

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
May 12, 2009

A public hearing of the Zoning Board of Adjustment was held on Tuesday, May 12, 2009 at 6:30 PM in the Auditorium at City Hall.

Jack Currier, Chair, conducted the meeting.

Members present were:

Jack Currier, Chair
Bob Carlson
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 & Catherine K. Fisher (Owners) 101 Shore Drive (Sheet E Lot 530) requesting special exception to work within the 75-foot prime wetland buffer of the Nashua River to install a 12'x20' shed on an existing concrete pad. R9 Zone, Ward 5.**

Voting on this Case:

Jack Currier
Bob Carlson
Kathy Vitale
Gerry Reppucci

John Fisher, 101 Shore Drive, Nashua, NH. Mr. Fisher stated that they want to place a prefabricated shed on an existing concrete pad, which has been there for over thirty years. He said there will be no disturbance of the soil, and no impact on the wetlands buffer area. He said there is no electrical or water going to the shed, it is just a storage shed sitting on a concrete pad.

Mr. Currier asked what was on the pad previously.

Mr. Fisher said nothing, it was a patio next to the garage, and there was no permit for it.

Mr. Currier said the patio was put in before the wetland ordinance was enacted.

Ms. Vitale asked what will be stored in the shed.

Mr. Fisher said it will primarily be used for storage of wood pellets for a pellet stove.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Reppucci to grant the variance on behalf of the owner. Mr. Reppucci stated that the request is listed in the Table of Uses, the only issue here is that it is in the wetland buffer, it will not create any undue traffic congestion or unduly impair pedestrian safety, it will not affect public water, sewer, drainage or any other municipal system.

Mr. Reppucci said the special regulations are fulfilled, they applied for and received permission from the Conservation Commission, and it will not impair the integrity or be out of character with the neighborhood, and the Board heard no testimony opposing the application.

SECONDED by Mr. Carlson.

Mr. Currier asked if the three stipulations of approval from the Conservation Commission would be met by the applicant, from their April 10, 2009 letter.

Mr. Reppucci said to add it into the motion.

Mr. Currier read the three stipulations into the record.

MOTION CARRIED UNANIMOUSLY 4-0.

2. **Neil P. & Mary B. Parmenter (Owners) 7 Aldgate Drive (Sheet B Lot 1250) requesting variance to encroach 6 feet into the 30 foot required rear yard setback to construct a home addition of which 11'x28' will encroach. R9 Zone, Ward 9.**

Voting on this Case:

Jack Currier
Bob Carlson
Kathy Vitale
Gerry Reppucci

Neil Parmenter, 7 Aldgate Drive, Nashua, NH. Mr. Parmenter stated that he is requesting a variance to encroach six feet into the 30 foot rear yard setback to construct a home addition. He said the garage will fall within the setback area, and it will also allow for access into the home from the garage during inclement weather. He said the property behind their house has a very steep slope, and they look right at the house in back's basement. He said he spoke to all the abutters, and none had a problem.

Mr. Parmenter said one of the benefits is that items can be stored in the garage instead of outside, which will make the property more attractive, and not interfere with any of the abutters. He said it will help with property values, as snow blowers and a number of other items will be stored inside, and nothing will interfere with the abutters in any fashion.

Mr. Currier stated that the application is very thorough, and speaks to the points of law.

Mr. Parmenter said for the hardship, it will be great to have lawn and garden equipment out of the yard and into the garage. He said for the spirit and intent, the abutting property is very steep and unusable, so it will not interfere with them.

Ms. Vitale asked if the drainage will be impacted coming off the slope into the back of the property.

Mr. Parmenter stated that the drainage is not good, and it hasn't been since they've lived there. He said that part of the quote was to grade the property so that the water will run off to the sides, instead of the basement.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Carrier to grant the variance on behalf of the applicant. He stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, it has a very steep slope on the back and side, and the back yards are unusable, so this encroachment into the rear yard setback provides no impact to the abutters on either side, and that is evident by the lack of testimony or opposition to this, and that gives credibility to the fact that those back yards aren't used, and this is a good use of the land, therefore, the request is within the spirit and intent of the ordinance, and will not adversely affect property values, actually, it may increase property values, as equipment and lawn tools can be stored indoors, therefore, the variance is not contrary to the public interest and substantial justice is served.

