

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
August 11, 2009

A public hearing of the Zoning Board of Adjustment was held on Tuesday, August 11, 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  
Rob Shaw, Clerk  
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. Nicole & Janet Heffron (Owners) 73 $\frac{3}{4}$  Bowers Street (Sheet 19 Lot 5) requesting special exception for a major home occupation for an in-home day care for 9 children. RB Zone, Ward 7.**

Voting on this Case:

Jack Currier  
Sean Duffy  
Kathy Vitale  
Rob Shaw  
Gerry Reppucci

Nicole Heffron, 73 $\frac{3}{4}$  Bowers Street, Nashua, NH. Ms. Heffron said she has a finished basement, and wishes to run the daycare out of there; it has two rooms that will be used. She said it would be for six children, including her own son. She said there would be three children that would be before and after school, for a total of nine children total. She submitted some pictures and brought them to the Board.

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She said there will be no problems with traffic, and they only have one car, and there are places to park.

Mr. Duffy asked if she has had any daycare experience.

Ms. Heffron stated that she's never had one out of her home, but was a program manager at one for ten years.

Mr. Duffy asked about the hours of operation, and the outdoor play.

Ms. Heffron said 7:00 am to 6:00 pm, Monday through Friday, and outdoor play will be every day, weather permitting, from 10-11, and an hour in the afternoon. She said it would not be earlier than 9:30 am.

Mr. Reppucci asked if the basement space is finished.

Ms. Heffron said it is finished, one of the rooms is, but there is a section that is for storage that is not listed as living space.

Mr. Reppucci asked what the living space of the house is.

Ms. Heffron said it is 989 square feet upstairs, and about 430 square feet downstairs.

Mr. Shaw asked if she was aware of the special conditions for a day care, and read them into the record.

Ms. Heffron agreed to the conditions, and believes she meets them all.

Mr. Shaw asked Ms. Heffron if her fence meets the solid fencing provision of 6 feet high.

Ms. Heffron said there is a chain link fence.

Mr. Shaw said she might have to install a fence to meet this requirement.

Ms. Heffron said she'd be willing to do it.

Ms. Vitale asked if the State of New Hampshire has been to the house yet.

Ms. Heffron said they haven't been there yet.

Ms. Vitale asked how the children get in and out of the basement.

Ms. Heffron said she has an exit out into the back yard, and one going up the stairs.

Mr. Currier asked Ms. Heffron to clarify how many children she would watch, whether it's six or nine.

Ms. Heffron said the way the licensing is, the minimum is nine, which is six children under five years old, and three before and after school kids, or you could get a larger license. She said she doesn't have any kids signed up, but will probably stay at six kids including her son.

Ms. Vitale asked about the fencing.

Ms. Heffron said on the left side, is their chain link fence, and they have two neighbors that have six-foot high wood fences, and in the back her neighbor has a chain link fence. The mulched area is where the children play. She said on the right side is also a 4 foot high fence, with chain link as well. She said they'd need to put fencing on two sides.

Mr. Duffy asked about the traffic, and drop-offs.

Ms. Heffron said it won't be a problem, she didn't believe that there would be more than two people at a time, and they should be able to park right in the driveway.

Mr. Shaw asked if there will be any employees in the day care.

Ms. Heffron said it will only be her.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

Mike Reynolds, 86 Allds Street, Nashua, NH. Mr. Reynolds said he is the abutter in the back. He said he has some concerns about the fence, and brought some pictures to show the Board. He said he has no concern with the day care, just the fencing, because its chain link, and he has a lot of things in his back yard, and a dog, and doesn't believe the dog would bite, but nonetheless has some privacy issues.

Steven DePanasse, 3 Nye Avenue. Mr. Currier read his letter of concern into the record.

Mr. Currier gave a copy of the letter to Ms. Heffron.

Mr. Currier asked Ms. Heffron if she would be installing a six foot high solid stockade fence.

Ms. Heffron said they would be doing it.

**SPEAKING IN FAVOR - REBUTTAL:**

Nicole Heffron, 73 $\frac{3}{4}$  Bowers Street, Nashua, NH. Ms. Heffron said her house is small, but has a big basement, and it's bright and plenty of room for the kids to play. She said the space is appropriate for the number and age of the kids.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:**

No One.

Further discussion ensued.

**MOTION** by Mr. Duffy to grant the special exception on behalf of the owner. Mr. Duffy stated that the use is listed in the Table of Uses, Section 190-36B, and 190-49B. Mr. Duffy stated that the use should not create undue traffic congestion or unduly impair pedestrian safety, the testimony from both the applicant and abutter indicate that the traffic in that area should be minimal.

