asked if Mr. Shaw meant that this approval should only be for Taco Bell, and not for any future use if they move out.

Mr. Currier said if Taco Bell moves away, and another fast food restaurant goes in there, that proposed anything greater than 42 square feet, they would need to come back for a sign variance.

Mr. Duffy said that the request for up to six wall signs at up to 63 square feet would not run with the land.

Mr. Currier said yes.

Mr. Falk said the variance should run with the land.

Mr. Currier said for example, the Bugaboo Creek Steak House, there was a variance granted for extra signage for the moose, it was a unique situation.

Mr. Currier said a majority of the applicants signage is taken up by the bells, and not text, and it's unique to Taco Bell.

Mr. Duffy said he didn't think it mattered whether it was a bell, a coffee cup, he didn't think it is a dramatic difference, if someone is going to go above 63 square feet.

Mr. Falk said the Board could stipulate this, as long as it's fair and reasonable. He said that the Board should be careful to not take away anyone's rights with regards to signs approved by a variance.

Further discussion ensued by the Board members.

Mr. Currier said that because a majority of the square footage is the Taco Bell "bell" the stipulation is that this relief is granted for the plan as proposed on this date, it is precisely for this plan, as proposed on drawing number 1957sign.dwg, dated 12-10-07.

**AMENDMENT TO THE MOTION SECONDED** by Mr. Shaw.

**AMENDMENT TO THE MOTION APPROVED 3-1** (Mr. Duffy).

**MOTION CARRIED UNANIMOUSLY 4-0.**

5. **Greyhawk Properties, LLC (Owner) "L" Ashland Street (Sheet 64 Lot 191) requesting variance from minimum lot depth, 90 feet required, 75.1 feet proposed (from Ashland Street). RA Zone.**

Voting on this Case:

Sean Duffy

Jack Currier

Bob Carlson

Robert Shaw

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier identified the location of the property on a map. He said that all dimensional requirements on this lot can be met, except that it is a corner lot, and the lot depth must be measured in both directions. It needs 90 feet of depth.

Atty. Prunier said at one time, it was two lots, owned by one family, the lot is now two lots, with two different owners. The depth will have no effect on any of the other abutters, and up until about a year or so ago, the lot depth was measured in only one direction on a corner lot, but due to an interpretation by the Board, now it must be measured from both streets on a corner lot.

Atty. Prunier said the new house will be a single-family house, and will not be out of character with the neighborhood.

Mr. Currier asked when the lot was sold.

Atty. Prunier said the Board has a copy of the deed, which should show the sale date.

Mr. Currier asked the year of the new interpretation.

Atty. Prunier said in 2006.

Mr. Falk said it was due to the Wellington Street case.

Atty. Prunier said the house will meet all applicable setbacks, the homes are situated in a very nice neighborhood and very well maintained.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

Joe Lemire, 2 Ashland Street. Mr. Lemire said his major concern is that the street is a very busy street, especially in the morning, and with the school as well. He said he's also concerned about the precedent it would set in the neighborhood, because the lot is small. He also is concerned about his property value, and when the lot was sold off, his house did not have enough land to meet the 10-foot side yard setback, and thinks that a new house would be too close to his. He said his house is only about 6.5 feet from the side property line.

Mr. Falk said the property used to be three lots, with one house on it, and variances were applied for, and denied, in 2001. Subsequently, the owner changed the two-family house into a single-family, and then the ordinance changed, where the building area requirement was no longer in the Land Use Code. However, there was never a subdivision or lot-line relocation to separate these lots.

Further discussion ensued between the Board and the applicant relative to the size of the lot, and dimensional criteria relative to setbacks.

Norman Hall, 66 Manchester Street. Mr. Hall stated that the lot has been in a state of disrepair. He questioned where the house would be located on the lot. He stated that a new house would improve the area, but it is a small lot.

Mr. Duffy explained where the new house could be located in relation to Mr. Hall's house.

Mr. Hall said his house fronts on Manchester Street, and indicated where the rooms are located in his house, and what is in his yard. He reiterated that he thought the lot was too small for a new house.

Mr. Shaw indicated that the proposed lot exceeds the minimum lot area standards.

Andy Morrow, 70 Manchester Street. Mr. Morrow stated he's across from the lot. He doesn't want to see anything being built there, as there is a lot of traffic, especially in the morning. He said that delivery drivers are always ringing his doorbell wondering where certain houses are located, as there are houses built in back of houses.