SECONDED by Mr. Reppucci.

MOTION CARRIED UNANIMOUSLY 4-0.

3. **Riverside Properties of Nashua, Inc. (Owner) 5 Pine Street Extension (Sheet 77 Lot 10) requesting special exception to work within the 75-foot prime wetland buffer to maintain an existing 14'x23'-6" deck. GI/MU Zone, Ward 4.**

Voting on this Case:

Jack Carrier
Bob Carlson
Kathy Vitale
Gerry Reppucci

The applicant was not present to discuss the application and the Board moved it to the end of the agenda.

4. **Noel B. & Rita Simoneau Rev. Trust (Owners) 312 Lake Street (Sheet 104 Lot 34) requesting the following: 1) special exception to convert a single-family dwelling into a two-family dwelling unit; and 2) variance for minimum lot area, 14,520 sq.ft required, 14,184 sq.ft existing. RA/RB Zones, Ward 6.**

Voting on this Case:

Jack Currier
Bob Carlson
Kathy Vitale
Gerry Reppucci

Susan Sanborn, Trustee for the Noel & Rita Simoneau Rev. Trust.
Ms. Sanborn said at least twenty years ago, an apartment was made on the second floor of her mothers and fathers cape, and it's been a two-family for all of this time, and now are trying to sell the house as part of the estate. She said the borderline for the single-family and two-family zoning districts runs partway down the driveway, and one whole length of the driveway of the two-family home.

Ms. Sanborn said that by making this an official two-family is going to change much for the abutters. She said in the variance, they are short a couple hundred square feet of land. She said her brother subdivided the lot.

Mr. Currier asked if there is an easement going to the back for the driveway.

Ms. Sanborn said there is, it is just for 308 and 312 Lake Street.

Mr. Currier asked Ms. Sanborn if she owns 308 Lake Street.

Ms. Sanborn said her brother owns it.

Mr. Reppucci asked when the property went into a revocable trust.

Ms. Sanborn said in 1995 it was created.

Mr. Reppucci asked if when the property was transferred into the trust, if it was identified as a single-family or a two-family.

Ms. Sanborn said she didn't know.

Mr. Reppucci asked who paid the taxes on the property.

Ms. Sanborn said her parents did, they had full benefit of all the assets in the trust, and paid all the bills.

Mr. Reppucci said in looking at the property assessment, it is clearly a single-family.

Ms. Sanborn said she can't speak for what was done in the past.

Mr. Carlson asked who lives in the house now.

Ms. Sanborn said it is empty, her Mother was living there, someone else lived upstairs.

Mr. Carlson said it looks like it was being used as a two-family unit, but they paid taxes on a one-family.

Ms. Sanborn said the assessment card said there are two kitchens.

Mr. Currier asked to clarify the zoning district boundary line.

Mr. Falk confirmed the zoning boundary line on the plan.

Mr. Currier asked if there have been any problems with noise over the years.

Ms. Sanborn said she wasn't aware of any.

Ms. Vitale asked how many parking spaces exist.

Ms. Sanborn said there is a two-stall garage, and three other spots.

SPEAKING IN FAVOR:

Yve Hines, ReMax Properties, 169 Daniel Webster Highway, Nashua, NH. Ms. Hines said the property has been vacant since last October. She said the house is a cape-style house, the upstairs has a living/dining room, one bedroom with a small kitchen bath combo. She said it has its own circuit breaker box, and meets

egress standards. She said the property card indicates that it has two kitchens, two baths and defines it as conversion property. She showed floorplans and photographs of the property.

Mr. Carlson asked if the property has already been sold.

Ms. Hines said it is under agreement, but not sold, or closed yet, it is subject to this request.

Mr. Carlson asked if Ms. Hines knew if the property is taxed as a single family or a two-family.

Ms. Hines said she has no idea how the assessors tax the property.