Mr. Duffy said the request should not overload public water, drainage or sewer or other municipal system. He stated that the special regulations are fulfilled, and the applicant will fully comply with the childcare facilities special conditions per

testimony, and the use should not impair the integrity or be out of character with the neighborhood, or be detrimental to health, morals or welfare of residents, there will be no change in the foundation of the structure, or the roofline, and, the applicant has up to ten years of daycare experience at another location, and is seeking State credentials, and she probably won't start off with the nine student load.

Mr. Duffy said the hours of operation will be 7:00 am. To 6:00 pm, Monday through Friday, no weekends, and outdoor play should not begin before 9:30 am. He said the applicant understands the stipulation for a six-foot high solid fence around the play area.

**SECONDED** by Ms. Vitale.

**MOTION CARRIED UNANIMOUSLY 5-0.**

2. **City of Nashua (Owner) 2 Court Street, 4-6 Cottage Avenue and "L" Pearson Street (Sheet 33 Lot 104, Sheet 34 Lot 2 and Sheet 33 Lot 50) requesting special exception to work within the 75-foot prime wetland buffer of the Nashua River to improve a portion of the Downtown Riverwalk near the Nashua Library, including extending a 6'-8' wide walking path along the length of the site, landscape improvements, and two stair structures. D-1/MU and RC Zones, Ward 7.**

Voting on this Case:

Jack Currier  
Sean Duffy  
Robert Shaw  
Kathy Vitale  
Gerry Reppucci

Deb Chisholm, Community Development Division, City of Nashua.  
Ms. Chisholm said the project is essentially for improvements to the walkways currently existing down at the Library. She said the primary piece within the 75-foot buffer is a pair of stairways along the trail in back of the Library down to Temple Street. She said that one of the stairs will be about halfway into the trail, and it will allow for better egress and safety from the walkway, the other one will be by the Library, and will improve pedestrian safety.

Mr. Duffy asked if there is a Dredge & Fill Permit completed yet.

Ms. Chisholm said that permit application has been submitted to the State.

Mr. Duffy asked how many square feet it is going to impact, under 5,000, or over.

Ms. Chisholm said it's well under 5,000. She said the number on the application is with respect to the 100 foot prime wetland buffer, and those impacts are about 3,400 square feet.

Mr. Duffy asked if the Conservation Commission is ok with this.

Ms. Chisholm said they need to approve the specs on the stairwell, they were concerned about runoff during installation, but not after the stairs are installed.

Mr. Currier went over the nine wetland special conditions.

Ms. Chisholm agreed to all of them, they will all be satisfied.

Ms. Vitale asked if a vendor has been decided upon yet.

Ms. Chisholm said a vendor has not been selected, no proposals have been requested.

Ms. Vitale asked about the girders, and the possibility of supporting beams.

Ms. Chisholm said that is in reference to what would need to go vertically into the soil to hold up the walkway, something that would get drilled into the soil.

Ms. Vitale asked what will happen if they run into asbestos.

Ms. Chisholm said she believes a majority of the asbestos is further down, but it is possible that the job may have to stop if they run into it, and then figure out how to move forward without disturbing it.

Ms. Vitale asked when the project will start.

Ms. Chisholm said the stairway may not go in until the spring, in order to find a vendor. She said the walkway and seating area would probably also start in the spring, but the wetland permit needs to be in place.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

No One.

Discussion ensued by the Board members.

**MOTION** by Mr. Currier to grant the special exception on behalf of the applicant. He stated that the request is listed in the Table of Uses, Section 190-112. Mr. Currier stated that the use will not create undue traffic congestion, or unduly impair pedestrian safety, by testimony, the application should greatly increase pedestrian safety and pedestrian use of this area. He said it will not overload public water, drainage or sewer or other municipal system, it doesn't really apply in this case, if anything, it will allow for a more stable bank, which will help in better rainfall water runoff. Mr. Currier stated that the special regulations, the nine criteria, are fulfilled by previous testimony at this hearing, and the request will not impair the integrity, or be out of character with the neighborhood, or be detrimental to the health, morals or welfare of residents.

Mr. Currier stated that the special conditions are that if the Dredge & Fill Permit exceeds 4,000 square feet, which is a qualitative increase to the 3,400 square foot or 3,560 square foot number, then it does not need to come before this Board again, the next is that the Conservation Commission will be notified immediately if any asbestos is encountered, and that a preliminary asbestos remediation plan be placed on file with the City, so they'll know what to do with it if they find it.

**SECONDED** by Mr. Duffy.

**MOTION CARRIED UNANIMOUSLY 5-0.**

Mr. Reppucci thought it may be more constructive if the Board focuses on when they have their Dredge & Fill estimate, that estimate should include a number. He said it would be better for everybody if the people look at the work, and it exceeds 4,000, then they could come back before the Board before the work begins. He said the Board should be concerned with the estimate.

Mr. Duffy thought the motion was clear, they can't go over 3,999 square feet, if it's greater than that, then they need to come back.

