

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

A public hearing of the Zoning Board of Adjustment was held on Tuesday, July 8, 2008 at 6:30 PM in the Auditorium at City Hall.

Jack Currier, Vice Chair & Secretary, conducted the meeting.

Members present were:

Jack Currier, Vice Chair & Acting Secretary
Robert Shaw
Kathy Vitale
Carter Falk, Deputy Planning Manager/Zoning

Mr. Shaw explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Shaw 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. Shaw also explained procedures involving the timing light.

MOTION by Mr. Shaw to remove case #1 from the Table, from the ZBA meeting of two weeks ago.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 3-0.

1. **John C. Jr. & Paula C. Kent (Owners) 14 Hillside Drive (Sheet 117 Lot 162) requesting special exception to encroach 9 feet into the 25 foot rear yard setback to construct a 12'x18' addition with balcony and landing area. RA Zone.**

Voting on this Case:

Jack Currier
Robert Shaw
Kathy Vitale

David Brown, Homeworks Residential Design, Andover, Mass. Mr. Brown introduced himself, and said this project is to remove an existing deck and construct a 12'x18' addition with balcony and

a landing area and stairway. He stated that the proposal would encroach approximately 9 feet into the rear yard setback. He identified the area of the addition on the map.

Mr. Brown said since the last meeting, the Board has received communication from Pennichuck Water Works. He said that at the last meeting, the abutter to the rear expressed reservations of the project. Subsequently, they have prepared additional CAD drawings for the abutter and the Board to see. He described the drawings. Mr. Brown said one of the issues raised by the neighbors was shadow penetration, and one of the drawings indicates that the shadows will not be an issue.

Mr. Brown said they designed the addition for views out the side, and not the back. He said they captured several views for the neighbor on the CAD drawings, and briefly described them. He said the Kent's met with the abutter, and discussed the views, drainage, and other issues. Mr. Brown said a petition has been done, in which about 30 nearby residents state that they are in approval of the proposed addition. Mr. Brown identified some other houses in the neighborhood, which are roughly the same size as the Kent's house, including the addition, and said that this house is in scale with others in the neighborhood.

Mr. Brown said Dig Safe will be called prior to any digging, so as to further protect the water line serving 29 Milk Street.

John Kent, 14 Hillside Drive. Mr. Kent stated that the neighbor was concerned about them using heavy equipment. He said they can't, because it is very narrow for any heavy equipment to get back there.

Mr. Shaw asked if the neighbor has any other concerns that have not been met.

Mr. Kent said it was a positive meeting, and said it will be a terrific addition. All the points were agreed with.

SPEAKING IN FAVOR:

No One.

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 190-16 (E)(3). Mr. Shaw stated it will not create undue traffic congestion or unduly impair pedestrian safety. Mr. Shaw said it will not overload public water, drainage or sewage, or other municipal systems. Mr. Shaw said that the 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 the residents nearby. He stated that the applicants have met with the neighbor at 29 Milk Street to address some of the concerns raised at the previous meeting, concerning drainage and some of the sight lines and appearance of the addition. Mr. Shaw said the inability of heavy equipment to come down through the side yard, and that not being an issue, and the item of the location of the water service line as provided by Pennichuck does indicate the presence of a $\frac{3}{4}$ inch copper line going through the property, but it can be remedied. Mr. Shaw said there was testimony at the last meeting about a 10-foot no-build buffer next to the stone wall, and further testimony indicated that there will be gutters on the addition to control drainage, and that there would be no difference in runoff from the property as it currently exists.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 3-0.

2. **Julio A. & Emma Vargas (Owners) 39 Pike Street (Sheet 112 Lot 106) requesting variance to encroach 3 feet into the 25 foot required front yard setback to maintain a home addition and porch constructed in 2005. RA Zone.**

Voting on this case:

Jack Currier
Rob Shaw
Kathy Vitale

Julio Vargas, 39 Pike Street. Mr. Vargas said they built an addition in 2005 to increase the size of the kitchen, and to build a deck. He said the buyers mortgage company did a survey, and said part of the addition is encroaching into the front yard setback. The bank refused to close the loan due to this, as it

is 3 feet too close to the front setback. He said the addition does not interfere with the traffic, or with the neighbors. He said they got a proper building permit for the construction, all signed off and approved. He said if the variance is not approved, they will lose the house.

