

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
June 9, 2009

A public hearing of the Zoning Board of Adjustment was held on Tuesday, June 9, 2009 at 6:30 PM in the Auditorium at City Hall.

Jack Currier, Chair, conducted the meeting.

Members present were:

Jack Currier, Chair
Kathy Vitale
Rob Shaw
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. Rosalyn O. Citino (Owner) 8 Woodland Drive (Sheet 53A Lot 21) requesting variance to exceed maximum driveway width, 24 feet allowed, 34' - 9" proposed - to repave an existing asphalt/concrete area. R9 Zone, Ward 1.**

Voting on this Case:

Jack Currier
Kathy Vitale
Rob Shaw
Gerry Reppucci

Rosalyn Citino, 8 Woodland Drive, Nashua, NH. Ms. Citino stated that she purchased her home seven years ago, and it had a concrete/gravel driveway that was about 34 feet wide, and has been using the driveway, unfortunately, it has been breaking down to the point where using a snowblower or a shovel causes pieces to fly into the air, also, large ruts form with ice, making it very dangerous to walk on. She said she would like to asphalt over the driveway, which would be 34'-9" wide. She said by putting asphalt over it, it would make it safer. She said

the home would have better access and safety, and it would look better.

Mr. Shaw asked if Ms. Citino has considered removing some of the gravel, and reducing the width of the driveway.

Ms. Citino said they did take that under consideration, if five feet were to be taken off one side, and five feet off the other side, or ten feet on one side, the access to the front door will not be able to be plowed correctly, or the access to the carport would not be able to be plowed correctly. She said because of the ruts, they can plow, but it is messy.

Mr. Currier stated that he didn't understand why a 24 foot wide driveway couldn't be accommodated, and a walkway could go to the front door.

Ms. Citino said the walkway is attached to the driveway, if there was lawn there, people would have to walk across the lawn to get to the walkway and the front door. She said it's almost impossible to grow a lawn there; it would be a muddy patched-up lawn, instead of a nice asphalt driveway.

Ms. Vitale asked if she compared the cost variation between a 24-foot wide driveway and finishing the remainder and re-grassing it, which would include bringing in loam and seeding.

Ms. Citino said by doing it that way, it would be a bad substitute instead of the proposed driveway.

Ms. Vitale asked if she has looked around the neighborhood, to see other similar driveways this wide.

Ms. Citino said there are numerous ones in the neighborhood, and there is one right around the corner. She said the driveway has been this wide for as long as she's been there, and has always tried to keep up her home, and maintain a good aesthetic balance with safety.

SPEAKING IN FAVOR:

Dave Alcaide, 7 Chatfield Drive, Nashua, NH. Mr. Alcaide said the existing left hand side of the driveway is already concrete and broken.

Mr. Currier asked if the pavement would just go over the broken concrete.

Mr. Alcaide stated that the concrete would be removed, and asphalt over the whole thing.

Elaine Dorgan, 1 Birch Hill Drive, Nashua, NH. Ms. Dorgan stated that she lives right next door, and supports the request. She said that in the winter, it is difficult to get into Ms. Citino's house due to the ice. She asked why there is a restriction on the driveway width.

Mr. Falk said it is a requirement in the ordinance to only allow a maximum of a 24-foot wide driveway per premise. He said it has been in effect for a long time, and many citizens have received variances for this type of request.

Mr. Currier said with wider driveways, people move out, and a new family moves in and the City is left with a wider driveway, which changes the character of the neighborhood. He said that if every driveway had an extra ten feet of width, would not be a trivial thing, and there would have to be compelling evidence to do so.

Claude Raymond, 9 Woodland Drive, Nashua, NH. Mr. Raymond said he is in support of the request.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Currier to waive the rules to allow Ms. Citino to come back for additional testimony.

Ms. Citino said the reason why she can't have a piece of lawn where the concrete is, is that she wouldn't get to the mailbox, which would be difficult in the winter time.

Mr. Currier said one option would be to move the mailbox over ten feet, and that would solve the access to it.

Mr. Shaw said there could be a paved walkway to the mailbox.

Ms. Citino said she was told that couldn't be done because it's the width of that whole area that was in question, and the walk would constitute part of the driveway.

Mr. Falk said there could be many different design options, staff would have to review plans to ascertain if it would meet the ordinance.

Mr. Reppucci said there are no curbs here, it is all paved. He stated that it is probably do-able to put a walkway there, it has been like this for many years, the neighborhood is accustomed to the size of parking area in front of the house, and the people most affected by it are the abutters, and there are three here tonight in favor. He said that he understands that elderly applicants do have a hard time getting around at times, and the request is appropriate in this case.

Ms. Vitale said the thing that she thinks of most, is that they are replacing what is gravel, without the runoff of a paved driveway, with one that is more paving with 34 feet wide of paving will occur. She said she didn't see the need to have a driveway this wide in this situation, but understands why the applicant wants it this wide, as it has been used that way, but it may be done somewhat differently, with a more comprehensive landscaping plan that incorporates the yard and everything else.

Mr. Shaw said he is struggling with the hardship criteria, he said the benefit sought by the applicant can be achieved in other ways, and that there are options to do this different. He stated that the surface would be going from a permeable one to an impervious surface, and isn't convinced that another solution cannot be found.

