

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
June 10, 2008

A public hearing of the Zoning Board of Adjustment was held on Tuesday, June 10, 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 & Secretary  
Bob Carlson  
Kathy Vitale  
Robert Shaw  
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. Anne G. & David Johnson (Owners) 78 Pine Hill Road (Sheet E Lot 95) requesting variance to exceed maximum accessory use area, 40% permitted, 57% requested, to construct a swimming pool. R9 Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Robert Shaw  
Gerry Reppucci

David Johnson, 78 Pine Hill Road, Nashua, NH. Mr. Johnson stated that they are requesting a variance for a 28-foot round above ground pool. He went over the variance points of law. It is not a permanent structure, if the kids don't use it, they'll take it down. He said he's talked to all his neighbors, and most all of them have pools. He said the back yard will look nice with the improvements.

**SPEAKING IN FAVOR:**

No One.

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

No One.

**MOTION** by Mr. Currier to grant the variance as advertised on behalf of the owner. Mr. Currier stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, being a corner lot, it is over 10,000 square feet in area, with a driveway easement in the rear to go to another house.

Mr. Currier 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 to the applicant.

**SECONDED** by Mr. Shaw.

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

**2. Shelby M. Monroe (Owner) 5 Santa Fe Road (Sheet D Lot 318) requesting variance to encroach 5 feet into the 6 foot right side yard setback to construct a 10'x16' shed. R9 Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Robert Shaw  
Kathy Vitale  
Bob Carlson

Shelby Geehan, 5 Santa Fe Road, Nashua, NH. Ms. Geehan said her request for variance is for a shed to house their motorcycles, and the location requested will encroach into the side yard. She said she's spoken with the neighbors, and the property owner of the land, and they have no issues with the request, actually,

the property owner said they can encroach four feet into the setback. She went over her application. She said this request is in keeping with the neighborhood, which consists of small three-bedroom homes.

Mr. Duffy asked if she wouldn't mind a stipulation that this be a one-level shed.

Mrs. Geehan said that's ok with her.

Mr. Duffy said there is a letter from Duhamel/Patterson, agreeing to the request.

**SPEAKING IN FAVOR:**

No One.

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

No One.

**MOTION** by Mr. Carlson to grant the variance on behalf of the owner, as advertised. He said that the shed is not greater than one story, and 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.

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

**SECONDED** by Ms. Vitale.

Mr. Shaw said the motion was for a five-foot encroachment, but the letter from the property owner was for a four-foot encroachment.

Mr. Carlson revised the motion to be for a four-foot encroachment.

**SECONDED** by Ms. Vitale.

**MOTION CARRIED UNANIMOUSLY 5-0.**

- 3. Nashua Regional Cancer Center (Owner) 11 North Southwood Drive (Sheet G Lot 597) requesting special exception to expand a nonconforming use by constructing a 3,303 square foot addition to an existing medical office. PI Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Bob Carlson  
Robert Shaw  
Kathy Vitale

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier identified the location of the building, located in a Park Industrial zone. He stated that the building has been before the Board before, and it consists of doctors from local hospitals to offer care for cancer patients. He said the office hours are Monday through Friday from 8:00 - 5:00.

Atty. Prunier said the addition will accommodate a vault to house additional equipment. He said the request will also include adding 17 new parking spaces in the back. He said this use came to the Board about 8 years ago for a use variance, but the current code allows this addition to come back as a special exception. Atty. Prunier went over all the special exception points of law.

Ms. Vitale stated that she has a business relationship with this property, but can vote without bias. No one had any objections with her voting on the case.

Mr. Currier asked if there will be any cutting into the land.

Steven Auger, HSI, 3 Congress Street, Nashua, NH. Mr. Auger said there would be minimal earthwork to accommodate the parking spaces and drive aisle. The area is comprised of ledge. He said he didn't have any specific numbers until they begin the grading work.

Barbara Kimball, Director of Cancer Center. Ms. Kimball said the piece of new equipment will replace the old one, and this

one will require additional shielding, and cannot fit into the previous space.

Atty. Prunier said the use is regulated by the State of New Hampshire for the radiation levels. He said that any blasting will be approved by the Fire Department, they have strict regulations, and everything must be documented.

**SPEAKING IN FAVOR:**

Scott Wade, 15 North Southwood Drive. Mr. Wade is a neighbor, and has owned it for 15 years. Mr. Wade said they have no problems with the request; he just wanted to make sure they are careful with any radiation issues with the equipment. He said it's probably covered by State and Federal laws.

