

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
April 28, 2009

A public hearing of the Zoning Board of Adjustment was held on Tuesday, April 28, 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
Marcia Wilkins, Planner I

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. 60 Main Street Nashua NH, LLC (Owner) 60 Main Street (Sheet 43 Lot 62) requesting variance for maximum wall sign height, 20 feet permitted, 22'-8" requested. D-1/MU Zone, Ward 7.**

Voting on this Case:

Jack Currier
Sean Duffy
Gerry Reppucci

Jack Floyd, Viewpoint Sign & Awning Company, Marlborough, MA.
Mr. Floyd stated that the sign is an identification sign for Jeanne Shaheen at the Telegraph Building. He said the letters will be a couple feet above the 20 foot height limit. He said there is other text this tall on the building, but it is a building identification sign. He said the letters will be consistent with the other letters on the building.

Mr. Floyd said they meet all the criteria and points of law for the area variance. He said he has "before and after" photos,

and showed them to the Board. He said they will not be internally illuminated, either internally or externally, and will be gold-leaf letters.

Mr. Reppucci said the sign would look odd if it were forced to meet the twenty foot height limit, the area where it's going is no problem.

Mr. Currier said it fits into the cement strip where it is proposed.

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 owner. Mr. Currier stated that the applicant has demonstrated a hardship, in that there is an old, existing building that a cement façade, that's approximately twenty-two feet high, and is a reasonable spot to have a rather tastefully designed sign, it's not lighted, either internally or externally, part of the building has signage a little bit higher on an analogous cement façade and around the side, so that unique situation with this building warrants the area variance, and because of that unique situation, he stated that it is within the spirit and intent of the ordinance.

Mr. Currier said there was no testimony one way or another about the impact on property values, but he said the Board finds that it will not adversely affect surrounding property values, and the public benefit is that it will serve the neighborhood or the City to identify the occupant, which is Senator Shaheen, so, substantial justice is served.

SECONDED by Mr. Reppucci.

MOTION CARRIED UNANIMOUSLY 3-0.

2. Mathew Theberge (Owner) 14 West Hobart Street (Sheet 128 Lot 139) requesting special exception for a major home

**occupation for an in-home day care for up to 9 children.
RA Zone, Ward 7.**

Voting on this Case:

Jack Currier
Sean Duffy
Kathy Vitale
Gerry Reppucci

Mathew Theberge, Gabriela Theberge, 14 West Hobart Street, Nashua, NH. Mr. Theberge said they are requesting a major home occupation for an in-home day care, for up to nine children. He said the hours of operation will be Monday thru Friday from 7:30 am to 6:00 pm. He stated that there will be no new construction or additions.

Mr. Theberge said that the daycare will not adversely affect the traffic on the street, as there is not a lot of traffic on the street, and the hours of operation will be staggered so everyone will not come at once. He said it is a family-oriented neighborhood, so there will be some people walking. He said they have a large fenced-in back yard, and outdoor play-time after 9:00 am, plus, the children will be playing in the back and side yard, not the front yard.

Mrs. Theberge said they are a small child-care provider, and it will be a very quiet operation.

Mr. Reppucci asked about the space in the back yard.

Mr. Theberge said the space belongs to a neighbor two houses down. He said there is a stone wall, and behind the wall, is a six-foot high chain-link fence.

Mr. Reppucci asked if they had looked at the City's ordinance for fencing.

Mr. Theberge said they did.

Mr. Reppucci said the fence must be solid, not chain-link.

Mr. Theberge said it is chain-link, and is brand new, just put in last year.

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Mr. Reppucci said that may be an issue, due to the City's code requirements of a solid fence. He asked if the Board were inclined to approve the special exception, it may contain language that would require that the code be met about the fencing, and asked if that would be a problem.

Mr. Theberge said it wouldn't be a problem, if that's the requirement.

Mr. Currier said a two square foot sign is permitted, and asked if they want any more than that.

Mr. Theberge said no.

Mr. Duffy asked if the hours of operation were Monday through Friday, from 7:30 am to 6:00 pm., with no outdoor play before 9:30 am.

Mr. Theberge said that is correct.

Mr. Duffy asked if they have operated a daycare in the past.

Mrs. Theberge said she has worked in a daycare before, for a year.

Mr. Duffy asked if the play area in the back is paved.

Mr. Theberge said it is grassed on the side, and all fenced in.

