

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
July 14 2009

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

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. Richard F. Tassi & Denise C. Duval, Trustees (Owners) 1 Rice Street (Sheet 126 Lots 179-181) requesting variance to encroach 10 feet into the 25 foot required front yard setback on a nonconforming structure to construct a 6'x12' second story dormer. RA Zone, Ward 6.**

Voting on this Case:

Jack Currier
Sean Duffy
Kathy Vitale

Richard Tassi, 1 Rice Street, Nashua, NH. Mr. Tassi stated the house was built in the 1920's, and has a 25 foot front yard setback, and the house is built at 15 feet. He said they are looking to construct a dormer on the street side to allow for a legal means of egress. He said the dormer will be 12 feet.

Mr. Currier said the application goes over the variance points of law, and asked if the applicant had any additional information to add.

Mrs. Tassi said she owned the property for over forty years.

Mr. Tassi said this dormer will add to the safety of the home.

Mr. Currier said they are not increasing the footprint, they are just building up, and will help to match the neighbor's properties.

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. He stated that it is granted to enable the applicants proposed use of the property, this is a very reasonable request, a special condition of the property is that it pre-exists and predates the zoning ordinance, it was positioned on the lot the way it is, and is nonconforming, but is reasonably developed in the essential character of the neighborhood as it is. He said it is a corner lot with two front yard setbacks as well, and the applicants application suggests that there is no other method reasonably feasible, it is a reasonable request to add a dormer that is not exceeding the frontage incursion, or the roofline incursion, therefore, it is within the spirit and intent of the ordinance that the proposed design in the application is similar to the existing character of the neighborhood, as there is no impact on property values, even though there was no expert testimony to that, and substantial justice is served that the applicant has reasonable development rights to do this request.

SECONDED by Ms. Vitale.

Mr. Currier said this is a minor request, but is still necessary to come before the Board, and is worthy of a variance.

Mr. Duffy said this case is not increasing the nonconformity, either.

MOTION CARRIED UNANIMOUSLY 3-0.

2. **DAL Management, LLC (Owner) 38 Harbor Avenue (Sheet 29 Lot 17) requesting to amend a variance stipulation of approval from the 4-14-09 ZBA meeting relative to turning an existing driveway/parking area on the southern side of the structure into green space. RC Zone, Ward 7.**

Voting on this Case:

Jack Currier
Sean Duffy
Kathy Vitale

Danny Laliberte, 10 Briarwood Drive, Nashua, NH. Mr. Laliberte said this is an application for a rehearing, in which a new fee was paid, and it started out as the rehearing request as advertised.

Mr. Duffy asked whether this case is approved or denied, how does it affect the original case, and can still have the two-family.

Ms. Wilkins said the first case had to do with the structure going from one to two units, and that case was approved.

Mr. Currier said this is a rehearing only about the parking and the driveway, the other case was already approved.

Mr. Laliberte said for the duplex on 38 Harbor Avenue, the Board voted to eliminate the southern side driveway entry from the property, and now the only way to access the property is via a cross-access from 36 Harbor Avenue. He said that he's devised a plan in which the driveway should be kept, because the curbcut is already a driveway entry. He said he'll keep the four spaces in the rear of the property, which is safe.

Mr. Laliberte said the Board recommended to eliminate the parking, as they felt it was too close to the corner, which would be unsafe to back out of, and agreed with the Board on that. He said that he'd like to request that the existing driveway remain in place as an entry driveway only, with the curbcut and the driveway already there, it conforms to other properties around it, and it has been there ever since the structure was built. He said in keeping the driveway, he will be meeting the 35% minimum open space on the property. He said the driveway would only be for entry only, and not to be used

for parking, and the four spaces fit properly in the rear of the lot.

Mr. Currier said the cross-access agreement is not signed, and if the Board were to be favorable to this request, it would need to be.

Mr. Laliberte said the property next door, at 36 Harbor Avenue, is his fathers property.

Mr. Currier read a portion of the agreement, it wouldn't just be for the father, it would be held in perpetuity.

Mr. Currier said the design shows four spaces, and it appears as if it will work.

Mr. Laliberte said it will work.

