

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
August 12, 2008

A public hearing of the Zoning Board of Adjustment was held on Tuesday, August 12, 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 (arrived at 7:20 pm)
Kathy Vitale (arrived at 7:00 pm)
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. **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 JULY 22, 2008 MEETING]**

CASE WITHDRAWN BY THE APPLICANT

2. **Paul F. & Cynthia D. Flynn (Owners) City of Nashua Department of Public Works (Applicant) 36 Holbrook Drive (Sheet C Lot 1255) requesting special exception to work within the 40-foot critical wetland and wetland buffer of Harris Brook to replace a headwall, and to add an 8-foot culvert extension. R9 Zone.**

Voting on this Case:

Sean Duffy
Jack Currier

Robert Shaw
Gerry Reppucci

Jeanne Walker, Engineer, City of Nashua DPW, 9 Riverside St.
Ms. Walker stated that they are requesting to do the work to prevent further erosion. She said that Harris Brook is relocated into a culvert, going through the applicants yard. She said the headwall has experienced erosion, and the bank has started to erode, and there is a chain-link fence that is beginning to sag.

Ms. Walker described the location of the culvert and fence. She said they are requesting to take out the existing headwall, and put in a new precast headwall. She went over all the relevant special exception points of law, as well as the wetland and wetland buffer points of law. She said the City of Nashua Streets Department will be doing the work, and that the Conservation Commission has forwarded a favorable recommendation. She said the project will improve the bank. She said it will take about three weeks to complete, sometime this fall.

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. Currier to grant the special exception on behalf of the owner. Mr. Currier stated that the use is listed in the Table of Uses, Section 190-112. Mr. Currier said that per testimony, the three criteria are met, it will not create undue traffic congestion or overload public water, drainage or sewer, in fact, it will help the drainage in the area, and the special regulations are fulfilled, per testimony, the only exception is that the Board doesn't have a written approval by the Conservation Commission, but the motion is being made on behalf of the owner as long as the approval comes through, and that the applicant will adhere to any stipulation.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY, 4-0.

3. **Joel M. & Carol R. Droznick (Owners) 5 Gruen Lane (Sheet A Lot 622) requesting variance to encroach 3 feet into the 6 foot required rear yard setback to replace an old shed with a new 10'x10' shed. RA Zone.**

Voting on this Case:

Sean Duffy **(RECUSED FOR THIS CASE)**

Jack Currier **(ACTING AS CHAIR FOR THIS CASE)**

Robert Shaw

Gerry Reppucci

Joel Droznick, 5 Gruen Lane, Nashua, NH. Mr. Droznick said they have an existing steel 10'x10' shed on a concrete pad, that was over 30 years of age, and would like to replace it in the same location, and the same size, in addition, it would be safer than the existing one. Mr. Droznick went over the relevant points of law, as stated in his application. He said the height is comparable to the old shed, and it is hidden behind a stockade fence.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Shaw to grant the variance on behalf of the owner. Mr. Shaw stated that the existing shed is already encroaching, and is located on a 10'x10' concrete pad, and the owner, rather than having to tear that up, is requesting to continue to use that same location for the new shed, and replace the old one for a new one, and it is well-shielded from the neighbors due to a fence, and will allow for continued use of the property in this same fashion, with an identical sized shed of near or identical overall height.

Mr. Shaw stated that the request is within the spirit and intent of the ordinance, to allow the homeowners to continue to use the property as it's currently being used. He stated that although

there was no testimony, there will not be any adverse impact to property values of surrounding parcels, and it will not be contrary to the public interest, and substantial justice is served.

SECONDED by Mr. Reppucci.

MOTION CARRIED UNANIMOUSLY 3-0.

