

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

A public hearing of the Zoning Board of Adjustment was held on Tuesday, July 22, 2008 at 6:30 PM in the Auditorium at City Hall.

Sean Duffy, Chair, conducted the meeting.

Members present were:

Sean Duffy, Chair
Bob Carlson (arrived at 6:45)
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. Ronald & Sandra Cicotte (Owners) 331 Lake Street (Sheet 88 Lot 38) requesting variance to exceed maximum fence height, 6 feet allowed, 8 feet requested, for a portion of a fence on east side of property. RA Zone.**

Voting on this Case:

Sean Duffy
Kathy Vitale
Gerry Reppucci

Ronald Cicotte, 331 Lake Street, Nashua, NH. Mr. Cicotte stated that the fence is about 65 feet long, and extends an existing fence that the neighbor already has. He stated that the fence is 8 feet tall, instead of 6 feet tall. He said he checked the City's website for codes, but didn't see anything. He said the fence is stockade type, and extends a fence that a neighbor has, and it's the same style, and consistent. He said it's in the rear yard, and doesn't block any access. Mr. Cicotte said he's

spoken with all the neighbors, and it provides additional privacy.

Mr. Cicotte said some of his neighbors have signed a paper that they have no objection to the fence, and the fence is used, so it matches exactly to what is already there.

SPEAKING IN FAVOR:

Letter from the applicant, signed by some neighbors in approval.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

Mr. Reppucci stated that the Board should discuss situations like this, where the work is already completed, it puts the Board in an awkward position.

Mr. Falk said this issue happens regularly, with all different types of requests. The Board should consider each request as they come in, and review them on their merit. In many of these cases, the Code Enforcement Division has already notified the owner.

Further discussion ensued.

MOTION by Mr. Duffy to grant the variance on behalf of the applicant. Mr. Duffy stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, the use on the site is a single-family home, which is an approved use in the RA zone, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible, this is a minor yard maintenance, on a pre-existing fence line, that was an open area, it's 65 feet in length, and it's not surrounding or creating a barrier on multi sides of the property or to the front yard, it is essentially in character with the neighborhood, there are many different uses and sizes of homes and other open areas.

Mr. Duffy said the request is within the spirit and intent of the ordinance, the applicant tried to get a used fence system.

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

Mr. Duffy said the request is not contrary to the public interest, and substantial justice is served with reasonable use and sight line and privacy for the back yard would be somewhat nonconforming, but not of a dramatic nature.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 3-0.

2. **Hugh T. Poza (Owner) 54-56 Perham Street (Sheet 45 Lot 184) requesting variance to encroach 9.5 feet into the 10 foot required front yard setback to construct a roof over existing front steps. RC Zone.**

Voting on this case:

Sean Duffy
Bob Carlson
Kathy Vitale
Gerry Reppucci

Hugh Poza, 66 Stowell Road, Bedford, NH. Mr. Poza stated that he is requesting a variance to allow a roof over steps, that go right to the front property line. He said there is a 3 foot awning overhang, which is not very attractive, the proposal is to increase the roofed structure over 9.5 feet over the existing steps. He said it is a safety issue for the tenants of the building entering and exiting the building, especially in inclement weather periods.

Mr. Poza said it will also make the front of the building more attractive than what is currently there. The current one is weathered, and falling apart. He said there shouldn't be any negative affect to property values in the neighborhood, and is a public benefit, and safety issue, that will be made safer.

Mr. Poza said the street is a one-way street, and most of the buildings are right up against the sidewalk, many of them are multi-family structures. He said his building has six dwelling units.

Mr. Reppucci asked if the stairs go into the sidewalk itself.

Mr. Poza said they do, slightly, it was concrete, and the new design is wooden.

Mr. Reppucci asked if the roof will direct snow or water into the sidewalk. He said the roof goes down right on the sides of the stairs.

Mr. Poza said it will run down the front of the staircase, there was minimal design options because of the location of the second story windows.

Ms. Vitale asked whether the steps will have the proper height and depth.

Mr. Poza said they will.

