

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
October 14, 2008

A public hearing of the Zoning Board of Adjustment was held on Tuesday, October 14, 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
Lara Rice
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. **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.**

Case is postponed to the November 12, 2008 meeting. Mr. Duffy stated that this case will be heard at the end of the Agenda that evening.

2. **BAE Systems (Owner) 95 Canal Street (Sheet 41 Lot 18) requesting special exception to work within the 75-foot prime wetland buffer of the Nashua River to collapse in place and fill three penstocks/tunnels under Building 2 to stabilize parking lot and building, and to install fire suppression line between front and rear mill. GI Zone, Ward 3.**

Voting on this Case:

Sean Duffy
Jack Currier

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Kathy Vitale

Lara Rice

Jeff Mathis, Manager, Environmental Affairs, BAE Systems, 95 Canal Street, Nashua, NH. Mr. Mathis stated that this project is to collapse some penstocks that have been creating concern for the company. He stated that they are concerned that they would have the ability to support the roadway above it, and to replace some fire lines that have been there in the past. Mr. Mathis stated that they have received approval from the Conservation Commission, and are seeking the special exception as well.

Mr. Mathis stated that they agree with the September 2, 2008 stipulations. He said the project will take about 1-2 weeks to complete, and no mitigation is needed. He said there will be no other impacts. The penstocks were used to take water from Canal Street, to a place under the building, and it would power the entire building, and afterwards, the water would go to the Nashua River.

Mr. Duffy said the special conditions for the special exception were clearly identified in the application.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Duffy to grant the special exception on behalf of the applicant. Mr. Duffy stated that the use is listed in the Table of Uses, Section 190-112. He stated that the use should not create undue traffic congestion or unduly impair pedestrian safety, the building has been in existence since 1958 or earlier, the work is in the back away from traffic, either public or private.

Mr. Duffy said the request should not overload public water, drainage or sewer or other municipal systems, this is maintenance to an existing group of structures, the work duration is 1-2 weeks and no mitigation is required or needed.

He stated that the special regulations are fulfilled per the Conservation Commission, 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, in fact, this is just a maintenance project, and as stated, the applicant has been very protective of the watershed areas that they have been involved with in the City.

Mr. Duffy said there are no special conditions other than the seven Conservation Commission stipulations from their September 2, 2008 meeting.

SECONDED by Ms. Vitale.

MOTION APPROVED UNANIMOUSLY 4-0.

3. **Public Service Company of NH (Owner) 34 Pine Hill Road (Sheet E Lot 70) requesting variance to exceed maximum fence height, 6 feet allowed, 7 feet existing, 9 feet proposed. RC Zone, Ward 1.**

Voting on this Case:

Sean Duffy
Jack Currier
Kathy Vitale
Lara Rice

Nick Golan, Engineer, TF Moran. Mr. Golan said that the request is for a 9 foot high fence, when 6 feet is allowed. He said the fence is for safety, as well as for security outside the fence. He stated that the substation has existed in this location since 1958. He stated that the expansion is to provide reliability as well as capacity for the Nashua area.

Mr. Golan stated that PSNH is trying to bring the fence up to the current code. He stated that the construction will start this year, but will take up to about 3 months at the latest to complete, and is in keeping with the National Electrical Federal Standard, and will be a chain-link fence. He said there have been no safety breaches, and the 9 foot high fence is consistent throughout the state.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Currier to grant the variance on behalf of the applicant. Mr. Currier stated that the variance is needed to enable the applicant's proposed use of the property, the property is in current use as a substation, however, the National Electric Code calls out for a 9 foot high fence, therefore, with this location, it is within the spirit and intent of the ordinance with this two foot higher fence, and it won't be out of the ordinary or will not be problematic with any of the abutters.

Mr. Currier stated that the Board does not believe that there will be any adverse impacts to property values, the request is not contrary to the public interest, and substantial justice would be served to the applicant with the granting of this variance.

SECONDED by Ms. Rice.

Mr. Duffy said the request is per their submitted plan, and is a safety and maintenance project.

