

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
January 27, 2009

A public hearing of the Zoning Board of Adjustment was held on Tuesday, January 27, 2009 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 & Clerk
Kathy Vitale
Bob Carlson
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. 158 Burke Street LLC (Owner) Stephen D'Angelo (Applicant) 141-143 Burke Street (Sheet 11 Lot 158) requesting use variance to allow a catering use in a portion of an existing building. GI Zone, Ward 7.**

Voting on this Case:

Sean Duffy
Jack Currier
Bob Carlson
Kathy Vitale
Gerry Reppucci

Attorney Kevin Bowman, Devine, Millimet & Branch, P.A. Atty. Bowman asked to continue the case until there were more than four members.

Mr. Duffy said they could switch the cases around until the fifth member comes. Mr. Carlson arrived, for the fifth member.

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

January 27, 2009

Page 2

Atty. Bowman said that his client, Stephen D'Angelo, operates the cafeteria at the subject building. He stated that he also owns "Only Catering", and recently moved into the building to expand the available space for the catering business, and it was made known to him that a catering business is not permitted in this zone.

Atty. Bowman stated that the proposed catering use is substantially similar, and will overlap with the current cafeteria use, and the operations will be food preparation, storage, and limited office use, and the catering use is all off-site, with only one van.

Atty. Bowman said the catering use will also allow the applicant to stay in the building, as just the cafeteria use does not make the business financially viable, but with both there together, it makes sense for a good business operation, as they overlap. He said there are 230 employees in the building that use the cafeteria, and the cafeteria use is substantially similar to the catering use. Atty. Bowman went over all the use variance points of law.

Mr. Duffy asked how large the catering use is in comparison to the entire 227,373 square feet building space.

Stephen D'Angelo, Only Catering. Mr. D'Angelo said there is about 1,000 square feet total, and the kitchen is about 500 square feet. He said the same kitchen space will be used for the catering as the cafeteria.

Mr. Duffy asked what the hours of operation will be.

Mr. D'Angelo said the catering hours are when they are needed, and the cafeteria is between 7:00 am and 1:30 pm, Monday through Friday. He said the catering is Monday through Sunday, 9:00 am to 7:00 pm.

Mr. Duffy asked if there will be any special events there.

Mr. D'Angelo said the catering use is all off-site.

Mr. Reppucci asked how long the cafeteria has been in the building.

Mr. D'Angelo said they've been in the building since last August, and the catering business was done at another location.

Mr. Reppucci asked if the catering use is run out of the subject building.

Mr. D'Angelo said when they moved in, the Board of Health license was due, and then they found out they need to get a variance.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Duffy to grant the variance on behalf of the applicant. Mr. Duffy stated that the zoning restriction as applied interferes with the owners reasonable use of the property considering the 227,373 square foot building, of which approximately 1,500 to 1,700 square feet is going to be continued to be used for a very similar use, and it already predates zoning. Mr. Duffy stated that it is fair and reasonable that this use is not a major hindrance to the public, and should not injure the public or private rights of others.

Mr. Duffy stated that the request is within the spirit and intent of the ordinance that a very minor use of allowing offsite catering within the on-site cafeteria be allowed.

Mr. Duffy stated that it should not affect the surrounding parcels property values, and there was no expert testimony to such, and this is an existing building at the terminus/end of a neighborhood, with the river as an abutter, and should not generate a lot of traffic, and should minimize the traffic as the catering is a one vehicle operation, very minor, and substantial justice is served with a reasonable use.

Mr. Duffy said the special conditions are that the hours of operation of the cafeteria are 7:00 am to 1:30 pm, Monday through Friday, and the offsite catering use is Monday through Sunday, from 9:00 am to 7:00 pm, with one vehicle, and no special events held on the property.

SECONDED by Mr. Reppucci.

MOTION CARRIED UNANIMOUSLY 5-0.

