

EXPANDED DRAFT MEETING SUMMARY
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ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
November 22, 2016

A public hearing of the Zoning Board of Adjustment was held on Tuesday, November 22, 2016 at 6:30 PM in Room 208, City Hall.

Members in attendance were:

J.P. Boucher, Clerk, sitting as Acting Chair
Kathy Vitale
Mariellen MacKay, Acting Clerk

Carter Falk, AICP, Deputy Planning Manager/Zoning

Mr. Boucher explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Boucher 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. Boucher also explained procedures involving the timing light.

PUBLIC HEARINGS:

- 1. 711 West Hollis Street Realty Trust, LLC, Michelle Rodriguez, Manager (Owner) 711 West Hollis Street (Sheet F Lot 54) requesting variance to exceed maximum principal structures permitted on one lot, one existing, four additional detached units proposed for a total of five units. R9 Zone, Ward 5. [REHEARING]**

Voting on this case:

JP Boucher
Mariellen MacKay
Kathy Vitale

Mr. Falk said that this case is a Rehearing, it was originally heard at the September 27, 2016 meeting, there was discussion, testimony and the Board granted relief, however, there was an error in the notifications, and that is why it is back before the Board.

Richard Maynard, Maynard and Paquette Engineering, East Pearl Street, Nashua, NH. Mr. Maynard said that it is his desire to

continue this case to the next meeting when there will hopefully be a full Board, as allowed under the RSA's.

Mr. Boucher said that it could go to the next meeting, which is December 13, 2016. He said he doesn't have an issue with them going at the next meeting. He said they should have the full Board.

Ms. Vitale said that she doesn't have any issue with it being continued.

MOTION by Mr. Boucher to table the request to the December 13, 2016 meeting.

SECONDED by Mr. Vitale.

MOTION CARRIED UNANIMOUSLY 3-0.

2. Sandra Srdanovic Soler (Owner) 150 Manchester Street (Sheet 137 Lot 181) requesting special exception to maintain an existing accessory (in-law) dwelling unit. RA Zone, Ward 2.

Voting on this case:

JP Boucher
Kathy Vitale
Mariellen MacKay

Sandra Soler, 150 Manchester Street, Nashua, NH. Mrs. Soler said upon buying her house in 2007, she said she used an attorney and a real estate agent, and no one identified to her that the in-law unit required building permits when it was built. She said that she is contemplating putting the house on the market. She said that it appears as if the unit was put in when the house was built in 1974, it has always been in existence. She said her request is for the Board to consider it legitimized and being classified as a single-family home with an accessory attached in-law apartment.

Mrs. Soler said that it meets all the requirements for the size and square footage, parking and accessibility as outlined in the ordinance.

Ms. Vitale asked if it's currently being used as an in-law apartment.

Mrs. Soler said they are not using it now, but it will be family use, and said that she wants to be compliant.

Mr. Falk said that Mrs. Soler has come to the Planning Department office, and has talked to Staff.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Ms. Vitale to approve the special exception on behalf of the owner as advertised. She said that the Board finds that it is listed in the Table of Uses, Section 190-32. She said that it will not create undue traffic congestion or unduly impair pedestrian safety, it has been in existence since the home was built, and the present owner has been there since 2007. She said it will not overload public water, drainage or sewer or other municipal systems. She said that special regulations are all fulfilled.

Ms. Vitale said that it will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of the residents, the in-law apartment has been part of this home for quite some time.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 3-0.

3. Faye Mandrevelis, Trustee of the Mandrevelis Realty Trust (Owner) Harbor Homes, Inc. (Applicant) 75-77 Northeastern Boulevard (Sheet 140 Lot 33) requesting variance to permit an office building without a drive-through facility, without the requirement that it be part of a site plan in which at least 75% of the gross floor area is reserved for uses listed in the "industrial and manufacturing" category. PI Zone, Ward 6.

Voting on this case:

JP Boucher

Mariellen MacKay

Kathy Vitale

Attorney Brad Westgate, Winer and Bennett, P.A., 111 Concord Street, Nashua, NH. Attorney Westgate said that Harbor Homes is under contract to purchase the property. He described the variance being requested. He said that the property is in the PI zone, and now, the district is no longer the traditional industrial and manufacturing district, and he pointed out numerous uses that are other uses besides industrial and manufacturing uses, as shown on a map that was provided to the Board.