Mr. Currier said that typically, the fenced in area where the children are is not where people would be driving, and thought that the chain-link fence in the back was the play area and beyond, but actually the back of the property does not go to the dealer, it goes to that fence. He asked if the gates were open, would the children be there and people pulling in/backing up to drive out.

Mr. Theberge stated that the play area itself isn't fenced in separately from the rest of the lot, but there is a turn-around area next to the shed.

Mr. Currier said that all day, the fence would have to be open so that people could drive in and drop off, and if they're open, asked if children would be in the front yard, or in a different area.

Mrs. Theberge stated that there will be scheduled outdoor playing time, and would ensure that the arrival times are well-known, so they'd know when cars are coming in and out, so, the gates will be closed while the children are outside.

Mr. Duffy said the ordinance is pretty clear in that the play area needs to be fenced in, and no play in the front yard.

Mr. Theberge said the plan is to keep the gates closed when the children are out playing.

Mr. Reppucci said it is his take that the play area should be completely fenced, separate from the driveway.

Mr. Currier said the outdoor play area shall not be located in the front yard, and shall be enclosed with a solid fence made of wood or other suitable material not less than six feet in height, and shall be erected and maintained in good condition around the outdoor activity area. He said it didn't seem to him that what is in front of us isn't a reason for denial, it's just that they would be asking for something different if they were asking the Board to waive that.

Mr. Theberge said if they needed to reconfigure the gate or fenced in area, then they would do so.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Mr. Maurice Cote, 10 West Hobart Street, Nashua, NH. Mr. Cote said they are concerned about the proposed use because it is a residential zone, and are concerned about the precedence this may start. He said they are concerned about the increase in traffic that a small business could bring. He said their biggest concern is with the Theberge's dog, which, to his understanding, will not be present when the children are at the daycare. He said with the temperament of this dog, they are asking the Board to protect their neighborhood, or the door will be opened. He said the applicant's dog caused the death of their dog.

Mr. Currier asked if there were any previous daycare requests on this street.

Mr. Cote said no, there has never been a commercial enterprise on the street.

Mr. Currier said any case considered by the Board is reviewed on a case-by-case basis.

Mr. Paul Cote. Mr. Cote said he is the son of Maurice Cote. He stated that his father has been trying to preserve the character of the neighborhood for over 45 years, and that is his instinct, to preserve this neighborhood and stop commercial development. He said that he also wants to make sure the children are safe.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Currier asked if there is a vicious dog.

Mr. Reppucci read from a letter, about the psychological condition of the dog.

Mr. Theberge said they wrote a letter, and sent it to all the neighbors. He said they are controlling the situation by taking the dog to a veterinarian, who said the dog is not aggressive to people, and never has had any incidents with people, and they don't plan on having the dog there during the daycare operation.

Mrs. Theberge has a letter from the boarding kennel, in Amherst, and the dog will be there Monday through Friday, she will be gone before the kids get there on Monday, and the dog will come home on Friday night, so the dog will not even be there.

Mr. Currier read a letter from Village Sentry Pet Care, stating that the dog will be boarded there from Monday morning till Friday night.

Mrs. Theberge said the dog will be gone, and didn't think the concerns about it apply.

Ms. Vitale said for the childcare, the fence is just as much protection for the children that are being seen as it is to protect them from something on the other side of the fence. She said that any children in the fenced-in area are going to be protected.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Maurice Cote, 10 West Hobart Street. Mr. Cote stated that you never know what an animal is going to do, look what happened in Las Vegas with the white Bengal tiger that mauled the entertainer.

Mr. Reppucci said he refers to the language on Page 10 of the NH OEP Manual, it is very succinct. He stated that it says that if the conditions for a special exception are not met, the Board cannot allow it, however, if the conditions are met, the Board must grant the special exception. He said he wanted to see all of the City's requirements met. He said this application meets the conditions, it is an allowed special exception. The issue about the dog has been testified that it is taken care of.

Mr. Currier said as long as they meet the criteria, and change their design from what is in front of us, it will be met.

Mr. Reppucci said that will be significant, because it will require them to install a six-foot high solid fence around the entire back of the property, actually, the play area.

Mr. Currier said the play area won't be the asphalt area where cars come in and turn around. He said they will have to re-design somewhat.