Mr. Currier asked about the size difference between the plans and the permit. There is a difference in the figures.

Mr. Vargas explained that they had the permit approved for the size noted on the plans; the construction company they chose did all the work.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

Discussion ensued amongst the Board members, and they believed it was an unfortunate occurrence to the owners.

MOTION by Mr. Shaw to approve the variance on behalf of the owner. Mr. Shaw stated that the work already occurred about three years ago and by granting this variance, will allow the applicant to use the property as it is right now. Mr. Shaw said the special condition of the property is that this situation does already exist, and there is no reasonable or feasible means of rectifying it, short of major demolition or major alteration and construction. Mr. Shaw stated that likewise, this property is still within the original appearance as other nearby properties on this unique street.

Mr. Shaw stated that granting this variance is within the spirit and intent of the ordinance, there's no indication of negative impact to property values, nor will it be detrimental to the public interest, and substantial justice will be served.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 3-0.

3. Rita Uberti (Owner) 21 & 23 Edwards Street (Sheet 122 Lots 94 & 97) requesting the following variances: Lot 94: 1) minimum lot area, 7,500 sq.ft required, 6,006 sq.ft proposed, 2) minimum lot width, 75 feet required, 60 feet proposed; Lot 97: 3) minimum lot area, 7,500 sq.ft required, 6,006 sq.ft feet proposed, and 4) minimum lot width, 75 feet required, 60 feet proposed; also, requesting Equitable Waiver to allow an existing detached garage to remain over a lot line - all requests to transfer common ownership between contiguous lots to create two nonconforming lots. RA Zone.

Voting on this Case:

Jack Currier
Robert Shaw
Kathy Vitale

Atty. Barbara Hantz, Gottesman & Hollis, P.A., 39 E. Pearl St.
Atty. Hantz said there are two pre-existing lots, Lot 94, as referenced, has a house on it and a garage, built in the 1940's or 1950's. She said that lot 94 is a developed lot, and they are not requesting a variance on that lot. She said that Lot 97 is vacant, and these two lots have been deeded separately, and have been separated by the Assessor's office, as a multi-parcel transaction, so they have been taxed separately, and they have been separated under the rule which separates these lots, since they have been maintained separately over time.

Atty. Hantz said in the nonconforming section of the ordinance, there is no merger of these lots, since the one was already developed. She said they are here for the undeveloped lot, and the variance request before the Board has to do with Lot 97. She said one is for lot area, the second is for width, however, the lot has the proper frontage.

Atty. Hantz said once the property was surveyed, it was noted that the garage sits about three feet over the common lot line, so that is for the equitable waiver. She said the garage has been there for over 50 years.

Atty. Hantz gave the Board a map of the general neighborhood, and she described its location. She also gave the Board a copy of the tax maps, showing it's a very developed neighborhood. She said there are single and two-family homes in the

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

July 8, 2008

Page 6

neighborhood. She also had an aerial map for the Board to look at. Atty. Hantz said they believe they meet the variance requirements, and went over the proper variance points of law. She also went over all the equitable waiver points of law. She said a private encroachment can be entered into for the garage.

Ms. Vitale asked if someone is looking to build a house on the lot.

Atty. Hantz said there is no specific person in mind.

Mr. Shaw said the advertisement also included Lot 94.

Atty. Hantz said staff interpreted it to be less than what was advertised.

Mr. Shaw said in the past, when we have two adjoining nonconforming lots, they were typically treated as one lot.

