

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
April 14, 2009

A public hearing of the Zoning Board of Adjustment was held on Tuesday, April 14, 2009 at 6:30 PM in the Auditorium at City Hall.

Jack Currier, Chair, conducted the meeting.

Members present were:

Jack Currier, Chair
Sean Duffy, Vice Chair
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. Andrew F. & Brooke M. Arthur (Owners) 4 Coventry Road (Sheet B Lot 1153) requesting special exception for major home occupation for in-home day care for an additional 3 children (9 children approved by ZBA on 4-13-04). R9 Zone, Ward 9.**

Voting on this Case:

Jack Currier
Sean Duffy
Kathy Vitale
Gerry Reppucci

Brooke Arthur, 4 Coventry Road, Nashua, NH. Ms. Arthur stated that she has been a provider for five years, and during that time, she has two children of her own, and one on the way. She said she works with another teacher who has two of the children, and their goal is to open a cooperative education program, and this is a transition year, as they have five of the children between them.

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Ms. Arthur said she is not looking to increase any of the traffic, the drop-off and pickups are staggered. She said the use is not out of character with the neighborhood, it is a very family-oriented neighborhood with a lot of children.

Mr. Duffy asked about the hours of operation.

Ms. Arthur said she wanted to keep the existing hours.

Mr. Duffy asked about the outdoor play time.

Ms. Arthur stated that there is no outdoor play before 9:30 am.

Mr. Reppucci asked if section 16-397 is the old ordinance numbers, and if the current requirements are any different.

Mr. Falk said it is the old ordinance numbers, and stated that the Major Home Occupation criteria is the same. He stated that there are a couple changes to the child care criteria, such as the lot size must meet the minimum criteria for the zone the applicant lives in, and the size inside the house has increased.

Mr. Reppucci said he noticed a discrepancy in the ordinance with respect to the fence height. He said in the Code, Section 190-36 (A)(2), it says the enclosure shall be a solid fence made of wood or other suitable material not more than six feet in height. He said on the next page, in (B)(5) or (C)(2), it states the opposite, it states that it has to be at least six feet high.

Mr. Falk said generally whenever there is a discrepancy in the Code, staff uses the more restrictive interpretation, which in this case, would be a solid, stockade fence of six feet in height.

Ms. Arthur stated that it is part of the State regulations about the fence, and hers was approved.

Mr. Duffy asked if it will be a total enrollment of twelve children, or a maximum of twelve in the house at any one time.

Ms. Arthur said it is twelve total enrollment.

Ms. Vitale asked about the transition year.

Ms. Arthur stated that they want to move into a facility space, and being able to operate a cooperative education there, somewhere in the City. She said they are working hard on doing this.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

Mr. Reppucci asked if the ordinance covers whether your own children count in the total number of enrolled children.

Mr. Duffy said it's his belief that past practice of the Board is that your own children do not count, they can be if they want to.

Ms. Vitale said this issue may be addressed in the State regulations.

Mr. Reppucci said her numbers are going up due to their own children, and wondered if they even need to come to the Board.

Mr. Falk said she may have to update her State license, but she's being honest and forthright in the number of children, and is coming before the Board to set the record straight.

Ms. Vitale said by the applicant shaking her head, that it is included in the State regulations.

Mr. Duffy said if you're watching children in your own home, you are their parent, if you're running a business of a day care, with other children that are not family members, you can't pay yourself.

Ms. Vitale said she is watching her own children as well as some others, and according to the State, there are bathroom requirements, and space needs for each child.

Mr. Currier asked about the fence, with it not being six feet in height.

Mr. Reppucci said it may cost the owner \$10,000 to do this.

Ms. Vitale said the applicant is looking at this as a transition year, and they are planning on moving into a facility. She said the fence is in good condition, and the State hasn't made any complaints about it, or cited her for the fence. She said she would just keep it as it is right now.

