

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

A public hearing of the Zoning Board of Adjustment was held on Tuesday, July 28, 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 (arrived at 6:45 pm)
Bob Carlson (arrived at 6:50 pm)
Gerry Reppucci
Carter Falk, Deputy Planning Manager/Zoning

Mr. Currier explained that since there was only one case on the Agenda, and the applicant present was well aware of the procedures, that the Board was waiving the reading of the pre-meeting procedures. Attorney Gerald Prunier and Richard Maynard, sitting in the audience, approved.

- 1. Wilfred J. Piekarski Revocable Trust (Owner) 4 Blackstone Drive (Sheet H Lot 520) requesting variance to encroach 23 feet into the 30 foot required front yard setback to maintain a landscape block patio with benches and shrubs. PI Zone. Ward 2.**

Voting on this Case:

Jack Currier
Kathy Vitale
Gerry Reppucci

Attorney Gerald Prunier, Prunier & Prolman, 20 Trafalgar Square, Nashua, NH. Atty. Prunier passed out pictures of the property. He said it is a re-use of a building that was refurbished. He said the applicant put in some landscaping stones, and some shrubs and benches. He said that it is encroaching on the front yard setback, but it is just a landscaping area, and they just want to keep it as is.

Mr. Currier said he didn't believe there was any blockage of view from traffic, and the Millstone ground sign is even closer.

Atty. Prunier said the Millstone sign goes back to the condos way in the rear, so that sign has been there for 25-30 years.

Mr. Currier asked if there is an intention to put cars on the patio.

Atty. Prunier said no, there is no plan to put cars there.

Mr. Reppucci asked if this building, in this zone, would need a variance for a ground level patio.

Mr. Falk said yes, according to Section 190-16 (4), this proposal is not allowed in the front yard setback.

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 applicant. He stated that the variance is needed to enable the applicants proposed use of the property, as stated by the testimony, it is going to be used as a patio and not for anything else, it doesn't obstruct any vision or obstruct any signage, and the benefit sought by the applicant cannot be achieved by any other reasonable, feasible method.

Mr. Reppucci stated that it is within the spirit and intent of the ordinance, the ordinance allows use of that land as a driveway, and other uses, it's just that the interpretation by the Planning Department is that this particular use needed to come before the Board, but it's not dissimilar to other uses there.

Mr. Reppucci said it will not adversely affect the property values of surrounding parcels, and there was no testimony presented that it would, and there is no reason to believe that it will, it is not contrary to the public interest, in fact, it makes the property look nicer and be more appealing, and substantial justice is served by approving this request.

Mr. Currier asked about the stipulation of parking a car on this area.

Mr. Reppucci said he thought it was self-evident that cars will not be there on this patio, and didn't feel that a restriction is necessary for this.

SECONDED by Ms. Vitale.

Mr. Currier said this use has been approved by the Board, it is in a PI zone, and is also the gateway to the Millstone apartments. He said it is important to keep the front setback looking nice, to have respect for the Millstone development. He said it could be converted to allow for a car parking there, and wanted it as assurance for the Millstone residents that it will stay this way, also, the applicant agreed to this stipulation.

Mr. Reppucci said he would add it in there, and amended his Motion to add the stipulation that no vehicles will park on the patio.

MOTION CARRIED UNANIMOUSLY 3-0.

2. **45 Pine Hill Road Real Estate Development, LLC (Owner) 45 Pine Hill Road (Sheet E Lot 44) requesting the following:**
 - 1) **use variance to allow two buildings with a total of 52 multi-family dwelling units; and the following variances:**
 - 2) **to exceed maximum number of principal structures on one lot, 1 permitted - 2 proposed, and 3) to exceed maximum building stories, 2½ permitted - 3 proposed. R9 Zone, Ward 1.**

CASE POSTPONED TO THE SEPTEMBER 22, 2009 MEETING

Alderman Fred Teeboom asked about the taxes owed for Case #2. He said he wasn't about to talk for or against the case, but wanted to talk about the legality of the case going forward while taxes are still owed.