Ms. Vitale asked if the snow would slide off the roof onto the sidewalk, which is public property, and asked if it could be built in a way to avoid the snow falling on the sidewalk.

Mr. Poza said with the windows above, the pitch on the roof would not be great enough to accomplish this.

Mr. Carlson asked if there is a property manager.

Mr. Poza said he is the property manager.

Mr. Duffy asked if he would be amenable to a smaller encroachment.

Mr. Poza said he wanted to maximize the amount of roof over the steps, as the last two steps wouldn't be covered, but said he might be amenable to that.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

Board members discussed rain, snow and ice falling off of the roof onto the sidewalk.

Mr. Duffy mentioned a 6.5-foot encroachment might be more amenable.

Mr. Falk said the applicant would be required to submit revised plans showing a shorter roof.

MOTION by Mr. Duffy to approve the variance on behalf of the owner. Mr. Duffy stated that the motion will be for a 6.5-foot encroachment, not 9.5 feet as requested. Mr. Duffy stated that the variance is needed to enable the applicants proposed use of the property, given the special conditions of the property, it is a nonconforming property on a lot that pre-dates zoning, and it's the Board's responsibility to allow some nonconforming uses that are reasonable, but not make it too nonconforming, and the Board feels it would be too nonconforming to have the original intrusion, but it is reasonable to cover the stairs and steps and do maintenance to the access of the building's main entrance on a reasonable nature that goes over the porch and down a bit.

Mr. Duffy stated that the request is within the spirit and intent of the ordinance, the safety issues have all been discussed, as well as the incursions into the sidewalk access areas, this is a more reasonable use.

Mr. Duffy said this request should not adversely affect property values, even though there was no expert testimony.

Mr. Duffy said the request is not contrary to the public interest, and substantial justice is served for reasonable development rights to cover his access.

SECONDED by Mr. Reppucci.

MOTION CARRIED UNANIMOUSLY 4-0.

3. **Michael S. Tiedemann (Owner) 5 McLaren Avenue (Sheet 85 Lot 40) requesting variance to encroach 10 feet into the 10 foot required front yard setback to construct a 15' x 20' second story dormer addition. RC Zone.**

Voting on this Case:

Sean Duffy

Bob Carlson
Kathy Vitale
Gerry Reppucci

Michael Tiedemann, 53 Ledge Road, Hudson, NH. Mr. Tiedemann stated that when he bought the property, it was listed as a two-family structure, which was illegal, and the previous owners converted it anyway. He said the staircase going up to the second floor is too small and narrow, so this plan is to construct a dormer on the right side of the house to allow headroom at the top of the stairs.

Mr. Tiedemann further described the internal configuration of the house. He said that the plans are preliminarily approved by the Building and Fire Departments. He said he is not adding to the footprint of the house, it's just a dormer on the second floor. He said he bought the property as a two-family, and will be converting it back to a single-family home, with five bedrooms, with 1,300 square feet inside. He said by bringing the building up to Code, the dormer is necessary.

Mr. Tiedemann handed out some pictures of the property to the Board members.

Mr. Carlson asked if he is going to live in the house.

Mr. Tiedemann said that he will, but to make the house marketable in the future, it has to have the proper stairwells and hallways.

Discussion ensued between the applicant and Board members.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

Mr. Duffy said this request is solely for a single-family house, with no changes to the foundation of the property, rear porches or front yard porch areas, exits and entrances to the building, to the footprint, it is for a single-family use, by the applicant's testimony.

MOTION by Mr. Reppucci to grant the request on behalf of the owner. Mr. Reppucci stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, by testimony, the applicant stated the building is out of Code in a variety of ways, and has submitted plans to the Building Department that have been approved to bring the building into Code, it's presently out of Code, as it was being used as a multi-family when it's intended use is a single family, he will restore it to a single-family use, and understands clearly that it will be limited to a single-family use by testimony.

Mr. Reppucci stated that it is within the spirit and intent of the ordinance, he is bringing something out of code, into code. He stated that it will not adversely affect the property values of surrounding parcels, clearly, these improvements will make the neighborhood increase in value. He stated that it is not contrary to the public interest, in fact, it's in the public interest to bring the building into code, and substantial justice is served by approving the application.

