

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
April 22, 2008

A public hearing of the Zoning Board of Adjustment was held on Tuesday, April 22, 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
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. Paul M. & Scott Levesque (Owners) Absolute Broadcasting, LLC (Applicant) 1081 West Hollis Street (Sheet D Lot 68) requesting special exception to work within a prime wetland and prime wetland buffer to construct three radio antenna towers. R30 Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Robert Shaw
Bob Carlson
Kathy Vitale

Jim Petropulos, Hayner Swanson, Inc., 3 Congress Street, Nashua, NH. Mr. Petropulos said that the Board recently granted a special exception for the cell tower in January 2008. He described the property location, a 28-acre site of which four acres are located in the Town of Hollis.

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Mr. Petropulos said the wetlands were flagged by a Wetland Scientist, Bob Prokop, and are identified on the drawing given to the Board previously. He said the wetland is a prime wetland. He said his client owns AM radio station WSMN. He said the towers used to be in back of the Greek Church on West Hollis Street, and they are currently using a tower in the Millyard district. He said the three towers will range in height from 150-190 feet, and will use guy wires to secure them in place, along with a 24'x24' fenced security area around each base of the tower, and there will be a buried ground wire installed in a spiral pattern around each tower, with will help to provide the signal strength.

Mr. Petropulos identified the three buffer impact areas from the buried ground wires. He said the wires will be installed by hand within the buffer impact areas. Upon completion, the areas will be graded, loamed and seeded. He said they have truncated the ground grid as much as possible.

Mr. Petropulos went over all the special exception, and wetland and wetland buffer points of law.

Discussion ensued amongst the Board members.

SPEAKING IN FAVOR:

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier agreed with and supported Mr. Petropulos's testimony.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Currier to grant the special exception on behalf of the owner and applicant. He said that the five criteria for the special exception have been demonstrated by the applicant, it is listed in the Table of Uses, Section 16-274 (b). He said he concurs that there will not be any undue traffic congestion or anything that will impair pedestrian safety. Mr. Currier said essentially, there are no utilities, and therefore no overload of public water, drainage or sewer. Mr. Currier said that the Board has discussed and voted on the character of the neighborhood, and has found that this request will not be out of character with the neighborhood.

Mr. Currier said for the special regulations, the nine special regulations, each of the nine special wetland regulations have been individually addressed by the applicant to the satisfaction of the Board, and also noting that the Conservation Commission recommended a favorable vote with special conditions on the April 4th, 2008 letter, with the seven special conditions that the applicant will adhere to, with the one additional special condition by this Board is that there will be no use of chemicals that will restrict vegetation growth in the buffer.

SECONDED by Mr. Carlson.

MOTION CARRIED UNANIMOUSLY, 5-0.

2. **17 Riverside Realty, LLC (Owner) 15 Riverside Street (Sheet 75 Lot 49) requesting use variance to construct a 32,000 square foot, two-story medical office building. PI Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Robert Shaw
Bob Carlson
Kathy Vitale

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that they got a variance in 2003 for the building right next door for medical office use, which was vacant at the time. It is completely full of tenants now. He said this building will also be for medical office, located on over 2.8 acres. This building is somewhat smaller than the one next door. Atty. Prunier described many other uses in the immediate area that have received approval by the Zoning Board. He mentioned that this property was originally designed to accommodate two office buildings. Atty. Prunier went over all the relevant use variance points of law.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Shaw to grant the use variance on behalf of the applicant. He said that the use variance as discussed for office space is typically allowed in a PI zone, but not specifically allowing medical use, so there are similar uses on the adjacent property and in the immediate vicinity. Mr. Shaw stated that there is other mixed use in the area as well, and will allow the owner reasonable use of the property.

Mr. Shaw said 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, if anything, supporting the medical community will support the City, and substantial justice is served.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 5-0.

3. 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. [Tabled from 1-9-08 meeting]

Voting on this Case:

Sean Duffy
Jack Currier
Robert Shaw
Bob Carlson
Kathy Vitale

Mike Lotti, Innovative Engineering Solutions, Walpole, MA. Mr. Lotti said that they have already been before the Conservation Commission twice before, and they have accepted the plan. They are waiting for approval from the State DES. He said they are drilling six wells, and to place a small trailer in the 75-foot wetland buffer. He said that four of the wells will be inside the fenced-in area, and the trailer will be an 8'x20' trailer that will house the equipment.

Mr. Lotti said most of the area has already been disturbed by Keyspan, and they will have erosion control in place. He said that instruments will be placed in the trailer to identify the coal-tar that will be collected.

Mr. Lotti said the coal-tar product has been in the ground for over one hundred years, and they are not sure of how much they can collect from the ground, hopefully most of it. They are hoping for a very successful amount. He said the site has been within the DES list of contaminated sites for years.

Mr. Duffy went over the wetland special conditions with Mr. Lotti, all to the satisfaction of the Board. He said that they are in favor of the four Conservation Commission stipulations. Mr. Lotti went over how they collect the coal-tar. He estimates there may be between 5,000 - 10,000 gallons beneath the ground, about 40 - 60 feet below the surface. He said there will be carbon treatment at the vents when the coal-tar is brought up. It is a closed system. He said driveway sealer is a very common substance to the coal-tar.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Duffy to grant the special exception on behalf of the applicant. Mr. Duffy stated that the request is listed within the Table of Uses, Section 16-274 and Table 271-1. He said it should not create undue traffic congestion or unduly impair pedestrian safety, both during and after construction. Mr. Duffy stated that it should not overload any public water, drainage or sewer or other municipal systems, in fact, it is a regulatory component to mediate and mitigate a site that is contaminated. He said there are no special regulations other than the wetland regulations, and the request is within the character of the neighborhood, and will not be detrimental to the health, morals or welfare of the residents.

Mr. Duffy said the special regulations are that this approval is consistent with the Conservation Commission approval of their April 15, 2008 meeting.

SECONDED by Mr. Carlson.

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.**

[WITHDRAWN BY APPLICANT]

REGIONAL IMPACT:

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

REHEARING REQUESTS:

None.

MINUTES:

April 8, 2008:

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

Mr. Shaw said there is a correction to be made on Page 6, concerning a motion that was approved unanimously, when it was actually a 4-1 vote. Mr. Falk will make the change.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

The Board mentioned that there is the Spring Planning Conference this Saturday.

ADJOURNMENT:

Mr. Currier called the meeting closed at 7:42 p.m.

Jack Currier
Acting Clerk

CF

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Taped Hearing