MOTION APPROVED UNANIMOUSLY 4-0.

4. **Greater Nashua Habitat for Humanity (Owner) 7½ Ridge Street (Sheet 42 Lot 233) requesting: 1) use variance to allow a single-family home; and the following variances: 2) to exceed maximum floor area ratio, 75% allowed, 97.3% requested, 3) minimum parking space width, 9 feet required, 8 feet proposed, 4) minimum parking space depth, 20 feet required, 18 feet proposed, 5) minimum side yard setback, 7 feet required, 5.5 feet proposed (both sides); and, 6) minimum rear yard setback, 20 feet required, 5 feet proposed. RC & LB Zones, Ward 3.**

Voting on this Case:

Sean Duffy
Jack Currier
Kathy Vitale
Lara Rice

Attorney Arthur Gormley III, 351 Main Street, Nashua, NH. Atty. Gormley stated that the area is split zoned, with the front being RC, and the back being zoned LB. He stated that they are requesting a use variance and area variances. He said the building will have a foundation of 20'x40', which is smaller than the dilapidated barn, which was 31'x52'. He said the split zoned lot creates a hardship, as you can't build a single family dwelling in an LB zone, and you can't have a business in the RC zone.

Atty. Gormley stated that this will cause less of an encroachment in the setbacks, as the side yards will be about 5½ feet each, and the rear will also be 5 feet. He said the parking spaces will be 8'x18', rather than the code requirement of 9'x18'.

Mr. Duffy asked which lot the subject lot would have been associated with, as it is an accessory use.

Atty. Gormley said the barn was constructed in the late 1800's, and it took up the whole lot, but isn't aware what abutting lot it was associated with.

Mr. Duffy said this area has been subdivided many times, and stated that he needed more convincing why a use variance for a single family home is necessary on a flag lot, that is so non-conforming. He said this is a very nonconforming use, in an area that would be in the back of several other homes.

Atty. Gormley indicated that the area is single and multi-family homes, and said there are many duplex units as well, so a single family home wouldn't violate the spirit and intent of the ordinance. He said that no use is allowed on this lot, and the only use could be is a dilapidated barn. He said the barn had no setbacks, and the proposed house would be less nonconforming, with better building separation.

SPEAKING IN FAVOR:

Jerry Harrow, President, Greater Nashua Habitat for Humanity, 63 Temple Street, Nashua NH. Mr. Harrow said they acquired the lot in December 2005, and was donated to them. The barn was condemned, and the owner did not want to incur the expense of removing the building. He stated that they accepted the building with the intent of replacing the barn with a home.

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Mr. Duffy asked if he knew which other property owner owned this lot.

Mr. Harrow said it has been a stand-alone lot for many years, and it was used for businesses for many years, they used to assemble Model T cars there, and it was currently used for storage for the owner, who lives in Massachusetts. The owner only owned the barn.

Mr. Duffy asked if the zoning line has been there for a long time.

Ms. Vitale asked where the parking will be located.

Mr. Harrow said in the existing driveway space off of Ridge Street.

Ms. Vitale asked how emergency vehicles would access the lot.

Atty. Gormley said they would park on Ridge Street.

Mr. Harrow said they can also park on Ferrysalls Court.

Mr. Duffy said the setbacks are required so that emergency personnel can make their way around a structure should there be a fire.

Atty. Gormley said the barn left virtually no setback area, while the house will provide for better yards.

Atty. Gormley indicated he did a title search, and did not find a common owner to any of the abutting properties.

Mr. Currier asked about the frost walls and foundations, and asked if they had any concerns about it, as there is a topography challenge here.

Mr. Harrow said they are a volunteer organization, and they had a study done by Cuoco & Cormier, and did the plan that was submitted.

Eric Moore, Chair, Building Committee for Habitat for Humanity, 63 Temple Street. Mr. Moore said they have a report from tech, and looked at the retaining walls, so there is a flatter area

and a sloping area. They have spoken to some excavators about this, but it's a complex area. He said they've talked to abutters about the demolition as well. He said the neighbors were looking forward to the barn coming down.

