

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
March 25, 2008

A public hearing of the Zoning Board of Adjustment was held on Tuesday, March 25, 2008 at 6:30 PM in the Auditorium at City Hall.

Jack Currier, Vice Chair, conducted the meeting.

Members present were:

Jack Currier, Vice Chair  
Robert Shaw, Acting Secretary  
Bob Carlson (arrived at 7:30)  
Kathy Vitale  
Gerry Reppucci  
Carter Falk, Deputy Planning Manager/Zoning

Mr. Currier explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Currier explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws. Mr. Currier also explained procedures involving the timing light.

- 1. JoAnne St. John (Owner) 25 Beauview Avenue (Sheet 59 Lot 24) requesting variance to encroach 6 feet into the 10 foot required left side yard setback to construct an attached 12'x20' one-car garage. RA Zone.**

Voting on this Case:

Jack Currier  
Robert Shaw  
Kathy Vitale  
Gerry Reppucci

Jo Ann St. John, 25 Beauview Avenue. Ms. St. John said she is requesting the variance to construct a one-car garage. She said the home was constructed in 1930, and is one of just a few in the area without a garage. Ms. St. John went over all the required variance points of law. She said that the previous owner did not drive; therefore, they did not need a garage. She said they have lived there since 1970.

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

March 25, 2008

Page 2

Mr. Shaw mentioned the petition that she submitted, showing neighborhood and abutter support. He asked if anyone did not wish to sign it.

Ms. St. John said that there were no concerns by the neighbors.

Mr. Shaw asked if there were any other options to place the garage.

Ms. St. John said that the proposed location is the best place on the lot for the garage, and wants to bring her home up to the standards in the neighborhood.

Mr. Currier asked about the vacant lot next to hers.

Ms. St. John said the previous owner bought that lot, with no intentions to develop it, it was for privacy. She said they lived at 9 Sherman Street. She also described the pictures she submitted, showing other similar lots that are narrow, and have garages.

Mr. Reppucci asked if there will be a door on the back of the garage.

Ms. St. John said there will be a door in the back of the garage.

**SPEAKING IN FAVOR:**

Dee Upton, 15 Hooker Street. Ms. Hooker said she is in favor of the variance, it will be an asset to the neighborhood.

Alice Fannin, 26 Beauview Avenue. Ms. Fannin is supportive of the request, and it will be a benefit to the neighborhood.

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

No One.

Discussion ensued amongst the Board members about the existing and proposed driveway.

**MOTION** by Mr. Currier to grant the variance on behalf of the applicant. He said that per testimony, the variance is needed to enable the applicants proposed use of the property, given the

special conditions of the property, which is a small lot with a small house built right up to the setback, and many other homes in the neighborhood have small garages that are attached, and into the setback, by testimony, therefore, feels that the spirit and intent of the ordinance, there is no professional testimony, but there does not seem to be evidence that it would affect property values of the surrounding parcels, in fact, there has been testimony that it would increase property values.

Mr. Currier stated that he didn't find the request contrary to the public interest, and by granting the variance, substantial justice would be served.

Mr. Currier stated that there will be two stipulations, one is that there is to be a door on the back of the garage to facilitate potential emergency egress from the back yard, and that the garage is a single-story garage with no living space above.

**SECONDED** by Mr. Reppucci.

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

**2. Michael D. Lyons & Marguerite L. Small (Owners) Cuilan Chen (Applicant) 6 Kinsley Street (Sheet 97 Lot 4) requesting special exception for a major home occupation for a dress-making and tailoring business. RC Zone.**

Voting on this Case:

Jack Currier  
Robert Shaw  
Kathy Vitale  
Gerry Reppucci

Attorney Michael Lyons, 6 Kinsley Street & Cuilan Chen, 82 Merrimack Drive, Merrimack, NH. Ms. Chen said she wants to have a dress-making and tailoring business at the building.

Mr. Currier asked if she would be living there.

Ms. Chen said she lives in Merrimack, and would consider moving there sometime in the future.

Mr. Currier went over all the other major home occupation points of law.

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

March 25, 2008

Page 4

Ms. Chen responded to the points of law satisfactorily. She said that certain months out of the year are busier than others.

Mr. Currier asked what use is in the building now.

Atty. Lyons said it is a law firm for many years, with six or seven employees, and with clients scheduled at regular intervals throughout the day. They have outgrown the property, as their firm has grown. He said that Nancy's Bridal is just down the street, and said her use is very low intensity for parking.

Atty. Lyons said he hasn't heard any opposition from any of the abutters. He said that the first floor was always used for a business, but there have been professional businesses there for many years. He said there is no one in the property right now.

Mr. Falk said the property is a RC zone, and city records indicate that there have been businesses in there. He said for the current application, for a major home occupation license, someone must live in the house for it to be a valid special exception request.

Mr. Currier said it would be a use variance if no one were to be living there.

Mr. Falk said when the application was submitted, it was pretty clear that the applicant would live there and have the business on the first floor. If that isn't the case, the request would likely be a use variance. That's what the application states.

Ms. Chen said she wouldn't live there now, but maybe later.

Mr. Currier asked about any stipulations where she could move in later on, after the business.

Atty. Lyons said he was under the impression that the applicant would live in the structure as well. He asked if there is a window of time in which someone could move into the structure.

Mr. Currier said there's no language in the code like that, it's supposed to be a home, with a business on the side.

