

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
December 9, 2008

A public hearing of the Zoning Board of Adjustment was held on Tuesday, December 9, 2008 at 6:30 PM in the Auditorium at City Hall.

Jack Currier, Vice Chair and Secretary, conducted the meeting.

Members present were:

Jack Currier, Vice Chair & Secretary
Kathy Vitale
Gerry Reppucci
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. John J. Flatley Company (Owner) 100-300 Innovative Way (Sheet A Lot 798) requesting variance to encroach 23 feet into the 25 foot required setback to an intersection for a park identification sign. PI Zone, Ward 8.**

Voting on this case:

Jack Currier
Gerry Reppucci
Kathy Vitale

Richard Cane, The Flatley Company. Mr. Cane passed out some handouts that he will go over with the Board. He described the property's location from the maps. He said it is a 180-acre parcel that is the Hewlett-Packard campus, and has a 750,000 square foot building to the rear, and the access road is called Innovative Way. He said there is a significant amount of frontage on Spit Brook Road, by Tara Boulevard.

Mr. Cane said the park is called Nashua Technology Park, and it has gone from a single user to a multi-tenant building. He stated that there is over half of the space that remains to be

leased.

Mr. Cane said they are requesting to install a park industrial identification sign at the intersection of Tara Boulevard and Spit Brook Road. He said they are allowed to install a 200 square foot sign, but are only proposing 58 square feet. He said the variance request is for the distance to the right-of-way, 25 feet is required, and are requesting it to go 23 feet into the setback.

Mr. Cane showed an exhibit that indicates where the pavement is in relation to the property line, and the distance from the pavement to the property line is 78 feet, rather than the typical 5-15 feet. He indicated that the grade, at 25 feet back, would be down in a hollow, about 4 feet lower. He said the building is about 1,800 feet from Spit Brook Road, and is not visible from either Spit Brook Road or the FE Everett Turnpike. He said by going to a multi-tenant building, it is important that people be able to find the park entrance and the building.

Mr. Cane said it is a wide intersection here, and exhibit #4 indicates where the sign would be located. He described the other exhibits as well. He said their sign will be 80 feet from the edge of the pavement. He said if they conformed to the ordinance, the sign would be 105 feet from the pavement, and it would be at a lower elevation than the abutting roadway.

Mr. Cane went over all the variance points of law.

Ms. Vitale asked if the individual users in the building will want their own signs.

Mr. Cane said no, only small directional signs. The proposed sign is the primary sign to get users into the site. He said the sign is only 58 square feet, and will be made of stone, very tastefully done. He said that they do not even allow tenants to put their name on the buildings, even there are some very large users in here, like Dell. He said that they want the signage to be tastefully controlled.

Mr. Currier asked Mr. Cane if they are willing to stay within the 58 square feet, even though 200 square feet is allowed.

Mr. Cane said that is what they are proposing, and said that they have no problem with that stipulation.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

Mr. Reppucci said he didn't see the need to put any kind of restriction on them, if they choose to come back and request something additional, as they have the right to do that. He said they may want to take advantage of their 200 square feet, and if they do, they can go through the process again and we can revisit it at that time. He said they're coming in at 25% of what they're entitled to.

Ms. Vitale said that she didn't think that the Board needed language in the motion that restricts them.

Mr. Falk said if they were 23 feet further back, they could erect a 200 square foot sign right away.

MOTION by Mr. Currier on behalf of the owner to grant the variance. Mr. Currier stated that it is a request to encroach 23 feet into the 25 foot required setback to an intersection for a park identification sign. He stated that a stipulation is that the sign is 58 square feet, as provided on the plan dated November 6, 2008, and also that this sign will serve as the sign for all the tenants of Nashua Technology Park. Mr. Currier said that with these two stipulations, the variance is needed to enable the applicants proposed use of the property, given the special conditions of the property, which by testimony, is the property line is very far back from the street, plus, the natural topography dips down, and to have a sign back with the 25-foot setback would make it not visible from the street, therefore, feel that this variance is within the spirit and intent of the ordinance. He stated that the sign is tastefully proposed, and with the 58 square feet, accomplishes the job of identification, but is not out of character with the neighborhood.

