

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
February 12, 2008

A public hearing of the Zoning Board of Adjustment was held on Tuesday, February 12, 2008 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  
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. Christopher A. Ordway (Owner) 45 Eastman Street (Sheet 110 Lot 44) requesting variance to encroach 3 feet into the 25 foot required rear yard setback to construct an attached 24'x32' addition. RA Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Robert Shaw  
Bob Carlson - **Recused**

Chris Ordway, 45 Eastman Street. Mr. Ordway said he is here with his contractor, Kevin McIntyre. Mr. Ordway said the addition is 22'x16', not what was advertised. He said the expansion will be for a garage and a couple bedrooms. He said the house is already within the setback in the rear; it will encroach about three feet, and keep the nice visual appeal of the house. He went over the variance points of law. It will have a single-car garage, with a 14-foot wide door. It will be a two-story addition, and will be below the existing house roofline.

Mr. Shaw said there is a letter from an abutter, Claudia Dionne, at 28 Harris Street, who is concerned about whether there will be any spotlights pointed at their home.

Mr. Ordway read the letter, and said there will be no spotlights in that area.

Mr. Duffy asked Mr. Ordway if he's aware of the Ordinance in that there is only one commercial vehicle allowed on the property.

Mr. Ordway said he is aware, and the addition will only be for residential purposes.

Mr. Shaw said the scale of the addition is proper for the house.

**SPEAKING IN FAVOR:**

No One.

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

No One.

**MOTION** by Mr. Duffy to grant the area variance on behalf of the applicant. He said it is needed to enable the applicant's proposed use of the property, given the special conditions of the property. He said the structure pre-dates zoning, the current zoning ordinances, and the incursion is already encroaching along a rear yard setback area. Mr. Duffy said it is a reasonable request for the applicant to pursue in that this is a less intrusive incursion into that rear yard area, and there is no incursion into the side yard setback, therefore, it is reasonable for the proposed addition not to exceed the roof line of the current structure to be granted.

Mr. Duffy said the request is within the spirit and intent of the ordinance that reasonable development and residential use of a proposed garage addition is reasonable and within the spirit and intent.

Mr. Duffy said the request should not adversely affect the property values of surrounding parcels, even though there was no expert testimony, it is not contrary to the public interest, and

substantial justice is served that a reasonable single-family home addition be allowed that is within the essential character of the neighborhood.

Mr. Duffy said that there is one special condition, that there will be no lighting directed towards the rear of the property of this addition.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY, 3-0.**

2. **Susan A. Brueckner (Owner) 75½ Pine Hill Road (Sheet E Lot 1351) requesting variance from minimum lot width, 90 feet required, 75.04 feet proposed - to subdivide one lot into two lots. R9 Zone.**

Voting on this Case:

Sean Duffy

Jack Currier

Robert Shaw

Bob Carlson

Attorney Nicholas Frasca, Mazerolle & Frasca, P.A., 2 Auburn Street, Nashua, NH. Atty. Frasca said the area variance is necessary with respect to the plan shown before the Board for lot width. The intent is to subdivide the lot into two lots. The property requires a minimum of 90 feet of width, and the proposed lot would have 75.04 feet. Atty. Frasca stated that the lot is large in size, and abuts on both Pine Hill Road and Charron Avenue. He described some of the nearby uses. He said the lot has over 26,000 square feet in area, including the discontinued portion of Evelyn Street. He compared the proposed lot sizes with other nearby lots, and the proposed size is very similar, if not larger, than many of the nearby lots. Atty. Frasca went over all the points of law with respect to area variances.

Mr. Duffy asked if the new curb-cut will be on Charron Avenue, and that all the setbacks will be adhered to.

Atty. Frasca said that is correct.

**SPEAKING IN FAVOR:**

Richard Maynard, Professional Engineer, Maynard & Paquette. Mr. Maynard said the lot will have city water, sewer and gas. He said the driveway location will most likely be as far away as possible to the intersection. Also, the driveway will be very long. He said they are not sure if it will be a single or two-story home, but it will not affect any flight lines. The home will be in character with the neighborhood. He said there is more than adequate space to put a house on the proposed lot.