Mr. Reppucci said this item should not be discussed, as the case has been postponed, and he should submit any request in writing.

Mr. Currier said this is a good time to talk about this, as this issue has been before the Board before.

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Ms. Vitale stated that if something is submitted, it will be in our packet, and can be discussed, and encouraged the Alderman to submit something for review.

Mr. Currier said if Ald. Teeboom has any information to submit, he could do so.

Mr. Reppucci said the Board should not hear any evidence relative to tax liens on cases before us, especially when the applicant is not even present, as it may taint the Boards discussion about this case.

Mr. Carlson said that Staff should implement a process whereby it can be determined if taxes are owed prior to a case being advertised.

Mr. Falk said that Staff already has this procedure in place, for all the land use Boards. He said the Zoning Board is a land use board, not a tax collecting board.

Mr. Reppucci said in the previous case in which back taxes were owed, Corporation Council stated an opinion that the Board has to tread lightly, or not at all, in involving ourselves with tax circumstances when it comes to land use, because there are other remedies available for the City to resolve those issues, and we all got a copy of that opinion.

Mr. Currier said the Board is not going to take testimony on the tax situation, if Ald. Teeboom wants to submit something to the Board, or staff, we will take it into consideration.

Ald. Teeboom said he wants to put this on the agenda, on September 22, 2009. He said he also wants to see the waiver that the Planning Department requires to hear this case, as indicated in the Ordinance.

OTHER BUSINESS:

Mr. Reppucci stated that he was concerned with the rehearing request heard at the last meeting. He said that he thought that the Board made a correctible error in dealing with that request.

He said that the conversation that the Board had included that it was the burden of the applicant to prove that driveways in

the neighborhood were legitimate and approved, and were not out of Code. He said that the burden was placed on the applicant to prove that other driveways were permitted by the City, and thought that was an onerous burden on the applicant, and didn't see how they could do it, even if they wanted to, without taking each driveway in the neighborhood and going to the Planning Department and having them investigate it. He said it is not doable, or reasonable. He said it should be the burden of the Board members, not the applicant. He said he wants to have the Planning Department notify the applicant that they don't have the burden to demonstrate the examples shown to us as being in the character of the neighborhood are legally permitted.

Ms. Vitale said she thought she heard that if they wanted to help with the procedure, and not that they had the burden to do it. She said if there were other driveways in the neighborhood that had variances for extra width, a precedent may have been set, and would maybe have voted differently.

Mr. Currier said the applicant identified ten or fifteen driveways, with addresses. He said the burden is a call or fax or email to Mr. Falk to verify if these addresses have received a variance. He thought the burden is a quick exercise by the applicant. He said that any case before us, the standard procedure is that there is a checking, or due diligence that the Board needs to know, to verify it is in the character of the neighborhood. He thought it was a simple request.

Mr. Reppucci said that what we are doing, is having applicants check on their neighbors to see if they have permitted uses of their driveways. He thought it was a significant change in the way we do things.

Mr. Currier said he'd volunteer to do it himself. He stated that the Board has every right, for example, if someone wants to go from a one-family to a two-family, and they say that every other house on the street is a two-family, and we go out there and see a lot of single-story ranches, he may not believe their testimony.

Mr. Reppucci said the difference here is the character of the neighborhood, so, the character of the neighborhood is displayed by whether or not driveways are in fact larger than a 24-foot curb cut, not whether or not they have a larger than 24-foot wide curb cut and have permission to do so. He said if there

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are six driveways with wider than 24-foot curb cuts, then that is the character of the neighborhood, whether they were granted it or not.

Mr. Currier disagreed, he said if there are six driveways that are illegal on the street, that are wider, or, six driveways that are legally wider, that is a huge difference.

Further discussion ensued.

MINUTES:

July 14, 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.

REHEARING REQUESTS:

None

REGIONAL IMPACT:

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

ADJOURNMENT:

Mr. Currier called the meeting closed at 7:19 p.m.

Robert Shaw, Clerk
Jack Currier (Acting Clerk for the meeting)

CF
Taped Hearing