Mr. Duffy said that one of the special conditions were that the agreement needed to be signed and put in place, and wondered why this hasn't been done yet.

Mr. Laliberte stated that it will be. He said the letter is done by the attorney, but hasn't been executed yet.

Mr. Currier said it was a stipulation, and it will have to be done before a certificate of occupancy anyways. He has committed that it will be signed.

Mr. Laliberte said there were stipulations of approval, and the cross-access agreement will be in effect.

Mr. Duffy said he believed that this should have already been signed and put in place before this request.

Mr. Laliberte said the project cannot be finalized until this cross-access agreement is in place anyways.

Ms. Vitale asked if the width of the driveway would be 10 feet wide.

Mr. Laliberte said yes, and it would widen out as it nears the parking spaces. He said it will clarify the congestion in the area, and he said they travel in there daily, since his business

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

July 14, 2009

Page 5

is at 34 Harbor Avenue, and it will allow drivers to drive out, instead of backing out.

Ms. Vitale asked how he would monitor people parking in the driveway area, versus driving through to park in the back.

Mr. Laliberte said it will be an entry-only, and said he is there daily, and will make sure it does comply with a one-way driveway.

Mr. Currier asked what the width of the driveway is now.

Mr. Laliberte said it is 18 feet, the width of the driveway is 16' x 20'.

Mr. Currier said it is being make narrower, and said he understands that they are there keeping a tight lid on the property, but said that if the property is sold, would like it stipulated that there can be no parking in the southern driveway.

Mr. Laliberte said that would be fine.

Mr. Currier said he would like to see a directional arrow on the driveway.

Mr. Laliberte said that is a good idea.

Ms. Vitale stated that since the driveway would be made narrower, asked if the remaining area would be loamed and seeded.

Mr. Laliberte said there will be new grass on the area, and in the front and rear.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

Ms. Vitale said the one-way drive in and drive out may alleviate some traffic issues, and the easement is being prepared. She

said the one-way in method may not be such a bad idea in this case.

Mr. Currier said that the Board struggled with the two-family the first time, especially with the parking. He said the southern driveway is busy, and it is a busy area near an intersection. He said if two cars are in that driveway, it is tough to back out, especially with the building next door. He said he went out to look at the property again, and believes that the new proposal with a 10-foot wide driveway is a much better plan and idea, especially with the easement that will be in place, and it will help increase the value of the property in the future. He said the easement is quite a commitment, and the design is much better, as drivers will have a much longer line of sight for vehicular safety.

Mr. Duffy said he likes the condition that there will be some green space added where the driveway will be reconfigured. He said that the applicant's work on the property, along with the easement, and the one-way driveway will be an improvement to the property.

Ms. Vitale said she likes the added green space, and likes the one-way in, especially if it's marked that way on the driveway. She said it will be a better parking and driving pattern, especially with the easement in place.

Further discussion ensued by the Board members.

MOTION by Mr. Currier to grant the request on behalf of the applicant. He said the request is to grant the variance for a 10-foot wide driveway on the southern side of 38 Harbor Avenue. He said the motion is to approve this because he believes this request enables the applicants proposed use of the property, given the special conditions of the property, which is that it is a thin property that is not a traditional rectangular shape, and there is a long, thin strip of land leading to the parking in the back and that it is located adjacent to a large building, which encroaches into the front yard setback, making the view for a driveway challenged on Harbor Avenue, so with those unique situations on this property, this proposed design with an entrance-only driveway at 10 feet wide on the southern side a reasonable request.

Mr. Currier stated that he believes because of these conditions, it is within the spirit and intent of the ordinance, because it allows for a better design to access and egress driving face forward both ways.

Mr. Currier said there is no written documentation on property values both ways, but doesn't believe the property values will be detracted, as this driveway has been in existence since the house has been in existence and has always been the driveway.

Mr. Currier stated that the public benefit is that it will allow for public access to the rest of the property, and the current driveway in the single family home is challenged because of the building's proximity to Prospect Avenue, and the approved two-family will allow for entrance into a driveway leading to the parking spaces in the back, along with the easement from the next door property.

Mr. Currier stated that substantial justice is served to the applicant, as well as the pedestrians in the area.