2. **City of Nashua (Owner) Shawn Smith, Nashua School District (Applicant) 39 Shady Lane (Sheet B Lot 62) requesting special exception to dredge and fill 1,046 square feet of wetlands and to work in an "other" wetland buffer area to construct a 22-foot wide paved fire**

Voting on this case:

Sean Duffy
Jack Currier
Kathy Vitale
Bob Carlson
Gerry Reppucci

Patrick Colburn, Keach, Nordstrom & Associates, Bedford, NH.
Mr. Colburn said he is representing the School District for this case. He said a landfill used to exist at a majority of this site. He said the nature of this request is to construct a 22-foot wide paved fire road for emergency access around the existing building, and it impacts about 1,000 square feet of jurisdictional wetlands, and the associated 13,883 square feet of wetland buffer impacts. He said their firm has worked with the City for the past several years on not only this school, but other City schools as well. He said this school was built in the 1970's, and in today's society, more kids are being dropped off to the school.

Mr. Colburn said there are no building additions. He said the operations at the school are unique, in that there are not many of the surrounding neighborhood children that go to school here. He stated that there will be a total of 105 parking spaces. He said there will be a new playground area being built as well. He said there will be a bypass loop, and this should alleviate parking issues around the access drive, as a lot of people park along the street, and there is not enough parking. He said that since the property used to be a landfill, there is uneven settling and the road is bumpy. He said that their construction

will not interfere with the old landfill items, they will work above the landfill cap, it is 2 feet to 6 feet deep.

Mr. Colbrun stated that the fire road is not adequate today, it is very narrow, and situated right next to, and abutting the school, and it is virtually impossible for an emergency vehicle to go around the school, they could not make it all around the school for 360-degree access around the building. He said that due to the limitations in the front of the building, the fire road will have to double up as a parent pick-up loop during both the morning drop-off and the afternoon dismissal.

Mr. Colbrun stated that the fire road will necessitate 1,046 square feet of jurisdictional wetland impact, as shown on the drawing in three locations. He said there will be 13,883 square feet of wetland buffer impacts. He said the pavement width is required to allow for emergency vehicle access, and the Conservation Commission has already approved the proposal. He went over all the special exception and wetlands points of law.

Mr. Reppucci asked if cars can presently drive on this loop road.

Mr. Colbrun said they can.

Mr. Reppucci asked if this really serves as a fire road if parents and teachers are parking or driving on the road.

Mr. Colbrun said the Fire Marshal has approved this, he said there will be about 1 hour of limited access when the school begins/ends and 23 hours of unlimited access, which is better today since they cannot get around the school at all.

Mr. Reppucci said the application should have listed a use for the school during the day, along with the fire road. Abutters might not realize what the road would be used for.

Mr. Colbrun said the intention was to first have the fire road for additional safety.

Mr. Duffy asked if the dumpster location could be moved.

Mr. Colbrun said they could move it.

Mr. Duffy asked if they are amenable to the Conservation Commission special conditions.

Mr. Colbrun said they are.

Mr. Duffy asked if the lighting will be downward facing.

Mr. Colbrun said they will meet the lighting ordinance.

Mr. Currier said he was concerned about the road around the school being full of cars.

Mr. Colbrun said there will be continuous traffic circulation at dismissal time.

Mr. Reppucci said that the request before the Board is to work within the wetland and wetland buffer from the roadway.

Mr. Falk said yes.

Mr. Reppucci asked if the road could be exclusively a fire access road, and not anything to do with a parent drop-off and pick-up road.

SPEAKING IN FAVOR:

Mr. Shawn Smith, Nashua School District Operations Mgr. Mr. Smith said that was their original intent, to make it for emergency vehicles, but the school staff said this road would be a great way of getting cars off the street, because they are lined up on Shady Lane.

Mr. Reppucci said he wants the Board to act within their jurisdiction for the benefit of the abutters, with respect to the application.

Mr. Currier asked if just the fire road needs to be 22 feet wide.

Mr. Colbrun said the turning template is for a 22-foot wide road, which is confirmed by the Fire Marshal, to navigate the road. There is one tight turn, which needs the extra width to make it around.

