

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
October 28, 2008

A public hearing of the Zoning Board of Adjustment was held on Tuesday, October 28, 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 & Secretary
Kathy Vitale (arrived at 7:00 pm)
Gerry Reppucci
Bob Carlson (arrived at 8:00 pm)
Carter Falk, Deputy Planning Manager/Zoning

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

1. **Mark & Rachel Davis (Owners) 32 Marie Avenue (Sheet 138 Lot 179) requesting variance to encroach 5 feet into the 30 foot required rear yard setback to construct a single-story 13' x 30' addition. R9 Zone, Ward 1.**

[POSTPONED TO THE NOVEMBER 12, 2008 MEETING]

2. **Rousseau Realty, Inc. (Owner) Cyn Environmental Services (Applicant) 151 West Hollis Street (Sheet 87 Lot 6) requesting special exception to expand a non-conforming use by constructing a 7'x14' shed to contain a soil vapor extraction system. RB Zone, Ward 4.**

Voting on this Case:

Jack Currier
Kathy Vitale
Gerry Reppucci

Shelley Tamis, Cyn Environmental Services, Dover, NH. Ms. Tamis stated that this site historically has had a leak from an underground storage tank, most likely gasoline, and they have

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been contracted to pull soil vapor from underneath the property and help mitigate some contamination on three connecting properties, to pull the vapor in from underneath the property and scrub it, and clean up the properties. She stated that the shed is very small, only electrical service, it is not manned, and requires no lighting or parking, and is a temporary structure. She said it will take between 2-3 years to remove the vapors. She indicated that it will be a benefit the surrounding areas as well, and will have no impact on traffic in the neighborhood.

She said it is a pre-fab shed, and will not impact the neighborhood, and the noise generated by it will be like a swimming pool filter. She said the surrounding properties are aware of this, and are in support. She said if the noise is a problem, they can insulate it better, and put it on a timer.

Discussion ensued between the applicant and the Board.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Reppucci to grant the special exception on behalf of the applicant. Mr. Reppucci stated that the use is listed in the Table of Uses, Section 190-119 (A)(4). He stated that per testimony, the use should not create undue traffic congestion or unduly impair pedestrian safety. Mr. Reppucci said the request should not overload public water, drainage or sewer or other municipal systems. He stated that any special regulations required will be fulfilled per testimony of the applicant. Mr. Reppucci stated that 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, it will be quite the opposite, as this will help the area.

SECONDED by Ms. Vitale.

MOTION APPROVED UNANIMOUSLY 3-0.

3. **City of Nashua (Owner) Department of Public Works (Applicant) Gilson Road at intersection of Musket Drive (Sheet D Lot 522) requesting special exception to work within the 40-foot critical wetland and wetland buffer of Lyle Reed Brook to extend a culvert so that a guardrail can be installed to improve roadway safety. R30 Zone, Ward 5.**

Voting on this Case:

Jack Currier
Kathy Vitale
Gerry Reppucci

Bill Keating, Department of Public Works, 9 Riverside Drive, Nashua, NH. Mr. Keating said that this project is near the intersection of Musket Drive and Gilson Road. He stated that the culvert going underneath the road is for Lyle Reed Brook. He said this is a low area, and the pipe is very close to the edge of the road as evidenced by the pictures submitted. He stated that this is part of a bigger project, in which the City is installing guardrails at certain places, and in this location, there is very little shoulder area, and it is a safety issue.

Mr. Keating said the guardrail is a separate project, and tonight's case is just to extend the culvert, about 5 feet. He said the work should be done in one half day. He said the Conservation Commission has approved the project, with the stipulations.

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. Ms. Vitale stated that the use is listed in the Table of Uses, Section 190-112. She indicated that it will not create undue traffic congestion or unduly impair pedestrian safety, it will be done in a half of a day. She stated that it will not overload public water, drainage or sewer or other municipal systems, actually it should improve the drainage in that area.

Ms. Vitale stated that the special regulations are fulfilled, the four stipulations noted by the Nashua Conservation Commission will be included. She stated that it will not impair the integrity or be out of character with the neighborhood, or be detrimental, actually it should help the neighborhood and the safety along the edge of the roadway.

Mr. Currier said he wanted to amend the motion to include the nine wetland special regulations, even though they were not verbally covered, they are all in the written application, and have been reviewed and approved by the Conservation Commission.

SECONDED by Mr. Reppucci.

MOTION APPROVED UNANIMOUSLY 3-0.