Dr. Sabina Manoli, 2 Ashland Street. Dr. Manoli said she is concerned that the "L" Ashland Street lot should have been sold so that they had the proper side yard setback. She also was concerned that the lot will be too small. She said the lot next to them is smaller than it appears to be, and the side setback was there when they bought the house. She said they do not want a house there. She said the lot is an oddly shaped lot, and a new house would be too close to them. She said their lot is essentially a corner lot, and they have enjoyed the view.

Mr. Currier said a lot line relocation, giving another four feet, would make her lot more conforming, and the new lot would also meet the minimum lot area requirement, including the depth in one direction, they'd still need the variance as applied for.

**SPEAKING IN FAVOR - REBUTTAL:**

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier reminded the Board that he gave them two deeds describing the property. He said he's not sure what happened with the Lemire's property. He said his clients lot was conforming, until the Board made the interpretation on corner lots. He said if someone wants a piece of property as their own, they should consider purchasing it. He said the owners own the lot, have paid taxes on the lot, and have the right to develop it. He said the only dimensional issue is the lot depth.

Mr. Duffy asked Atty. Prunier if the client would agree to a stipulation of a single-family home, one or two story.

Atty. Prunier said they would agree to a single-family home, two story.

Mr. Currier asked about the 14'x24' space on the footprint.

Atty. Prunier said it is for a one-car garage.

Mr. Shaw said a typical garage is 24'x24'.

Mr. Currier asked if a stipulation could be made with the footprint shown on the plan, with a 14'x24' garage space.

Atty. Prunier said he would agree that the house to be built would be the same footprint as the plan shown to the Board.

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

Joe Lemire, 2 Ashland Street. Mr. Lemire didn't think that even in 2001, that this lot was a conforming or buildable lot.

Mr. Duffy asked if looked at the lot as one that would meet setbacks.

Mr. Lemire said he wasn't aware of the setbacks of the empty lot, he said they thought it was a small space, with no room for a house because of the angles of the lot.

Mr. Duffy said the square footage exceeds the minimum, with a building footprint that can fit a house.

Mr. Falk said a lot line relocation could occur, in which the Lemire's could gain about 3 or 4 feet, and both lots would be conforming, except for the lot depth on the subject lot. It would make the side yard setback on the Lemire's property be conforming.

Mr. Lemire said even if the new house met setbacks, it would not make the property values increase.

Mr. Carlson asked if when Mr. Lemire closed on the house, if there was a mention that the side yard setback was not conforming.

Mr. Lemire said he would look into this issue.

Further discussion ensued amongst the Board members, summarizing the issues raised in the Public Hearing.

**MOTION** by Mr. Duffy to suspend the rules to ask if the applicant can come up to see if they're amenable to a buffer of twenty feet from the existing foundation at 2 Ashland Street to the new foundation.

**SECONDED** by Mr. Carlson.

Atty. Prunier. He said the distance from the foundation to the lot line will be fourteen feet.

Joe Lemire, 2 Ashland Street. He said he appreciates the added buffer, but doesn't want the house there. He said if there is a house built on that lot, he'd like a minimum of twenty feet distance.

Further discussion ensued amongst the Board members.

**MOTION** by Mr. Duffy to approve the case on behalf of the applicant. He stated that it is needed to enable the applicant's proposed use of the property, given the special conditions of the property, which in this neighborhood, are an existing and long-standing community of different sized houses, different sized number of single-family and multi-family units, smaller houses, larger houses, smaller lots, larger lots, so it's a very mixed use. There is landscaping and structures up to certain property lines, and not up to certain property lines, there are mixed accessory uses, and there are nonconforming uses in the area, but this is basically a reasonable request because the applicant is proposing a single-family home, up to a two-story home, which is an approved use in this zone, it is within the buildable envelope, which would be smaller than many, including the garage, than any other use, and would be more conforming than other nonconforming uses that are grandfathered and covered, and the applicant cannot obtain any other reasonable feasible method that would be less intrusive to both Ashland and Manchester Street abutters.

Mr. Duffy said the request is within the spirit and intent of the ordinance that a single family home is an approved use, it

should not affect the property values of all the surrounding parcels and the essential character of the neighborhood, he stated that he looked at even though there was no expert testimony, this is a smaller single-family with a small garage, therefore it is within the public interest that a reasonable approved use in this zone be allowed, and will give substantial justice, given the change in the interpretation between 2001 and 2006 to the calculations for these types of lots, it's created a review of the process to make sure it was a reasonable determination.

