

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
May 13, 2008

A public hearing of the Zoning Board of Adjustment was held on Tuesday, May 13, 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  
Bob Carlson (arrived at 7:35 p.m.)  
Kathy Vitale  
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. Allen P. & Kathleen Monette (Owners) 173 Concord Street (Sheet 49 Lot 117) requesting variance to encroach 7 feet into the 25 foot required front yard setback (on Damon Avenue) to construct a 7'-4" x 18'-4" roof over an existing deck. RA Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Kathy Vitale  
Gerry Reppucci

Alan Monette, 173 Concord Street, Nashua, NH. Mr. Monette stated that the property is unique, in that it is a corner lot with front yards on Concord Street and Damon Avenue. The purpose of the roof is to protect the owners of the house from the elements, and to block the sun. He said currently, there is just an open deck there, and would like to make it look like a farmers porch. He stated that there is currently a garage attached to the house, and this would go out the same distance as the garage.

Mr. Monette went over the variance points of law, with assistance from the Board. Brief discussion ensued.

**SPEAKING IN FAVOR:**

No One.

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

No One.

**MOTION** by Mr. Duffy to grant the variance as advertised on behalf of the owner. Mr. Duffy stated that the variance is needed to enable the applicant's proposed use of the property, due to the position of the house and that this is a minor encroachment and a small addition covering and enclosing a deck space, next to an area that already has an incursion into the front yard setback area on Damon Avenue. Mr. Duffy stated that the special conditions of the property is the position of the house on the property, and the two front yard setbacks.

Mr. Duffy stated that the request meets the spirit and intent of the ordinance, it is a reasonable request and they are not adding to the second story. Mr. Duffy stated that it should not negatively affect property values of surrounding parcels, it is not contrary to the public interest, and substantial justice is served to the applicant for reasonable development rights.

**SECONDED** by Mr. Reppucci.

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

2. **Robin L. & David P. Finneral (Owners) 79 Deerwood Drive (Sheet H Lot 93) requesting special exception to expand a nonconforming use by constructing a 20'x26' single-story addition. PI Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Kathy Vitale  
Gerry Reppucci

David Finneral, 79 Deerwood Drive, Nashua, NH. Mr. Finneral stated that they would like to add a 20'x26' addition onto the back of their house for added living space and room.

Mr. Falk said the street is located in a Park Industrial zone, however, most all the properties on Deerwood Drive are residential uses. He said the applicant's request otherwise meets all setbacks and density criteria.

**SPEAKING IN FAVOR:**

No One.

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

No One.

**MOTION** by Mr. Carrier to grant the special exception behalf of the applicant. He said that the use is listed in the Table of Uses, Section 16-302(a)(2). Mr. Carrier said that per testimony, the Board believes that the use will not create undue traffic congestion or unduly impair pedestrian safety. He stated that the use will not overload public water, drainage or sewer or other municipal systems, special regulations are fulfilled, and the use will not impair the integrity or be out of character with the neighborhood or be detrimental to health, morals or welfare of the residents, the 20'x26' addition is reasonable, and all other zoning criteria are satisfied.

**SECONDED** by Ms. Vitale.

**MOTION CARRIED UNANIMOUSLY 4-0.**

3. **Marybeth Moore (Owner) 20 Taylor Street (Sheet 8 Lot 53) requesting special exception to allow an accessory (in-law) dwelling unit. RA Zone.**

Voting on this Case:

Sean Duffy  
Jack Carrier  
Kathy Vitale  
Gerry Reppucci

Marybeth Moore, 20 Taylor Street, Nashua, NH. Ms. Moore said she is requesting an in-law unit within her house. There will

be no changes to the outside of the home. She said access is through the garage, and there is another door in the back. Ms. Moore went over all the special exception points of law.