- 4. Michelle C. Rancourt & Judy S. Giroux (Owners) 30 Victor Avenue (Sheet 111 Lot 197) requesting variance to encroach 4 feet into the 10 foot required side yard setback to construct an attached 26'x28' garage. RA Zone, Ward 6.**

Voting on this Case:

Jack Currier
Kathy Vitale
Gerry Reppucci

Michelle Rancourt & Judy Giroux, 30 Victor Avenue, Nashua, NH.
Ms. Rancourt said they are requesting a four foot variance on the side yard setback. She stated that they believe that it's a reasonable request relative to the property lines, she said the neighbors will have adequate space and light, and the garage will be set back a little bit from the house. She said no one's windows will be impacted, and there will be a lot of green space left in their yard.

She said they are in keeping with the spirit and intent of the property, and they are adding value to the property with this request. She said the garage will help to decrease congestion on the street. She said there are letters signed by three abutters, and they are in favor of it. She said that one of the neighbors is here tonight to ask questions.

Mr. Reppucci identified the neighbors who are in support of the request.

Mr. Currier asked if they considered a narrower, but deeper garage. He said it could be one large door instead of two. He asked if they could go deeper.

Ms. Rancourt stated that the driveway is 22 feet wide, and there is enough room for their two vehicles. She said they'd need to remove some green space for a narrower garage.

SPEAKING IN FAVOR:

Jerry Donohue, Contractor. Mr. Donohue said what they are finding in the market is that to put two medium sized or large vehicles in a garage today, these garages can't be 22 or 24 feet wide. He stated that in order to make the garage this size, it will allow them to keep trash barrels, lawnmowers, snowblower and other items inside the garage, instead of somewhere else outside the garage, and it is also based upon the layout of the driveway.

Mr. Currier asked if this garage were built as proposed, if it would alter the driveway.

Mr. Donohue stated that it wouldn't. He said they are pushing the garage back, so it's not the focal feature of the house. The doors will be 10 feet wide.

Mr. Reppucci asked if the garage were to be made deeper, would it alter the roofline, and the windows on the house.

Mr. Donohue stated that based upon the drawing, the house is 34 feet. He stated that the garage is 28 feet, so the visual is pretty accurate. He stated that the idea is to slide the garage back a little further. He said the roofline is at the maximum, and no windows would be removed.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Lazel Nash, 28 Victor Avenue, Nashua, NH. Mr. Nash asked if this request were to be granted, what impact would it have on the sale of his house in the future.

Mr. Currier said he really can't answer the question, but his opinion is that if there's a nice house next door, it can't hurt

the value. He asked if he's concerned with the four foot encroachment. He said that they need a 10 foot setback, and this one would be 6 feet away. He said the Board's review is to look at the 4 foot encroachment.

Mr. Reppucci said the applicant is going to build a garage, it's a matter of whether they build it four feet narrower. He said his question is that if he's concerned if it's there, period, or four feet narrower.

Mr. Nash said he can live with the garage being there, he wondered if someone knows about zoning, if he wants to sell his house, can he justify it with this garage being closer to the setback.

Ms. Vitale said that a garage on a house makes a neighborhood look neater, as items can be stored in the garage. She said the applicant's property is very neat and kept well.

Mr. Nash asked about his property values.

Mr. Currier said no one here is a property appraiser, and cannot make judgment on property value.

Further discussion ensued.

Mr. Currier said he'd feel more comfortable if the garage stays as a one story garage, not living space.

Ms. Rancourt said that is fine.

Discussion ensued amongst the Board members.

MOTION by Ms. Vitale to grant the variance on behalf of the applicant. Ms. Vitale stated that the variance is needed to enable the applicant's 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. Ms. Vitale said they are asking for an extra four feet, and per testimony, they would be able to get into a structure of this size and they will be able to keep their trash barrels and associated household items in the garage

Ms. Vitale said the request is within the spirit and intent of

the ordinance. She said the property values will not be adversely affected, although the Board has had no testimony towards that.

Ms. Vitale stated that the request is not contrary to the public interest, and substantial justice is served on a home that was built without a garage will now have a garage.

Ms. Vitale said the special conditions are that the garage will be a one-story garage, and that there will be no living space allowed within the 26'x28' space.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 3-0.