Mr. Maynard said the lot is almost three times the minimum size required for the R9 zone, and it is "L" shaped as well.

Mr. Shaw asked if the driveway could have a turnaround, so that cars wouldn't have to back out onto Charron Avenue.

Mr. Maynard said that would be acceptable.

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

Tom Pelkey, 75 Pine Hill Road. Mr. Pelkey said they are concerned about how this will impact his property, and wind from the airport always comes into his yard. He said he has always been the one to maintain the old paper street, such as mowing the grass and cleaning it. He said he was against the discontinuance of the paper street. He said he would love to have a fence separating the properties.

Further discussion ensued relative to the discontinued paper street.

**SPEAKING IN FAVOR - REBUTTAL:**

Atty. Nicholas Frasca. Atty. Frasca said the Infrastructure Committee and the Board of Alderman accepted the street discontinuance, and the City has released its interest in the street. Mrs. Brueckner and Mr. Pelkey each own one-half, in full ownership, of the right-of-way.

Mr. Duffy asked if they would be amenable to place a fence from the back of the property, going towards Pine Hill Road.

Atty. Frasca said it would be a rather large expense to incur, and they would be amenable to working out some kind of fencing agreement.

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

Tom Pelkey, 75 Pine Hill Road. Mr. Pelkey said he is acceptable to the fence.

Mr. Currier said it should be at least 145 feet in length.

Mr. Duffy said there are sight-line issues. The maximum height of the fence is six feet.

Mr. Pelkey said he wouldn't like a wire fence, as debris can still go through it, he said it should be wooden.

**MOTION** by Mr. Duffy to grant the variance on behalf of the applicant. He stated that the variance is needed to enable the applicant's proposed use of the property, given the proposed subdivision lines as shown in the July 10, 2007 plan. Mr. Duffy stated that the special conditions of the property is that the lot is oversized for this area and that the essential character of the neighborhood is that there are multiple sized lots with different conforming and nonconforming frontages. He stated that the special conditions of the property is that the paper street allows for two nonconforming lots to be more conforming for frontage, leaving this other oversized lot of greater than 13,000 square feet as substantive, and that the setbacks will be adhered to.

Mr. Duffy said the request is within the spirit and intent of the ordinance, it is not a flag lot situation. He stated that it should not adversely affect the property values of surrounding parcels, it is not contrary to the public interest, it will be an oversized lot, and substantial justice is served to the applicant for reasonable development rights for a single-family home.

Mr. Duffy said there are stipulations, one is that there will be 150 feet of wooden fencing be provided along the rear of the property lot XXXX and lot 1351 towards the street area, to be worked out with the abutter at 75 Pine Hill Road. The others are that the t-turnaround and driveway and curb-cut be placed as far down Charron Avenue as possible from the intersection.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 4-0.**

3. **Rubin Nashua, LLC (Owner) 243 Daniel Webster Highway (Sheet A Lot 128) requesting variance to exceed maximum wall sign area, 150 square feet allowed, 211 square feet existing, 223 square feet proposed. GB Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Robert Shaw  
Bob Carlson

Scott Spaulding, Viewpoint Sign & Awning, and John Wyatt, Facilities Manager for Rubin Properties. Mr. Spaulding said they have been doing a re-branding for Bernie & Phyls. He said there was an error on their part, and the signage is already on the building, and as soon as they found out, they requested to appear for a variance.

Mr. Currier asked how they got from 150 square feet to 211 square feet.

Mr. Wyatt said they were not involved with the previous signage, but it appears that they went from 149 square feet to 211 square feet illegally. They said they are trying to get the proper approvals.

Mr. Falk said it was an error by a previous sign company, it was an error in the plans and calculations.

Mr. Shaw said the proposal is less cluttered, with an easier font to read, and is a proper scale on the building.

**SPEAKING IN FAVOR:**

No One.

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

No One.