Ms. Rice asked about the public interest portion of the application. She indicated that the request would provide affordable housing, and asked if there is some sort of sustainability attached to this property, whether it's affordability in perpetuity or not.

Mr. Harrow stated that they do not have any methods for perpetuity for affordability, but it's possible that they could consider it, and said that Habitat for Humanity picks their family based three criteria. He said the first is need, based upon their current living conditions. The second is based upon their willingness to work with us, as they have to help build the house and put in 350 hours of sweat equity. He said the third is the ability to have a zero percent mortgage, because Habitat self-mortgages the property for whatever the cost of construction is. They just pay the principal.

Mr. Duffy asked about the spirit and intent. He said certain properties have a challenging topography, but there is also a buffer zone between the LB and RC zones. He also asked about the setbacks, and about exceeding the floor area ratio.

Atty. Gormley said the plans for the house right now are in flux, nothing is set in stone with the foundation size, or the setbacks.

Mr. Harrow said they want to provide about 1,100 sq.ft for a family of three. He said any configuration they could consider changing, in order to provide a reasonable house size on this lot. He said there would be an unfinished basement.

Atty. Gormley said with the spirit and intent, the neighborhood is primarily residential, and the house will provide a buffer to the LB zone below this house. All buildings on all sides of this house are residential.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Patricia Darrah, 60½ Canal Street, Nashua, NH. Ms. Barrah wanted to see a plan of what the house would look like, and

didn't want to see a balcony overlooking her house. She said that Mr. Adrian LeBrie owned the barn, and he had a welding shop and old wagon wheels.

Mr. Harrow described what the house would look like for Ms. Darrah.

Ms. Vitale asked about snow removal, and water runoff.

Ms. Darrah said the City plows up to the front of their house, and they shovel the rest, as no one else does. She's not sure of where the snow goes on Ridge Street.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Jerry Harrow, Habitat for Humanity, 63 Temple Street. Mr. Harrow said construction access would be through the driveway off of Ridge Street, and an abutter would allow them to use their lot as well. He said they've had neighborhood meetings to keep them informed.

Ms. Vitale asked which abutter is allowing them to use their lot.

Mr. Harrow said 8 & 9 Ferrysall's Court, on the south side of the building.

Mr. Currier said the proposal is less intense than commercial use.

Ms. Rice said the character of the neighborhood will not suffer with this use, and it won't generate the amount of traffic than commercial will.

Ms. Vitale stated that a single family house is the most logical, but stated that the parking spaces are extremely small, and access around the home is questionable, and understands the size of the lot is small. She said the winter will be challenging with snow removal, and the driveway is right on the curve on a downhill slope. She said she didn't like the amount of setbacks available. Ms. Vitale said it's a nice program here, but has concerns about the request.

Mr. Duffy asked about the floor area ratio.

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Mr. Falk said it is the amount of total floor area, but since this is such a small lot, it would be difficult to meet the floor area ratio.

Mr. Currier said the lot is not being created, it has been in existence for many years with a barn on it. He said that anything but a barn would have to come before the Board. He said that the snow removal issue will be difficult, and wasn't sure how the snow has been removed in the past. He said it is a lot of record, not a newly created flag lot.

Ms. Rice said they are proposing one more affordable unit in the City, and the developer/company is well known, with a good reputation, which lends credibility for the long-term. The Board wouldn't be creating the lot.

Mr. Duffy said he's having a problem with the setbacks and the floor area ratio.

Ms. Vitale read the letter in the record, and stated that there are some grading and topography concerns. She said she has a hard time with the fact that there will be virtually no yard, limited access, and small setbacks, the Board is being asked to squeeze this in here.

Mr. Currier said there's not due diligence done for the foundation, and the organization does this in piecemeal with volunteers. He asked if there was a setback that Mr. Duffy may be more comfortable with.

Mr. Duffy said he may be more amenable to a smaller building footprint, and they may not need setback or floor area variances with a smaller footprint. He suggested tabling the request to see a revised plan.

Mr. Falk said the barn is an accessory structure and use, and you can't have a barn as a principal use.