Mr. Currier went over all the accessory dwelling unit special requirements. The accessory dwelling unit will be 622 square feet in size, and the house is approximately 1,953 square feet in size. The Board was satisfied with Ms. Moore's testimony. Ms. Moore stated that she is intending to sell the property, and has no intention of making this a two-family 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. Currier to grant the special exception on behalf of the applicant. Mr. Currier stated that the request is listed within the Table of Uses, Section 16-61. He said it should not create undue traffic congestion or unduly impair pedestrian safety, per testimony. Mr. Currier said it should not overload any public water, drainage or sewer or other municipal systems.

Mr. Currier stated that all of the special conditions for an accessory dwelling unit are met, per testimony, and they meet the size, which is below the 30% maximum size. Mr. Currier said by testimony, there will be no changes to the external portion of the house, therefore, the request will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of residents.

**SECONDED** by Mr. Reppucci.

**MOTION APPROVED UNANIMOUSLY 4-0.**

4. Michael J. & Joanne L. O'Loughlin (Owners) 2 Shelton Street (Sheet B Lot 1305) requesting variance to encroach 5 feet into the 20 foot required front yard setback to construct a 15'x30' home addition. R9 Zone.

Voting on this Case:

Sean Duffy  
Jack Currier  
Kathy Vitale  
Gerry Reppucci

Michael O'Loughlin, 2 Shelton Street, Nashua, NH. Mr. O'Loughlin stated that he wishes to construct a 15'x30' addition for more bedrooms. He said there is no other section of the house to add on, and they want to stay in the neighborhood. He said his house is situated on a small hill, and the encroachment will go 5 feet into the front yard setback. The fence will be taken down to put in the addition. He stated that the addition will go to the end of the fence.

Mr. O'Loughlin went over the variance points of law. He said his neighbors are in favor of the request, as well. He pointed out some of the information he discussed on the photographs that were handed out to the Board. He said the addition will be in scale with the existing ranch style home. This addition will add new bedrooms, and the addition will be about a foot taller than the existing roofline.

**SPEAKING IN FAVOR:**

No One.

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

No One.

Discussion ensued about the size and scale of the addition, as well as the location of the addition in regards to the existing fence.

**MOTION** by Mr. Duffy to grant the variance on behalf of the applicant. Mr. Duffy stated that the request is for a single-story addition, as the request is needed to enable the applicant's proposed use of the property, given the special conditions of the property, being that the property sits on a knoll, and it is subject to two front yard setbacks, being a corner lot, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible, to build to the back to the property or the side of the property don't afford the uses proposed by the applicant, which are reasonable

uses of storage and living space, without adding accessory uses and curb-cuts and garage space and second or third story that is occurring in the City in other locations, and the proposal is in keeping in the essential character of the neighborhood, even though there are both smaller and larger houses than this one.

Mr. Duffy stated that this request is within the spirit and intent of the ordinance, the essential character of the neighborhood is single-family homes.

Mr. Duffy said the request should not affect the property values of surrounding parcels, but it seems like a reasonable use for a 15'x30' home addition.

Mr. Duffy stated that the request is not contrary to the public interest, and substantial justice is served for reasonable development rights so that the applicant can add onto their house.

Mr. Duffy said the special conditions are that the roofline of the new addition be no greater than one foot above the existing roofline, and the existing roofline will not be changed on the house, the roofline of the plan dated 4-1-08 in the design presented to the Board for the addition is to be adhered to, and the fence line not be changed or modified per their testimony to the current back of the property, it can be reduced or eliminated, but it can't be greater than that towards the setback area.

**SECONDED** by Ms. Vitale.

**MOTION CARRIED UNANIMOUSLY 4-0.**

5. **Alcide Lizzie (Owner) 4 Daniels Street (Sheet 122 Lot 504) requesting special exception to expand a nonconforming use by constructing a 20'x60' second story addition to be used for storage. GB Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Kathy Vitale  
Gerry Reppucci

Mr. Falk said the request should be for a 20'x50' addition, not

20'x60' as advertised. The Board continued with the case.

Brad Lizzie, 10 Autumn Glen Circle, Nashua, NH. Mr. Lizzie said the business was established in 1963, and he is the co-owner. In 1984, an addition was added. This request is to place a second-story addition for light storage for the business.