MOTION by Mr. Reppucci to grant the special exception on behalf of the owner. Mr. Reppucci stated that the use is listed in the Table of Uses, Section 190-36. He stated that it will not create undue traffic congestion or unduly impair pedestrian safety, per testimony it shouldn't change traffic in the area at all.

Mr. Reppucci stated that it will not overload public water, drainage, sewer or other municipal systems. He stated that the special regulations are fulfilled by the applicant with the noted exception of the existing fence, the fence right now doesn't meet the requirement of the City, the fence that is currently on the property is adequate for this application and doesn't have to be modified, given the track record of the business, and it's a transitional period of a year until they move into a facility. He said it will not impair the integrity or be out of character with the neighborhood, or be detrimental to the health, morals or welfare of residents, all the neighbors support this use.

SECONDED by Ms. Vitale.

Mr. Duffy said the hours of operation and outdoor play will be the same as the previous approval.

MOTION CARRIED UNANIMOUSLY 4-0.

2. **DAL Management, LLC (Owner) 38 Harbor Avenue (Sheet 29 Lot 17) requesting the following variances: 1) minimum lot area, 6,969 sq.ft required, 4,205 sq.ft existing; and, 2) to encroach 5 feet into the 7 foot required left side yard setback, to construct an 18'x24' second story addition - both requests to convert a single-family dwelling into a two-family dwelling. RC Zone, Ward 7.**

Voting on this Case:

Jack Currier
Sean Duffy
Kathy Vitale
Gerry Reppucci

Danny Laliberte, 10 Briarwood Drive, Nashua, NH. Mr. Laliberte stated that he owns 34 Harbor Avenue, and operates Andy's Carpentry, which is a residential remodeling business. He said that 38 Harbor Avenue went into foreclosure, and he purchased the property. He said the lot is unique, and the rear is pie-shaped. He said the area consists of a lot of multi-family buildings and two-families. He said a lot of the two-family buildings have less square footage than the subject lot.

Mr. Laliberte said he's owned 34 Harbor Avenue for almost ten years, he said the subject house has never been remodeled, and it really needs to be re-done, inside and outside. He said the 18'x24' addition will be built on the existing footprint, so there will not be an expansion to the footprint.

Mr. Laliberte said he received approval for a very similar request at 78-80 Ash Street, he said that turned out wonderful and it made the neighborhood very happy. He went over the points of law. He stated that the whole house would be re-sided. He said his father owns the next lot over.

Mr. Currier asked if the house has always been a single family home.

Mr. Laliberte said yes.

Mr. Currier said the plan shows a parking area of 18'x40', and asked if it was problematic, if two cars were parked in front of one another. He thought that it may be tight.

Mr. Laliberte stated that the driveway is 18'x40', and understands the concern about people backing out of that area. He said if this creates any issue whatsoever, he said he's willing to apply for a cross-access easement onto 36 Harbor Avenue, and have parking in back of the 38 Harbor Avenue.

Mr. Currier asked who owns 36 Harbor Avenue.

Mr. Laliberte said his father owns it, it's a duplex.

Mr. Duffy asked what the size of the units will be.

Mr. Laliberte said they both will be two-bedroom units, they will either be one unit on the first story and the second unit on the second story, or, the building could be split in two, with each unit having a first and a second floor, there is some flexibility on how it can be arranged.

Mr. Reppucci asked if the Board were to approve this request, what would be the possibility of paving some spaces in the rear of the building, and how many cars could park there.

Mr. Laliberte said he could comfortably park two cars back there.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

Ms. Vitale said if the Board is going to approve it as two unit building, to get at least two parking spaces in the back would be ideal, because each unit will have at least two cars. She said that the applicant does quality work, and will be a benefit.

Mr. Reppucci said the layout does seem dangerous with the driveway where it is, it is extremely close to the corner, plus, if the driveway were to remain there, by Harbor Avenue, and allow two more spaces in the back, the lot may not have enough open space, we don't want the whole thing to be a parking lot. He said it is good that his father owns the lot next door, and he can get the cross-access easement. He stated that it would be good to eliminate the parking in front, and just have it all in the back.

