ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
April 11, 2017

A public hearing of the Zoning Board of Adjustment was held on Tuesday, April 11, 2017 at 6:30 PM in the Auditorium, 229 Main Street, at City Hall.

Members in attendance were:

Jack Currier, Chair
JP Boucher, Vice Chair
Mariellen MacKay, Clerk

Carter Falk, AICP, 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.

REHEARING REQUESTS:

122 Manchester Street:

Mr. Currier asked the other members about tabling the rehearing request until the next meeting, where there is an expectation of having a full Board.

Mr. Boucher said as long as it doesn’t go against any of the rules of operation he’s ok with it, and said that it’s important that we’re all here with the full benefit to the public.

Mr. Falk said that even the action of tabling the request is still an action, so it should be ok to table.

Mrs. MacKay said that she’s fine with it being tabled, and said that she intends to recuse herself from the case.

Mr. Boucher said that if Mrs. MacKay recuses, there would be only two members anyways.

MOTION by Mr. Currier to table the rehearing request for 122

Manchester Street to a date certain of April 25th, with the expectation of having a full Board, and it's the fairest decision for the applicant.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 3-0.

1. **John J. Flatley Company (Owner) Expose Signs & Graphics (Applicant) 15 Tara Boulevard (Sheet A Lot 995) requesting the following variances: 1) to exceed maximum ground sign area for an existing sign, 150 sq.ft permitted, 256 sq.ft granted by Zoning Board on 5-12-15, permit issued for 239 sq.ft - an additional 36 sq.ft panel proposed; and, 2) to allow proposed sign panel for an off-premise site at 200 Innovative Way for use to be determined later. PI Zone, Ward 8. [TABLED FROM FEBRUARY 14, 2017 MEETING] [POSTPONED TO APRIL 11, 2017 MEETING]**

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay

Kevin Walker, John J. Flatley Company, 10 Tara Blvd, Nashua, NH.
Mr. Walker said that the original request was an increase of 17 square feet on the previously approved 256 square feet. He said that what was actually built on the sign was 239 square foot sign. He said that after the last meeting, the Board's request was to look at keeping the sign as is, at 239 square feet, with no increase to the sign, and seeing if there could be a Homewood Suites sign and the restaurant sign in the same box that is there now, with no change to the sign area.

Mr. Walker said that the restaurant sign will fit into the box that is there now. He said that the hotel approved the new sign layout, so the sign face size will remain the same. He referred the Board to the proposed sign, which has a black horizontal line for the restaurant on the bottom of the sign.

Mr. Falk said that the applicant had two variance requests, and the first one would go away, since the size of the sign would not change. He said they'd still need the variance for the off-premises sign.

Mr. Walker said that it appeared as most of the Board members from the last meeting were supportive of the direction that they went with.

Mr. Boucher asked if this request has any concern or bearing on the case the Board heard recently with the Radisson and their off-premises sign.

Mr. Falk said that that request doesn't have any bearing on the proposed request.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Boucher to approve the variance application on behalf of the owner. Mr. Boucher said that there were two variances that were requested, and the first variance is now moot, as the applicant said that they will not be looking for the extra 36 square foot panel, and they have achieved what they want to achieve within the original variance.

Mr. Boucher said that the variance the Board is voting on now is the second one. He said that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, the Board mentioned the position of the restaurant off the road, and that the challenge is this area is that the development needs some off-premise signs to direct the public to their establishment.

Mr. Boucher said that the proposed use would be within the spirit and intent of the ordinance.

Mr. Boucher said it will not adversely affect property values of surrounding parcels, it is not contrary to the public interest, and that substantial justice is served.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 3-0.

2. Patricia Laurent (Owner) 163 Tolles Street (Sheet 47 Lot 238) requesting variance to exceed maximum accessory use area, 40% permitted, 54% proposed – to install an above-ground swimming pool. RA Zone, Ward 3.

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay

Patricia Laurent, 163 Tolles Street, Nashua, NH. Ms. Laurent said it's an 18 foot round, 52 inch high above-ground swimming pool for recreational use in the back yard.

Mr. Currier said that this is a variance to go above the 40% maximum accessory use area, and that 54% is being requested.

Ms. Laurent said that there was a shed on the property and it has been removed. She passed out a photo of the back yard without the shed.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Currier to approve the variance application on behalf of the owner as advertised. Mr. Currier said that the variance is needed to enable the applicant's use of the property, given the special conditions of the property, given that the lot size and the house that is on it, and the Board finds that the pool is a reasonable request, even though it drives up the maximum accessory use area to 54%.

Mr. Currier said that the proposed use would be within the spirit and intent of the ordinance.

Mr. Currier said it will not adversely affect property values of surrounding parcels. He said that the request is not contrary to the public interest, and that substantial justice is served.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 3-0.

3. **Industrial Rents of Nashua, LLC (Owner) Christopher Franklin (Applicant) 134 Haines Street (Sheet 12 Lot 13) requesting use variance to allow a pinball club in a portion of an existing building. GI Zone, Ward 7.**

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay

Christopher Franklin, Westford, MA. Mr. Franklin said that he initially thought that the use was allowed under the recreational section of the Code, and thought the pinball club would fit into that category, and then the Building Department said that it's the assembly portion of the Code. He said that the club is 750 square feet, out of 77,000, so it's less than 1% of the size of the building.

Mr. Franklin said that the building had been vacant for a while, and will help to get the building filled up.

