

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
April 8, 2008

A public hearing of the Zoning Board of Adjustment was held on Tuesday, April 8, 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 & Acting Secretary
Robert Shaw
Bob Carlson
Kathy Vitale (arrived at 7:30)
Gerry Reppucci
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. Bobbie Veligor (Owner) 21 Fairview Avenue (Sheet 89 Lot 60) requesting variance to encroach 6 feet into the 25 foot front yard setback to construct a 16' x 24' attached two-story addition. RA Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Robert Shaw
Bob Carlson
Gerry Reppucci

Bobbie Veligor, 21 Fairview Avenue. Ms. Veligor said she received another variance a couple years ago. She introduced her contractor, Eric Parent.

Eric Parent, JP Management. Mr. Parent said they want to encroach 6 feet in the front for the addition. Last year, they put the dormer on, and there have been no issues with that. It

will be a single-story addition. He said the height will be below the total roofline. The addition is just going out to the side, and it is a large lot.

Ms. Veligor said the addition will be set back further from the existing porch and the other part of the house.

Discussion ensued amongst the Board members.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Shaw to grant the variance on behalf of the applicant. He said that the variance is needed to enable the applicants proposed use of the property to expand the living space, the house already extends into the front yard setback and the addition will be consistent with the façade of the house on the side that the addition is being added to. Mr. Shaw said that the applicant did discuss per testimony, the placement of the addition, and it was not feasible or easy to accommodate an addition like this by not following the existing footprint of the home as it is, and the home is already set back somewhat significantly further from the front yard and the adjacent properties.

Mr. Shaw said that the variance will be within the spirit and intent of the ordinance, there's no testimony that there will be any negative effect on any surrounding parcels, there is no apparent issues with the public interest, and substantial justice is served for further use of the property.

SECONDED by Mr. Carlson.

MOTION CARRIED UNANIMOUSLY, 5-0.

2. **Stellos Family Investment Properties (Owner) Sarah Beth Smith (Applicant) 125 Northeastern Boulevard (Sheet 140 Lot 31) requesting use variance to allow a ballet school in a portion of an existing building. PI Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Robert Shaw
Bob Carlson
Gerry Reppucci

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that he is representing Granite City Ballet. He described the building location. They want to use about 7,000 square feet of space for ballet and dancing. Atty. Prunier said that businesses like this require a lot of interior space, and they have approximately 300 students in all.

Atty. Prunier said a lot of gymnastic and ballet schools use industrial space not only in Nashua, but in other cities, as they have large classes. This use cannot go in a small building. He said right next door to the ballet use, there is an indoor batting case place, and just further down, is a gym. He said the use is reasonable for this building, and in this zone. Atty. Prunier went over the relevant points of law.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Carlson to grant the use variance on behalf of the applicant. He said that the zoning restriction as applied interferes with the reasonable use of the property, considering the unique setting of the property in its environment, and no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property, and the variance would not injure the public or private rights of others, the prior use of this space was a church, a non-traditional PI use.

Mr. Carlson stated that the use is within the spirit and intent of the ordinance, it will not adversely affect the property values of surrounding parcels, it is not contrary to the public interest, and substantial justice is served, there are other events occurring in the building and in the area.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

3. Two Guys Properties, LLC (Owner) 15-A Spit Brook Road (Sheet A Lot 214) requesting variance to allow a 40 square foot electronic message center wall sign. GB Zone. [TABLED FROM THE MARCH 11, 2008 MEETING]

Voting on this Case:

Sean Duffy
Jack Currier
Robert Shaw
Bob Carlson
Gerry Reppucci

MOTION by Mr. Shaw to remove this item from the Table, and open the Public Meeting.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 5-0.

Mr. Reppucci said you can only see this sign as you're at the intersection of Spit Brook Road and DW Highway. He said this sign could be distracting. He asked about other signs that the business has to attract customers.

Mr. Shaw said he's concerned about the competition for drivers, there are many signs in this area, perhaps when cars are stopped in traffic they could see the sign.

Mr. Duffy said that ground signs for EMC's are allowed administratively in this zone. In addition, ground signs are closer to the roadway, and provide direction and identity for drivers. He said that wall EMC's are not an allowed sign type, and require an area variance. He stated that the spirit and intent of the code is that we must be careful about having signs that are distracting for drivers and the safety of drivers.