Mr. Currier said there is one tight turn, but nothing else is, and there is a large wetland disturbance further down, without the need for a tight turn, and asked if the entire road needs to be this width, as a portion of it could be made narrower and lessen the impact to the buffer.

Mr. Colbrun said that may be true.

Mr. Duffy asked about the wetlands.

Mr. Colbrun said that their wetland scientist, Mr. Bob Prokop, states that he doesn't believe there will be any adverse impact to the two larger complexes. He said some of it will only be partial impacts.

Ms. Vitale asked what type of communications has taken place between the neighbors.

Mr. Colbrun said just the City's notification. He said he's not sure if the school has done anything extra.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Kristin Garland, 38 Taschereau Boulevard, Nashua, NH. Ms. Garland pointed out her home. She said her and her child walk to school every day with several other children through an access path. She said her concerns are that the number of children who walk out the back of the school to Taschereau Boulevard would be crossing this traffic, also, this approval would be putting a busy thoroughfare in our back yard, also, she said she is concerned about teenager activity back here with the wider road. She said she didn't think there was enough information on how the wetland would affect the area, and where the water would go.

Joanne Friedman, 71 Wethersfield Road, Nashua, NH. Ms. Friedman said she is an abutter, and the children walk right through here, and there is a hillside. She asked how the hillside will be retained, and asked if there will be fencing added. She said there is a lot of teenager activity, with graffiti. She asked if the road will have speed bumps, because people will speed around this road.

Marion Hochuli, 28 Taschereau Boulevard, Nashua, NH. Ms. Hochuli referred the Board to the letter she sent in. She said

she was unaware that this roadway would act as a drop-off area as well. She said where the roadway begins, there is a small building/shed, and wanted to know if the road would go around it or between the school and that little building. She asked what kind of lighting they will have.

Mr. Duffy said they would have to comply with the City's lighting ordinance.

Mark Garland, 38 Taschereau Boulevard, Nashua, NH. Mr. Garland said it is a little misleading about the greenery shown on the plan. He said he's seen an assessment of trees that may need to be taken out to provide for adequate passage, and is concerned about the buffer from the roadway to his home. He asked if there will be an appropriate fire gate, which may be a deterrent for other vehicles from going back there.

Mr. Duffy asked if there is any flooding in his back yard area.

Mr. Garland said there is a steep bank that comes down, and it is a pretty good drainage area away from the property.

SPEAKING IN FAVOR - REBUTTAL:

Patrick Colburn, Keach, Nordstrom & Associates. Mr. Colbrun stated that the proposed wetland impacts are very minor in nature, about 1,000 square feet, and the thoroughfare is not a thoroughfare, it is going to be used for approximately one hour a day, a half-hour in the morning, and a half-hour in the afternoon. He said there are limited options on site to bring these people, and there are few alternatives. He said the teenagers and the vandalism is an enforcement issue. He said that increased lighting will help what is out there today. He said the lighting will comply with the lighting ordinance, also, many of the issues brought up are Planning Board issues.

He said they will be proposing raised speed islands around the roadway. He showed areas on the map where the existing and proposed tree line, and grassed areas, will be located. He said all of the proposed work is downstream to the abutters, there should be no yard drainage to them, also, no retaining walls are proposed.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

January 27, 2009

Page 9

Kristin Garland, 38 Taschereau Boulevard, Nashua, NH. Ms. Garland stated that if we are looking at this as a fire lane, the abutters understand it is important, and we are here to make sure that it has minimal impact on our property. She said the tree line cuts look minimal. She said the abutters are here to only talk about the fire lane road, not school operations. She said that the drop-offs and pickups are not being done properly, so in terms of the fire lane, they would appreciate the road being narrowed around the back. She said they were here solely for the wetland and tree removal impacts.