4. **Terry L. Dakin (Owner) Margo Lewis (Applicant) 8 Webster Street (Sheet 66 Lot 23) requesting special exception for a major home occupation for an in-home day care for 6 children. RB Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Robert Shaw
Gerry Reppucci

Margo Lewis, 8 Webster Street, Nashua, NH. Ms. Lewis stated that she is already a licensed exempt child care provider, and now is asking to be licensed. She said the ages of the kids will be from six weeks to five years old. She showed where people park, as shown in the submitted pictures, and the parents come at different times. Ms. Lewis said there is no traffic. She stated that it would be no different if she had small children of her own. She said the back yard is fenced in, and she has permission from the owner. She submitted a signed letter from the owner for the record.

Ms. Lewis said she is insured, and has completed all the requirements from the State. She said she's been doing this for a year now.

Mr. Duffy said there are some special regulations, and said it must be a subordinate use located in a single-family home, and asked if it is.

Ms. Lewis said it is.

Mr. Duffy said the maximum capacity of the child care is no more than twelve children, and six are being asked for.

Ms. Duffy said the lot must meet the dimensional regulations for the zone the structure is located in. He said that onsite parking is for the principal residential use, which has already been testified to. Mr. Duffy said a sign no bigger than one square foot in size can be used.

Ms. Lewis said she doesn't have a sign.

Mr. Duffy asked how many square feet she is using for the use.

Ms. Lewis said she's using a part of the second floor.

Mr. Reppucci asked if the owner is present.

Ms. Lewis said he is not.

Mr. Reppucci asked if this is a single-family home.

Ms. Lewis said the owner is on the bottom, and she's on the second floor, so there are two families that live there. She said it's like a townhouse or a duplex. She said the owner owns the entire house.

Mr. Currier asked about the garage and driveway on Hopkins Street, and if the owner lives in there.

Ms. Lewis said that is his driveway, her driveway is on Webster.

Mr. Currier said he assumes the owner parks his car on that street, and they use the one on Webster Street. She said they have three spaces, and the people can use the driveway, or park on the street, her husband is always at work, so there's plenty of parking spaces.

Mr. Reppucci asked who lives in each floor of the structure.

Ms. Lewis said the owner lives downstairs, and she lives upstairs.

Mr. Reppucci asked about the front door.

Ms. Lewis said it is the entranceway to go upstairs.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Glen Poncet, 1 Hopkins Street. Mr. Poncet said if the child care is approved, it would lower his property values, he said if he were looking to buy a house, he wouldn't buy one across from a daycare. Another concern is that there is little thru traffic, and is concerned about six additional cars on the street, and another concern is that it isn't the owner requesting the day care, it's the tenant.

Mr. Currier asked if there are any other daycares around.

Mr. Poncet said there are others around, probably on Manchester Street.

Mr. Duffy said perhaps the maximum age could be five years old, and this request seems like it's more of a neighborhood use, instead of a high intensity type of use. It doesn't seem to be on a major thoroughfare. People could just walk to drop off the children.

SPEAKING IN FAVOR - REBUTTAL:

Margo Lewis, 8B Webster Street. Ms. Lewis said she's been doing this for a year, and has not created any traffic jams or problems. She said she doesn't intend to have children over the age of five, whether or not she ever gets six children is neither here nor there, she's had the same three kids since she's opened the daycare. She said she's not sure if by watching the three extra children would make the property values go up or down, but there's many children in the neighborhood

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

None.

Mr. Reppucci said right away, this request doesn't qualify, it is a two-family structure and needs to be a single-family.

Mr. Falk said the Board has heard a couple other cases for two-family structures that requested in-home day cares. He said they still have to get approval by the State, and meet all

criteria for inside space and the fenced-in play area.

Mr. Reppucci asked if there are any specific requirements for the fence.

Mr. Falk said the State reviews the fence.

Mr. Reppucci said the fence is rotted, and asked if the Board can address the fence.

Mr. Falk said the Board can make any request they deem reasonable, if they feel that the fence is not adequate, you can request them to replace or repair it. Mr. Falk said the State RSA's support families with in-home day cares, especially neighborhood daycares. The Board can have any reasonable stipulation.