Mr. Falk said the Board has considered many other requests like this. He said he checked with the Assessor's office, and these two lots have been owned together since at least 1918. He mentioned the families that have owned these lots over history. Mr. Falk stated that even though they are two lots, they've always been looked at as one "premise". He said that staff wrote the advertisement for both lots needing variances for lot area and lot width, as the owner intends to sell off one of the lots, and the ordinance clearly states that if there are two nonconforming lots held in joint ownership since October 1976, a lot or lots cannot be sold, consolidated or transferred in ownership unless both of the lots meet the minimum density and lot size regulations as stated in the ordinance. By selling off the vacant lot, both of the lots would need variances for lot area and for lot width. He mentioned Land Use Code Section 190-121 (B)(3). He said that when staff saw this request, believed it met this criteria, and advertised it as such. He said it's not really a subdivision per se, but they are selling off a deeded lot, they would have one lot remaining that wouldn't meet the ordinance. He said it doesn't matter how they're taxed, its one premise, and they're selling off half of it, and both lots need to meet the ordinance.

Mr. Currier said the Board has seen many of these cases, and believe it was advertised correctly.

Mr. Currier asked how long the current owner has owned the lots.

Atty. Hantz said since 2005.

Mr. Currier said there have been many requests like this, and said if it were to be approved, and the garage remained there, you'd be ending up with a lot that's really smaller than 60 feet, and would create a problem with fencing. He stated that it's likely that another driveway would be added, making it even smaller.

Atty. Hantz said the owners can have an easement for the garage and/or driveway, it will depend on what the new owners may want to do.

Attorney Barbara Hann. She said she is power of attorney for the owner, who lives in Connecticut. She said the garage is so small, and doesn't conform to today's needs.

Mr. Currier said it didn't appear as if it had a foundation or frost wall, or cement floor.

Atty. Hann said the garage could be attractive to a future buyer, that's why it stayed there.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Steven Harris, 20 Edwards Street. Mr. Harris said he lives across the street from the proposed property. He said the house has been on the market since last fall. He said he has the largest lot on the street, and by them subdividing the lot and putting another house there, it would be against the character of the neighborhood.

Mr. Currier went over the adjoining lot sizes on the street.

Mr. Harris said it would look even smaller and more congested.

Evangeline Pappas, 25 Edwards Street. Ms. Pappas said a house will be built on the vacant lot, and it is extremely close to their lot. She read a letter into the record from the

neighbors, stating that they are against the variances. She said the lots would be too small for another lot. The ambiance and appearance of the street would be altered, and traffic would be increased.

Lynn Dale, 22 Jaffre Street. Ms. Provencher said the neighbors are against this request, traffic is very heavy here. She said it would change the ambiance and appearance of the neighborhood. She said this is for profit-gain only, it is too small of a lot to do this, and would take away from what the neighborhood has.

Nicholas Pappas, 25 Edwards Street. Mr. Pappas said the street is dangerous with the amount of traffic.

SPEAKING IN FAVOR - REBUTTAL:

Attorney Barbara Hantz. Atty. Hantz said that what is proposed is in keeping with the neighborhood today, and many of the lots are similar in size, and also, there are many two-family structures in the neighborhood. She said that a single-family house is being proposed, and it meets the frontage, and would also meet the setback requirements. She said that if you look at the aerial, many of the houses are very close. She said for traffic, it would be only one additional house.

Atty. Hantz said the width is one of the variances, however, they would meet the frontage. She said there was a previous sale pending, but the prospective buyer walked away.

Attorney Barbara Hann. Atty. Hann said the market dropped out, and the buyer walked. The owner needs to sell the lot. She mentioned some of the two-family houses on the street.

Further discussion ensued.

Atty. Hantz said the code section doesn't apply when, within 500 feet of the subject lot, there are other nonconforming lots.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Steven Harris, 20 Edwards Street. Mr. Harris said his house is a single-family house. The house next to him at 16 Edwards is a duplex. He said he's not sure of 17 Edwards Street.

Mr. Shaw said he didn't believe the variance criteria were met. He said they're creating two nonconforming lots, and sees the current use as a reasonable use of the land. Mr. Shaw said a majority of the adjoining lots are also conforming.

Ms. Vitale agreed, she said it didn't fit in with the neighborhood. She said she didn't agree to make two nonconforming lots. She said parking and traffic will be more, and traffic is already busy on this street. She said the lot is probably more valuable as one.

Mr. Currier said there are certainly larger lots in the area, but there are also many others that are similar in size. He said he's not comfortable with the garage on that lot line.

MOTION by Mr. Currier to grant the request for the four variances, all taken together, but not for the equitable waiver.