**MOTION APPROVED UNANIMOUSLY 5-0.**

**3. Erin & James O'Malley (Owners) 8 Westbrook Drive (Sheet A Lot 362) requesting variance to encroach 7 feet into the 30-foot required rear yard setback to construct a 14'x25' single-story three-season porch. R9 Zone, Ward 7.**

Voting on this Case:

Jack Currier  
Sean Duffy  
Robert Shaw  
Kathy Vitale  
Gerry Reppucci

Erin O'Malley, 8 Westbrook Drive, Nashua, NH. Ms. O'Malley said she is here with her husband Jim. She said they are looking for a variance to construct a single-story three-season screen porch onto the house. She said there is an existing slab where it will go. She said the house was built in the 1960's, and an addition to the back that was built in the 1970's, which goes to this 23' area, which is out of the 30 foot setback. She said there is just a slab there.

Mr. Duffy said there is no plumbing or heating in the porch.

Ms. O'Malley agreed.

Mr. Currier asked if it is a slab, or a poured foundation.

Ms. O'Malley said she believes it's a slab.

Mr. Jim O'Malley said it was put in in the 1970's, with the addition of the house, he said it is very solid, and they're using that footprint.

**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 as advertised. Mr. Reppucci stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions, in that the slab already exists, and the footprint is already there on 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, if they try to move it forward, by testimony, it would be interfered with by the chimney.

Mr. Reppucci said it is within the spirit and intent of the ordinance, it will not adversely affect property values of surrounding parcels, it is not contrary to the public interest, and substantial justice is served.

**SECONDED** by Mr. Currier.

**MOTION CARRIED UNANIMOUSLY 5-0.**

4. Crazy Squirrel, LLC (Owner) 146 Amherst Street (Sheet 61B Lot 41) requesting the following variances: 1) to encroach 2 feet into the 10-foot required right side yard setback; and, 2) to encroach 4' - 10" into the 25-foot required rear yard setback - both requests to maintain an existing 8'x12' home addition. RA Zone, Ward 4.

Voting on this Case:

Jack Currier  
Sean Duffy  
Robert Shaw  
Kathy Vitale  
Gerry Reppucci

Charles Okorie, CDB Designs, 5 Pine St, Nashua, NH. Mr. Okorie stated that Mrs. Lister, the owner, just moved to Nashua, and bought two properties, and have a large family, with a lot of guests. He said they were out of town, and a contractor began the construction on the bedroom addition, and never applied for a building permit. He said that the owner called him to do a plan, and noticed the addition was in the setback. He said that a building inspector saw the work without a permit, and issued a stop work order, so they wondered if they should take it down, or continue. He said the contractor kept doing to work to keep busy, but we decided to submit a building permit and go through the variance process.

Mr. Reppucci asked when the builder started to build the room.

Mr. Okorie said he wasn't aware, and the contractor is not here tonight. He said the quality of work is fine.

Ms. Vitale asked if any plumbing is in the room.

Mr. Okorie said no.

Mr. Duffy asked how long Crazy Squirrel LLC has owned the property.

Mr. Okorie said less than one year.

Mr. Duffy asked if it is a single family home.

Mr. Okorie said it is, it's a ranch.

Mr. Duffy asked if Crazy Squirrel owns 4 Essex Street as well.

Mr. Okorie said yes, they own them both.

**SPEAKING IN FAVOR:**

Theresa Lister, 146 Amherst Street, Nashua, NH. Ms. Lister said she is one of the owners. She said the LLC was done for tax purposes, and they also live at 8 Essex Street. She said they have done numerous repairs, and have enhanced the value of the house. She said they have had problems with the neighbors and their dogs. She said she is a fine arts painter, and they travel a lot. She said when they went away for a week, the contractor was already well under way.

Ms. Lister said it was not their intention to illegally build the addition, and they have a lot of out of town guests.

Mr. Reppucci asked what the contractor's name is.

Ms. Lister said it is Keith Bowan.

Mr. Reppucci asked if she had no idea that the work was being done without any building permits being applied for, or approved.

Ms. Lister said they were away, and didn't sign a contract with him, and didn't give any money up front. She said they already had a lot of materials on site for him to use, and the builder brought other materials.

Mr. Currier asked if there is a foundation.

Ms. Lister said there is.

Mr. Currier said an excavator comes in, digs a hole, then forms are laid in the ground, a cement company fills them in, then they have to cure, and it's backfilled. He said this takes some, and asked how this was done without any knowledge.