Mr. Reppucci said it appears the School wasn't looking at the road the same way as the engineering company was, it appeared as if it was something the engineering company came up with. He stated that he would be amenable to approve the request, only for the fire road, and notify the abutters about the complete intended use of the road will be. He said that more work needs to be done on the total proposed impact of the road, perhaps all the ZBA looks at is the wetland issues, and the School Department needs to address other issues. He said he didn't think the ZBA should put any restrictions on it.

Mr. Duffy said this is a school, and perhaps a 16-foot wide road could work, too.

Mr. Currier said the proposed wetland incursions are minimal, and what is proposed is a paved fire road, and didn't think it's properly advertised. He said he's ok with the wetland incursions for the fire road, and didn't think they need the entire 22 feet in width. He thought the Board could take action on just the fire road, and perhaps the applicant can come back and address all the other issues.

Ms. Vitale stated that there is minimal tree cutting impact, not too extensive. She said that impact is minimal, and the fire road is definitely needed, perhaps the Fire Department needs to discuss their exact needs for the width of the road. She said there is a drop-off and pick-up issue here, and there is a time period where the flow is very heavy. She said the Conservation Commission has given a favorable recommendation already.

Mr. Carlson said the application is misleading, and cannot support it as an access road or a fire road.

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

January 27, 2009

Page 10

Mr. Currier said if a motion were on the table for just a fire road, that would give the School Dept. the green light for only the fire road.

Mr. Reppucci said the abutters have rights, and should know the entire intent of this roadway.

Ms. Vitale said if she was an abutter, she'd want to know that the lighting would not impact my property, and that the runoff would not interfere with my yard, and would want to know if any tree removal would not interfere with the wetland.

MOTION by Mr. Duffy to approve the special exception on behalf of the applicant for up to a 22-foot wide paved fire road. Mr. Duffy stated that the request is listed in the Table of Uses, Section 190-112.

Mr. Duffy said it should not unduly create traffic congestion or unduly impair pedestrian safety for a fire road around the perimeter of an elementary school, it's not a significant change to the traffic in this area.

Mr. Duffy stated that the use should not overload public water, drainage or sewer or other municipal systems, based upon the testimony heard this evening.

Mr. Duffy stated that special conditions are all met, with the Conservation Commission findings of January 2, 2009 with the six stipulations agreed to by the applicant.

Mr. Duffy said it should not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of residents, considering that the advertised use is for a fire access road out of the facility.

Mr. Duffy said the special conditions are that there will be no parking in this access road, the lighting situations for the wall-packs be in compliance, as the applicant has attested to, that tree removal is minimal compared to the presentation that has been brought here, and the plan and the applicant will adhere to that, and the applicant to approach the Fire Department to document what their needs are in pavement width for fire access, in writing.

SECONDED by Ms. Vitale.

Mr. Duffy said they can refile an application if they want full access around the school, other than the fire roadway.

Ms. Vitale said it truly is for about an hour a day with traffic on this road, it's not like a thoroughfare at all, it's drop-offs and pickups. She said she'd agree to approve it for both uses.

Mr. Reppucci said all we'd be approving in the motion is for up to a 22-foot wide paved fire road.

Mr. Duffy agreed.

Mr. Currier said he wouldn't support it if it were for full drop-off and pickups.

Ms. Vitale said she was surprised that it didn't list all of their intent on the application. She said she wouldn't make an amendment to the motion.

MOTION CARRIED 4-1 (Mr. Carlson).

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. R30 Zone, Ward 5. [TABLED FROM THE DECEMBER 9, 2008 MEETING]

Voting on this Case:

Sean Duffy
Jack Currier
Kathy Vitale
Bob Carlson
Gerry Reppucci **(RECUSED)**

MOTION by Mr. Currier to remove this item from the Table.

SECONDED by Mr. Carlson.

MOTION CARRIED UNANIMOUSLY 4-0.

Mr. Currier stated that he spent some time going over the entire drawing that they didn't have before, and said only a very small

portion of the property is zoned R9, the Board should respect the R30 zone. He said there is already a good amount of traffic on the road, and this will add to it. He said this parcel could support two lots without any variances, and didn't want to come up with a number of lots that are reasonable, a lot of numbers were spoken of, he didn't want to design the project. He thought it's best to just stick with the application of eight lots. He said that over 4 acres are wet out of the total acreage.