Mr. Duffy said he's aware of a couple cases that the State did not approve, after ZBA approval. He said there have been some recent newspaper articles about multi-family structures in the City, and asked if this is an approved two-family structure. He asked if it is only approved as a single-family, we shouldn't approve a use that is out of compliance.

Mr. Reppucci said he's concerned about the living space over the garage.

Mr. Currier's concern is that the Code states that the in-home child care must be subordinate to a single-family attached dwelling. Perhaps the Code writers had single-family attached slipped in there, not really meaning that it had to be a single-family, but didn't think so. He said it is worthy of the request. He said this is a two-family home, assuming it is legal, and part of the request should be to have a daycare in a two-family home, just to be straight.

Mr. Reppucci asked in the application if it must state that it is a single-family structure.

Mr. Duffy said the application is made by the owner and an applicant, they both must sign it.

Mr. Reppucci said it could be a single-family dwelling, with an absentee owner. He asked when the application was made, is the applicant asked the series of requirements, one of them being

that it needs to be in a single-family dwelling.

Mr. Falk said some applications get mailed to us, some get dropped off, we don't always get an opportunity to go over it with the applicant.

Mr. Currier said if he were to vote to approve this request, it would be for Ms. Lewis, it wouldn't be for this piece of property because we granted this request for this site. He stated that if this Board were inclined to approve, he'd only approve it for Ms. Lewis only, and if she were not there, the approval lapses.

Mr. Reppucci said it seems like the Board should be dealing with the owner of the property, and not a tenant. If the Board approves this, it shouldn't get associated with the property, rather than the house.

Mr. Currier said if it's approved, we could stipulate that it's to the applicant, and not to the property.

Mr. Duffy said there is a public hearing on whether the request meets the points of law.

Mr. Currier said he thought Mr. Poncet's concern is a valid one, if he knew that his neighbor was going to have an in-home child care business, he'd be concerned about the noise and property values.

Mr. Falk said there are a lot of families have six children, the youngsters are usually inside. Most times, the property values go down due to unregistered/junk cars, landscaping and lawns that are not maintained, a house in poor condition, that's what people see as they drive by, and have an immediate negative reaction. If someone were to see a nicely maintained home, with five or six children playing outside, they generally do not think of devalued property values. He said that if a home daycare has 12 kids, there will be much more of an impact in the neighborhood.

Mr. Duffy asked if it's in Mr. Falk's scope of work to see if the property is out of compliance with respect to the number of units.

Mr. Falk said it would fall under the Code Enforcement

Department.

Mr. Reppucci said the fence should be solid, not higher than six feet. This is what the Code requires.

Mr. Currier stated that he couldn't support this application, and suggested tabling this request so the applicant can meet with the neighbor to go over the request. He said consistently when we hear a complaint from neighbors, they fall under two categories, one is a legitimate concern that an abutter expresses, the other is from an abutter that has been having a fued with the applicant, and didn't think this was the case here. He stated that most of the times in the past when someone applies for this use, and abutters complain about noise or traffic, he stated that he hasn't supported the requests.

Mr. Duffy said he'd be comfortable with tabling the request, which helps at some level. He said he feels more comfortable with the age of the children. He said if the applicant and abutter speak to one another, we'd have to open up the public hearing again.

Mr. Reppucci said he had a concern about the staircase, these kids are on the second floor, and it could be 20 or 25 stairs, and these little kids wouldn't be going directly into a house, it would be a significant distance for them. He said he didn't feel that this request meets the criteria.

MOTION by Mr. Duffy to Table this request to the first case of the next meeting to allow the applicant and abutter to talk about the issues between them, and come back and continue the public meeting. He said that us four, as well as another member not present right now will be voting on the case, so there will be five votes.

SECONDED by Mr. Shaw. He said that he will not be present at the next meeting. He said the other two members are in the audience, and have heard most if not all of this case.

Mr. Currier said he hopes that the folks can discuss this and come to a happy meeting.