Mr. Currier said the use is well controlled, and well regulated for safety issues.

Ms. Vitale said they are also adding parking spaces as well.

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

No One.

**MOTION** by Mr. Shaw to grant the special exception on behalf of the applicant. Mr. Shaw stated that the request is listed in the Table of Uses, Section 190-119 (A)(4), to expand a nonconforming use. Mr. Shaw indicated that it will not create undue traffic congestion or unduly impair pedestrian safety; there is no evidence of safety issues in the current use.

Mr. Shaw stated that the use will not overload public water, drainage or sewer or other municipal systems. He said that special regulations are fulfilled, and the use will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of residents.

Mr. Shaw stated that the hours of operation will be Monday - Friday from 8:00 am to 5:00 pm, other than nonrecurring emergency visits.

**SECONDED** by Ms. Vitale.

**MOTION APPROVED UNANIMOUSLY 5-0.**

- 4. Riverwalk-Hudson LLC (Owner) 14A Broad Street (Sheet 62 Lot 68) requesting use variance to convert a previously approved delicatessen into a restaurant. GI/RB Zones.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Bob Carlson  
Robert Shaw  
Kathy Vitale

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that the use is in the former location of Roy's Kitchen. He stated that the reason they are before the Board is that a delicatessen is an allowed use, but the restaurant is not an allowed use. It will be the same size as before, and they will have 39 seats. Atty. Prunier said the parking is in excess of what the code requires, and the menu is roast beef and pizza. He said the proposed tenant has three other restaurants, and is opening another one.

Atty. Prunier said the building has been approved for retail uses, and the new ordinance is more detailed for uses, and this use is a restaurant, and they do serve people at the restaurant.

Mr. Duffy asked who the original attorney for this property was.

Atty. Prunier said it was Morgan Hollis.

Mr. Duffy said the original application was for a bicycle business. He suggested that the use is more intense, and perhaps a rezoning may be more appropriate.

Atty. Prunier said their use is the same as Roy's Kitchen, except for some additional seats.

Mr. Duffy said this is an expansion of the use, and the property is very tight in size.

Atty. Prunier said if they asked for a delicatessen, he'd already have an occupancy permit.

Mr. Carlson identified many other restaurant/food places right

in the nearby neighborhood, which is not a residential neighborhood.

Mr. Reppucci asked how long the deli has been closed.

Atty. Prunier said about seven or eight months.

Mr. Reppucci asked how many seats were in the previous use.

Atty. Prunier said he's not sure.

Mr. Currier said as an observation, there is a spillover onto Chautauqua Avenue, with cars parked on the street.

Atty. Prunier said there is a fence, which blocks off a parking lot that would lead to Chautauqua Avenue.

**SPEAKING IN FAVOR:**

Jeanette Alexandrew, Owner of Giovanni's Roast Beef & Pizzeria. Ms. Alexandrew mentioned their other locations. She said they don't serve beer and wine, and roast beef, subs, salads, pastas and pizza are their specialties. She said they've never had any complaints on their restaurants. She said they run a clean business. She said they are experienced in the restaurant business.

Mr. Currier said it makes a big deal that they do not serve beer and wine.

Ms. Alexandrew said that is fine, they are not looking for alcohol sales.

Mr. Carlson said they call it a restaurant, but in the trade industry, it's a deli/pizza establishment. You order your food, and go sit down. There's not table service, and people only stay about 20 minutes.

Ms. Vitale asked about the dumpster.

Ms. Alexandrew said they use Waste Management, and they come twice a week for pick-up. She said they double-bag their trash.

Jerry DiGrazio, 188 Baby Road, Dover NH. Mr. DiGrazio said he is the general manager of Riverwalk-Hudson. He stated that

dumpster pick up is twice a week at this location. He said he's been very responsive to the neighbors concerns. One of the neighbors complained that a light was too bright, and they covered it up. He said the fence area once was opened up to Chautauqua Avenue, and now it's always locked.

Mr. Reppucci said this place is like a stand-alone place. He asked about the parking spaces.

Mr. Falk said the parking spaces are shared amongst the tenants in the building, there are no assigned parking spaces.

Further discussion ensued about the parking spaces in the building.