MOTION by Mr. Currier to suspend the rules to ask the applicant additional questions.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 4-0.

Mr. Duffy asked the applicant if a 20'x36' footprint would be more amenable.

David Ely, Architect, Windy Hill Associates. Mr. Ely said the house, as designed, is 20'x40'. He said there is a lot more to know about the site, especially the retaining walls. He said the smaller footprint is possible.

Mr. Duffy said by doing this, it may reduce the amount of area variances that were requested.

Mr. Ely said they would be amenable to a smaller footprint.

Mr. Currier said the use variance would be the same, but they may not need the side yard setback variances. He said the Board should be impacted by the fact that an affordable house will be built, but the Board should warrant consideration of this, a different standard. He said a two bedroom home would be a better design, there is certainly a need for this.

Ms. Vitale said she would like to see a revised design and footprint.

Mr. Duffy said he'd feel more comfortable with the applicant asking for fewer variances.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

None.

Mr. Harrow said they are amenable to coming up with a revised house plan.

MOTION by Ms. Vitale to table the request to the October 28, 2008 meeting, to be the last case on the Agenda. The applicant is to come forward with a revised plan based upon the Boards concerns, also, the house is not to have a balcony.

SECONDED by Mr. Duffy. He stated that they can also come forward with their original plan if they so desire.

MOTION CARRIED UNANIMOUSLY 4-0.

**5. Stellos Family Investment Properties (Owner) Lynn Nelson
(Applicant) 115 Northeastern Boulevard (Sheet 140 Lot 52)**

requesting use variance to allow the sale of educational toys, and to allow craft classes and children's birthday parties in a 3,700 square foot portion of an existing building. PI Zone, Ward 9.

Voting on this Case:

Sean Duffy
Jack Currier
Kathy Vitale
Lara Rice

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier described the building location, and Maaco has a portion of the building as well. He said they will use 3,700 square feet, out of the 20,000 sq.ft total size. He said the lot has provided 70 parking spaces, where 40 spaces are required. He said the application is unique, as even though they do retail, they have the materials they sell, and apply them to the sessions and birthday parties they have with the parents and children that come there. He said that they need space, and a lot of the material they sell is involved with the educational products they use for classes and parties.

Atty. Prunier said it meets the spirit and intent, as it provides a service.

Mr. Currier asked what this use would fall under.

Atty. Prunier said this is a new type of business, trying to incorporate what they sell into their functions. He said this use will not be found in the code.

Mr. Falk said it is three different principal uses. The only use that is listed in the code is the retail component, he said the birthday parties are usually done in conjunction with other uses, such as Jump On In or Monkey Joe's. He said that staff believed that a use variance is required due to the nature of the combination of their uses.

Mr. Currier asked if this would need a use variance in the HB zone.

Mr. Falk said it probably would be ok, as retail is allowed.

Mr. Currier said this almost looks like a Chucky Cheese type of

operation, which is not allowed in the PI zone.

Atty. Prunier said the retail portion is only a part of the use. The items they sell are all used in conjunction with their functions and parties they have. He said the applicant already has a business, on Daniel Webster Highway near Applebee's Restaurant. He said her existing space cannot do this use at the present location. He said she is keeping her existing store.

Ms. Vitale asked how long the proposed space has been vacant.

Atty. Prunier said about two years. He said the building is old, back in the early 1970's. Most industrial users wouldn't want this space, as needs have changed over the decades.

Ms. Vitale asked how this space compares with the British Isles store.

Atty. Prunier said he's not sure.

Atty. Prunier said this use is not a day care, or a party time type of store.

Mr. Duffy said the proposed uses are more than parties, with the concerts.

Atty. Prunier said these are small events, with ten to fifteen people, and they use the instruments that are in the store. He said the occupancy of these would be very small.

SPEAKING IN FAVOR:

Lyn Nelson, 288 Daniel Webster Highway. Ms. Nelson said they may have families in and out throughout the day, they won't be events that draw a lot of people, it is mostly for limited family use, with no large grouping of people. There will not be a kitchen or anything.