**MOTION** by Mr. Duffy to grant the variance on behalf of the applicant. Mr. Duffy stated that it is a reasonable size sign

considering the height and scale of the structure, it is a better readable sign, with an easier font that uses the space better, and simplifies the direction and identification of the building. He stated that it is within the spirit and intent of the ordinance, it will not adversely impact property values, it is within the public interest for adequate identification and direction, and substantial justice is served to the applicant.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 4-0.**

- 4. Larry D. Constant (Owner) 8 Chase Street (Sheet 24 Lot 11) requesting use variance to allow a property maintenance and services use, to be located in a proposed 1,200 square foot building on same lot as an existing nonconforming single-family house. GI Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Robert Shaw  
Bob Carlson

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier said it is a unique property, located in the GI zone. He stated that it has a garage on the lot, which will be removed. The house will stay. A 1,200 square foot garage is proposed in the back of the lot, and it will be used for the owners business in plumbing and property maintenance. Some of the uses are allowed by right, and others are allowed only as a conditional use. But the overall use, as property maintenance and services, is not allowed. The proposed use is a combination of many of these uses, as many of the uses are allowed in the GI Zone.

Atty. Prunier said the use is reasonable in this zone, and described the neighborhood and the other points of law. He said the proposed garage will add to the neighborhood. He said that three parking spaces are required, and there will be six provided.

Mr. Currier asked if there will be any outdoor storage of materials or debris.

Atty. Prunier said there will not be any outside storage, it will all be in the garage. The materials are all taken to the individual job sites.

Mr. Falk said use #125 from the Table of Uses is the proper use to describe what the applicant wants to do. He said this area should be a mixed use zone, as within a half-mile, there are a multitude of different uses.

**SPEAKING IN FAVOR:**

No One.

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

Joe Roberts, 5-5½ Chase Street. Mr. Roberts said there has been a dumpster in the property for about a year. He said he has a three-unit building. The street is all residential. He asked about the hours of operation, late night service calls, lighting, limited parking, repairing equipment on site, and if the house would end up being an office for the building.

Ray Roberts, 5-5½ Chase Street. Mr. Roberts said he is concerned with the dumpster in the front yard. He said it is a heavily traveled street, and it can be used as a cut-through.

**SPEAKING IN FAVOR - REBUTTAL:**

Atty. Gerald Prunier. Atty. Prunier said the dumpster will be removed, the hours of operation will be 7:00 a.m. to 7:00 p.m., six days per week, except for emergency calls. He said there is no lighting proposed, but it will be on the southerly side, there will be two employees. He said delivery times will be during the day, between 8:00 a.m. to 4:00 p.m.. Also, the home will not be an administrative office. He said there will be no repair of equipment on site.

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

None.

**MOTION** by Mr. Duffy to grant the use variance on behalf of the owner, to place a property maintenance and services use on the same lot as an existing house. He stated that there is no zoning restriction that interferes with the landowners

reasonable use, it is a GI Zone, in which the property will have both GI and residential on the lot, which is in keeping with the uses in this neighborhood. He said there are a number of combination of uses in this neighborhood, it is an area in transition, with multiple uses, both conforming and nonconforming. He stated that the request is not dimensional, but the uses proposed may be allowed as sole entities, but not when they're all combined into one use.

Mr. Duffy said the request is within the spirit and intent of the ordinance, it should not affect the property values of surrounding parcels, it is in compliance with parking and dimensional criteria in this zone, it is not contrary to the public interest, and substantial justice is served for a reasonable use in a mixed use area be allowed.

Mr. Duffy said for the special conditions, there will be no outside storage of both inventory or products or debris. There will be no dumpster, minimal signage use, hours of operation will be 7:00 a.m. - 7:00 p.m. six days a week with infrequent emergency calls, lighting should be to the southern side of the property, and deliveries will be during daylight hours.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**OTHER BUSINESS:**

**MINUTES:**

January 9, 2008:

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

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**REGIONAL IMPACT:**

Mr. Duffy said the By-Laws review will be on the next agenda.

Mr. Currier asked if we can get a meeting with Corporation

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Counsel.

Mr. Falk said he will contact their office to set a meeting up.

Mr. Currier and Mr. Shaw will not be in attendance at the next meeting, so the next meeting will be on March 11, 2008.

The Board did not see any items of Regional Impact.

**ADJOURNMENT:**

Mr. Duffy called the meeting closed at 8:03 p.m.

Jack Currier  
Acting Clerk

CF  
Taped Hearing