Mr. Shaw said that ground signs are typically closer to the traffic and the drivers, so that even if there is an EMC sign, the distraction is such that the sign is already in drivers'

primary field of vision, where wall EMC's are further away from the driver.

Mr. Duffy said properties can only have one ground sign, while in a strip center; there could be twenty signs. Also, for ground signs, only 50% of the sign can be an EMC, while there is none allowed for wall signs for EMC's. He said he didn't see the need of any special condition for this sign, as the building has many other types of signage for identity and direction. He said he didn't see any special condition to allow wall EMC sign.

Mr. Shaw asked about the other signs are for this business.

Mr. Falk said that Ken Jones has a wall sign, and an EMC sign facing the west that was approved by the ZBA a couple years ago. He also said that Two Guys have a ground sign with an EMC that was approved administratively.

Mr. Currier said that EMC's can be advantageous to drivers, but not necessarily in this location. He stated that on some Interstate highways, there are EMC's that list traffic conditions or roadway construction ahead. Those signs are great for driver safety and information. He thought that other information on an EMC is not necessarily in the public interest.

Mr. Carlson said there are other signs in the area that have similar information, for other stores. He said there are other areas in the City that are just as busy traffic-wise, and they have these types of signs.

Mr. Currier said that he looked at a couple other EMC's in the City, from the list that Mr. Falk provided. He said that many of them do not meet the criteria. He said that he wishes that the Board voted negatively for the Ken Jones sign, because there is a lot of quick changes of text, and adds more light pollution to the area.

Mr. Carlson said that on Rt. 101, there are several signs in violation of this ordinance. He said that several of the major retailers in the City and in Massachusetts have very large signs that allow just about anything for signage on the roadway.

Mr. Duffy said if these signs are not in compliance, then it is an enforcement issue, and should be addressed in another forum. He said the wall EMC signage issue, for this building, they have

many other opportunities for identity and signage for this building, just like any other retail business, there is no other special condition to allow an EMC sign. He said there is a lack of compliance with these signs, and the software for these signs have been turned over by the sign companies to the businesses.

Mr. Reppucci said it's a bad location for this sign. He said even if the sign were to be used to meet the ordinance, it's not a good reason to have a sign here.

Mr. Shaw said when he looked at the criteria, he said he's not convinced that they meet the intent of the ordinance, and thought there will be traffic and safety criteria that will not be met.

Mr. Currier brought up the Carlson's Chrysler v. Concord case, in which the City can control EMC's to minimize traffic concerns. He said he didn't think that it's an appropriate place for the sign.

MOTION by Mr. Duffy to deny the variance request on behalf of the applicant, as it is not needed to enable the applicant's proposed use of the property, given that there are no special conditions of the property, and the benefit sought by the applicant can be achieved by other reasonable feasible methods to be able to pursue other than this area variance. He stated that the Board had viewed and re-reviewed this sign and find that it's not an appropriate placement of an additional wall sign, the applicant has additional wall signs on the property, as well as a ground sign ECM area, which based upon the spirit and intent of the ordinance, give more than a reasonable amount of signage for directional identity and advertising being able to draw attention to the business at this location.

SECONDED by Mr. Reppucci.

MOTION CARRIED 4-1 (Mr. Carlson).

4. **Tree Street Realty LLC (Owner) 40 Pine Street (Sheet 83 Lot 80) requesting the following variances; 1) use variance to allow a Laundromat on the first floor of an existing building; and 2) an area variance for minimum lot area, 3,524 square feet existing - 6,970 square feet required to convert one dwelling unit on the second floor into two dwelling units. RC Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Robert Shaw
Bob Carlson
Kathy Vitale

Attorney Robin Oinonen, Jordan, Maynard & Parodi, E. Pearl Street, Nashua. Atty. Oinonen described the property's location, and stated that it was once two lots. She said the use variance is required because the Laundromat proposed on the first floor is not a permitted use. She went over all the use variance points of law. She indicated that the first floor was historically used for a convenience store, and the second lot was bought for a parking lot. She said by having a Laundromat in a residential zone, it will be very beneficial to the neighborhood.

Mr. Duffy said for the record, the applicant submitted an appraisal.

Atty. Oinonen went over all the variance points of law for the lot area, to construct an additional affordable residential unit. She said it will go from one unit into two units. She said there is no other feasible way to do this other than an area variance. She went over all the parking requirements.