Mr. Lizzie described the neighborhood, and the abutting uses, mostly commercial and general business uses. He said there are only three residences nearby.

Mr. Lizzie said it will be light-duty items on the second floor, nothing heavy. He said they will continue to use the loading on the second floor of the old addition.

Ms. Vitale asked if any changes are proposed to the driveway area.

Mr. Lizzie said it will remain as is.

Mr. Reppucci remarked that the place has a lot of storage and debris outside, which is unsafe.

Mr. Lizzie said they go to the dump once a week, and they separate cardboard, steel and wood, to recycle. He said they can get rid of all the trash.

Mr. Reppucci asked if the debris could be stored indoors.

Mr. Lizzie said that can be arranged.

Mr. Currier said he shared Mr. Reppucci's concern, and stated there is a lot of debris, and hope it can be moved inside. He said the proposed building will look more like an old New England barn.

Mr. Currier asked about signage, the drawing indicates a sign.

Mr. Lizzie said that sign will not go there.

Mr. Lizzie said the steel against the side of the building will be going out back. They separate it for ease of recycling. The items never stay there for more than a week.

Mr. Reppucci said he is most concerned about the rails and other

vertically stored apparatus, it is not safe if children are nearby. It should be secured.

Mr. Currier is aware of how their system works, but wants to make sure it's safer, and cleaned up and straightened out some more.

**SPEAKING IN FAVOR:**

Mr. Alcide Lizzie, 58 Lawndale Avenue. He said he owns the business, and they do their best to recycle every week to keep it clean.

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

No One.

The Board discussed that the addition should be an improvement to the property, but had concerns about debris, outside storage and safety, which will be addressed in the motion.

**MOTION** by Mr. Reppucci to suspend the rules to open the Public Hearing again to ask Mr. Lizzie additional questions.

**SECONDED** by Mr. Currier.

**MOTION CARRIED UNANIMOUSLY 4-0.**

Mr. Currier said the Board wishes for the business to succeed, but is concerned about the debris factor.

Mr. Brad Lizzie stated that if they buy another trailer, make the sides a little higher to put all the steel in it, so they'll have a pile for steel and another one for wood. So, the steel will go right into a trailer instead of on the ground.

Mr. Reppucci asked about the tall, vertical inventory leaning against the wall.

Mr. Lizzie stated that he could weld some brackets that stick out, so they have no way to fall, and/or maybe a chain across it.

Mr. Currier said they can capture these issues by saying that there will be no storage of outdoor debris on the ground, and

the vertically stored units will be secured.

Mr. Lizzie said that's fine.

Mr. Duffy asked about storage of debris in the setback area.

Mr. Falk said the front yard setback is ten feet, and the side yard setback is seven feet.

Mr. Currier said they store items in the side yard now, and have been doing so, but the ten feet in front should be adhered to.

**MOTION** by Mr. Currier to grant the special exception on behalf of the applicant. Mr. Currier stated that the use is listed in the Table of Uses, Section 16-302 (a)(2). He stated that it will not create undue traffic congestion and will not unduly impair pedestrian safety, by testimony, the property is at the end of a dead-end street, and has been here for many years.

Mr. Currier stated that the use will not overload public water, drainage or sewer or other municipal systems, the special regulations are fulfilled, and the use will not impair the integrity or be out of character with neighborhood or be detrimental to the health, morals or welfare of residents, the use is surrounded by many businesses, as well as a few residences.

Mr. Currier said the special conditions are that outdoor storage of debris will be not be on the ground, and the vertically stored apparatus will be secured so that it won't be a hazard to anyone on the property, and there will not be any outdoor storage in the front yard setback, which is ten feet.