SECONDED by Ms. Vitale.

Mr. Duffy said it is clear in the record that this approval is clearly for a single-family use, with no changes to the foundation or the front, rear porch, and accessways, other than a single-family home.

MOTION APPROVED UNANIMOUSLY 4-0.

4. Donzi Realty LLC, City of Nashua, Fimble Door Corp., Warren W. Kean, Trustee, & Boston & Maine Corp. (Owners) Department of Public Works (Applicant) 44 Broad Street, 24 Fox Street, L Fox Street, 11 Warsaw Avenue, 66 Fairmont Street & L Crown Street (Sheet 71 Lots 1, 2 & 4, Sheet 134 Lot 16, Sheet 70 Lot 14 and Sheet 12 Lot 4) requesting special exception to work within the 75-foot prime wetland buffer of the Nashua and Merrimack Rivers to replace the sewer mains along the CSO-008 and CSO-004 interceptors. GI & RC Zones.

Voting on this case:

Sean Duffy

Bob Carlson
Kathy Vitale
Gerry Reppucci

Bill Keating, City of Nashua, Department of Public Works. Mr. Keating said this project is required by the Consent Decree with the EPA and the NHDES. He stated that it is a mandated project for the City. He said it is CSO-008 sewer line, the pipe size is being increased from 18" to 30", on the Nashua River, about 2,100 feet, it's in a wooded area, away from the abutters, with very minimal disturbance.

Mr. Keating said the other one is along the Merrimack River, CSO-004, it is a smaller project, only 50 feet long, replacing the sewer line from a 10" to an 18" pipe, on the east side of the railroad tracks, not near any abutters.

Mr. Duffy asked how with the past week, with the amount of rain we've had, would this project be able to handle the downfall of rain we've had.

Mr. Keating stated that he didn't know the total amount of rainfall. He said we've had some intense rain events.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Ms. Vitale to grant the special exception on behalf of the applicant. She stated that the use is listed under Code Section 190-112. Ms. Vitale stated that this is a mandated project, it will not create any undue traffic congestion or unduly impair pedestrian safety, it is located quite some distance from residential areas. Ms. Vitale stated that with the precautions they will be taking, there will not be any impact to public water, sewer, drainage or other municipal systems.

Ms. Vitale said that the special regulations are being fulfilled and it will not impair the integrity or be out of character with the neighborhood, basically it's a replacement project, and it

is mandated. She said they will be doing trash removal, and is included in the project.

Mr. Duffy said part of the motion should be the seven stipulations from the June 3, 2008 Conservation Commission meeting.

Ms. Vitale agreed.

Mr. Duffy said the applicant complies with the eight wetland special conditions, as well.

SECONDED by Mr. Reppucci.

MOTION CARRIED UNANIMOUSLY 4-0.

5. Paul E. Grigas (Owner) 158 Amherst Street (Sheet 61B Lot 113) requesting use variance to convert a previously approved professional office into a printing company. RA Zone.

POSTPONED UNTIL THE AUGUST 26, 2008 MEETING.

6. Southern New Hampshire Hospitality, LLC (Owner) 11 Tara Boulevard (Sheet A Lot 333) requesting the following variances: 1) to exceed maximum ground sign area, 100 square feet allowed, 195 square feet existing, one additional 130 square foot panel requested below existing panel, 2) to exceed maximum height of ground sign, 20 feet allowed, 85 feet existing, 78 feet proposed, 3) to exceed maximum number of ground signs, one allowed, two existing - two additional 18 square foot ground signs requested. PI Zone.

Voting on this case:

Sean Duffy
Bob Carlson
Kathy Vitale
Gerry Reppucci

Terry Wilkins, Barlo Signs, Hudson, NH. Mr. Wilkins said part of the recent Radisson renovations included the health club, a private entity. He said that guests of the hotel may use the club, as well as the general public. He said it is a well-

rounded club, with programs for children and adults, with a full complement of health and wellness classes.