Mr. Falk said a site plan will be necessary, which will indicate the existing parking area. He said that if any of the criteria is not met, such as parking space length, the Planning Board may waive any of the parking requirements. This used to be the purview of the Zoning Board.

Mr. Currier asked what percentage of the business would be from drivers or walk-ups.

Atty. Oinonen said a large majority will be walk-ups.

Discussion ensued about the size of the two apartments.

SPEAKING IN FAVOR:

Bruce Hansen, 5 Trombley Terrace, Nashua. Mr. Hansen said there are two bump-out additions, that will be removed, giving an

additional eight or nine feet to be used for parking. He said they will get at least six parking spaces. He said they will be using an existing curb cut at 42 Pine Street. He said there is some on-street parking as well.

Mayor Donnalee Lozeau. A letter of support was read into the record.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Currier to grant the use variance on behalf of the owner. Mr. Currier stated that the zoning restriction in the RC zone interferes with the landowners reasonable use of the property. He stated that this is a highly nonconforming lot and the landowner has merged two lots and is attempting to make the business of a Laundromat in the RC zone. He stated that this type of business is a bit of a unique business, it's not like a convenience store, it would serve the immediate surrounding neighborhood, with the intent of helping the neighborhood in uplifting the neighborhood, which makes this request within the spirit and intent of the ordinance.

Mr. Currier stated that the Board has some testimony that it will improve the property values of surrounding parcels by drastically improving this corner property. He stated that this use variance is not contrary to the public interest, and substantial justice would be served.

SECONDED by Mr. Carlson.

MOTION CARRIED UNANIMOUSLY 5-0.

MOTION by Mr. Carlson to grant the area variance on behalf of the owners. Mr. Carlson stated that the variance is needed to enable the applicants proposed use of the property, given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonable feasible for the applicant to pursue, other than an area variance. Mr. Carlson stated that the request is within the spirit and intent of the ordinance, it will not adversely affect the property values of surrounding parcels, it is not contrary to the public interest, and substantial justice is served.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 5-0.

5. **MacThompson Realty Inc. (Owner) 140 Daniel Webster Highway (Sheet A Lot 242) appealing decision of administrative officer relative to replacement of an existing nonconforming electronic message center sign with a new one that may have symbols, graphics and images in addition to text, and/or variance to allow the replacement of an electronic message center sign with one that may have symbols, graphics and images in addition to text. HB Zone. [TABLED FROM THE MARCH 11, 2008 MEETING]**

Voting on this Case:

Sean Duffy
Jack Currier
Robert Shaw
Bob Carlson
Kathy Vitale

Mr. Currier said this issue is about grandfathering. They had a sign that was hit by lightning, and they want to replace it with a substantially more advanced sign. He said the applicant wants full graphic capability for the new sign. He said he agrees with Mr. Falk, in that the new sign ordinance should be levied in this case. He said he is not in favor of overturning Mr. Falk's decision.

Mr. Reppucci said the Board had testimony from the applicant that they were going to utilize the sign to the same standard that it previously was in 1996. He said they would sign the affidavit, as long as they could use the same standards as previously approved. He stated that he doesn't see where Mr. Falk can approve a sign that would operate over and above what the current ordinance allows. He believed that Mr. Falk did exactly the right thing. He said he would uphold Mr. Falk's decision.

Mr. Duffy stated under Section 16-262, in comparing the new and old code, it has the exact same language relative to maintenance and replacement of signs where the damage is over 50%. He said the sign is a complete replacement, and not ordinary maintenance, it is a new sign. He said the sign is dramatically different, with different capabilities. He said he believed the

administrative officer made the right decision, and to uphold the officer's decision.

Mr. Shaw stated that alterations, maintenance and replacement of a legal nonconforming sign is allowed if the damage or deterioration does not exceed 50% of the appraised value. He said it is specific that, by all accounts, it is the majority, or full amount of the sign.

Mr. Duffy said through the appeal and the variance request, the applicant is trying to cover all their options. He didn't see anything to support the appeal in favor of the applicant. He said the old and new ordinance has the same language in this section.

MOTION by Mr. Duffy to deny the appeal of the applicant, and to support the administrative officer, in fact, the Board believes the administrative officer determined that ordinary maintenance did not apply in this sign, based on the terms of the current and prior ordinance, and the spirit and intent of his determination is in keeping with the ordinance, under Section 16-262 for both maintenance and alterations, but in general, the applicant had another reasonable method alternative here, for a variance request to seek an alternate outcome. This is a motion to uphold the administrative officers decision.

