

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
September 23, 2008

A public hearing of the Zoning Board of Adjustment was held on Tuesday, September 23, 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
Kathy Vitale (arrived at 6:45 pm)

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. Charlotte Doyle (Owner) 3 Calico Circle (Sheet D Lot 304) requesting variance to encroach 5 feet into the 20 foot required front yard setback to construct an 8'x36' front porch. R9 Zone, Ward 5.**

Voting on this Case:

Sean Duffy
Jack Currier
Kathy Vitale

Charlotte Doyle, 3 Calico Circle, Nashua, NH. Ms. Doyle said her house was in a fire, and must rebuild the house, and has always wanted a porch. She showed the Board a picture of a house in Lexington that has a porch that she would like. She went over the front yard setback distance, and where the porch would be located.

Mr. Duffy said the location of the house on the lot is unique, it's not in the center, so a portion of the front is not usable, and is at a little bit of an angle, also, it is at the end of a dead end road cul-de-sac, so it's a little unique.

Ms. Doyle said the road went through to the trailer park, but they closed off the street because cars used to race through. She said this area has a lot of children. She said it will be a one-story porch, three-season. She said it will have storm windows and screens, and will be the whole length of the house, except for the first four feet at each end. She said it will have two eight-foot boxes, and then sixteen feet in-between them.

SPEAKING IN FAVOR:

Frank Pachopin, 487 Boston Post Road, Amherst, NH. Mr. Pachopin said he is the builder. He said there will be two 6'x8' enclosed porches off either side of the front of the house, and then do an open deck, no roof, connecting the two porches. He said that five feet of this is in the setback area, as the house is one foot off the setback line, one story high.

Mr. Duffy said three season porches that come before the Board usually have no plumbing or heating.

Mr. Pachopin said it wouldn't have plumbing or heating.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Duffy to grant the area 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 house is located on a unique position on the property, and has two front yards, and two front yard setbacks, and the position of the house on the lot is unique to the other houses in the area, and the applicant's application cannot be achieved by some other method reasonably feasible for the applicant to pursue, and the porch is a reasonable use, given that this is a short cul-de-sac area at the end of a dead-end street in a very low traffic area.

Mr. Duffy stated that the request is within the spirit and intent of the ordinance, with reasonable use of two 6'x8' porch additions with the open deck is very reasonable given the area.

Mr. Duffy stated that the request will not adversely affect the property values of surrounding parcels, the Board did not receive any other testimony stating otherwise, it is not contrary to the public interest, and substantial justice will be served for reasonable development rights.

Mr. Duffy said the special conditions are that there will be no heating or plumbing systems installed, and the addition is on sono tubes, and not on a foundation.

SECONDED by Ms. Vitale.

MOTION APPROVED UNANIMOUSLY 3-0.

2. **Geraldine King (Owner) 10 Tampa Street (Sheet 130 Lot 107) requesting special exception to work within the 75-foot prime wetland buffer of the Nashua River to construct an attached 28'x28' garage with rooms above, and a 14'x33' breezeway. RB Zone, Ward 4.**

Voting on this Case:

Sean Duffy
Jack Currier
Kathy Vitale

Walter King, 10 Tampa Street, Nashua, NH. Mr. King said he is seeking the special exception to work within the 75-foot wetland buffer of the Nashua Cove, to put in a garage and sunroom. He said the Conservation Commission has approved the request. He said his house, and about 90% of the homes on this side of Tampa Street sit within the wetland buffer as well.

Mr. Currier asked about the cabana in the back.

Mr. King said the cabana is a summer screen room, with no plumbing or living area.

Mr. Currier asked Mr. King if he is willing to abide by the Conservation Commission stipulations.

Mr. King said they will.

Mr. Duffy asked about the size of the existing house.

Mr. King said it is a 28'x38' cape. He said the proposed garage is 28'x28', with a 14'x32' sunroom, with room above, it will be a workshop.

Mr. Duffy asked how the size of this house will fit into the essential character of the neighborhood.

Mr. King said there are very few two-car garages in the neighborhood, and said it's not anything unusual.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

Mr. Currier said that this street, and most all of the homes, were already here before the wetlands ordinance was adopted. He said if this were an undeveloped portion of town, there would be no development on this side of the street. He said the Board needs to be sensitive to that, as people should still be able to enjoy the use of their land.