Mr. Duffy said the special conditions are that it will be a two-story single-family use, with the current footprint as proposed for up to the proposed footprint, and the applicant has testified that they would be amenable to a 14-foot side yard setback to 2 Ashland Street to the foundation area, which is a reasonable request.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**OTHER BUSINESS:**

**MINUTES:**

December 11, 2007:

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

**SECONDED** by Mr. Carlson.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**BY-LAWS:**

Mr. Duffy said any amendments to the By-Laws must be done at two successive meetings. He passed out an amendment with three statutory changes to the Board members.

Mr. Falk said he can make the revisions, and e-mail it to all the members and discuss them at the next meeting.

Mr. Falk said there are no cases for the next meeting, and the

next meeting is February 12, 2008.

Mr. Duffy said the Board can review the changes at the February 12, 2008 meeting.

**SECONDED** the Amendments by Mr. Carlson.

Mr. Shaw said the Land Use Code has been updated, with new Section numbers.

Mr. Falk said the new Land Use Code is updated and adopted as of January 2, 2006, and there have been new amendments since that time.

Mr. Shaw asked about the "three or four" member amendment, if someone has the right to postpone the case. His impression was that if there were three members present, they had to go forward with the case.

Mr. Currier said his recollection was that if people showed up, things couldn't be postponed and postponed.

Mr. Duffy said he remembered it stating that the applicant can re-apply after they withdraw their request.

Mr. Shaw stated that the Board should get a written notice of the Agenda before the meeting, he's not sure if they are meeting this.

Mr. Currier said that two weeks before the meeting, the Board knows what cases we'll have.

Mr. Shaw said the By-Laws shouldn't state it if we don't meet it.

Mr. Falk said the agenda is on-line.

Mr. Currier said before the public is notified, we should know of the cases beforehand, we should just meet the by-law.

Mr. Falk said he can email the Board members as soon as the agenda is prepared, that way, the By-Law will be followed.

Mr. Shaw said in the By-Laws, where it says instead of "those in opposition", it should state "those in opposition or with

questions or concerns". He also asked about the \$25 fee if someone withdraws the case.

Mr. Duffy said he thought this was covered under subsequent amendments.

Mr. Falk said it's not covered in the Fees section of the Land Use Code.

Mr. Shaw said only the Board of Aldermen can set the fees.

Mr. Shaw said we shouldn't collect it if it's not codified.

Mr. Duffy said this section should be stricken out.

Mr. Shaw asked if all postponements or withdrawals are published on Page 2. It doesn't necessarily specify the Nashua Telegraph.

Mr. Falk said any applicant can come right up to the podium the date of the meeting and withdraw or postpone their case, and there would be no time to notify the newspaper.

Mr. Duffy said perhaps the "Page 2" portion can be taken out of the sentence, as this scenario does not happen too often, and the intent is to notify the public so they do not come when the case will not be heard.

Mr. Shaw asked about the two cases this evening, when one was withdrawn, and one was postponed.

Mr. Falk said the "Cajun Way" case was withdrawn, and it was indicated as such in the paper. The other case was postponed not for any Zoning Board reasons, the Conservation Commission is still reviewing the case, and needs to wait for warmer weather when there's no snow on the ground.

Mr. Shaw said an Alderman was concerned about the language, and that's why he suggested changes to the By-Laws.

Mr. Falk said he would insert the language that Ald. Teeboom suggested.

Mr. Shaw mentioned a typo that should be changed.

Mr. Currier asked if there could be headers and footers in the

By-Laws, including the revised date.

Mr. Falk said he'll make the changes and email the By-Laws to the members.

**ELECTIONS:**

**MOTION** by Mr. Carlson to name Mr. Duffy as Chair.

**SECONDED** by Mr. Currier.

**MOTION** by Mr. Duffy to name Mr. Currier as Vice Chair, and Acting Clerk. He said at a later date, we can name a Clerk.

Mr. Currier said he was thinking of nominating Mr. Shaw as Clerk.

Mr. Shaw said he travels quite a bit, and may miss meetings.

Mr. Currier said he doesn't mind having both roles.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**REGIONAL IMPACT:**

There are no cases for the next meeting. Mr. Falk will email and regular mail the next agenda.

**ADJOURNMENT:**

Mr. Duffy called the meeting closed at 9:30 p.m.

Jack Currier  
Acting Clerk

CF  
Taped Hearing