SECONDED by Mr. Currier.

Mr. Currier said over 50% of the sign is not operating.

Mr. Duffy said over 50% of the value of the sign is not in operation. The structural supports are there, but the whole sign does not work.

MOTION CARRIED UNANIMOUSLY 5-0.

Mr. Duffy opened the Public Meeting for the area variance for the variance component of the MacThompson Realty, Inc. case, as earlier read with the appeal.

Mr. Reppucci said he wants to speak favorably of this case. He said the sign was in place for 12 years, without any enforcement actions. He said he wants to see signs in operation and not just sitting there non-operational. He said it is admirable that the applicant wants to replace the sign so quickly. He

said the applicant has done exactly what the Board wants. He said we can't limit people from buying technology above what is allowed in the Code. We can govern how they can operate the sign. He said this application is very specific, and wants to support them.

Mr. Shaw stated that they stipulated that they'd have just one color, and there is testimony that would be pretty close to meeting the ordinance. He said he is favorable to replacing an electronic message center sign at this location that follows our standard criteria regarding the three lines of text and no flashing and no graphics. He said he understands that is not exactly what Attorney Prunier said they are requesting, but it's awfully close in meeting the spirit and intent of the original ordinance. He said he's in support of the electronic message center, but wants to see a motion that's more restrictive while it may have capabilities for symbols, graphics and images.

Mr. Currier didn't think the Board had the position that someone should buy something with technology that doesn't exist anymore. He said in this variance request, the applicant wants to do graphics, because it was on there before, but it was more of a simple, stick-figure type, going on the screen at one-second intervals. It looks like they want today's technology, but to limit it to one color. He said the only thing that looks more restrictive, is the one-second vs. the five-second rule. He said he's in favor of the affidavit, and is not in favor of additional graphics, and doesn't think it's appropriate for the area.

Mr. Reppucci said they can operate the sign with the current ordinance, but not the old standard. That's why they didn't sign the affidavit.

Mr. Currier said it could be a wide-screen tv with graphics, images and symbols.

Mr. Duffy said what it looks like, is that we would require them to sign the affidavit, and they must follow the whole thing except for item "B". He said there is no movement, no flashing bulbs, and no appearance of animation.

He said he's favorable to supporting the placement of an electronic message center sign at this location that follows our standard criteria.

Mr. Shaw said there was some testimony that the sign can be programmed to run with just one color. He said the difficulty of the interpretation is that yes, you can re-create the old technology, but at some point, do you stipulate that everything has to be in increments of one hundred pixels to re-create something that would be very coarse of a display, this can get into very tricky territory to even talk about.

MOTION by Mr. Duffy to suspend the rules to ask the applicant's attorney to answer some specific questions on the case.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

Atty. Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier said that the 5-second timing for the message is fine, they don't want 1-second. He also stated that they do not want animation. He said that the sign is at the location where the stoplight is, at the Lowe's Shopping Center, they can advertise a car and they want the message to stay there. He said they want people to see what they have to sell.

Mr. Duffy asked if Atty. Prunier's client would be amenable to a stipulation that they would be able to sign the affidavit, if there is variance condition that would allow section "B" of that affidavit to include the graphics, symbols and images that were in the prior ordinance.

Atty. Prunier said yes.

Mr. Duffy asked if his client would have the full understanding in the spirit and intent of the ordinance of this affidavit for item "C", that the illumination elements, whether they are bulbs or pixels, stay up for five seconds at a fixed level of illumination, and not repetitive multiple locations across the signage.

Atty. Prunier said absolutely.

Mr. Duffy asked Atty. Prunier that it is very clear that the Board will not approve any grandfathered or ungrandfathered rights that animation, scrolling, movement, or the appearance of movement, or the appearance of animation, whether it's a stick

figure or a high resolution, is not something that's being sought, or being approved.

Atty. Prunier said absolutely, what would be granted would be a variance with stipulations that are somewhat different than the affidavit involves.

Mr. Duffy said that the location of this property is an auto village, that is completely commercial, not many residential units are going to see this sign, or any lights, so sections "A", "C", "D", "E" and "F" they would be completely amenable to on the affidavit.

Atty. Prunier said yes.