Ms. Lister said they were away, and it was done. Keith Bowan did all the work.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

Carol Cordero, 144 Amherst Street, Nashua, NH. Ms. Cordero said she is in total opposition to this project, it is not a benefit to the neighbors. She said the Listers have not been friendly. She said that Ms. Lister offered to buy their house, and that she said that their house was previously a convenience store. She told Ms. Lister that her lot (146 Amherst) was an unbuildable lot, and twelve feet was sold to them just to have it become a buildable lot. She said that now, they have five exterior front doors, where it had two before. She explained that a lot of construction has taken place at their property, and there is a sign on the back that says Crazy Squirrel. She said that Crazy Squirrel doesn't intend to use this as a house, but for a business.

Mr. Shaw asked how long the addition took, if it was under a week.

Ms. Cordero said it took quite some time, but it was over a week, but wasn't sure of the exact time, but it has been going on since at least April.

Mr. Currier asked when she thought this property was built originally.

Ms. Cordero said the early 1950's, it has always been a single family home, she knew the occupants, and one family lived there with three children.

Krista Barlow, 4 Essex Street, Nashua, NH. Ms. Barlow said she is totally opposed to this request. She said she worked for Ms. Lister, and said that her whole purpose for this property is for business. She said that Ms. Lister runs a business out of the basement there now. She said that she was in the house cleaning it every day for two weeks, and PM MacKay was in there doing work too, to turn it into a business.

Ms. Barlow said the addition was constructed in June, and the workers were there every day, and so was Ms. Lister. She ultimately let PM MacKay, but she was there every day supervising the work.

Mr. Reppucci asked if she could confirm that Ms. Lister was there every day to supervise the work.

Ms. Barlow said that is correct.

Darrell Barlow, 4 Essex Street, Nashua, NH. Mr. Barlow said they have lived there for 17 years. He said that multiple contractors have worked at this home. He said that the whole house has been re-wired, and is concerned about an electrical fire. He said this variance is to create a business. He said right across from the house is a traffic light and a crosswalk, in which small children cross to go to school. He said if this is a business, it will create additional traffic.

Mr. Shaw asked how long the addition has been worked on.

Mr. Barlow said it has been multiple weeks.

**SPEAKING IN FAVOR - REBUTTAL:**

Theresa Lister, 146 Amherst Street, Nashua, NH. Ms. Lister stated that for the electrical work, an electric permit was pulled for it to go to 200 amps, and it was inspected by the City.

Mr. Currier said that the abutters have testified that she has been there every day.

Ms. Lister said she has no reason to be there every day, she had people who were staying there, and someone is living there right now.

Mr. Duffy asked about the doors to the property.

Ms. Lister described the doors.

Mr. Currier asked why this variance is needed.

Ms. Lister said the house is small, and the master bedroom is very small, and they have a lot of furniture, so the extra space was needed. She said the new electric was needed for safety purposes.

Ms. Vitale asked how many square feet are in the house, and how many bathrooms are in it.

Ms. Lister said that she has no idea how many square feet are in the house.

Ms. Vitale said that some of the testimony is that there is a business being run out of the basement.

Ms. Lister said that she has storage down there, and one friend lives upstairs. She said sometimes she goes there, for quiet time to write.

Ms. Vitale said that previous testimony was that this house will be used for out of town guests, and asked if it were going to be rented out.

Ms. Lister said no, it functions as a second home.

Ms. Vitale asked how many rooms are in the house.

Ms. Lister said there are five rooms.

Ms. Vitale said from the way the testimony is going, she doesn't believe that this house was bought to be used as a house.

Ms. Lister said it was bought as a house.

Mr. Shaw said there is conflicting testimony on whether the owners were home when the addition went in.

Ms. Lister said they were working intermittently when it was built, and Ms. Barlow was working there cleaning the house, but was terminated.

Mr. Shaw asked to confirm that the addition was built in only four or five days.

Ms. Lister said it was put up so fast it would make your head spin.

Mr. Shaw asked to confirm if building permits were applied for and granted for all the work.

Ms. Lister said they did get the electrical permit, and a lot of the work didn't need a building permit, like painting. She said the addition went up very fast.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:**

Carol Cordero, 144 Amherst Street, Nashua, NH. Ms. Cordero said there are four doors on the Lister home that faces her house, which is the east side. She said one family, the Sharps, lived there for about fifty years. She said it was a reasonable single family house.

Ms. Vitale said that previous testimony indicated a business that was in the house.

Ms. Cordero said she hasn't been inside the house, but knows that the addition going into the basement, has a sign that says Crazy Squirrel, LLC, and fully believes that a convenience store was there at one time.

Mr. Reppucci said in all the testimony, he never heard any remnant of hardship. He said he appreciated the drawing by Mr. Okorie, it was nicely done, but the testimony from, and on behalf of the applicant, showed no hardship. He said no matter what the decision is, there will be no winner here. He said he heard a lot of superfluous information, but didn't believe the owner's testimony was credible. He said he thought the abutters testimony was more credible, and didn't think the owner was accurate on what they said. He said he saw no hardship, and found it incredible that they didn't know that the addition was going to be built when they were out of town.