Mr. Currier said a 24-foot wide driveway will serve as everything, the only setback is that the mailbox may or may not be ten feet further away. He stated that they could have a 24-foot wide driveway, and have a walkway going to the mailbox. He said in looking at this objectively, he didn't feel it meets the hardship criteria.

Mr. Reppucci said the applicant has been using their property in a certain way, and has had a use of it for a period of time, back to when they bought it. He said that the applicant is in a situation when they are improving their property, but they have to have less than they previously had, and this can have

negative effects. He said that this request is somewhat unique, in that they have already been using the driveway width they have, but in this case, the applicant is using the 34 feet width, and to make them reduce it to 24 feet doesn't benefit anyone.

Ms. Vitale said it would be a more intense use, as it would be going from gravel to full pavement.

Further discussion ensued.

MOTION by Mr. Currier to deny the variance on behalf of the owner. Mr. Currier stated that he found difficulty with the first test of the area variance, that it is needed to enable the applicant's proposed use of the property, given the special conditions of the property, he said he feels that the gravel driveway on the right could be paved over to make a very stable driveway, and that the curb cut could remain at 24 feet, and there still could be either parking further back closer to the house, and the mailbox could be moved closer to the house than it is now, with a walkway, so, the applicant can be accommodated with what they are looking for with the 24 foot wide driveway, and he stated that he didn't feel it meets test one.

SECONDED by Mr. Shaw.

MOTION CARRIED 3-1 (Mr. Reppucci).

2. Brian A. & Sara C. Sullivan (Owners) 5 Terry Street (Sheet 59 Lot 69) requesting variance to encroach 6 feet into the 10 foot required left side yard setback to construct a second story dormer. RA Zone, Ward 2.

Voting on this Case:

Jack Currier
Robert Shaw
Kathy Vitale
Gerry Reppucci

Brian Sullivan, 5 Terry Street, Nashua, NH. Mr. Sullivan showed the Board some pictures of his property. Mr. Sullivan stated that they are requesting a variance that will enable them to construct a second story dormer, however, the house is within the setback. He stated that the footprint will not be

increased, they are just building up. He said the change should increase the property values in the neighborhood, and will be like others in the neighborhood. He said there will be two window dormers in the front.

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 per testimony and in the application, the five criteria for an area variance have been established, the unique situation here is that the existing foundation is already within six feet of the required ten foot setback, so there would be no additional encroachment into the setback, and per the application, this addition is essentially to have a twelve foot roof with dormers in the front and back, and per testimony, there are no issues by the abutters that are most impacted.

Mr. Carrier said that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, it is within the spirit and intent of the ordinance, it will not adversely affect property values of surrounding parcels, it is likely to increase surrounding values, it is not contrary to the public interest, and therefore substantial justice is approved.

SECONDED by Mr. Reppucci.

MOTION CARRIED UNANIMOUSLY 4-0.

OTHER BUSINESS:

REHEARING REQUESTS:

1. **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.

The rehearing request is relative to the driveway, and to allow some parking in the front, where the Board wanted, as a stipulation, to have it grassed over.

Mr. Currier asked if there was any procedural error, including any improper notice.

The Board members unanimously stated "no".

Mr. Currier asked if it was an illegal decision, in other words, did the Board fail to completely address each of the points of law required.

The Board members unanimously stated "no".

Mr. Currier asked if the request for rehearing contain any new information not presented or available to the Board at the original public hearing.

Mr. Reppucci said yes, relative to the parking in the back, there is much clearer information in this request with the parking, and the width of the driveway, and the spaces available in the back.

Ms. Vitale concurred, she said it is clearer that they explained the overall space better.

Mr. Shaw agreed.

Mr. Currier said Mr. Reppucci said it all.

Mr. Currier asked if there is anything which would/could cause the Board to make a different decision.

Mr. Currier said there could be, as there is new information here, not necessarily would, but could be. He said yes.

Mr. Shaw agreed.

Mr. Reppucci said yes.

MOTION by Mr. Currier, on the rehearing request, on behalf of the applicant, to approve the rehearing request, in that this will be re-heard at the next available meeting. He said that per the testimony, the Board believes that criteria number three and four, there is some new information that could possibly allow the Board to make a different decision.

SECONDED by Mr. Reppucci.

Mr. Reppucci said he's not inclined to take a position on this right now, but asked if the Board has the leeway to just change, or go through the process. He said there were no abutters at the meeting.

Mr. Falk stated that this was a special condition of the Board, it was part of the motion, so it has to come back.

MOTION CARRIED UNANIMOUSLY 4-0.

REGIONAL IMPACT:

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

MINUTES:

April 28, 2009 and May 12, 2009.

MOTION by Mr. Currier to waive the reading of the minutes for April 28, 2009, and place on file as presented.

Mr. Reppucci suggested a change on Page 7 near the bottom, something that he said. He said he will contact Mr. Falk via email with the changes.

MOTION by Mr. Currier to approve the minutes of May 12, 2009.

SECONDED by Mr. Reppucci.

MOTION CARRIED UNANIMOUSLY 4-0.

ADJOURNMENT:

Mr. Currier called the meeting closed at 7:35 p.m.

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Robert Shaw
Clerk

CF
Taped Hearing