Mr. Reppucci said by doing this, puts an unfair burden on the people speaking against the application, because they're put in a position where they have to negotiate this. He said he'd

rather talk to the property owner, and how he stands on this issue with compliance, and what their position is on the whole request.

Mr. Falk said by tabling this request, it is a reasonable thing to do, and this way, the Board can hear what the owner wants to do with the fence, and to get a little more discussion on the issue.

Mr. Currier said he's in favor of tabling the request.

Mr. Shaw said he heard several concerns by the abutter, and sometimes having applicants and abutters meeting together can be good, and come to a better understanding of what the request is. He said there is a lot to be gained by this.

MOTION APPROVED 3-1 (Mr. Reppucci against motion).

5. Lisa C.S. Rumohr (Owner) 9 Oriole Drive (Sheet H Lot 217) requesting variance to encroach 4 feet into the 20 foot required front yard setback to construct an 8'x32' farmers porch along with an open deck. R18 Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Robert Shaw
Bob Carlson
Kathy Vitale

Lisa Rumohr, 9 Oriole Drive. Ms. Rumohr stated that she wants a roof on her porch, and a portion of it goes into the front yard setback. She said her neighbors are very supportive of the request. She stated that the only portion in the front setback is the octagonally shaped front step area that jogs out. She said it will be open-air, not closed in, and one story in height.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Shaw to grant the variance request on behalf of the owner. Mr. Shaw stated that this variance is needed to enable the applicant's proposed use of the property, it is essentially just taking the existing deck structure and adding a roof to that area. Mr. Shaw stated that it is within the spirit and intent of the ordinance, there's no testimony that there will be any adverse impacts to property values, it will continue to allow the owner use of this space, it is not contrary to the public interest, and substantial justice is served.

Mr. Shaw said the special stipulations that this will be a one-story porch, open air.

SECONDED by Mr. Carlson.

MOTION CARRIED UNANIMOUSLY 5-0.

6. **Najla & Beejul, LLC (Owners) James Bonin Construction (Applicant) 74 Allds Street (Sheet 19 Lot 126) requesting special exception to expand a nonconforming use by constructing an 8'x10' canopy over front entry steps. RB Zone.**

Voting on this Case:

Sean Duffy

Jack Currier **(RECUSED FOR THIS CASE)**

Robert Shaw

Bob Carlson

Kathy Vitale

Gerry Reppucci

James Bonin, Bonin Construction, 20 Pearson St, Litchfield, NH. Mr. Bonin stated that they are building a canopy over the front entrance of the building. Mr. Bonin stated that the use is nonconforming, it's in a residential zone. He said it is a wood structure with EIFS exterior, which is like a stucco. He said they are planning on going out eight feet over the steps, so when people come to the front door, they can open the front door without the rain coming in. He said it's very similar to the building next door, except it wouldn't have the brick.

Mr. Duffy said if the building were set back a little bit more on the property, they wouldn't need to be here. He said it's a little bit unique.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Shaw to approve the special exception on behalf of the applicant. Mr. Shaw stated that the request is in the Table of Uses, Section 190-119 (a)(4). Mr. Shaw said the request will not create any undue traffic congestion or unduly impair pedestrian safety, if anything, will allow pedestrians as they enter and exit the building more opportunity to stay out of the elements. He said that this request will not overload public water, drainage or sewer or other municipal systems. Mr. Shaw said 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 residents, it is similar to one of the adjacent buildings, and the building is set near the front of the property, which makes it more difficult to not encroach into the front setback of the property.

SECONDED by Ms. Vitale.

MOTION APPROVED UNANIMOUSLY 5-0.

REHEARING REQUESTS:

None.

REGIONAL IMPACT:

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

MINUTES:

July 22, 2008:

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

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SECONDED by Mr. Reppucci.

MOTION CARRIED UNANIMOUSLY 5-0.

ADJOURNMENT:

Mr. Duffy called the meeting closed at 8:17 p.m.

Jack Currier
Acting Clerk

CF
Taped Hearing