Ms. Vitale stated that she is struggling with approving eight lots. She thought perhaps four lots may be reasonable, and agreed with Mr. Currier's thoughts.

Mr. Currier said he got an idea of what variances would be required with six lots, but it would still be a lot of variances. He said he'd also be uncomfortable with six lots.

Ms. Vitale said when she heard they may want six lots, if it were four years ago, in different economic times, we are not here to determine financial matters on this request, we have to look at the land use and what impacts it may have in the neighborhood. She said she's not comfortable with eight lots, but may be comfortable with four lots, but would like to see what it may look like.

Mr. Currier said the idea of applying an R9 zone to this lot, when only a small portion of it is within the R9 zone, is not within the spirit and intent of the ordinance, and it would adversely impact surrounding property values by having this density, as people buy here expecting a density consistent with the R30 zone.

Mr. Duffy stated that he looked at the intersection, and looked at the Planning Code, and when you have street intersections less than 175 feet jogs, they need to be avoided, they should be across from one another. He said he was unconvinced for R9 zoned lots. He said the R30 zone here is long-standing, and there are reasonable uses for the property.

MOTION by Mr. Duffy to deny the area variance, as it's not enabling the applicants proposed use of the property, given that there were no special conditions proven by the property, the Board is unconvinced that the minimal and most negligible R9 component to this lot is not really by definition a significant

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

January 27, 2009

Page 13

R9 criteria. Mr. Duffy said the benefit sought by the applicant can be achieved by reasonable methods available, the existing, long-standing use of a single-family home on one lot, with potentially two, or three or up to four with a variances requested in a different configuration, but certainly even two lots without any variance requests at all are other reasonably feasible methods for the applicant to pursue, other than this area variance.

Mr. Duffy said it is within the spirit and intent of the ordinance that the expectations of this resource, long-standing as an R30 conforming use in this area be respected and maintained as long as possible, until such time as the Aldermen or the zoning map change the parcels and/or again, other variance requests are sought, so, therefore, is not contrary to the public interest, and substantial justice - there is no comment.

SECONDED by Ms. Vitale.

MOTION CARRIED 3-1 (Mr. Carlson).

OTHER BUSINESS:

REGIONAL IMPACT:

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

MINUTES:

January 13, 2009:

MOTION by Mr. Duffy to approve the minutes, waive the reading, and place the minutes in the file, with a correction from an e-mail to Mr. Falk from Mr. Reppucci.

SECONDED by Mr. Reppucci.

MOTION CARRIED UNANIMOUSLY 5-0.

December 9, 2008:

MOTION by Mr. Currier to approve the minutes, waive the reading, and place the minutes in the file.

SECONDED by Mr. Reppucci.

MOTION CARRIED UNANIMOUSLY 3-0.

ZBA BY-LAWS:

Mr. Falk said there are a couple technical corrections, with new Code Section numbers.

MOTION by Mr. Duffy to suspend the reading of the By-Laws, and to approve the By-Laws with the technical corrections.

Mr. Currier mentioned another technical correction, on paragraph 10, Postponements and Withdrawals, the second sentence from the bottom, the word "unclear" should be "clear".

SECONDED by Mr. Reppucci.

Further discussion ensued.

MOTION CARRIED UNANIMOUSLY 5-0.

ELECTION OF ZBA OFFICERS FOR 2009:

MOTION by Mr. Duffy to elect Mr. Currier as Chairman, Mr. Duffy as Vice Chairman and Mr. Shaw as Clerk. Mr. Duffy stated in Mr. Shaw's absence that both he and Ms. Vitale will help out.

SECONDED by Mr. Carlson.

MOTION CARRIED UNANIMOUSLY 4-0.

ADJOURNMENT:

Mr. Duffy called the meeting closed at 9:19 p.m.

Jack Currier
Clerk

CF
Taped Hearing