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

Bill Dempster, 18 Chautauqua Avenue. Mr. Dempster asked if the restaurant use could go anywhere in the building, or if they're limited to the end space. Mr. Dempster asked about the code definitions of a restaurant vs. a deli, and does it include drive-thru or drive-up service.

Mr. Shaw said it's a totally different application.

Mr. Dempster said there has been some traffic issues, some fender benders. He asked if the previous stipulations of approval are still valid for this variance, as sometimes the garbage is picked up at 4:00 am, and now there will be an increase. He said he had a concern with the later hours of operation, but understands it's a Planning Board issue.

Mr. Duffy asked if Mr. Dempster if he thought there was a problem with the level of operation.

Mr. Dempster thought it was a good level for a neighborhood establishment.

Mr. Carrier asked what Mr. Dempster thought was a reasonable trash pick-up time.

Mr. Dempster stated between normal working hours would be fine.

Ms. Vitale said on the plans, it would be between 8 am - 5 pm.

Mr. Currier said the neighbors were concerned about the encroachment of this property onto Chautauqua Avenue.

Mr. Dempster said he cannot pinpoint a specific business, but there are cars being parked on his street, and they have called the Police Department to have them towed. He said he's not sure where the cars are coming from.

James Weston, 10 Chautauqua Avenue. Mr. Weston said he goes to work at 3:00 am, so even a 4:00 am pick-up doesn't bother him. He said he's more concerned with the fats and grease from the restaurant, and wants to know how it will be contained. He said he's also concerned with the additional cars parked on their street, sometimes in the winter the plows cannot get through. He also wanted to know where employees park, so they don't park on our street.

Mr. Duffy said he understands from the restaurant that it's a small operation for food wastes. He asked if any of the neighbors have asked the Aldermen for a No Parking zone on their street.

Mr. Weston said he's not sure if that has occurred.

**SPEAKING IN FAVOR - REBUTTAL:**

Atty. Prunier stated that the application is just for the part of the building that was the restaurant before, not any other part of the building. He said if they wanted a drive-thru, they'd have to come back before the Board. He said parking on Broad Street is an issue that is more than this establishment, as there are many businesses in this area on Broad Street.

Atty. Prunier stated that they could petition the Aldermen for a sign that reserves parking for residents only, or for parking for 1 hour, he said this use has 4-5 employees, and there will be a sign for them to park in the rear of the building, so the front is for customers. Atty. Prunier said trash will be picked up during 8:00 am and 5:00 pm., and no alcohol will be served.

**MOTION** by Mr. Currier to hear additional testimony from the restaurant owner.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 5-0.**

Jeanette Alexandrew, Giovanni's Roast Beef & Pizzeria. Ms. Alexandrew stated that clean up at night is as they work, they start at 8:00 pm, so that when the kitchen closes, they are all prepped and cleaned, and at the most, they are gone one-half hour after closing. It is different from a bar. She said they use a grease dumpster, that is picked up on a regular basis, and they have no issues with odors. She said they run a very clean business, and they have never had any problems with neighbors. The grease dumpster is small, and is within the regular dumpster space.

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

Bill Dempster, 18 Chautauqua Avenue. Mr. Dempster stated that he has talked to the Aldermen about the parking issue on their street. He wanted to clarify whether the restaurant use applies to just the portion of the building where Roy's Kitchen was, or the whole building. He agreed that no alcohol sales is a good idea, and should be a stipulation should the case be approved.

Mr. Shaw said the Board, or Mr. Falk, should address whether the restaurant can go anywhere in the building, or just where Roy's Kitchen was.

Mr. Falk said this portion of the property is basically one building, with shared parking, access, and a main ground sign. The use variance applies to the land, which could mean that the restaurant could conceivably go anywhere in the building. However, there has been a history of the deli at the corner of the building nearest Broad Street, and the application and plans, and all the testimony has been focused on a certain definable portion of the building. If someone were to argue that they could put a restaurant in another portion of the building, staff would disagree and say that the proposed restaurant is only valid for the end-cap portion of the building, as proposed this evening.

Mr. Currier said this should be put forward in a stipulation, so staff's position is crystal clear in the future.

Mr. Falk said if another restaurant were to apply, since this is a GI Zone, they'd have to apply for a use variance and go through the process.

Mr. Currier said we should define in a stipulation that the restaurant is for a definable place within the building.