5. **Robert G. & Patricia Goodspeed (Owners) 26 Dublin Avenue (Sheet 53A Lot 11) requesting the following: 1) variance to allow an accessory (in-law) dwelling unit in a structure that is not the principal structure on the lot; and 2) special exception to allow an accessory (in-law) dwelling unit within an accessory structure. R9 Zone, Ward 1.**

Voting on this Case:

Jack Currier
Kathy Vitale
Gerry Reppucci
Bob Carlson

Robert Goodspeed, 709 Westover Road, Columbia, SC. Mr. Goodspeed said he's owned the property for thirty years, and has lived in the property for twenty years, moved to South Carolina, and now is retiring back here. He said his son is living in the main house, and he'd like to live in the accessory building, he said it is two stories with a full basement. He said he'd like to connect both buildings with a carport/breezeway, by doing that, it would retain the single family character of the neighborhood.

Mr. Goodspeed said the site is oversized, the lot is over three times the minimum area. He stated that by allowing this case, it will let his son stay in the house.

Mr. Reppucci asked about the connection between the buildings.

Mr. Goodspeed described the carport and breezeway.

Mr. Currier asked if the connection is a zoning requirement.

Mr. Goodspeed said he'd need a building permit to do this, and they must be attached.

Mr. Currier asked why the application has it identified, but the advertisement did not.

Mr. Falk said that there was a time, for years, that staff believed that if you connected a principal structure with an accessory structure, such as this case, it would constitute one principal structure. About 25 years ago, there was a case similar to this, in the Historic District. One of the abutters appealed staff's decision, and ultimately the case went to court. The Judge ruled that by connecting these buildings does not constitute one building, it is still a principal structure and an accessory structure, connected by either a carport or breezeway, or some other non-living space, so, the City was overturned. So, in this case, staff is taking the position that is consistent with the Judge's ruling. That case was on Orange Street.

Mr. Currier asked if there is a need, or a requirement, to connect the two buildings.

Mr. Falk stated that the applicant is not required to build anything that attaches each structure, but can if he wishes to do so. He said you can only have one principal living structure on one lot, and this lot would have two. The owner has asked for a variance to allow a second structure, the accessory structure, to be used for another principal living structure. He said the ordinance requires an in-law unit to be part of a principal structure, and staff does not believe that by connecting these two structures with a carport and breezeway will constitute one principal structure. Staff believes that there will be two principal structures.

Mr. Reppucci asked if we could allow the applicant to have living space in the other building and the house, without building the connection.

Mr. Falk said if the Board grants this request, he could. The ordinance mandates that in-law apartments must be part of the

principal structure. The applicant has correctly applied for a variance to allow the accessory building to be used for the in-law apartment.

Mr. Goodspeed said the accessory building has a two-car garage underneath it.

Mr. Currier said the "watch out" is that someone in the future, should this request be approved, and the property sold, would be that someone could try to subdivide this property into two lots, and asked if this were to be approved, would he agree to a stipulation that this lot not be subdivided.

Mr. Goodspeed said he has no intention of subdividing the lot.

Ms. Vitale asked what the total size of the lot is.

Mr. Goodspeed said it is about 40,000 square feet.

Ms. Vitale said her concern is that this is along a curve on Dublin, and it is a dangerous area.

Mr. Reppucci said if this were to be allowed, it would be transparent, as they cannot subdivide the lot without variances.

Mr. Carlson asked if the garage had plumbing.

Mr. Goodspeed said it is not.

Mr. Currier asked about the 30% gross floor area, and the maximum size of 700 square feet.

Mr. Goodspeed said it is 24'x24', two stories. He said both floors would be used for the in-law. He said the main house is 28'x60', it is a ranch with a full basement, which is 28'x44'.

Mr. Currier said it would be about 1,250 square feet, which is over the maximum allowed size, and is about 50%.

Mr. Currier stated that there is an accessory dwelling unit proposed that is not in the principal structure.

Mr. Currier went over the other accessory dwelling unit points of law. He said whatever arrangement would be approved, it is supposed to be for a marriage or blood relative.

Mr. Goodspeed agreed to all the other points of law.

Mr. Reppucci said the structure is already there.

Mr. Currier said most of the points are met, except for the fact that the accessory unit is not within the principal structure.

Mr. Falk said it was advertised correctly, he has applied for a variance to allow the accessory dwelling in a structure that is not the principal structure, and has applied for a special exception for the in-law criteria.

Mr. Reppucci asked if this case were to be approved, would the connection still be made between the two structures.

Mr. Goodspeed said he thought he had to do the connection.

Mr. Falk said he could build the carport and breezeway by right, it is not anything that would require a variance, all he'd need is a building permit.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Abraham James, 30 Dublin Avenue. Mr. James said he has no specific questions, and said he believes there is no encroachment to the setbacks, it is all located in existing buildings, and will not do anything to the property lines.