Ms. Vitale asked how many people per day will come to the site.

Ms. Nelson said people will come throughout the day, and the closing time will be 7:00 p.m. They want to allow for people coming after work. She said the busiest time will be between 10:00 am and 3:00 pm. She said they rarely take more than ten children at a time, with fewer parents.

Mr. Duffy asked how many employees they will have.

Ms. Nelson said two, herself and one other person.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

Ms. Rice said the use is generally consistent with other uses in the area, and also understands what the applicant's product line is.

Mr. Duffy said the use is less intrusive.

Ms. Vitale said she was concerned about the park industrial uses, and thought that this area is becoming less park industrial.

Mr. Falk said there have been recent approvals, Monkey Joe's and Jump On In, which were indoor recreation uses, as was Extra Innings. The Ballet place received approval from the Board, and he mentioned other uses in the area that are not industrial. He said that the overall infrastructure of the park industrial remains intact, if this use comes in, and decides to leave after five years, an industrial use could easily move in. The building stays, and the inventory of park industrial acreage remains intact, which is unlike where the Target site is, or Hampshire Chemical, where the buildings were removed, and the property was rezoned to a commercial zone. In this case, the zone is still PI, and the building and infrastructure remains in place.

Mr. Duffy said the building and the infrastructure are still there.

Mr. Currier said he thinks it's a great business, and great need for the City. He said from a use point of view, he cannot support it. He said there are at least three zones in the City where this use would be allowed in. This whole area is substantially changing away from industrial uses. He said this area has a lot of vitality, but it shouldn't be justification to allow a business here that is not allowed by right. It is the continual erosion of these zones that the Board should be concerned with, and there are other zones where this use could

go. He said there will be a lot of traffic going to this use.

Mr. Duffy said they are only using 3,700 square feet out of 20,000 square feet, so it's almost like an incubator business. It's only a small portion of the building, and it's educational in nature.

Mr. Falk said city staff is not advocates for or against any use, staff assists applicants to go through the City land use boards properly.

Ms. Vitale said she is comfortable with the use going in there, and by using such a small portion of the building, and they have ample parking spaces.

Mr. Duffy said they will have to go to the Planning Board as well.

Ms. Rice said the building has been vacant for two years, and this is a good opportunity to bring more life into this area.

Mr. Duffy said it still retains the infrastructure and the resource of the Park Industrial zone.

MOTION by Mr. Duffy to approve the use variance request on behalf of the applicant. He stated that the approval is to allow the sale of educational toys, to allow craft classes and children's birthday parties, and limited small family events and programs inside the building site, and not outside, in a 3,700 square foot portion of an existing building. The motion is to grant the use variance, as the zoning restriction as applied interferes with a reasonable use, which is a minor use in the building that already exists, a unique setting of the property is in the area of a PI zone, which has some approved uses which are still able to retain the overall resource of Park Industrial to the City of Nashua, and they are not changing the foundation, internal structures, the general purpose of the ordinance does not specifically address this kind of a business.

Mr. Duffy said it is within the spirit and intent of the ordinance that reasonable use of the property, an existing business operator in the City of Nashua with educational, sales, classes and some events are reasonable and do not override the uses in the area or on this property, there is enough parking.

Mr. Duffy said it should not adversely affect the property values of surrounding parcels, there is no expert testimony, and they are using a portion of the building. Mr. Duffy said it is not contrary to the public interest, and substantial justice is served with reasonable use of a business.

SECONDED by Ms. Rice.

MOTION CARRIED 3-1 (Mr. Currier).

Mr. Duffy said this is Lara Rice's first meeting with the Zoning Board as an Alternate.

Mr. Duffy said that many of the members attended the Training Session last Tuesday night at City Hall. He said there is another training session coming soon at Loon Mountain.

REHEARING REQUESTS:

None.

REGIONAL IMPACT:

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

MINUTES:

September 23, 2008:

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

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 4-0.

ADJOURNMENT:

Mr. Duffy called the meeting closed at 8:54 p.m.

Jack Currier
Acting Clerk

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