**SECONDED** by Ms. Vitale.

**MOTION CARRIED UNANIMOUSLY 4-0.**

6. **Elizabeth E. & Richard Foemmel (Owners) 51 Berkeley Street (Sheet 47 Lot 46) requesting special exception to work within an "other" wetland and wetland buffer to dredge a pond to remove invasive plant species. RA Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Kathy Vitale  
Gerry Reppucci  
Bob Carlson

Richard Foemmel, 51 Berkeley Street, Nashua, NH. Mr. Foemmel said this request is to allow for a maintenance dredge to control invasive species, specifically, iris plants, that are taking over the pond. The pond is a neighborhood landmark, and the iris is an invasive plant, and now completely surrounds the pond.

Mr. Foemmel said they will use a hydro-raking process, in which a backhoe on a raft is used to dredge. This system does not do any damage to the shore of the pond, it takes the iris out from the water. It is a two to four day operation. He said that the Conservation Commission approved the project, and they have an application in with the DES.

Further discussion ensued between the Board and the applicant.

**SPEAKING IN FAVOR:**

No One.

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

No One.

**MOTION** by Mr. Reppucci to grant the special exception on behalf of the applicant. Mr. Reppucci stated that the request is listed in the Table of Uses, Section 16-274 (b). Mr. Reppucci stated that the use will not create undue traffic congestion, or unduly impair pedestrian safety, per testimony. He stated that the request will not overload public water, drainage or sewer or other municipal systems.

Mr. Reppucci stated that all the wetland special conditions are fulfilled and will be met, and the request will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of residents, and will actually be a benefit.

Mr. Reppucci stated that the special conditions are that should future similar maintenance be required, if already approved by the Conservation Commission, they would not be required to come before the Zoning Board, also, the applicant agrees to all the Conservation Commission stipulations as well.

**SECONDED** by Ms. Vitale.

**MOTION CARRIED UNANIMOUSLY 5-0.**

7. **Estate of Margaret R. Mercier (Owner) Robert Walsh, Executor (Applicant) 14 Brook Street (Sheet 100 Lot 70) requesting the following variances: 1) minimum lot area, 5,000 square feet required - 3,800 square feet proposed; and 2) minimum side yard setback, 7 feet required - 3 feet proposed - to effectuate the proper use and occupancy of a garage at 12 Brook street. RC Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Kathy Vitale  
Gerry Reppucci  
Bob Carlson

Attorney Lynn Morse, Morse Law Firm, Exeter, NH. Atty. Morse stated that the requests are made necessary when the owner tried to sell the property. The plot plan and deeds indicate that in 1965 a variance was requested and granted, but a lot line relocation plan was never done, it was only a deed exchange that was never recorded. The owners have paid the taxes on this property for over forty years. Atty. Morse handed out photos of the properties, showing the garage being used by the owners of 12 Brook Street. Attorney Morse went over all the variance points of law as stated in the application.

Atty. Morse said his client's property would be decreased in size, and the adjacent owners property would increase in size with the lot line relocation. He said the property is a single-family residence. He stated that the relief that the owners are seeking is that the Board recognize what has occurred during the past 45 years for the garage, to establish the boundary line where both owners believe it is, and to allow the owner to go to the Planning Board for the lot line relocation.

Discussion ensued between the Board and the applicant.

**SPEAKING IN FAVOR:**

No One.

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

No One.

**MOTION** by Mr. Carlson to grant the variances on behalf of the owner. Mr. Carlson stated that the variance is needed to enable the applicant's 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 reasonably feasible for the applicant to pursue other than an area variance, it is a long-standing issue, with no physical change to the property.

Mr. Carlson stated that the request is within the spirit and intent of the ordinance, it will not adversely impact the property values of surrounding parcels, it is not contrary to the public interest, and substantial justice is served to the applicant for reasonable development rights.

**SECONDED** by Mr. Currier.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**REHEARING REQUESTS:**

1. Katherine Smith (Owner) Meenakshi Kumar (Applicant) 282 Main Dunstable Road (Sheet C Lot 90) requesting use variance to use existing premises for restaurant/catering business. R9 Zone.