Mr. Currier said it is good that there are no abutter concerns, and the applicant has a good track record in the City of success. He said the parking could be a problem in the front, and at some time, this property could be sold off. He said they are proposing four spaces in the front, it is 18'x40', which meets the ordinance, and it's a functioning driveway, but only

for one family. He said by having two families here, it will get more use and activity. He stated that the easement is important, and this is a busy area with the hospital, and other activity on the street. He said it is a fine, functioning single-family home just the way it is, and even though it would be renovated, perhaps it would be better served as a single family home.

Ms. Vitale said by having it change into a two-family is logical, due to the neighborhood. She said there are many worse examples of two-family buildings in the City, she thought the Board can make it work for the parking, and the easement is a good idea, because it would be written in the deed, and it would run with the land and be recorded.

Mr. Falk said the easement for cross-access is a common occurrence, it happens frequently with commercial properties, so that cars can go from one shopping center to another without going on the public right-of-way.

Mr. Reppucci said he feels that the existing driveway is too small for four cars parking there, and it is abutted by two buildings on either side of it. He said he is in favor of the two family being there, and the property would be greatly improved. He said it would be better for all the parking to go in the back, that way we don't lose any green space if the parking space in the front is removed and grass planted there.

Mr. Falk said the driveway is existing, and he has a right to keep it there.

Mr. Reppucci asked if the Board has the right to make him remove the parking in the front, if the two-family unit is allowed.

Mr. Falk said they have the right to keep it as it is, the Board can make stipulations as long as they are reasonable, like perhaps taking out two spaces in the front and allowing two more in the back.

Ms. Vitale said it would be reasonable to reduce the space in the front for two spaces and to have two spaces in the back, it will balance out for the green space.

MOTION by Mr. Currier to suspend the rules to ask the applicant a question about the parking.

SECONDED (SO MOVED) by Mr. Duffy.

Mr. Currier said that the Board is debating about the parking spaces, he said the testimony was that there could be two spaces in the back.

Mr. Laliberte agreed that it could be hazardous in the existing driveway for cars backing out, he suggested keeping two spaces in the front, side-by-side, and having a cross-access on 36 Harbor Avenue for two other parking spaces in the rear of the property.

Mr. Currier asked if the driveway would be reduced in size by half, or, would it stay the same size.

Mr. Laliberte said they could reduce it to make more green space.

Mr. Reppucci asked how large the lot is for 50 Bowers Street, and how far is the driveway to the corner of Bowers Street and Harbor Avenue.

Mr. Currier said it's right on the line.

Mr. Reppucci asked how far a driveway needs to be, at a minimum, from an intersection.

Mr. Falk said fifty feet, but the driveway is existing and has been in its present configuration for numerous years.

Mr. Laliberte said 50 Bowers is 5,789 square feet.

Mr. Duffy said it is a small, nonconforming lot, and the existing parking doesn't work, and now, it would be going to two units.

Mr. Reppucci said if we are approving this, we would be changing it from a single-family to a two-family, we can require them to meet the codes of today. He said he thought that the driveway is dangerous with four cars parked there, so close to the intersection, but it is solvable, by putting the parking in the back.

Mr. Currier stated that having the four spaces in the back, and eliminating the front driveway, is an improvement to the overall driveway, parking and traffic situation, and would be willing to support that.

MOTION by Mr. Reppucci to grant the variance on behalf of the applicant. Mr. Reppucci stated that the variance is needed to enable the applicants 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. Mr. Reppucci stated that it is within the spirit and intent of the ordinance, there are similar properties in the neighborhood that are multi-family properties. He stated that it will not adversely affect the property values of the surrounding parcels, in fact, the testimony and the track record of the applicant is that the property will be greatly improved, and the value of the properties will no doubt increase. He stated that it is not contrary to the public interest, the previous discussion is that it will be improving the property and the area, and substantial justice would be done with the following special conditions: 1) that the applicant return the driveway that presently has a curb-cut on Harbor Avenue to green space, and receives an easement from the abutting property at 36 Harbor Avenue to allow access to the rear of the property at 38 Harbor Avenue, and the applicant will turn the rear of 38 Harbor Avenue into parking for up to four vehicles. Further, the footprint of the house is to remain the same.