Ms. Vitale said she wouldn't approve it unless it has a separate fenced in play area, she said she didn't like it if cars can pull into the area where the children are outside playing. She said she wanted to see a separate fenced in play area. She said by requiring a fence for childcare, you are doing it to provide safety to the children.

Mr. Duffy said the lack of a fence has been identified as a potential risk by an abutter, and the applicant has testified to comply with installing a six-foot high solid fence. He said the applicant has also agreed to have the dog off the property for the entire time that the daycare is in operation.

MOTION by Mr. Duffy to grant the special exception on behalf of the applicant. He stated that the applicants have asked for a reasonable request, it is listed in the Table of Uses, Section 190-36. Mr. Duffy said there should not be any significant changes to the foundation or the roofline of the building, there

should be no direct effect on the essential character of the neighborhood, this is a dead-end area street, with very little through traffic, therefore, it should not impair the integrity of the neighborhood or the character of the zoning district or the immediate neighborhood, in fact, this is a well-established neighborhood.

Mr. Duffy said the hours of operation will be, as stated by the applicant, Monday through Friday, from 7:30 am to 6:00 pm with no outdoor play any earlier than 9:30 am. Mr. Duffy stated that they will have no employees, and they will comply with the special exception criteria, including signage of only two square feet, and they will have no other employees other than themselves.

Mr. Duffy said the two stipulations are that the play area identified by the applicant, before issuance of the building permit, be identified to meet the Code criteria, and, per testimony of the applicant, and the abutters request, an identified animal will be stored and kept offsite during hours of operation.

SECONDED by Ms. Vitale.

Mr. Reppucci said with reference to employees, the applicant's testimony is that she is going to have up to nine children there with no help. He said he didn't think that was realistic, and asked why the Board would want to restrict, or have in the motion, no employees, he said he didn't see the benefit of that.

Mr. Currier said that it was provided as testimony. He said that when you add non-resident employees, it makes the use blossom, it will be someone else driving to and from the site. He said they testified that it is a low-key business, just starting out, and they're looking to get the use rolling. He thought it was a willing concession by the applicant. He said per our training, any time we feel that a stipulation is reasonable, or needed, it is the Boards duty and right to stipulate those, if it will meet the spirit and intent of the ordinance.

Mr. Reppucci said by having no employees, the Board would be further restricting the language in the ordinance, which states that they can have one employee.

Mr. Currier said that the make-up of the yard and property is challenged for daycare. He said he was uncomfortable with the design, but it doesn't restrict them from coming back to the Board in the future if they want an employee.

MOTION CARRIED 3-1 (Mr. Reppucci).

3. Geoffrey Lynch & Tara Beth Sivik (Owners) 496 Main Dunstable Road (Sheet C Lot 1999) requesting use variance to amend a February 2000 Zoning Board of Adjustment stipulation to allow for outdoor storage of landscaping vehicles next to the barn. R40 Zone, Ward 5.

Voting on this Case:

Jack Currier
Sean Duffy
Kathy Vitale
Gerry Reppucci

Attorney Gerald Prunier, Prunier & Prolman, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that he objects going forward with less than a full Board, but is proceeding with the case. He said this property is located in the southeasterly corner of Nashua, and described its location and history. He said the property is higher in the front, and when you drive by, you cannot see the back of the property.

Atty. Prunier said they are here due to a successful business. He said that Mr. Lynch does landscape work, and has gained some large clients, such as Walmart, and needs some large equipment to do these jobs. He said that a lot of his large equipment stays on the sites, which go all the way into Maine. He said that sometimes large equipment is in transition, and it's located on his property for just a short period of time, and then it's moved to the specific job locations and stays there. He said that most of his employees go right to the job sites.

Atty. Prunier said there is about 12 acres in back of his property that the City owns, in which he maintains and cleans. He said that all of his equipment is way in the back, and you can't see it. He read a letter of support into the record from Mr. Gould. He said in the spring and fall there is more equipment stored out back, temporarily, and then it's moved to

the job sites. He said at the most, there are ten pick-up trucks out back, but they're gone all day at the sites.

Mr. Reppucci asked if the 12 acre piece of property in the back will ever be developed.

Atty. Prunier stated that it is only to be used for open space, nothing else, there are wet and conservation areas.

Mr. Duffy asked what the hours of operation are.

Atty. Prunier said 7:00 am to 7:00 pm Monday through Saturday, not on Sundays.