**MOTION** by Mr. Duffy to grant the use variance on behalf of the applicant. He said it is granted for a roast beef pizzeria sandwich food service location existing in a square footage of approximately 2,400 square feet in this location previously known as Roy's Kitchen. Mr. Duffy said the extended hours of operation granted by this use variance to be 10:00 am to 11:00 pm Monday through Saturday, and 12:00 noon to 11:00 pm on Sunday, also, that the use variance include as a portion of the motion and not a special condition that the dumpster pick-up from this location not be outside of the hours of 8:00 am to 6:00 pm.

Mr. Duffy said the zoning restriction as applied interferes with the landowner's reasonable use of the property, given that the property has existed as a small delicatessen drive-in area for food service and preparation, that by definition, has been reviewed by this Board and is fair and reasonable that the relationship of units can be met by the existing use that has been granted for eight years.

Mr. Duffy said it does not injure the private rights of others, in fact, the operation of the area at this kind of a site, with a small less-intensive use of a full restaurant be allowed. He stated that the applicant's testimony and plans indicate there will be no liquor, or beer or wine served at the operation, and this is part of the motion, not a special condition.

Mr. Duffy said the request is within the spirit and intent of the ordinance that the applicant have reasonable use of their property, we are not creating an area of transition on this property or in this area, restaurants as defined by the ordinance in this zone in the LB, GI and RB zones or the split-zones are very definitive, so the Board is only acting on this one application in this 2,400 square foot area in the property.

Mr. Duffy said the request should not negatively affect property values of surrounding parcels, although there was no expert testimony.

Mr. Duffy stated that the request is not contrary to the public interest, in fact, there was a similar kind of service that

existed there for more than eight years. Mr. Duffy stated that it is not a drive-up or a drive-thru.

Mr. Duffy stated that substantial justice is granted that reasonable development of an existing property be granted.

Mr. Shaw asked Mr. Duffy to consider the dumpster pick-up times, and it should be 5:00 instead of 6:00 pm.

Mr. Duffy agreed, and this is part of the motion, not a special condition.

**SECONDED** by Mr. Shaw.

Mr. Carlson asked about the handicapped parking spaces.

Mr. Duffy said it is more of a Planning Board issue to discuss this.

Mr. Reppucci asked if this restaurant, located in a zone that otherwise would permit it, if they could serve beer and wine.

Mr. Falk said yes, it would be allowed, as long as they are ok with the State Liquor Commissioner.

Mr. Reppucci said if the Board puts a condition on someone, and they're otherwise allowed to do it, he said he didn't agree that the Board put a restriction to a function that they are otherwise allowed to do, and didn't see the purpose of doing this.

Mr. Currier disagreed. He gave an example of a court case where if an additional restriction was warranted, for a variance, the Board has a right to do so. He said he believed the sales of alcohol, and testified by the applicant, that he agrees with Mr. Dempster's testimony, and wouldn't support the application if they were to serve alcohol. He said he feels that this is a reasonable stipulation to offer.

Mr. Carlson said the insurance rates for places that serve alcohol have a 35% greater rate. There is a greater chance for something to happen, there is greater risk.

Mr. Duffy said it is for a 39-seat restaurant, for a deli pizza roast beef operation, with no alcohol. The applicant has stated

that they will not offer alcohol. This is their model. They were the ones that put the restriction on themselves.

Mr. Reppucci said he's questioning the wisdom of the Board to have this be a stipulation. He said it should be the decision of the business owner, and they can pay the additional insurance premium.

Further discussion ensued.

Mr. Currier said the use variance should apply to 14A Broad Street, noted as "deli" on the plans, dated 11-4-03, and no where else on this property.

**MOTION** by Mr. Duffy, agreeing with Mr. Currier's statement, and that it is for approximately 2,400 square feet.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**REHEARING REQUESTS:**

None.

Mr. Duffy said there is a training opportunity, coming on October 7, 2008, for all ZBA members in the region.

Further discussion ensued about the training.

Mr. Duffy said he would seek additional information about it.

**REGIONAL IMPACT:**

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

**MINUTES:**

May 27, 2008:

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

**SECONDED** by Mr. Carlson.

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

June 10, 2008

Page 14

Mr. Reppucci said the minutes should reflect a vote that was 3-1, but the minutes said it was approved unanimously, on Page 8.

Mr. Falk will make the appropriate change.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**ADJOURNMENT:**

Mr. Duffy called the meeting closed at 8:43 p.m.

Jack Currier  
Acting Clerk

CF  
Taped Hearing