Ms. Vitale said nothing was said for the need of additional space, and didn't hear anything of the need for hardship. She said the design work was done after the fact. She said she didn't hear anything about a family needing more bedroom space, it was just for storage space and out of town guests.

Mr. Shaw said there is conflicting testimony in this case. He said in all likelihood, if this case is denied, there will be a cost issue, as the addition will need to be removed. He said he didn't hear anything related to hardship either, also, the neighbors that came tonight are all in opposition to this request. He said that a family has lived in this house for over fifty years, and this is not a commercially zoned property.

Mr. Currier said he tried to steer the testimony to the points of law. He said he didn't see or hear the real need for this addition with respect to hardship, as usually, we hear from a family that is expecting another child and they need the extra space, but in this case, didn't hear anything like that. He said that the testimony was given under oath, but heard some testimony from the owner that was hard to believe it was credible. He said he didn't hear the hardship test as being met.

Mr. Duffy said he looked at it under the Boccia test for the hardship. He said due to the position of the house on the lot, and the size of the addition in relation to the essential character of the neighborhood. He said that on the side yard, they are adding only 8 feet, and there's already an incursion on that side, and they're only encroaching 4 feet, 10 inches into the rear yard setback, along a twelve foot distance. He said he is just looking at the overall square footage of the addition in

the setback. He said he would like to look at the property, and the abutter properties, as well.

Mr. Falk said they have an electric permit for the 200 amp service.

The Board took a 5 minute recess at this point.

Mr. Duffy read the residential electric permit that was approved in April 2009, and reviewed the remainder of the building file.

Mr. Reppucci stated that his references to the credibility of the testimony relates to substantial justice. He said that if he believed that this addition was put up without the applicants knowledge, then, he'd consider it to stay, to allow for substantial justice. He said that the testimony is not credible, as the abutters stated something completely different. He said that if the Board were to grant the variance, it does not allow for substantial justice to the applicant.

Mr. Shaw stated that the majority of any part of the home, if it were to be added onto, would go into a setback. He said the encroachment into the setback is relatively small, and noticed that many other homes nearby are into setbacks as well.

Ms. Vitale said the property is viable as it is, even though it is small, it can be used for residential use. She said she never heard anything that said why it would add value to the property, or any valid reason why they want to expand the house, or anything in relation to the spirit and intent of the ordinance. She thought it was against the public interest, as the neighbors would all be impacted. She said they're coming to us after the fact, and was surprised that they didn't even know the size of the rooms, or why it would add value to the house.

Mr. Duffy said this was a nonconforming lot, and they actually had to acquire an additional 12 feet just to make it the minimum size.

Mr. Reppucci said to have a single family house with five front doors is not normal, it is not credible. He didn't believe that the testimony was credible for the hardship and substantial justice points of law.

Mr. Shaw said we have conflicting testimony, and we have to make a judgment based upon what we hear as testimony.

Mr. Currier said we have a request for an encroachment on two setbacks, and does that request warrant granting a variance, and even though it's a small encroachment, he didn't feel that based upon the testimony, that it is a credible case.

**MOTION** by Mr. Currier to deny the area variance on behalf of the applicant. He stated that the criteria for variance, first of all, does not meet the test for hardship, and does not believe this variance will enable the applicants proposed use of the property, that testimony is that it has served fine as a single family home without this addition for over fifty years, and the additional space is not needed for the use of the house.

Mr. Currier stated that it does not meet the spirit and intent of the ordinance, there hasn't been testimony one way or the other for affecting property values of surrounding parcels, but believes that the fact that it is close to the neighboring houses, it would jeopardize the surrounding parcels values, and it is contrary to the public interest, and as Mr. Reppucci talked about with substantial justice, doesn't believe it will be served by approving this variance.

**SECONDED** by Mr. Reppucci.

**MOTION CARRIED 4-1** (Mr. Duffy).

5. **Steven M. Chagnon (Owner) 10-12 Underhill Street (Sheet 13 Lot 4) requesting variance to maintain two driveways for a duplex totaling 39'-6" - 24 feet permitted. RB Zone, Ward 7.**

**[CASE POSTPONED TO THE 8-25-09 MEETING]**

6. **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. [REHEARING]**

Voting on this Case:

Jack Currier  
Sean Duffy

Robert Shaw  
Kathy Vitale  
Gerry Reppucci

Peter Bonnette, President, Riverside Properties, 134 Jenkins Road, Bedford, NH. Mr. Bonnette said their business, PM MacKay moved into the building in 2003, and they have done major renovations in the building since that time. He said he thought they were doing a simple egressway out of a back door, with a nice brick walkway and a deck for the employees to enjoy.