SECONDED by Mr. Shaw, to allow for action on the motion.

Mr. Shaw said he's not in favor of the equitable waiver portion, but is not in support of the request, it will be more nonconforming. He said he didn't think the variance criteria were met.

MOTION DENIED 2-1. (Shaw and Vitale - vote may be 1-2?)

Mr. Currier noted that Mr. Duffy has arrived.

4. Tulley Buick-Pontiac Company, Inc. (Owners) 147 Daniel Webster Highway (Sheet A Lot 745) requesting the following variances: 1) to allow four ground signs, where three are permitted by vested permits and/or variances, 2) to allow 13 wall signs, where 9 are permitted by vested permits and/or variances, 3) to allow 342 sq.ft of ground signs where 278 sq.ft are permitted by vested permits and/or variances, and 4) to allow 503.5 sq.ft of wall signs where 461.5 sq.ft are permitted by vested permits and/or variances. GB Zone.

Voting on this case:

Sean Duffy
Jack Currier
Rob Shaw

Kathy Vitale

Attorney Morgan Hollis, Gottesman & Hollis, 39 East Pearl Street. Atty. Hollis identified the property, consisting of a large automobile sales multi-dealership, with 7 separate dealerships and three separate service areas, and two separate parts shops. He went over when all the dealerships were added to the business. Atty. Hollis said in 1986 they constructed one building, and had all the dealerships move into one location.

Atty. Hollis said the building was expanded recently from 75,000 to 125,000 square feet. He said the linear frontage of the building, with all the angles, is about 500 feet. He said the lot frontage is about 408 feet, but in reality, is over 800 feet due to a Friendly's restaurant as an outparcel.

Atty. Hollis said the building is 125,000 square feet, and showed on the plan with green dots the recent addition. He stated that the green dots reflect the new, proposed signage, and the red dots indicate the existing signage. He said they have three existing ground signs, with one new one proposed. He said one of the new wall signs is actually one just being divided into two signs.

Atty. Hollis said they've established a history of the previously approved signage for the property, and gave a copy to the Board. The report indicates a total of nine wall signs, at 461.5 square feet have received approval. Also, three ground signs, one of which has agreed to be removed. He said that on the application, it says that four ground signs, where three are permitted, he said they want to correct the record to indicate that they are asking for three ground signs, where two are permitted by vested permits. Those three ground signs will all be located out in the front, there are two there now, and there will be a new BMW sign out front, the small BMW pylon near the building will be removed, so there will be three ground signs total.

Atty. Hollis said they are asking for four additional wall signs. The building is walled off and separated into different businesses and dealerships. Auto dealerships all want their own signage, not to be combined. The automotive companies all mandate this, and they must all conform and upgrade to current criteria.

Atty. Hollis said all in all, they are asking for four additional wall signs, and one additional ground sign. Atty. Hollis stated that the square footage is going from 278 square feet of ground signage, to 342 square feet of ground signs. He said the wall signage would go from 461.5 square feet permitted, to 503.5 square feet. He said that although they are adding four wall signs, we are only adding approximately 40 square feet in size, as the signs get more modernized, and they go to more of a logo-based sign as shown. They are mostly logos.

Atty. Hollis said they need one ground sign for the BMW dealership at the corner, so when vehicles come off the Exit 2 ramp, they'll know exactly where they're going. He said the building is setback about 250 feet from the road, it's a large lot, and setback the furthest from the street. He said the BMW wall signs will be more directed near the Exit 2 ramps. He said the second wall sign is for the BMW service. Atty. Hollis went over the variance points of law.

Mr. Duffy said that the 15-minute time limit is up.

Atty. Hollis said he reserves the right to disagree with the time limit, and this is the only Board that has this time limit.

Mr. Duffy said the application was very thorough and complete, and it is very clear what is being requested. He said the time limit is to protect the rights of everyone involved.

Mr. Duffy asked if any of the signs will be electronic changing signs.

Atty. Hollis said no, they will be static.

Mr. Duffy said he respects what the applicant has done with the property, it has a wonderful buffer area, and the property is maintained very well. He asked Atty. Hollis if the front yard area usage setbacks remain in the current usage state, just to protect the frontage.