No rebuttal necessary.

Mr. Currier said what we have before us is an application that would keep all the structures as they currently exist, except that the back building would be used for an in-law unit.

Ms. Vitale said her main concern would be if they requested a subdivision.

Mr. Reppucci said it is a unique property, even though we're making exceptions, it seems appropriate in this case.

Mr. Currier said it is a large waive of the rules over the 700 square foot size, to be about 1,250 square feet, but the structures have been here for a long time, and it has served as a garage for a long time, it is a unique situation with this long-time homeowner wants to come back to the city, so, while on paper there is a large change, but in this case, there's no change to the land.

MOTION by Mr. Currier on behalf of the owner to approve the variance to allow an in-law apartment in a structure that is not the principal structure. Mr. Currier stated that as part of the area variance, a couple of variances that are specifically being asked for here is the gross floor area is larger than 700 square feet, it is approximately 1,250 square feet, the Board does not have the percent that the accessory unit is to the main unit, but it could be above 30%, and perhaps as much as 50%, but nonetheless, the buildings are both long since constructed and this motion is to approve the area variance with the structures as built.

Mr. Currier stated that the other variance is that the accessory dwelling unit is separate from the main unit, so, with this area variance that a motion is made to approve, the testimony and application given and heard tonight is to enable the applicants proposed use of the property, because the buildings are existing and it is a very large lot in the R9 zone, approximately 40,000 square feet, and the second building is set back from the street, it is within the spirit and intent of the ordinance.

Mr. Currier said there will be no affect to surrounding property values, it is not contrary to the public interest, and it is a busy and dangerous corner, but the use of the property isn't going to be increased that much because it's the same people that have lived here, therefore, it's not contrary to the public interest, and substantial justice will be served.

SECONDED by Mr. Reppucci.

MOTION CARRIED UNANIMOUSLY 4-0.

MOTION by Mr. Currier to grant the special exception on behalf of the owner. He stated that it is listed in the Table of Uses, Section 190-32 (B)(2). He stated per testimony, by having this in-law unit, it will not create undue traffic congestion or unduly impair pedestrian safety, it is a busy corner and the

applicant is well aware of the special needs to exit and enter the roadway through the other driveway.

Mr. Currier said the property is on city water and sewer, and it will not overload any other municipal systems, and both structures are already built, so this proposal will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of residents.

Mr. Currier said on the special regulations, the Board has already discussed the square footage is larger than the 700 square foot maximum, it is about 1,250 square feet, and the accessory dwelling unit is separate from the house, it's already been discussed. Mr. Currier said the other criteria for the conditions of an in-law apartment have been testified by and will be adhered to by the applicant, so, with that, the special criteria have been fulfilled.

SECONDED by Mr. Carlson.

Mr. Reppucci stated that a special exception must meet all requirements, or else the Board cannot approve it. He asked if we can go outside the requirement with more than 30% living space without a variance, or, can the Board word it in such a way that based upon the numbers, the applicant can stay within the square footage of 30% or 700 square feet.

Mr. Currier said the Board covered it in the variance request.

Mr. Falk said everything was covered in the testimony and discussion, and nothing was left out as far as what was being asked for. If someone were to ask for a rehearing based upon this, perhaps then the Board could grant a rehearing, but, everything has been brought out into the open, there is no question to what the owner is asking for.

MOTION APPROVED UNANIMOUSLY 4-0.

6. **Dan Bergeron Building & Development, Inc. (Owner) 78 Cox Street (Sheet 190 Lot 137) requesting the following variances: 1) minimum lot frontage, 60 feet required, 35.62 feet proposed, and 2) minimum lot width, 75 feet required, 35.62 feet proposed - both requests to subdivide one lot into two lots. RA Zone, Ward 2.**

[POSTPONED TO THE NOVEMBER 12, 2008 MEETING]

7. 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. [TABLED FROM THE OCTOBER 14, 2008 MEETING]

[POSTPONED TO THE NOVEMBER 25, 2008 MEETING]

8. 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. Ward 4.

[POSTPONED TO THE DECEMBER 9, 2008 MEETING]

REHEARING REQUESTS:

None.

REGIONAL IMPACT:

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

MINUTES:

October 14, 2008:

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

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 4-0.

ADJOURNMENT:

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Mr. Currier called the meeting closed at 8:52 p.m.

Jack Currier
Acting Clerk

CF
Taped Hearing