Mr. Wilkins said they are requesting a sign to be placed below the existing Radisson sign on the tall pylon sign, to take advantage of passing-by traffic.

Mr. Wilkins went over the points of law required for an area variance. He said the signs will allow people to find the club, along with the hotel.

Mr. Falk went over the application with the Board, describing the requested signs.

Mr. Wilkins said they are not going forward with the third variance, and withdrew it.

Mr. Duffy requested additional testimony as to how this request meets the hardship criteria.

Mr. Paul Kearney, Atlantis Sports Club. Mr. Kearney said they've been there for five years, and get no traffic, and it's difficult when we're trying to promote the club. He said it's very difficult to get people there. He said they want to educate and motivate people to get to the gym. He said they have six other clubs, but the others get better visibility.

Mr. Reppucci asked if Radisson gave permission for the health club to erect a sign on the poles.

Mr. Kearney said they are allowing us to use the poles.

Discussion ensued between the Board members and the applicant.

SPEAKING IN FAVOR:

Tom Head, 30 Berkeley Place, Milford, NH. Mr. Head expressed his support for the proposed signage.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

Further discussion ensued amongst the Board members.

MOTION by Mr. Duffy to suspend the rules to ask the applicant a question on the sign.

MOTION APPROVED UNANIMOUSLY 4-0.

Ms. Vitale asked about the plans, specifically the material options.

Terry Wilkins, Barlo Signs, Hudson, NH. Mr. Wilkins said it is technical, it's how we apply graphics, sometimes the print is a digital process done by a large machine, sometimes it's pre-printed and we just put the face in the sign. The other option is to cut and apply vinyl's by hand in the shop. It is not electronic changing or digital.

Ms. Vitale said as far as advertising, the applicant stated that there would be two directionals, as well as the highway sign that would attract new members. The highway location would be better at both of those than the one on Spit Brook Road. During the holiday season, people are more likely to be going east than they are west, so there will be more people seeing it off the highway than you are off of Spit Brook Road, so the ability to attract more people is there. She stated that she sees the value of the business that is being run for the City, and gives another nice option for swimming opportunities. She stated that it would be nice to make a stipulation that the sign could not be used by another entity coming into that location, but if anyone else did come in, she'd want it to come before the Board to be re-evaluated.

Mr. Duffy said it's his understanding that we cannot regulate the content of the sign.

Ms. Vitale stated that she thought the Board could.

Mr. Duffy said once you grant a sign structure, you can't take it away.

Mr. Falk said if the request is approved, there would be a sign box, or cabinet, spanning the existing poles. There will be removable panels, and if a new business were to go in the building, they could take out the old business panel in the sign, and simply replace it with the new business panel. It's a "change of face" for the sign, and that doesn't even require a sign permit. It can be done in a matter of minutes.

Mr. Falk said the entire issue here is very basic - they are requesting to add square footage to an existing ground sign in excess of what the sign ordinance allows, it doesn't matter what the business is, or anything about their lease, or any other financial matter, it is purely adding square footage above and in excess of the maximum allowed ground sign area, approximately 195 feet exists, and 325 square feet would be up there should the Board approve this request. The ordinance does not regulate sign content.

Mr. Reppucci stated that if the Board grants this request, they can do with it what they want, that is clear. They could use the additional square footage however they see fit.

MOTION by Mr. Carlson on behalf of the applicant to grant the variance, 100 square feet allowed, 195 square feet existing, one additional 130 square foot panel requested below existing panel, and to exceed maximum height of ground sign, 20 feet allowed, 85 feet existing, 78 feet proposed. Variance #3 is withdrawn by the applicant.

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 reasonably feasible for the applicant to pursue, other than an area variance, it is within the spirit and intent of the ordinance, it will not affect the property values of surrounding parcels, it is not contrary to the public interest, and substantial justice is served.

SECONDED by Ms. Vitale for purposes of discussion.

Mr. Duffy said he sees the request as more of a gateway, there are other reasonable uses. It is more of a gateway issue to the City and the State, not a destination.

Mr. Reppucci asked if Radisson needs to be present at the meeting, as it is a sign on their property.