Mr. Currier said the sign will not adversely affect the property values of surrounding parcels, it is not contrary to the public interest, and substantial justice is served.

SECONDED by Mr. Reppucci.

MOTION APPROVED 3-0.

2. **SAT Sr. Limited Partnership (Owner) ITT (Applicant) 85 Northwest Boulevard (Sheet H Lot 633) requesting variance to allow a temporary building for three years, one year permitted. PI Zone, Ward 2.**

Voting on this Case:

Jack Currier
Kathy Vitale
Gerry Reppucci

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that the building they are proposing is a temporary building in back of the existing building, towards the Pennichuck watershed. He said they could have this building for six months without coming to the Board. Atty. Prunier said that they are requesting a variance to allow this building to be here for three years.

Atty. Prunier said that ITT has offices in this building, and they do government research. He said they have a government grant that will take up to three years, and it needs visibility and light. He said at the end of the three years, they will take it down. He said it will not adversely affect property values, it is in the rear of the building.

Atty. Prunier said it is a single-story building, and you won't be able to see it from the street, and it won't impact any property values. He went over the required variance points of law.

Ms. Vitale asked if the building will be placed on a pad.

Atty. Prunier said it will be on a pad, no foundation.

Ms. Vitale asked if it will be in a wetland buffer.

Atty. Prunier said it will not be.

Mr. Reppucci asked if the project could take longer than three years.

Atty. Prunier said it may be less, but if it's more, they'd have to come back.

Mr. Currier asked if it's a wood frame building.

Atty. Prunier said yes, with an asphalt roof.

SPEAKING IF FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Reppucci to grant the area variance on behalf of the applicant. Mr. Reppucci stated that the variance is needed to enable the applicant's proposed use of the property, they expect it's going to take less than three years to complete.

Mr. Reppucci stated that the request is within the spirit and intent of the zoning ordinance, it will not adversely affect

property values of surrounding parcels, is not contrary the the public interest, and substantial justice will be served.

SECONDED by Ms. Vitale.

MOTION APPROVED UNANIMOUSLY 3-0.

3. **David & Gayle Dionne (Owners) 417 Main Dunstable Road (Sheet C Lot 126) requesting variance to subdivide one lot into eight lots, using lot dimensions and setbacks consistent with the R9 zone.**

Voting on this Case:

Jack Currier

Kathy Vitale

Gerry Reppucci

Kevin Milligan, 15 Reservoir Street, Nashua, NH. Mr. Milligan said he's spoken to all the abutters that are here, and have all agreed to come back at the first meeting in January. He said one of the abutters requested that certified letters be sent out. He said that he understands that rules are always adhered to, and is proud of those rules and in working with the community, but said there is always an interest in fairness.

Mr. Reppucci said people are at a disadvantage when they come before the Board with less than five members. He said he sent a letter to the Corporation Counsel, looking for guidance on whether or not this is actually a legal position, and if so, to go before the Board of Aldermen to ask them to reconsider this ordinance. He said he can't see how the Board can make a determination that we can table one and not another.

Mr. Currier stated that in the past, when cases were postponed, there were roomfuls of people, this is the first time there hasn't been roomfuls of people, and when there's a postponement, there's been a reaction from the crowd that have wasted their evening. He said in this case, it's a different dynamic, when there's one person here in opposition, and they're ok with a postponement to a later date. He said he wants to stick to the laws, as we are a Board of exceptions, but when all involved are willing to postpone, and no one is in opposition, he said he's willing to postpone, which stays within the spirit and intent of how this was made.

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Ms. Vitale said that when this ordinance was proposed by Ald. Teeboom, maybe it wasn't discussed as thoroughly as it could have been in the case of meeting that three to zero vote, and an applicant having to convince 100% of three members versus a percentage of five members. She said that convincing 100% of three members sometimes is a different dynamic than three out of five members.