Mr. Currier asked what wouldn't they do without "B". In other words, if the right to use "B" were restricted, which is what the existing affidavit says, what does that not allow them to do that you want to do.

Peter March, New Hampshire Signs, Londonderry, NH. Mr. March stated that if we were not bound by this, we would be allowed to put graphics on the sign, but we're not intending to do scrolling or animation, so essentially, what we'd do is to put pictures of cars or logos or symbols on the sign. They would be still pictures, static images, nothing moving.

Mr. Currier said what they're asking to do is to put graphics where graphics are not specifically not permitted because of the high-resolution capability there now.

Mr. March said the old sign had graphic capabilities. He said that you can't buy a sign like the one that was there anymore.

Mr. Currier said the Board would not ask them to buy an "old" sign. He said that the Board is aware that there is high definition out there, but the ordinance says that under normal situations, graphics are not permitted.

Mr. March said the technology has changed, the LED's have shrunk, and the old technology has disappeared.

Mr. Shaw asked about the opportunity for pictures and graphics of a car for sale, and how easily is it done to replicate 1996 technology with the current resolution.

Mr. March stated that there is a sign program loaded on a PC, and is run like a PowerPoint presentation.

Atty. Prunier said they want no scrolling and the message will be up there for at least 5 seconds. He said they want the public to see and understand what we have for sale.

Mr. Reppucci asked if the City restricts the number of colors on a sign.

Mr. Falk said there is no restriction on the number of colors. He said these new EMC signs can have literally millions of different colors.

Ms. Vitale said they could have text on the sign, and would have the ability to take a picture of a product they may have, and have the picture on the sign for at least 5 seconds.

Mr. Falk said that's correct, and everything else will meet the ordinance.

Mr. Shaw asked Atty. Prunier if in their previous testimony, that they would agree to have one color, not a multi-color sign.

Atty. Prunier said they would like to have colors, but if the Board stipulates that they can have only one, they'd live with that.

Mr. Duffy said even with a white color, there are different shades and hues of white.

Mr. Currier said he didn't see any special conditions to waive the code for this request, he said it's near the entrance to Lowe's and there is a stop light there, so it is a very visible location. He didn't see why this property needed any relief from "B".

Mr. Reppucci said that sign was there for over 12 years, without any problems. He thought that was a compelling point to have the sign.

Mr. Shaw said it is a balance, should the request be approved, they'd get 5 seconds with a higher resolution image, instead of a stick-figure image going across the screen in 1 second

intervals.

Further discussion by the Board members ensued.

MOTION by Mr. Duffy to grant the variance on behalf of the applicant. Mr. Duffy said the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, specifically, the sign which was pre-existing for more than 12 years that had some character and image capability of a unicolor capability, so the applicant is seeking a reasonable alternative with the current technology so that the essential character of the compatibility, capability and construction of and the characteristics of the sign are similar to the usage they had prior to the damage done to the sign.

Mr. Duffy said by testimony, it is within the spirit and intent of the ordinance that reasonable identification and directional use of the property for signage is/should be allowed, and this is a reasonable alternative for identifying and advertising, and direction to the site. Mr. Duffy said it is not unreasonable or out of character with the neighborhood, given the auto village in the area, and no residential properties are abutting the site, it 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 the applicant has reasonable development use of identification and directional advertising to their property.

Mr. Duffy said the special conditions are that the applicant will sign, and be amenable to all the criteria of the electronic message center affidavit, excluding paragraph "B", and will completely adhere to paragraphs A, C, D, E and F, and by the applicants testimony and their credibility, complied with the code with their prior use of the site, and that they absolutely understand that there will be no animation, no flashing of pixels or bulbs, and that the unified color sign will be used for appropriate purposes for the fixed level of illuminations for five seconds as stipulated in paragraph "C", whether it regards to text or images, designs or graphics.

SECONDED by Mr. Shaw.

MOTION CARRIED 4-1 (Mr. Currier).

OTHER BUSINESS:

Mr. Duffy said the By-Laws have been signed, and will be placed on file in the City Clerks office and in the Community Development Department as appropriate. Mr. Falk will give everyone a signed copy.

REGIONAL IMPACT:

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

REHEARING REQUESTS:

None.

MINUTES:

March 25, 2008:

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

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 5-0.

ADJOURNMENT:

Mr. Currier called the meeting closed at 9:26 p.m.

Jack Currier
Acting Clerk

CF
Taped Hearing