Mr. Currier read a letter of support from 4 Kingston Drive.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

Mr. Carlson said the property owner wants to sell the property, and it is their right to do so, and get the official conversion to a two-family home, which apparently was never done when the house was functioning as a two-family home, and most people were paying taxes on a two-family home, and paying the City for a two-family home. He said the property seems to be well-maintained, and neat, and the change in square footage is not substantial. He said he wished the house had been listed as a two-family all along.

Mr. Reppucci said there's two different kinds of mistakes. He said there's the kind of mistake that somebody makes inadvertently, as if the person in violation doesn't know it, or is it a cognitive act. He said in the development of these three lots, he said he can't believe it's an oversight. He said the owner should have known it was being taxed as a single-family home for the past numerous years, so, the City has not received the tax revenue all this time, and the only way this has come to us is because of the sale of the property.

Mr. Carlson said what troubled him is that the realtor used the words "two-family", but when challenged, produced the card that said one-family.

Ms. Vitale said she agreed with what has already been said. She said she is not in favor of flag lots, and understands that this was separated years ago. She looks at it as three single-family units, one which has an upstairs rented out. She said she is not in favor of approving two-family units on flag lots. She said it is a small space upstairs, it only has one bedroom. She said it doesn't do the neighborhood justice.

Mr. Currier stated that initially, he was somewhat in favor of it, as it is nicely maintained. He stated that this property has cost the City a lot over the years to support another family, but not get any revenue for it.

MOTION by Mr. Currier to re-open the Public Hearing to ask for additional testimony from the realtor.

MOTION CARRIED 3-1 (Mr. Reppucci).

Yve Hines, ReMax Properties, 169 Daniel Webster Highway, Nashua, NH. Ms. Hines said we wouldn't be here to petition for a two-family if we were not aware that it was categorized as a single-family. She said for the tax issue, single-family vs. two-family, the approach from the assessors is to value that they attribute to single-family to a two-family, she said it is no question that it is listed as a single-family, or else we wouldn't be here to petition for a two-family, as it has been used for over twenty years, also, she said that the fees to come here for this request are \$530, so this was not taken lightly.

Mr. Reppucci asked how the property was listed.

Ms. Hines listed it as both a single-family and a two-family, because of the two kitchens. She said it is in two categories in the MLS, for both single and two-family. It was listed in October or November.

Ms. Hines said that twenty or twenty-five years ago, when we would run into a something like this, we would go to the assessors office, and everything of the documentation of the property would be re-categorized. She said it's not done that way anymore.

Mr. Currier asked if the assessor would change it from a one to a two family.

Ms. Hines said many years ago, a lot of this was going on, and they did. She said today it's not that common.

Ms. Vitale asked if the sale is contingent on it being a two-family.

Ms. Hines said she believes so.

Ms. Vitale asked if anyone has looked at it as a single-family house.

Ms. Hines said it is on the MLS, and she's not the only agent who could show the house.

Mr. Reppucci said it could be used just fine as a single-family home.

Mr. Reppucci asked how hardship applies to this case. He said his sense is that he sees no hardship in this property, he said that the property owners benefitted for many years by having the property taxed as a single unit rate, and sees no hardship to sell it for what it is, which is a single-family house, and sees no hardship to have it converted to a two-family.

Mr. Currier asked Mr. Reppucci if the split-zoned property is not a hardship, as it's essentially still a single-family home.

MOTION by Mr. Currier to deny the area variance on behalf of the applicant. Mr. Currier stated that while the variance is needed to enable the applicant's proposed use of the property, the Board does not find a hardship in the property in that the single-family home can serve fine, and it probably was originally designed as a single-family home, but would be an adequate single-family home, and there's no hardship, although the applicant has testified that it is a split-zone through the center of the land, and it has been used as a double-family home for twenty years, there's no hardship as thus, and over all these years, the City has not received any tax benefit of it, they are coming to the Board after the fact, there's no hardship to warrant that, therefore, it is not within the spirit and intent of the ordinance.

SECONDED by Mr. Carlson.

MOTION CARRIED UNANIMOUSLY 4-0.

Mr. Currier said the request requires the criteria to be met for both of the applications.