Mr. Falk said the very next case on the agenda has been postponed two or three times, because the applicant wasn't ready due to contract and purchase and sale issues. He said that hypothetically, what if an applicant came to the meeting, and said that their engineer, architect and other members of their group are stuck in traffic and can't make it to the meeting, if this ordinance were to hold true, would the Board insist they make a presentation even though under the circumstances they are not able to? He said the Board cannot force someone to testify for a case if they're not ready to.

Mr. Reppucci said that would be a valid reason to table a case, but what we're addressing is the specific ordinance that the Aldermen put forward that forbids tabling cases with less than five Board members. He said right now, there are three members here, not five, and that's why they want to table the case.

Mr. Currier said he wants to make a motion to table this case, because everyone here in the audience with an interest in the case does not have an objection to tabling it. He said although he may take some heat by doing this, but in this case, it's the right thing to do.

MOTION by Mr. Currier to table this request to the January 13, 2009 meeting.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 3-0.

4. 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 FROM THE OCTOBER 28, 2008 MEETING]

Voting on this Case:

Jack Currier

Kathy Vitale

Gerry Reppucci

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that he wanted to incorporate the past proceedings and evidence for Paul Grigas for the variance earlier granted at this site into the record. He said this request is for a printing company, and this use is not much more than an office use.

Atty. Prunier passed out pictures that the applicant took of the printing machines that they will have. The larger machines will be in the garage, and the site will look the same. He said most of the equipment is normal copying equipment that any office has. The only difference is the larger machines in the garage. He said that there will be very little traffic, maybe a few cars per day, most of the work is done over the phone, and there are two employees. He said this is not like a newspaper printing business, it is very small, it is a professional office-type of setting.

Mr. Reppucci asked if there are any ventilation issues with the inks or solvents.

Atty. Prunier said there are no issues, they have an existing shop and everything is fine.

Ms. Vitale stated that about 4.4% of the business is retail oriented, and if there will be walk-in customers.

Atty. Prunier said there will be no self-serve.

Atty. Prunier said that the machines they use are very quiet, as shown in the pictures.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Currier to grant the use variance on behalf of the owner, Paul Grigas. Mr. Currier stated that the zoning restriction as applied interferes with the landowners reasonable use of the property, considering the unique setting of the property in its environment, there are other businesses in this locale, low-impact businesses, and as testified, this printing business, although not previously approved professional office, is also, by testimony, is a low-impact business, therefore, by having a printing business, it's within the spirit and intent of the ordinance, it will not adversely affect the property values of surrounding parcels, the printing business is not contrary to the public interest, and by allowing this use, substantial justice is served.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 3-0.

Attorney Prunier said that he has historically stated that if there's less than five members present, that he's reserving this as a right to go to Court, because this is an important issue. He said to all the applicants, as well as the abutters, they should have a full Board, and said he never heard of the ordinance that requires you to go forward with less than a full Board, and all the Attorneys he knows, unanimously, feel this ordinance is unconstitutional and unfair to both sides, and that applicants are entitled to a 5 member vote, and this is what the State Legislature wanted, you can go with less members, it is up to the applicant, but stated that this ordinance should be looked at again. He said he'd like to take another look at it with some of the Aldermen to get it repealed, and to let all of us have notice of an ordinance.

Mr. Reppucci said the process has already started, with a letter to the Corporation Counsel.

REHEARING REQUESTS:

None.

REGIONAL IMPACT:

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

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MINUTES :

November 12, 2008:

MOTION by Mr. Currier to approve the Minutes as written, and to waive the reading and place them in the file as proposed.

SECONDED by Mr. Reppucci.

MOTION CARRIED UNANIMOUSLY 3-0.

ADJOURNMENT :

Mr. Currier called the meeting closed at 7:45 p.m.

Jack Currier
Clerk

CF
Taped Hearing