He said the end of the deck had an old bridge abutment, and the plan was to put a kayak ramp out so they could go out into Mines Falls. Subsequently, the Conservation Commission didn't like the cantilevered deck, and approved the deck, but not the cantilevered deck out into the water, which leads us to the current request. He said the cantilevered portion will be cut back four feet, but want to keep the deck there. He said they have come up with a bank restoration plan with a mixed plan of plantings. He said the approval from the Conservation Commission had 32 stipulations.

Mr. Reppucci asked if the deck required a building permit.

Mr. Bonnette said by law, yes, but they thought of it as an extension of what they already began in 2003, and were approved for.

Mr. Currier asked if they need DES approval.

Mr. Bonnette said they have applied for it.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

No One.

Mr. Currier went over the wetland points of law with Mr. Bonnette, all the points were satisfied or agreed to.

**MOTION** by Mr. Currier to grant the special exception on behalf of the applicant. He said it is listed in the Table of Uses,

Section 190-112. Mr. Currier said that per testimony, it will not create undue traffic or unduly impair pedestrian safety, in fact, it could help pedestrian safety by helping someone to not fall in the water. He said there is no impact to public water, drainage or sewer or other municipal systems, the special regulations are fulfilled by testimony, and the request will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of residents, and will enhance the work environment in the area.

**SECONDED** by Mr. Reppucci.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**7. 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. [REHEARING]**

Voting on this Case:

Jack Currier  
Sean Duffy  
Robert Shaw  
Kathy Vitale  
Gerry Reppucci

Rosalyn Citino, 8 Woodland Drive, Nashua, NH. Mrs. Citino said her driveway width request has been reduced to 32 feet. Mrs. Citino read a letter into the record to the Board, going over all the variance points of law.

Mrs. Citino compared the variance granted to 2 Tufts Drive, a similar variance. She said that they asked for an extension of their driveway to 32 feet, to allow for better access and better drainage. She said her request will make it easier to plow, it will provide for better access to the front door, and will also allow for better drainage. She said that Tufts Drive will be safer, as hers will too. She said that Tufts Drive would make it easier for an ambulance to pull in. She said that she needs the extra space for a handicapped friend to park in. She said that the Tufts Drive request was approved unanimously, with no one speaking in favor or in opposition. She said that she even brought neighbors in favor of the request. She went over

numerous other comparisons with the Tufts Drive approval with her request, and she wanted the same consideration.

Mr. Reppucci said that she has a handicapped friend that comes to the house regularly. He asked if the handicap is a recognized handicap.

Mrs. Citino said absolutely, and has a handicap sticker on his car.

Mr. Reppucci asked if the space in front of the door is the one that he parks in.

Mrs. Citino said yes.

Mr. Duffy said that in relation to the 2 Tufts Drive case, the Board does not look at cases with precedence, each case has to stand on its own merit.

Mr. Duffy said he didn't think the property had any special condition to have an extra wide driveway.

Mrs. Citino said that there are at least ten other driveways in the neighborhood that have at least 32 feet of driveway width, or wider, all within a 3 block area of her house, she submitted a list of the addresses in the package.

Ms. Vitale asked when the houses were built in this neighborhood.

Mrs. Citino said in 1965, 1966 or thereabouts.

Mrs. Citino said she has had several building permits over the years, with many inspectors at her house, and no inspector has ever said anything about the driveway. She said when she bought the house, the carport had already been turned into a room.

Ms. Vitale said in relation to the 2 Tufts Drive house, the Board does not look at them the same way; that property is entirely different.

Mr. Currier said the 2 Tufts property is different, and that property had no retaining wall on the left hand side, and there was a staircase going up to the left, and that was the main entrance to the house. He said there was different rainwater

runoff, and there was a lot of erosion on the left hand side. He said they needed to keep the cutout to the left, and went over the conditions of approval for this site. He said that the two properties are looked at completely different.

Mrs. Citino said the City owns the first eight to ten feet after the pavement in this area from the edge of the road.

Mr. Currier asked what is being made skinnier from the first request down to 32 feet.

Mrs. Citino said she's putting the driveway up to the white fence, and took the rest of the white fence and made it into a garden and blocked it off, and it is made skinnier on the right side.

Ms. Vitale said she's looking to get the handicapped access to her front door. She said a lot of houses in the neighborhood have a little turn-around area, and asked if she could do some sort of a little turnaround for the handicapped access.

Mrs. Citino said they tried that, and it will not work, especially if the driveway cannot be plowed correctly, as there's a lot of ice, and it's a very dangerous situation for a car to be parked horizontally, and her coming out vertically. She said there's a lot of ruts, and ice.

Mrs. Citino said she has a man that helps with a snow blower, and he's had to fix it numerous times due to the gravel that's there. She said her driveway is so broken up, every time it gets plowed, and it becomes worse.

Mr. Duffy asked about whether she could make a "club apron", so people can turn around.