Ms. Vitale said the Conservation Commission was very thorough in the stipulations they recommended, and most homes have a two-car garage, so overall, it's better to have a two-car garage.

Mr. Duffy said with all the additions, he'd feel more comfortable stipulating that it is a single-family home.

Ms. Vitale said she didn't have any problem if the space above the garage was used for living space.

Mr. King said he has an approved in-law apartment already existing.

Mr. Duffy said that is a separate issue, it is fine.

MOTION by Mr. Currier to grant the special exception on behalf of the owner. Mr. Currier stated that the request is listed in the Table of Uses, Section 190-112. He stated that the use will not create undue traffic congestion or unduly impair pedestrian

safety, it will not overload public water, drainage, or sewer or other municipal systems.

Mr. Currier stated that the special regulations are fulfilled, the wetland conditions are fulfilled, as provided by the letter from the Conservation Commission. He stated that the proposed addition 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. Mr. Currier stated that the two surrounding homes are larger than this home, so even though this is a large addition, it does not appear to be out of character with the neighborhood, and no abutters have testified otherwise. Mr. Currier said a special condition is that the house will remain a single-family home, it is currently a single-family home with an approved in-law.

SECONDED by Ms. Vitale.

MOTION APPROVED UNANIMOUSLY 3-0.

3. Robert V. & Sandra A. Clark (Owners) 58 Amherst Street (Sheet 62 Lot 19) requesting variance to exceed maximum driveway width, 24 feet permitted, 27 feet existing - an additional 27 feet requested. RB Zone, Ward 4.

Voting on this Case:

Sean Duffy

Jack Currier

Kathy Vitale

Robert Clark, 4 Briand Drive, Nashua, NH. Mr. Clark stated that this property is at the corner of Amherst Street and Mitchell Street, and the driveway is on the Mitchell Street side. He said he wants to asphalt to the right side of the driveway, as tenants park there and it gets muddy. He said that most of the tenants ask for three vehicles. He said that four can fit in the driveway now, and the area is all fenced in. He said he has two units, and two tenants.

Mr. Duffy asked why there is a dramatic need for parking spaces, given that there are only two tenants.

Mr. Clark said one tenant has three vehicles, and most of the time, tenants ask for space for three vehicles, and people park in that section, but it's all dirt and mud, and he said he wants

to level it off and make it easier to park.

Mr. Currier asked how long the structure has been a two-family.

Mr. Clark said his wife was raised in this house, so it's always been one.

Mr. Falk said it is a permitted use in this zone.

Mr. Currier asked how many parking spaces currently exist.

Mr. Clark said four cars can park on the existing driveway.

Mr. Currier asked if there is a curb-cut.

Mr. Clark stated that there is a curb-cut.

Mr. Currier asked if there is a curb-cut in front of the fence.

Mr. Clark said there is no curb-cut in front of the fence, they come in the driveway and turn off to the right to park in that area we want to pave.

Mr. Currier asked if the curb-cut would be 54 feet long, or to have 27 feet of curb-cut and have the cars drive around the fence.

Mr. Clark said he wants them to pull in and drive around the fence.

Mr. Duffy said the DPW would have to approve any curb-cuts greater than 24 feet in width.

Mr. Clark said the fence is 2-3 feet within his property boundary.

Mr. Duffy said he's looking at this as a self-created hardship, with the shed, the bulkhead, and now, the pavement would go into a larger area.

Mr. Clark mentioned some neighboring properties with large paved driveway areas, and said most of them didn't get permission to do it.

Ms. Vitale asked how many square feet the structure has, the

first floor square footage.

Mr. Clark said he's not sure.

Ms. Vitale said if this is approved, the parking area would be larger than the footprint of the house.

Mr. Currier said he could choose tenants, and put it in their lease that they are only allowed one or two cars, instead of three.

Mr. Duffy asked if he had considered any other options, perhaps a smaller paved area, in which the first ten feet are not paved.

Mr. Clark said they've looked at a few different scenarios, but they want it as they've submitted, he doesn't want cars parking in the dirt and mud.

Mr. Currier said the new area will accommodate at least three cars, and asked if the applicant had considered paving a smaller area, for two cars.

Mr. Clark said he wants to pave the area he's submitted for.

Mr. Falk said the dimensions of a parking space are 9'x20'.

Mr. Duffy asked Mr. Clark if he would be amenable to having the paved area be 27' wide by 26' deep, so there would be at least 10 feet of grassed area in the front of the property. He showed Mr. Clark what he was describing.