Mr. Falk said that the ordinance is clear, in that for a special exception for a major home occupation, the owner must live in

the structure, it does not allow for someone to move in "later". The Board cannot approve something that is not consistent with the application. He said that staff was under the impression that this would be the applicant living there.

Atty. Lyons said that after conferring with Ms. Chen, she will live there.

Ms. Chen said she will live upstairs and move in there.

Mr. Reppucci asked if there are two separate units in the building.

Atty. Lyons said there is the ability to access either the apartment or the office area.

Mr. Shaw said the ordinance clearly states that the principal part of the use must be residential, and the business use is accessory. He said the application indicates that the plan is to live there.

Ms. Vitale asked about the signage proposed for the use.

Atty. Lyons said she would follow whatever the law is for signage.

Mr. Currier said it is a two square foot sign that is permitted for a major home occupation license.

Mr. Shaw identified the ten major home occupation criteria, and the applicant should testify to them.

Ms. Chen testified that she would agree to each of the criteria.

Further discussion ensued by the Board members.

Atty. Lyons said the applicant runs Nancy's Bridal, right down the street, and she only needs a small area to work in.

**SPEAKING IN FAVOR:**

No One.

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

No One.

**MOTION** by Mr. Currier to grant the special exception on behalf of the applicant. He stated that the use is listed in the Table of Uses, Section 16-92 (b). Mr. Currier said by testimony, the small business will not create undue traffic congestion, or unduly impair pedestrian safety. He stated that the request will not overload public water, drainage or sewer or other municipal systems.

Mr. Currier stated that the ten special conditions of the major home occupation ordinance have been fulfilled, and by keeping this as a home business, it will not impair the integrity or be out of character with the neighborhood or be detrimental to healthy, morals or welfare of residents. Mr. Currier said to clarify, the sign must be two square feet in size or smaller, and the use must be 300 square feet in area or smaller.

**SECONDED** by Ms. Vitale.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**3. Stonewater Exec Tower Funding (Owner) 61 Spit Brook Road (Sheet A Lot 229) requesting variance to exceed maximum wall sign area, a maximum of 6 square feet allowed, 105 square feet requested to install one wall sign. RC Zone.**

Voting on this Case:

Jack Currier  
Robert Shaw  
Bob Carlson  
Kathy Vitale

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that they are requesting a 105 square foot wall sign near the top of the building. He passed out a map of the area, as well as a drawing showing what the sign would look like on the building. He stated that if this building were in the Park Industrial zone, it would be allowed by right. He said the proposed sign is a building identification sign, it only states the building name. It will help the public to locate the building, as most of the abutting properties are businesses as well.

Atty. Prunier showed a photo of the sign, as how it would look

from Royal Crest Apartments. He said the sign will not negatively affect the residences.

Atty. Prunier said this is a reasonable request from where this building is located. He said it will be internally lit, with white color text.

Mr. Currier asked about the lumens of the sign.

**SPEAKING IN FAVOR:**

Cliff Conti, N.H. Signs, Londonderry, NH. Mr. Conti said it is a steady white light, but is so far from the property line, and high above the ground, so that it will not go over the brightness levels that are required.

Mr. Falk agreed, he stated that the sign cannot exceed 0.2 foot-candles at the property line, which would be difficult since the sign is over 50 feet in height above ground, and is pretty far from the front property line. It probably wouldn't even register if a light meter was used.

Mr. Conti said it is a 60,000 square foot office building, it would be helpful to identify the building.

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

No One.

Mr. Reppucci stated that with such a large building, a 6 square foot sign that is allowed seems awfully small.

Mr. Falk said it is because the building is in a residential zone, not a commercial or industrial zone.

Further discussion ensued by the Board members.

**MOTION** by Mr. Currier on behalf of the applicant to grant the area variance. He stated that the variance is needed to enable the applicant's proposed use of the property, it is a 60,000 square foot building in an RC zone, and per testimony, the six square foot sign would be inadequate to identify the building. Mr. Currier said the request is within the spirit and intent of the ordinance to grant this variance. He stated that per testimony, it should not adversely affect the property values of

surrounding residential parcels, and it is not contrary to the public interest, and substantial justice is served.

**SECONDED** by Mr. Reppucci.

**MOTION CARRIED UNANIMOUSLY 4-0.**

4. **Woody & Michael Realty Investments, Inc. (Owner) 233 Main Dunstable Road (Sheet E Lot 111A) appealing the decision of the administrative officer that the proposed use of the property of repair and service of recreational vehicles, including motor homes and other vehicles and retrofitting such vehicles is use #118 from the Land Use Code, Table of Uses.**

**[POSTPONED TO THE APRIL 22, 2008 MEETING]**

**OTHER BUSINESS:**

**REGIONAL IMPACT:**

The Board did not see any items of Regional Impact on the next agenda.

Mr. Currier discussed the 1997 sign ordinance, with respect to electronic message centers. Further discussion ensued about these types of signs.

Mr. Falk said he will forward a list of recently approved electronic message center signs to the Board.

The Board spoke about the upcoming spring conference in April in Manchester.

**REHEARING REQUESTS:**

None.

**MINUTES:**

March 11, 2008:

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

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

March 25, 2008

Page 9

**SECONDED** by Ms. Vitale.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**ADJOURNMENT:**

Mr. Currier called the meeting closed at 8:20 p.m.

Jack Currier  
Acting Clerk

CF  
Taped Hearing