Mr. Falk said they signed off on the application, and they own the property, further, if this request is approved, it goes with the land.

Mr. Reppucci said he found the discussion compelling, and a good case has been made for the business, and is convinced it's the right thing to do. He said that having the clarity that the sign is there, we know it's going to be there, they are almost doubling their signage, and we're doing that consciously, he's persuaded to approve the request.

MOTION FAILS 2-2 (Mr. Duffy and Ms. Vitale against motion).

Mr. Falk said in a 2-2 vote, the Motion to grant fails. There must be three affirmative votes for a Motion to be approved.

Mr. Falk said the Board should exhaust all the possibilities in the Motions.

Mr. Reppucci asked if there's anything we can do in a compromise sort of way, to give them the opportunity to have something.

Ms. Vitale said there's not much they can change with the sign, if they're going to put a sign there, this is the right size of sign. She said the Radisson sign already is 95 sq.ft larger than what is allowed, so, the sign they're proposing is the right size of sign, it comes down to the fact that what else can be there, if you cannot stipulate that that sign comes down, then we don't have any mobility. She asked if they leave, can they take the sign with them.

Mr. Falk said it could be looked at as if you're taking away their right, if the variance is granted.

Mr. Carlson said a condition could be that the rights of the sign could belong to Southern NH Hospitality, and if the lease is terminated or they leave the property, the sign must come down immediately.

Mr. Falk said the Board can make any stipulation they feel is right, as long as it's reasonable, but in this case, the property owner would be granted a variance, and the Board would be taking it away.

Ms. Vitale looks at this as a leased property, and no one from the Radisson is even here this evening, and we've been told this is a separate business, and they pay through a lease agreement, therefore, it's not the property owners sign, it's them asking

for it. She asked if that can be a condition, if they move out, they remove the sign.

Mr. Falk said as long as the applicant and property owner agree to that, it's a reasonable.

Mr. Carlson suggested attaching a special condition, if the tenant leaves, then the sign must be removed.

Mr. Falk asked if the Board wants to have a time frame attached to it.

Mr. Carlson said the sign is tied to the lease from Atlantis, and not a successor lease.

Mr. Duffy said if the Radisson were asking for this sign, he wouldn't have a problem with it, as it's a destination location for visitors and guests.

MOTION by Ms. Vitale to grant the area variance on behalf of the applicant, with a special condition to read as at the time of the expiration of the lease, the sign comes down and the business moves at that time.

Mr. Carlson said or if there's a substantial change in ownership in the business.

Mr. Reppucci asked if the sign comes down, so it's clear, that the faceplate of Atlantis doesn't come out of the box, that the box comes down, the whole structure of the sign comes down.

SECONDED by Mr. Carlson.

Mr. Duffy said the Motion is to grant the area variance, numbers 1 & 2, because it's a reasonable use of the property, they have identification and directional purposes to this site, with a special condition of that the structural cabinet be removed at the expiration of the lease of the Atlantis Sports Clubs, or a substantial change in the ownership.

MOTION APPROVED 3-1 (Mr. Duffy).

7. City of Nashua (Owner) Pennichuck Water Works, Inc. (Applicant) E Street, requesting special exception to expand a nonconforming use by constructing a 160 square

foot addition onto an existing water pumping station. GI
Zone. [POSTPONED FROM THE JUNE 24, 2008 MEETING]

POSTPONED TO THE AUGUST 12, 2008 MEETING

OTHER BUSINESS:

REGIONAL IMPACT:

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

REHEARING REQUESTS:

None.

MINUTES:

June 24, 2008

July 8, 2008

MOTION by Mr. Carlson to approve the minutes, waive the public reading, and place the minutes in the appropriate files.

SECONDED by Ms. Vitale

MOTION APPROVED UNANIMOUSLY.

Mr. Carlson asked when the Members' appointments expire.

Mr. Falk will let the members know.

ADJOURNMENT:

Mr. Currier called the meeting closed at 9:11 p.m.

Jack Currier
Acting Clerk

CF
Taped Hearing