Ms. Vitale said she sees no hardship to convert the single-family into a two-family dwelling in this case. She said it's a flag-lot, and these types of lots, in and of themselves, depending on the area, are more congested. She said she didn't hear any testimony to make her vote in any other way. She said the testimony that the building was used for a two-family for twenty years had no impact on her decision.

Mr. Currier said he believes the special exception request generally meets the criteria, in the past, if the Board doesn't find support for one criteria, it just nixes the others.

Mr. Falk said if the area variance is denied, it makes the special exception a moot point, because they were denied the amount of land they need for two units, therefore, they cannot have the two units just because of that.

MOTION by Mr. Currier to make a motion on behalf of the owner to deny the special exception request because the variance request is needed for this special exception, which was denied by this Board for a finding of lack of hardship, therefore, the motion is to deny the special exception.

SECONDED by Mr. Reppucci.

MOTION CARRIED UNANIMOUSLY 4-0.

5. **WCG Realty, LLC (Owner) Gurney's Automotive Repair (Applicant) 83 Broad Street (Sheet 133 Lot 34) requesting the following variances: 1) to exceed maximum ground sign area, 10 sq.ft allowed, 51 sq.ft granted by ZBA on 3-27-01, an additional 12 sq.ft proposed, and; 2) to allow an electronic changing message sign. RA Zone, Ward 4.**

Voting on this Case:

Jack Currier
Bob Carlson
Kathy Vitale
Gerry Reppucci

Attorney Gerald Prunier, Prunier and Prolman, P.A., 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that he objects going forward without a full Board. Atty. Prunier identified Gurney's Automotive on Broad Street, located across from Nashua Outdoor Power Equipment. He said that Broad Street has changed greatly over the years, and it's changed to business, and identified some of the area businesses.

Atty. Prunier said that Gurney's already has a sign up, he wants to install an electronic message center on it. He said the total sign area is going to be about 12 square feet over what was approved. He said the total sign will be about 70 square feet. He identified other EMC's in the immediate area. He said the hardship in the area is that it has changed to retail commercial and will continue in that way, especially with the Broad Street Parkway coming in. He said the sign will not interfere with anyone's property values, the ground sign already exists.

Ms. Vitale said she goes by this site frequently, and complimented the existing sign. She said she didn't see any hardship that would require a change to this type of sign. She said it's in a visible location, and the sign is readable as it is, it is a great sign, but doesn't see the hardship.

Atty. Prunier stated that the HB zone is one block up, and if we were located there, we wouldn't be here for this request. He said the HB zone allows a 150 square foot ground sign, and the proposed sign is less than half that size. He wants to identify to the general public the services that are provided.

Mr. Carlson asked if there will be any motion pictures on the sign.

Atty. Prunier said no, only verbiage.

Mr. Carlson asked if they would be amenable to a stipulation that there will be no motion pictures.

Atty. Prunier said yes.

Mr. Falk said these types of signs are only allowed to have three lines of text.

Mr. Reppucci asked to confirm the total increase in size, if it is 12 additional square feet.

Atty. Prunier said yes. He showed a picture of the existing sign and the proposed, it is a whole new sign.

Mr. Reppucci asked how many square feet over what is allowed is the sign.

Atty. Prunier said they already have a variance for the sign.

Mr. Falk said that 10 square feet is allowed in the RA zone, it is a residential zone. He said that in 2001 a variance was granted for a 51 square foot ground sign, the existing sign. The new sign would be 63 square feet.

Mr. Reppucci asked if they were to design a sign to stay within the 51 square feet, would they be required to come to the Board.

Mr. Falk said yes, because they are requesting an EMC, and those types of signs are not allowed in the RA Zone.

Mr. Currier said that EMC's are very challenging, and most of the existing ones around the City are in violation. He mentioned the Court case in Concord where the Court determined that it wasn't a Constitutional right to have an EMC for car dealers. He stated that Gurney's is a great asset to the community, but said he is struggling with the enforcement issue.

Discussion ensued about other EMC's in the City.

Mr. Reppucci said it isn't fair to predict if an applicant will violate the rules, because a series of previously approved applicants do. He said it seems unfair to the present applicant. He said we shouldn't make an assumption that they will violate the rules. He said that the statutes are very explicit about the Boards enforcement ability, which is zero. He said that is strictly up to Code Enforcement.