Atty. Hollis said if this refers to the large green area in the front, it may be larger than what the zone setbacks are.

Mr. Duffy said this is meant to be a compliment, as the Tulley dealership is so well maintained and kept, and wants it to stay that way.

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

July 8, 2008

Page 12

Atty. Hollis stated that they won't put any more signs out there, but they can't make the decision without further research by the other co-owners.

Mr. Shaw asked about the orientation of the façade of the new BMW sign, and the lighting of it.

Atty. Hollis said it will be perpendicular to DW Highway, and the up-lighting will be parallel to DW Highway. It will not shine into the right-of-way.

Mr. Currier asked about the old BMW pylon, which will be replaced by the new one by the street. He asked what the height of it will be in relation to the other ground signs.

Bryan Tulley, Co-owner of Tulley BMW. Mr. Tulley said it would be smaller, at about 16 ft 4 inches. The new VW/Mazda sign will be 20 feet.

Mr. Currier asked about the BMW roundel.

Atty. Hollis said it is the BMW round logo sign.

Mr. Currier said the site is unique, as you can see it from over the river in Hudson. He asked how visible it will be from the highway.

Atty. Hollis said it is about 46 inches, with a smaller roundel, so it is not very large.

Vince Tulley, Co-owner of Tulley BMW. Mr. Tulley said you can only see that sign from the ramp, you won't be able to see it from the highway.

Mr. Duffy asked if the signage is reasonable compared to abutters.

Mr. Tulley said it is very reasonable, as they have many different franchises, and you can't read any of the signs from Hudson, but you can see the building. He said it is a reasonable request.

Mr. Currier asked about the other lot, the "Roscommon" lot. He said it's looked at as one big lot, but it's conceivable that another building could go there.

Atty. Hollis said it is a separate lot under different ownership, but Tulley uses it for parking, and if another building was to be put there, site plans and complete analysis of parking and traffic would be required.

Additional discussion ensued about the vacant Roscommon lot next door.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Duffy to grant the variances on behalf of the applicant. He stated that the credibility and track record of the applicant on this property over the number of years, when you drive and look at this property, and look at the accessory uses, and along the edges and front and back, there are no residences near the property, they are all commercial and it is very comfortable. Mr. Duffy stated that this is for four new wall signs, and for three ground signs in all, that it is needed for the applicants proposed use of the property, it is a very reasonable use of the property considering the minimal amount of identification and directional signage on the property, and the size of the property is rather unique in this area and in this district, and to other competitors in the area, and/or abutters, and the applicants past history of keeping this property in a very well maintained minimal intrusions with minimal variance requirements is there for the record as special conditions of the property.

Mr. Duffy stated that the spirit and intent of the ordinance is being kept in good faith, the directional and identification signage for their property across a broad area, and is more unique to this area.

Mr. Duffy said it should not affect the property values of surrounding parcels.

Mr. Duffy said it is not contrary to the public interest, it is a reasonable amount of signage, and substantial justice is granted for reasonable development rights.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 4-0.

5. Spyros C. & Katherine C. Docos (Owners) Lannan Development Group (Applicant) 836 & 844 West Hollis Street (Sheet D Lots 84 & 85) requesting: 1) use variance to allow a gas station/convenience store with coffee shop/drive-thru, food service/retail, and accessory uses; and the following variances: 2) to exceed maximum ground sign area, 10 sq.ft permitted, 100 sq.ft proposed, 3) to exceed maximum ground sign height, 6 feet permitted, 15 feet proposed, 4) to exceed maximum number of wall signs, 1 permitted, 3 proposed, and 5) to exceed maximum wall sign area, 6 sq.ft permitted, 78 sq.ft proposed. R30 Zone.

POSTPONED TO THE SEPTEMBER 9, 2008 MEETING.

OTHER BUSINESS:

REGIONAL IMPACT:

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

REHEARING REQUESTS:

None.

MINUTES:

None.

ADJOURNMENT:

Mr. Currier called the meeting closed at 9:08 p.m.

Jack Currier
Acting Clerk

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

July 8, 2008

Page 15

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Taped Hearing