Mr. Currier said the first special condition is that there not be any parking on the southern driveway, it would just be for accessing the four parking spaces to the rear, or easterly side of the property. He said the second one is that the southern driveway is only 10 feet wide, and that the lawn with the vegetated area on either side of the driveway, and there will be some sort of directional arrow pointing in, something that will clearly identify that it is used for entry only. He said that there will be no accessory structures placed on the southern side, or on the front lawn of this property. He said that the easement is to be signed and registered with the Registry of Deeds, and a copy provided to the Office of Zoning before any permits, especially a Certificate of Occupancy.

SECONDED by Ms. Vitale.

MOTION APPROVED UNANIMOUSLY 3-0.

3. **Edinalva De Jesus (Owner) 31 East Pearl Street (Sheet 34 Lot 57) requesting the following: 1) special exception for major home occupation for in-home day care for an additional 3 children (9 children approved by ZBA on 7-22-97); and, 2) variance to exceed maximum indoor square**

footage for a child-care home occupation, 420 square feet allowed - 640 square feet proposed. RC Zone, Ward 7.

Voting on this Case:

Jack Currier
Sean Duffy
Kathy Vitale

Edinalva De Jesus, 31 East Pearl Street, Nashua, NH. Ms. De Jesus introduced her fiancée, Mr. Chris Rolette.

Ms. De Jesus said she has a single-family home, and currently has approval for an in-home day care for nine children. She said she is planning on using two rooms in the house for day care. She said she had two other family members living in the house, but they have moved out.

Mr. Currier asked if there is one kitchen in the home.

Ms. De Jesus said she has one kitchen on the first floor, and the house has a mother-in-law apartment, and has a second kitchen on the second floor.

Mr. Currier stated that Ms. De Jesus and her son will reside on the second floor, and the day care will be on the first floor.

Mr. Currier asked where the staircase is to go from the first to the second floor.

Mr. Rolette said it is in the residential area, away from the day care.

Mr. Currier said there is one area that is 18'x10', and it looks like the house in the back is 18 feet wide, and questioned the dimensions.

Ms. De Jesus said her back yard is not lined up even.

Mr. Currier described the area approved for 6 kids from the drawing, and asked about another area on the drawing.

Ms. De Jesus said it is a dining room, and she described where the area will be for the day care.

Mr. Currier asked about the playground for the 6 kids, and it is 572 square feet, and the proposed request is 692 square feet, but the outside area looks to be the same, and wondered where the extra square footage came from.

Ms. De Jesus stated that her problem for adding kids is the space inside, she has plenty of space outside.

Mr. Currier said the application has a public parking area, and parents will park on East Pearl Street.

Ms. De Jesus said people can park on the street, and from the front hallway, she can help with parents dropping off and picking up kids. She said she has three other parking spaces on the side of the house.

Mr. Currier asked where most people park.

Ms. De Jesus said her clients use the front door, and they can park on the street. She said they come at different times, the hours are staggered. She said the existing parking works fine.

Mr. Duffy asked if the day care has been in operation for about ten years, and if it has operated at full capacity.

Mr. Rolette said yes, and sometimes are busier than others, it is somewhat less in the summer.

Mr. Duffy asked how often the State does an inspection.

Ms. De Jesus said they have surprise visits, sometimes two or three times per year, and haven't had any problems.

Mr. Duffy asked what the hours of operation are.

Ms. De Jesus said it is 6:00 am to 6:00 pm, Monday through Friday.

Mr. Duffy said the Board usually requests no outdoor play before a certain time, usually 9:00 am.

Ms. De Jesus said not before 9:00 am.

Mr. Duffy asked the ages of the children that are served.

Ms. De Jesus said infants up to age 12.

Ms. Vitale said that she is increasing the number from 9 to 12 because some people have moved out of the house.

Ms. De Jesus said yes. She said this is a good opportunity to help additional children with the three extra children.

Mr. Duffy asked if the total number is 12, or just 12 there at any one time.

Mr. Rolette said they have no more than 12 in all.

Mr. Currier said the Board got a letter from Linda Argenti, in support of the request, at 29 East Pearl Street. She said they are a good neighbor, and run a good business.

Mr. Duffy asked if the foundation or roof line will change.