Mr. Clark said it would be awfully tight, because things are stored in the garage.

Mr. Duffy asked if he would like the proposed smaller area, or is it "all or nothing".

Mr. Clark said he wants what he submitted for.

SPEAKING IN FAVOR:

Sandra Clark, 4 Briand Drive. Mrs. Clark said they want to add a little more pavement to have space for two more cars straight in, and leave the rest as grass.

Mr. Duffy said the Board isn't in position to negotiate, or re-design this plan. We have to consider what has been submitted and advertised.

Mr. Currier said he's getting a sense that this case would not be supported, but stated they would like them to use the property as best as possible, but the proposal before the Board has problems. He suggested tabling the request, while knowing the Boards concerns, to come back with a scaled-down version of the design.

Ms. Vitale said they should go back, consider the space available, and see if the configuration can work, instead of blacktopping such a large area.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Duffy to Table the variance, and to continue the Public Hearing at the next meeting, which is October 14, 2008, to be placed at the end of the Agenda, we will have the Public Hearing testimony from the applicant to hopefully present a little more conforming plan and presentation.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 3-0.

4. **Matthew E. & Josephine Holland (Owners) 16 Wheaton Drive (Sheet E Lot 466) requesting the following: 1) special exception for a major home occupation for an in-home nail salon, and 2) variance to encroach 1.5 feet into the 10 foot required right side yard setback to construct an attached 13'x34' garage and salon addition. R9 Zone, Ward 1.**

Voting on this Case:

Sean Duffy
Jack Currier
Kathy Vitale

Matthew & Josephine Holland, 16 Wheaton Drive. Mrs. Holland said they have been forced to scale back from their original plan that was submitted, so, they are requesting to convert

their existing garage into a space for the salon, it will be 297.5 square feet, meeting the ordinance. The garage will not be added. She said the salon where she works now was flooded out, so they are closing.

Mr. Duffy asked about the encroachment into the front yard setback, or the right side yard setback.

Mrs. Holland said they are not going to do that part; there will be no addition.

Mr. Duffy stated that they are only seeking the special exception.

Mrs. Holland said yes.

Mr. Currier asked for some clarification relative to the distance from the house to the property line.

Mr. Duffy asked if they were going to build onto the garage.

Mrs. Holland said no.

Mr. Duffy said there's at least ten feet. He said there is a property card from the building file that indicates the structure is about thirty feet away from the front property line.

Mr. Duffy went over the major home occupation criteria, to the satisfaction of the Board.

Mr. Duffy said the applicant handed in a petition signed by at least five different addresses in favor of the request.

SPEAKING IN FAVOR:

Mr. Duffy read a letter written from Ald. Cookson in support of the request.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Duffy to grant the special exception on behalf of the owner. Mr. Duffy said it's listed in the Table of Uses,

Section 190-36 and 190-47B. Mr. Duffy said it should not create undue traffic congestion or unduly impair pedestrian safety, the applicant's testimony is that it will not overload public water, sewer, drainage or other municipal systems, there will be few, if any changes inside the property, and there will be no changes, per testimony, to the outside foundation, roof lines, and parking should not be a problem, and traffic on the city streets should not be a major change for a reasonable in-home occupation.

Mr. Duffy said it will impair or be out of character with the neighborhood, or be detrimental to the health, morals or welfare of the residents, it is a wonderful neighborhood.

Mr. Duffy said the hours of operation are no greater than 10 a.m. to 7 p.m. during weeknights, Tuesday through Friday, and Saturday from 9 a.m. to 2 p.m.

Mr. Duffy said all the special regulations are fulfilled per testimony of the applicant.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 3-0.

Point of Order by Mr. Duffy that the above-mentioned variance for 16 Wheaton Drive was withdrawn by the applicant.

REHEARING REQUESTS:

None.

REGIONAL IMPACT:

Mr. Falk said the Agenda for October 14, 2008 is not ready yet, as there is an extra week between meetings. Mr. Falk will e-mail the agenda to the Board members when it is available.

MINUTES:

September 9, 2008:

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

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 3-0.

Mr. Duffy said the Board has a new member, Ms. Lara Rice.

ADJOURNMENT:

Mr. Duffy called the meeting closed at 8:02 p.m.

Jack Currier
Acting Clerk

CF
Taped Hearing