This request was denied by the Board on March 11, 2008. The applicant believes that staff misinterpreted the request, in that they are requesting approval for a catering business, and not a restaurant.

Mr. Duffy asked if there was any improper notice.

Board members collectively said no.

Mr. Duffy asked if it was an illegal decision, and did the Board fail to completely address each of the points of law required for the use variance.

Board members collectively said no.

Mr. Duffy asked if the request for rehearing contained any new information not presented or available at the original Public Hearing.

Mr. Currier said that the letter indicates that Mr. Falk misinterpreted the request. He stated that the Board asked numerous questions about the use, but in the discussion, it was acknowledged that it was going to be a restaurant. Clearly what was stated is that a restaurant is in the cards. He didn't think this was new information, as the plan indicated several parking spaces for the restaurant, and it was clear in the testimony that this is a restaurant. He said if they're asking specifically for catering, that would be a separate, different use, perhaps worthy of a new application.

Mr. Reppucci said it was clear that the applicant expected people to come up to the house and take food and drive away. There was discussion about the traffic, and the number of cars that would come there.

Ms. Vitale stated that the site analysis indicates a total of eight tables with thirty-two seats are proposed for inside dining, maximum of three employees, and it sounds like a restaurant, but also has catering. She said it sounds like a restaurant.

Mr. Carlson stated that the insurance requirements to serve customers is significant, as well as the licensing. With tables and chairs inside, it is a restaurant. He said that even if it had one table with chairs, it is a restaurant.

Mr. Duffy said in his letter, a use variance requires a staff report. We all saw the application, the tables and chairs, the hours of operation, and the parking. He said the testimony was that it has the characteristics of a restaurant, as it has parking and tables and chairs. He said that there is no credible information to lend the Board to believe that this is not a restaurant.

Mr. Reppucci said if there was no reason for anyone to eat there, there would be no need for signage.

Mr. Duffy said that staff was wrong, but doesn't indicate reasons why. He said the testimony and everything about the case, he believes, was for a restaurant. He said there is no new information.

Mr. Reppucci said the applicant spoke at length about how the service would be at the structure. He said it's possible it was a language barrier, or a disconnect about the applicant saying one thing, and not what he intended. He said if he didn't intend on having a restaurant, would the Boards decision be different.

Mr. Duffy said his recollection is that it was very clear, that this is a restaurant. He said he heard him talk about a restaurant.

Mr. Currier said when he sees a catering business, there are no customers at the building, and they deliver off site. He said this site has tables.

Ms. Vitale said tables were talked about in the testimony.

Mr. Duffy asked if there is anything which would/could cause the Board to make a different decision.

Board members collectively said no.

**MOTION** by Mr. Currier to deny the rehearing request on whether staff misinterpreted the request to be a restaurant instead of a catering business. He said the debate on record, none of the items for a rehearing request have been determined to be affirmative by any of the Board members here, therefore, the motion is to deny the rehearing request.

**SECONDED** by Mr. Carlson.

Mr. Duffy agreed, nothing was presented to change his mind, or to come up with a different decision.

Mr. Reppucci asked if the applicant could re-apply as strictly a catering business.

Mr. Falk said he could re-apply, but the Board would have to do the "Fisher v. Dover" test to determine if it's a substantially different request, or if there is a significant change in the neighborhood.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**REGIONAL IMPACT:**

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

**MINUTES:**

April 22, 2008:

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

**SECONDED** by Mr. Currier.

**MOTION CARRIED UNANIMOUSLY 5-0.**

Mr. Duffy thanked the other members for attending the Spring Conference.

Mr. Duffy asked if other members can meet a little earlier to meet with Corporation Counsel, as we meet with him once or twice a year.

Mr. Falk said he will notify Corporation Counsel.

Mr. Duffy said the Board will be having a training session soon as well, with former Corporation Counsel David Connell.

**ADJOURNMENT:**

Mr. Duffy called the meeting closed at 9:13 p.m.

Jack Currier  
Acting Clerk

CF  
Taped Hearing