Mr. Rolette said no.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

Ms. Vitale said this is a good opportunity to expand her business slightly, and it is a needed business.

Mr. Currier said at first he was uncomfortable with this, because it is a tight property, and was concerned about the parking, but it has been in operation for a long time, and wasn't aware of any parking problems. He said there is no opposition, and one letter of support from the next door neighbor, who is an attorney, that letter speaks volumes for this case. He said with three more children, it shouldn't make this case a problem.

MOTION by Mr. Duffy to grant the area variance on behalf of the applicant to exceed the maximum indoor area. He stated that it is a reasonable request, given the demographic and existing business that was granted a variance for more than ten years in

operation, with testimony indicating that they have State visits, and have been able to stay in compliance with the rules and regulations for a day care, therefore, it is a reasonable area variance to allow the applicants reasonable use of the property, and there are no other alternate methods of approval for this variance, and going up in the number of children lends to a better use of the property, therefore, it is within the spirit and intent of the ordinance, there is no impact on property values, and the structure will not change in any way, and substantial justice is served for the applicant to have this business.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 3-0.

MOTION by Mr. Duffy to grant the special exception on behalf of the applicant. Mr. Duffy stated that the request is listed in the Table of Uses, Section 190-36 (B) and 190-47 (B2). Mr. Duffy said the business has been in operation for the past ten years, and all the special criteria have been met by the applicant for the past ten years of operation, both inside and outside requests are reasonable, a single-family house is still the principal use of the property, there are no building or structural changes to the foundation or the roofline. He said the hours of operation of the daycare are from 6:00 am to 6:00 pm., Monday through Friday, and there will be no outside play prior to 9:00 am, and the applicants testimony that all the other criteria are met, and will continue to be met, and that no more than 12 children will be on the property at any one time.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 3-0.

REHEARING REQUESTS:

8 Woodland Drive, Rosalyn Citino

Mr. Currier asked if there was any procedural error at the original meeting.

Ms. Vitale said no.

Mr. Currier said no.

Mr. Duffy said no.

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

Ms. Vitale said no, the Board was complete in its discussion.

Mr. Currier agreed, the Board addressed the points of law.

Mr. Duffy said he didn't feel that there were any illegal decisions or incorrect decisions.

Mr. Currier asked if there was any new information provided.

Mr. Currier said he believes so, and one of the things the Board considers is the character of the neighborhood, including driveways. He said the letter indicates that there are other wider driveways in the neighborhood, and it is worthy of consideration as new information. He said the letter has a lot of information in it, but didn't think a lot of it was worthy of a rehearing, but the idea that there is a lot of other wider driveways in the area is significant. He said for the mailbox, it was never his intention to move the mailbox further away from the street, he suggested it may be moved along the street.

Ms. Vitale said she did ask about other driveways in the neighborhood that were wider, and some were identified.

Mr. Duffy said he saw a couple wider driveways in the neighborhood.

Mr. Currier said he would like this information about the wider driveways to be validated by the applicant, and is expecting to see information about this.

Mr. Duffy said he wanted to see some proof that they are all valid driveways, and if they were permitted or not, or received variances.

Mr. Currier said the information provided is worthy of a rehearing.

Mr. Duffy said the Board may still come up with the same outcome.

Mr. Currier asked if there was anything submitted which would/could cause the Board to come up with a different decision.

Mr. Currier said there are a lot of points raised in the rehearing request, but the one that states that there are a lot of other wide driveways in the area is significant enough to grant a rehearing.

Ms. Vitale agreed, and if there are a lot of other wide driveways in the area approved by the Board to be wider than 24 feet, then there is a precedent that could be considered.

MOTION by Mr. Currier to rehear the case because of the answers in questions 3 and 4.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 3-0.

Mr. Duffy asked if this case be the last scheduled case on the Agenda.

REGIONAL IMPACT:

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

MINUTES:

June 23, 2009:

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

SECONDED by Mr. Duffy.

MOTION CARRIED UNANIMOUSLY 3-0.

ADJOURNMENT:

Mr. Currier called the meeting closed at 8:37 p.m.

Robert Shaw

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

July 14, 2009

Page 14

Clerk

CF

Taped Hearing