Mr. Duffy asked if there should be an area that restricts where the equipment can go.

Atty. Prunier said yes, it should be on the rear of the property next to the barn, if it's there, no one can see it.

Mr. Duffy asked if there's an approximate square footage for the storage.

Atty. Prunier said he hatch-marked the back corner of the piece of property, and will submit it for the record.

Ms. Wilkins stated that if this request is approved, the applicant will need to submit an amended site plan.

Atty. Prunier said that it will be taken care of.

Mr. Currier said from looking to the site, from the Captain's Corner, is that you can see equipment there. He asked if people would see equipment in the viewscape from this location.

Atty. Prunier said if you see anything, Mr. Lynch would be glad to fence it, or plant trees, to block that viewscape into the back yard. He said it is landscape equipment, not construction equipment.

Mr. Currier asked about employee parking, and if it's valid today.

Atty. Prunier said the employees that he has are superintendants, and the other ones go directly to the jobsite.

He said they can have up to ten pickup trucks, the guys come in to pick up their orders for the day, and take off, they are gone by 7:00 am.

Mr. Currier said that would mean that there are ten employees coming there and parking there to start the business day.

Atty. Prunier said they're not going there on a daily basis. He stated that if you want a stipulation of no more than ten, we can put in a stipulation.

Ms. Vitale said by having an employee come and park there is a reasonable request, if the Board is going to approve them to have the vehicles park there, at some point an employee is going to come in their own car and leave in a truck to go to the jobsite, so it goes hand-in-hand.

Atty. Prunier said all the vehicles will be down in the corner.

Mr. Currier said the stipulation of no employee parking, that implies, and states emphatically, that there are no employees coming to the site, it's not supposed to be a place of business where employees drive in and out.

Atty. Prunier said they're willing to limit it to no more than ten, and in the same area.

Mr. Currier said we're getting into a different application, it's going from no employee parking to employee parking for ten.

Mr. Reppucci said the applicant is asking to store vehicles and use the outside of his barn, and the area is delineated to leave vehicles. He said if we're going to allow them to park vehicles, it is micro-managing to say what type and when.

Mr. Duffy said the original stipulation to grant the request indicate that there was to be no outdoor storage of materials or equipment. He didn't remember it being a major issue about the employee parking.

Atty. Prunier said it is not very active at the site, and that's why there are no abutters here, it's not active, some days there's only five cars there.

Mr. Currier said he has no problem with Mr. Lynch's business, the only issue he said he has is if the property changes hands, would this be an active business that is out of control.

Atty. Prunier said they'd restrict it to no more than ten automobiles on site, no more.

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 owner. Mr. Duffy stated that it allows the applicant's proposed use of the property being a reasonable use, that is a continued growth of an existing use, non-conforming in nature, but was granted by variance, so, therefore, is grandfathered. Mr. Duffy said the applicant has other alternatives to expand the business, but those changes might be more nonconforming or obtrusive, like large structures that might house a garage for landscaping equipment, so, this is a low impact nonconforming use, with temporary or transitional storage of equipment. This is transitional storage, and the topo of the property also allows this to be sitting below the visibility areas.

Mr. Duffy said the spirit and intent is that the applicant has reasonable use of the continued growth of a nonconforming business use, the affect on property values, even though there was no expert testimony, the property will retain and keep the value that they've had at this point. Mr. Duffy stated that substantial justice is served that reasonable development rights might be granted.

Mr. Duffy stated that the stipulations are that the wooded buffer area for a positive viewscape buffer solution be included and completed in 2009. He said that the second stipulation is that the cross-hatched area on the plan that was provided by the applicants attorney as where any storage of transitional storage of the vehicles or trucks or employee parking be housed in that back section.

SECONDED by Mr. Reppucci.

MOTION CARRIED 3-1 (Mr. Currier).

OTHER BUSINESS:

REHEARING REQUESTS:

None.

REGIONAL IMPACT:

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

MINUTES:

April 14, 2009:

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

SECONDED by Mr. Currier.

Mr. Duffy suggested that the procedural announcements are part of the official record, and should be on the website.

MOTION CARRIED UNANIMOUSLY 4-0.

ADJOURNMENT:

Mr. Currier called the meeting closed at 8:36 p.m.

Robert Shaw (Sean Duffy acting for the evening)
Clerk

CF
Taped Hearing