SECONDED by Mr. Currier.

Mr. Currier said he struggled with the extra unit, but the easement for parking in the rear will be a net improvement, and allows the applicant to move forward.

MOTION CARRIED UNANIMOUSLY 4-0.

3. 22 Marshall Street, LLC (Owner) 26 Marshall Street (Sheet 29 Lots 26 & 64) requesting use variance to allow 112 multi-family dwelling units in three buildings (80 units were granted by the ZBA on 3-8-05, an additional 24 units were granted on 8-28-07 - both requests have lapsed). GI Zone, Ward 7.

Voting on this Case:

Jack Currier
Sean Duffy
Kathy Vitale
Gerry Reppucci

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that he objects to proceed without a full Board. He said this property has been approved by the Board previously, in 2005 with 80 units of multi-family, and then in 2007 for an additional 24 units. He said this property was a hazardous waste site, and they had to submit a remedial action plan, as the previous buildings were taken down. He said they have been moving and working with the soils on the property.

Atty. Prunier stated that the building foundations will comply with the dimensional requirements of the ordinance. He said the area has changed over the last few years, with the Fire Station and other commercial properties. He said this plan was approved earlier by not only the Zoning Board, but the Planning Board as well, and wanted to incorporate previous minutes of this case into tonight's meeting.

Mr. Duffy asked why they went from 24 to 32 units in one of the buildings.

Atty. Prunier said it is the same size building, and they took out space that was reserved for meeting rooms, the building has the same size footprint.

Mr. Currier asked about the required parking.

Atty. Prunier said the site meets all the required parking.

Mr. Currier asked if this is targeted for a certain type of population, such as over age 55 or workforce housing.

Atty. Prunier said it's not over 55, it's for middle-class, and would be apartments.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

Further discussion ensued.

MOTION by Mr. Duffy to grant the use variance on behalf of the applicant. Mr. Duffy stated that since the request has lapsed, there have been no substantial or substantive changes in the unique setting of this area or this neighborhood, or the essential character of this neighborhood, there has actually been an improvement of the Fire Department coverage in this neighborhood and area, so a zoning restriction interferes with the landowners reasonable use of the property, which already has been approved three times by two Boards, the additional eight units are coming from a configuration of meeting space as testified, so therefore, it is within the spirit and intent of the ordinance to be a reasonable use of an already approved plan.

Mr. Duffy stated that it should not adversely affect the property values of surrounding parcels, it should not be contrary to the public interest, and substantial justice is served with reasonable development use of the property, which has already been approved for multi-unit housing.

SECONDED by Mr. Reppucci.

MOTION CARRIED UNANIMOUSLY 4-0.

- 4. Creative Years Realty of Nashua, LLC (Owner) 30 Broad Street (Sheet 61 Lot 2) requesting special exception to expand a nonconforming use by constructing an attached 3,225 sq.ft gymnasium to an existing private school. GI Zone, Ward 4.**

Voting on this Case:

Jack Currier
Sean Duffy
Kathy Vitale
Gerry Reppucci

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that he objects to proceeding with less than a full Board, but said he is going forward with the case.

Atty. Prunier said this area is zoned GI, and it used to have an old industrial building on it that was renovated. He said the special exception is to add a 3,300 square foot gymnasium, it will offer year-round recreation and activity to the students, presently they play outside. He said the gym will allow the students to play in cold, or inclement weather, they will not have any more students, or any more demand on city services. He went over the special exception points of law.

Ms. Vitale asked if there will be any after-school hours type of activity.

Atty. Prunier said there might be, but there are after-school drop-offs, it is an existing program, there are no evening shows or anything like that, but there may be a couple times a year, it wouldn't be on a regular basis.