Atty. Westgate said that the property is really two buildings, but they're connected by a common wall. He said that 75 Northeastern Boulevard is a one-story building that has St. Joe's Hospital as physical therapy and rehabilitation services, and uses a substantial part of the building for warehouse storage. He said that 77 Northeastern Boulevard is the building where Harbor Homes wants to occupy, is a two-story building, it's the building to the left, or north, and it has Hello Direct in it, and they occupy approximately 17,000-18,000 square feet. He said that there is about 37,000 square feet of space at 77 Northeastern that is presently vacant.

Atty. Westgate said that Harbor Homes has two proposed uses, part of the vacant space for a facility for the provision of in-patient residential rehabilitation services, for alcohol and substance abuse. He mentioned the Keystone Hall use on Amherst Street, it will replicate that, and they need more space. He said that use is permitted in the PI zone, the treatment facility. He said that the second use that Harbor Homes wants is for general office use, about 20-30% of the 77 Northeastern Boulevard would be used for general office purposes, if the variance is granted. He said that even though there are two proposed uses that are before the Board, only the general office use needs relief, as the Land Use Code requires 75% of the building being used for a use listed in the industrial and manufacturing category, and therefore, 25% can be general office use. He said that with St. Joe's occupying about 45% of the complex, they can never reach the 75% threshold.

Atty. Westgate said that Harbor Homes wants to move their administrative office staff at 45 High Street to this site, and

it will serve to free up some space at 45 High Street to expand some other services.

Atty. Westgate said that the use will not be contrary to the public interest, that given the character of the neighborhood and the site, it's not contrary to permit vacant space to be used for office use, especially with the site being surrounded by a variety of uses that are not exclusively industrial or manufacturing.

Atty. Westgate stated that the use will observe the spirit and intent of the ordinance, as the proposed use will contemplate productive and appropriate use of the building, as the overall trend on Northeastern Boulevard has been an increasing set of mixed uses, non-traditional uses.

Atty. Westgate stated that substantial justice would be done by granting this request, as the overall nature of the site and the surrounding uses are compatible, and it wouldn't have any adverse effect on the immediate neighborhood, and it wouldn't injure the public.

Atty. Westgate stated that the use will not diminish the property values of surrounding parcels, as office use will not have any effect on any other nearby property.

Atty. Westgate said that hardship will be met as well. He stated that it meets the Simplex test. He said that the building was built about thirty years ago, at a time when traditional industrial uses were more the norm on Northeastern Boulevard. He said that there is no fair and substantial relationship between the purposes of the 75% requirement and the application that is proposed. He said that the use is reasonable given the nature of the uses in the area, and property values will not be negatively impacted.

Ms. Vitale asked about the number of cars and parking, she recalled that it's substantially empty most of the time.

Atty. Westgate said he too doesn't see many cars there. He said the proposed office would have typical hours, and not a lot of cars go in and out of Keystone.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Ms. Vitale said that this is a very good location for this use, seeing as most of Northeastern Boulevard has a mix of businesses and uses.

Mrs. MacKay agreed, and said that there is a great need for this use, and their programs. She said she didn't see their use as a conflict to any other uses.

Mr. Boucher said it's good that this location will help to benefit their other locations in the City. He said it's a great use, and there is no opposition to it, and there won't be any impact on any nearby residential uses.

MOTION by Ms. Vitale to approve the variance application on behalf of the applicant as advertised. She said that the Board finds that the variance is needed to enable the applicant's proposed use of the property, and 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. She said that St. Joe's takes up about 35% of this building, which means that the applicant can never fall within the percentage that they need. She said the use is reasonable for both office space and the Keystone Hall type of use in this space.

Ms. Vitale said that the proposed use would be within the spirit and intent of the ordinance, and will not adversely affect property values of surrounding parcels, and there will be no outside work to distract any of the neighbors. She said that the request is not contrary to the public interest, it should serve the good of the public for a needed facility for treatment, and office use, and it will free up another building in town, and that substantial justice is met, as this is a reasonable use.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 3-0.

MISCELLANEOUS:

REGIONAL IMPACT:

There is additional time in the schedule, Mr. Falk said he'd forward the agenda to the Board when it is available.

MINUTES:

10-25-16:

No action.

ADJOURNMENT:

Mr. Boucher called the meeting closed at 7:10 p.m.

Submitted by: Mrs. MacKay, Acting Clerk.

CF - Taped Hearing