Bill Gurney, Gurney's Auto, 83 Broad Street, Nashua, NH. Mr. Gurney stated that he heard, and understands the Boards concerns about the electronic changing signs, and the timing of the message, and the pictures. He said that they have demonstrated with their property that when they were given approval by the ZBA to build it, they have taken the maintenance and look of the

property very seriously. He said the reason for the EMC is that mostly, there are sayings on the sign, public announcements, the problem is that with the economic conditions, when we want to run something for ourselves, such as an air-conditioning special, it becomes a problem, and would like to have four or five different messages going on at the same time rotating through the sign.

Further discussion ensued about the characteristics of EMC's.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

Mr. Reppucci understands that any business owner would like to change their message on a regular basis, it is very understandable, and thinks that this technology is not going away, perhaps the Aldermen may need to revise the rules on them, but it would be nice to enforce the rules we have, that would solve a lot of the issues about these types of signs. He said he didn't have any reason to believe that Mr. Gurney would not follow the ordinance. He said the sign is up to date, it is new. He said he's not concerned about the extra twelve square feet over what has been approved.

Mr. Currier said that history shows that Gurney's is a good local business, but is not supportive of the electronic changing message center.

MOTION by Mr. Reppucci to grant the variances on behalf of the owner, both of the cases taken together. 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 said the sign is twelve square feet larger than the present sign, and by discussion on the Board, no one felt that was excessive, there was no testimony opposed to it.

Mr. Reppucci said that it is within the spirit and intent of the ordinance, we have had no testimony that it isn't, although certainly we had discussion on the Board, where members on the Board felt uncomfortable with that.

Mr. Reppucci said it will not adversely affect the property values of surrounding parcels, there are similar signs on similar properties in the area, and there was no testimony that property values will be adversely affected. He stated that it is not contrary to the public interest, the applicant testified he hopes to use the sign for the public interest, and his previous track record indicates that is exactly what he will do with it, and by approving this application, substantial justice will be done.

SECONDED by Mr. Carlson.

MOTION CARRIED 3-1 (Mr. Currier).

3. Riverside Properties of Nashua, Inc. (Owner) 5 Pine Street Extension (Sheet 77 Lot 10) requesting special exception to work within the 75-foot prime wetland buffer to maintain an existing 14'x23'-6" deck. GI/MU Zone, Ward 4.

Voting on this Case:

Jack Currier
Bob Carlson
Kathy Vitale
Gerry Reppucci

The applicant was not present to discuss the application.

MOTION by Mr. Currier to deny the request for the Special Exception. He stated that the Board does not have a DES permit, we do have approval by the Conservation Commission, but no DES permit this time. He stated that he has some questions on it.

Mr. Currier said in the past when this has occurred, there have been some circumstances when someone does not make the meeting, and the Board has granted a rehearing.

Mr. Reppucci said they can apply for a rehearing, and explain the circumstances.

SECONDED by Mr. Carlson.

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:

None.

Mr. Reppucci asked if the Board has the option of tabling the rehearing request until the following meeting, so we don't have to have a meeting for just one rehearing request.

Mr. Currier asked if it would be over 30 days to the applicant.

Mr. Falk said that the Board must take some action within 30 days.

Mr. Currier said we have 30 days to act on the rehearing, so it can go on June 9th, we would be acting within the 30 days.

Mr. Reppucci said that Mr. Duffy cannot make it to the next couple meetings, so there could be just three of us here for the rehearing request.

MOTION by Mr. Currier to hear the rehearing request, and cancel the rehearing request, as there's only one agenda item. He said if it is heard on the June 9, 2009 meeting, it is still within the 30 day window, and therefore, the motion is to cancel the May 26, 2009 meeting, and hear this rehearing case on the June 9th meeting.

SECONDED by Mr. Reppucci.

MOTION CARRIED UNANIMOUSLY 4-0.

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

May 12, 2009

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ADJOURNMENT:

Mr. Currier called the meeting closed at 8:38 p.m.

Robert Shaw (Sean Duffy acting for the evening)
Clerk

CF

Taped Hearing