Mrs. Citino said there's a letter in support in the package.

**SPEAKING IN FAVOR:**

Steve Butt, 10 Woodland Drive, Nashua, NH. Mr. Butt said he didn't have any problem with the driveway, his only problem would be with the drainage. He said that all the gravel goes in his yard when they snowblow.

**MOTION** by Mr. Duffy to suspend the rules to allow Mrs. Citino to give additional testimony.

Mrs. Citino said that the garden that she is leaving will act as a buffer between her house and the Butt property, so that if there is any drainage problems, but, she had contacted Hudson Paving before this all came about, and said that the problem is with the drainage, and they assured her that there would be no problem with the drainage.

David Alcaide, 7 Chatfield Drive, Nashua, NH. Mr. Alcaide stated that he visits this property almost daily, and is handicapped. He said he has reviewed the State regulations. He read a portion of the nonconforming section from the Land Use Code. He stated that nonconforming structures may be continued. He also read a section from the NH RSA's with respect to nonconforming structures.

He said that he is handicapped, and walking on a broken driveway is a major task, and is especially true in winter. He said that by allowing Mrs. Citino to widen her driveway to 32 feet would not be out of character with the neighborhood, in fact, it will be a positive impact to the neighborhood, given the current deteriorating condition.

Mr. Duffy said he works in the field of special education, and knows all about ADA parking and access, and understands the criteria and reality. He said the property was nonconforming back then, so it wasn't lawful, and by using the argument that it was nonconforming, and should have been lawful, it was not lawful during all those years. He said that they're asking the Board to approve a nonconforming use that was not lawful in all the years that the house has existed, so nothing is being continued, and it is not guaranteed or garnered under the RSA 674:19, or 190-211. He said there are options to have an apron on the back side, and said with a 24-foot wide driveway, with a turn-around near the house, possibly at 32 feet.

Mr. Alcaide said it is not practical, as some days it will not be possible.

Karen Oster, 49 Gillis Street, Nashua, NH. Ms. Oster said she is Mrs. Citino's daughter. She said she is not handicapped, and has trouble getting in and out of that driveway. She said that the big thing is that she is the one who is shoveling and

breaking up the ice, and she said most of the problems are on the left side, in front of the room, and it is broken up there, especially with the car not being able to get in there. She said the broken-up concrete is a major issue, and it's very difficult to get out of the driveway with the way it is. She said it also decreases the property value, and a new driveway will help.

Mr. Currier said he'd like to compare a 32 foot, versus a 24 foot wide driveway. He asked if a car can do a "K" turn and pullout in the street.

Ms. Oster said you can't make that type of turn, there is not enough room.

Mr. Currier said most cars will pull in, and pull out, and said he fails to see a hardship in the property, as a car will pull in and pull out no matter what the width is.

Ms. Oster said if the width is shortened in any way, there wouldn't be any access to the front of the house.

Mr. Currier said the Board tries to take the emotion out of the cases, the cases are decided based upon the land, and the points of law. He said he sees a nice house, a carport, a pretty flat yard, not near a corner, and didn't see anything that meets the hardship criteria. He said he didn't understand how having the extra width would help.

Ms. Oster said this is a sensitive issue, with a lot of emotion, and is trying to be objective, and sees what they go through on a daily basis.

Mr. Duffy said a 32 foot curb-cut allows for three cars to park in the driveway side by side.

Mr. Duffy asked if three cars could park side by side in a 24 foot wide driveway.

Ms. Oster said three cars could fit across, but they'd be right against the grass. She said she really didn't know if they could, she hasn't measured it.

Mr. Currier acknowledged a letter of support into the record that was in the package, from the Dorgan Family.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

No One.

Mr. Reppucci said from his recollection, there was an issue about the walkway from the front door to the driveway at the first meeting. He said this driveway has to be plowed sideways, because you can't push the snow into the house, and the plow driver has to push the snow from side to side. He said the problem is that when the plow moves the snow to the side, it leaves a large mound when it stops, and if the driveway stops, and the walkway starts, as you push the snow towards the walkway, you can clear the driveway, but you have a huge amount of snow that is there impeding the walkway, and it is difficult to clear. He said it is significantly difficult. He said the easiest way is to have it be smooth and all paved the whole width. He said he thought the Board didn't clearly understand this issue when the case was heard initially.

Mr. Reppucci thought the first decision was clear, it was well-rounded, however, when it was voted down, it was voted down on hardship, not because of character of the neighborhood, and in the motion, there was nothing relating to hardship. He thought the thing the Board missed was the issue of handicap access. He said in RSA 674:33, and in our training manual from OEP, there is an interesting section on granting variances for disabled, chapter 218, talks specifically about this. He also quoted section 1b, and if the Board is so inclined to look at this application, it is significant and we should give credence to this part of RSA Chapter 674, it sort of addresses handicapped access, and we could look at it as being supportable with respect to hardship.