Mr. Currier said this used to be New Hampshire Industrial Suppliers. He asked if Creative Years added onto the back of the building.

Atty. Prunier said they added onto the building when they originally reconfigured it.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Jacques Couteau, 153 Pine Hill Road, Hollis, NH. Mr. Couteau asked where the addition would be located on the property.

Atty. Prunier showed him where the addition would be located.

No rebuttal, concerns or further questions from Mr. Couteau.

MOTION by Mr. Currier to grant the special exception on behalf of the applicant. Mr. Currier stated that the use is listed in the Table of Uses, Section 190-119 (a)(4). He stated that per testimony, there will be no additional children, so there will

not be any undue traffic or pedestrian traffic issues, and there will be no overload to public water, drainage, sewer or other municipal systems. He stated that the special regulations have been fulfilled per testimony, and the Board believes that this addition of 3,300 square-foot, same roof-line on the front of the building will not impair the integrity or be out of character with the neighborhood, or be detrimental to the health, morals of residents, because the building sits way back from Broad Street.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 4-0.

5. **Palm Square, LLC (Owner) 57 Palm Street (Sheet 83 Lot 67) requesting the following two variances: 1) to exceed the maximum number of wall signs, 1 permitted, 2 requested, and 2) to exceed maximum wall sign area, 6 square feet permitted, 83 square feet proposed. RC Zone, Ward 4.**

Voting on this Case:

Jack Currier
Sean Duffy
Kathy Vitale
Gerry Reppucci

Tony Marcotte, on behalf of Palm Square, LLC, 9 Old Derry Road, Hudson, NH. Mr. Marcotte indicated he submitted a drawing showing the location of the signs on the building, one sign will be for the housing residents, and the other will be for the restaurant. Mr. Marcotte went over the area variance points of law. He said the Palm Square sign will not be lit, but the Estabrook Grill sign will have internal fluorescent lighting and will be turned off by 11:00 pm.

Mr. Marcotte said the Estabrook Grill sign is 3'6" x 10' and the Palm Square sign is 4' x 12'.

Mr. Reppucci asked if anyone would have trouble finding Palm Square if the sign is not lit.

Mr. Marcotte said most of the people visiting the building would be coming during the day, the sign is just really to name the building, and he said it doesn't need to be lit.

Mr. Duffy said the project is very unique, and said the signage is in good faith, it is not overdoing it. He asked if they will have any other tenants in the building that may want a larger sign.

Mr. Marcotte said no, no other use that would want a large sign. He said they are looking for a tenant for the basement, but there is limited parking, so he didn't imagine they'd want a big sign.

Mr. Currier said the neighborhood has many other similar sized signs.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Duffy to grant the area variance, both requests taken together, on behalf of the applicant. Mr. Duffy said both the requests are needed to enable the applicants proposed reasonable use of the property, he said the special conditions are that it is a unique, larger building, which has been redeveloped in a split-zoned area that abuts a GI zone, and it has an approved use for a redevelopment and reasonable signage identification, aesthetically proposed here, it is directional in nature and it does keep in spirit with the ordinance, also, the rail trail easement was granted, which does create some hardship unique to the property for a ground sign placement.

Mr. Duffy said the sign is visually minimal to the size of the property and the building, the sign has a lot of negative space, and the applicants testimony of a special condition is that one sign will be un-lit, and the other will be illuminated internally, not later than 11:00 p.m., and it does not have an electronic message system, it is not intensive, and will not adversely impact property values of surrounding parcels, it is not contrary to the public interest, and substantial justice is served for reasonable signage is granted.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 4-0.

OTHER BUSINESS:

REHEARING REQUESTS:

None.

REGIONAL IMPACT:

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

MINUTES:

March 24, 2009:

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

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 4-0.

ADJOURNMENT:

Mr. Currier called the meeting closed at 8:30 p.m.

Robert Shaw (Sean Duffy acting for the evening)
Clerk

CF
Taped Hearing