Mr. Currier asked what the exact paragraph is.

Mr. Duffy said we have to look at the entire ordinance, such as curb-cuts to be inclusive of handicapped access. He looked at this more of an area variance with respect to the property, instead of an access issue. He said that three vehicles can access through the 24-foot wide area, is that acceptable for access, and is a reasonable item, even with snow removal.

Mr. Reppucci said if there's a walkway there, it makes the snow removal even more difficult.

Mr. Currier read a portion of chapter 218.

Mr. Reppucci said that any Zoning Board in the State doesn't have to show hardship if a person has a handicap that lives there or uses it frequently.

Mr. Currier questioned why the Board would allow a driveway in relation to this, a walkway, or a ramp perhaps, but not a driveway.

Ms. Vitale said one of the neighbors concerns was of runoff, and this driveway has a downward slope, and the amount of runoff that comes off a 32 foot wide driveway is a lot more than a 24 foot wide driveway. She said there are sometimes water issues on this street, and a paving company will address those, but you can't put curbing, only the City can, to address the runoff issue. She said she would be amenable to a turnaround area, she said a snow blower will get clogged up with rocks, and said a 24 foot wide driveway and a turnaround is a reasonable use.

Mr. Duffy said with a 32 foot wide driveway, there is a lot more snow to blow to the yard.

Mr. Shaw said that the recognized handicap is a special condition on the property.

Mr. Reppucci said it would be permanent, because it's not something that can be easily removed, if it was a wooden ramp, that's another story.

Ms. Vitale asked staff if we have the dimensions of the house.

Mr. Falk said it is 26'x43'-5", plus the garage, and the garage is 14 feet.

Mr. Reppucci said its about 1,100 square feet.

Ms. Vitale said the house is 46 feet, with the garage, its 58 feet, and with a 32 foot wide piece of asphalt, going uphill, that's what you would see from the street, she said that it is a lot of asphalt. She said that a 24 foot wide driveway, with a turnaround, would be better, visually, and would be reasonable.

**MOTION** by Mr. Reppucci to grant the variance on behalf of the applicant. Mr. Reppucci stated that the variance is needed to enable the applicant's 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. He stated through discussion, and testimony, the applicant presented testimony that with the handicapped friend who frequently visits the property, and has a recognized handicap, that the driveway at 32 feet is necessary to allow him access to the property.

Mr. Reppucci said it's within the spirit and intent of the ordinance, and it will not adversely affect property values of surrounding parcels, we heard no testimony that it will, in fact the property owners that did come to the meeting and send documentation were in favor of the application.

Mr. Reppucci said it's not contrary to the public interest, in fact, providing handicapped access assists public interest, and substantial justice to the applicant is provided.

**SECONDED** by Mr. Shaw.

**MOTION DENIED 3-2** (Ms. Vitale, Mr. Duffy and Mr. Currier against Motion).

**MOTION** by Mr. Duffy to deny the area variance on behalf of the applicant. Mr. Duffy stated that there are no special conditions to the property, given that the applicant has an alternative that is reasonably available to them, and can be sought to achieve all the requirements feasible and necessary for the prescribed uses of the property, that a 24 foot wide curb cut that angles out into a angle or hammerhead into that 32 foot corner of the building is an option that is there.

Mr. Duffy said it is within the spirit and intent of the ordinance that the essential character of the neighborhood, and access to the property for many uses, including handicap, are reasonably addressed by that option.

Mr. Duffy said there was no expert testimony on property values of surrounding parcels, a large impervious paved area might have a negative impact on parcels, and actually, it probably would.

Mr. Duffy said it is not contrary to the public interest that the applicant has the development rights, and substantial justice is that they still have access for three or more vehicles being able to access the driveway, which is reasonable.

**SECONDED** by Ms. Vitale.

**MOTION CARRIED 3-2** (Mr. Reppucci and Mr. Shaw against Motion).

**OTHER BUSINESS:**

**REHEARING REQUESTS:**

None

**REGIONAL IMPACT:**

Mr. Currier asked how far the 91 Farley Road case is from the Town of Hollis line.

Mr. Falk said the Town of Hollis is not an abutter, they are very close, though. He said that staff will notify them.

The Board did not see any items of Regional Impact.

**MINUTES:**

July 28, 2009.

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

Mr. Currier said that Mr. Reppucci emailed him some minor changes, and staff will make the changes.

**SECONDED** by Mr. Reppucci.

**MOTION CARRIED UNANIMOUSLY 3-0** (Ms. Vitale and Mr. Reppucci not voting).

**ADJOURNMENT:**

Mr. Currier called the meeting closed at Midnight.

Robert Shaw

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

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Taped Hearing