Mr. Currier said it's his sense that there's not a lot of activity going on down there, and it's a small component of the building.

Mr. Franklin said that they have plenty of acreage for parking, and this is a club where people pay for membership to have access to old-style pinball machines. He said it's not a group of kids, it's an older crowd, a sedentary group.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

MOTION by Mr. Boucher to grant the variance as advertised on behalf of the applicant. He said that the zoning restriction as applied interferes with a landowner's reasonable use of the property, considering the unique setting of the property in its environment; no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property, and the variance would not injure the public or private rights of others. He said that this property is somewhat challenged, and they are trying to re-purpose some of the space.

Mr. Boucher said that the request is within the spirit and intent of the ordinance. He said it is not contrary to the public interest, and substantial justice would be served.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 3-0.

4. G Hurd & Son Construction, LLC (Owner) 36-36½ & "L" Russell Street (Sheet 93 Lots 87 & 88) requesting the following variances: 1) "L" Russell Street – for minimum lot area, 4,730 sq.ft existing, 6,000 sq.ft required; and, 2) 36-36½ Russell Street – for minimum lot area, 5,348 sq.ft existing, 12,445 sq.ft required – both requests to maintain existing two-family home and construct new single family home on "L" Russell Street. RB Zone, Ward 6.

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay

Attorney Colin Jean, Nashua, NH. Atty. Jean passed out some photos and information to the Board. He expressed concern with going forward without a full Board, but will proceed. He said that they are seeking two variances, one for each lot, they are contiguous lots, always owned by the same family historically. He referenced the lot with the existing two-family home, and both lots are essentially the same size, about 5,100 square feet. He pointed out page 6 of the packet, the original plan was done in 1890, when the neighborhood was platted out and planned. He said that the lots are approximately 50'x100'. He said on page 7, it shows that the neighborhood was re-platted to

show 60 foot frontage and approximately 95-100 feet in depth, with a couple exceptions. He said that for the two-family house, it's been there since 1940 or so, and never accessed or used the existing lot to the left, lot 88. He said that the existing garage on the lot will be taken down, and the porch on the left hand side, closest to lot 88, will also be removed in order to lessen the encroachment. He said that the property would have the exact same use as it had before, a two-family with a driveway, and additional parking in the back, and with additional green space as well, with over 60 feet of frontage, and it will exist as other properties in the neighborhood.

Atty. Jean said on page 5, it shows many properties on Russell Street between Lewis and Gilman Streets, and the character of the area is for lots between 4,500 square feet to a maximum of 9,500 square feet. He said that many of the lots are identical in nature.

Atty. Jean said that they are seeking to construct a new house on lot 88, which will be in line with other properties on the street. He said that the new home would meet all setbacks, and would be a home that would fit in the character of the neighborhood.

Atty. Jean said that on pages 3 and 4, page 3 is an overview of the neighborhood in general, showing the subject lots, and those lots conform very nicely to the general layout of the entire neighborhood. He said on page 4, it looks specifically at the homes on Lewis and Gilman, on both sides of Russell Street. He compared the lot sizes in the neighborhood.

Atty. Jean said that the proposal shows no detriment to the health and safety of the neighborhood, and there will be no detriment to the property values in the neighborhood, and the denial of the request would severely diminish the value of the owner without adding any value to anyone else's property. He said that there won't be any detriment to any of the abutters, and the spirit of the ordinance is to make sure that properties are conforming to the characteristics of the neighborhood. HE said that to have a two-family house that is renovated and re-styled, and updated, will add value to the property and the neighborhood in general, as opposed to being a dilapidated property. He said to add a single family home is reasonable. He said that the City assesses the empty lot for $75,000 a year, so someone thinks that it has a lot of value.

Mr. Currier referenced page 5, it mentions 50 & 50½ Russell Street as a two-family. He asked if the rest of them are single family units.

Atty. Jean said yes, and in that particular block, from Lewis to Gilman, there are two two-families. He said that as you get closer to Lake Street, there are another three or four, but the drawing shows a closer area of who the neighbors are.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

David Haigh, 3 Lewis Street, Nashua, NH. Mr. Haigh said he is not in support of the request. He said that the two-family house is an eyesore, and it's the largest structure in the development, 2½ - 3 stories tall. He said this will negatively impact his property values, and that a total of three family units in this area will exceed the density per acre, and fears that there will be insufficient parking, and people will be parking on the street. He said that a second house on the lot will obstruct light getting into his house and yard, and will be a detriment to the neighborhood, as there are a lot of houses there.

Mrs. MacKay said that she heard that the proposed single-family home will cause an issue for parking or accessing the property. She said she didn't understand how that would cause an access issue.

Mr. Haigh said that in his opinion, the lot size would be too small for six parking spaces for three dwelling units, and there would be on-street parking, and there is quite a bit of it already on Russell Street.

Mr. Boucher asked if the City permits on-street parking here.

Mr. Haigh said that he believes they do, but not in snow emergencies or overnight parking.

Mr. Falk said that the two-family will be staying as a two-family, so that house does not require any additional parking, nor does it need any relief from the Zoning Board. He said that

there would be one additional single-family house, and that house will meet the minimum parking requirements as well.

Gregory Haley, 42 Russell Street, Nashua, NH. Mr. Haley said that there is a two-family house to the left of his house, owned by an absentee landlord, and there are five or six cars parked on the grass. He said it is existing as a beautiful property for a two-family house, with a nice area to the left for a playground for children, and now there will be no place for them to play, they'll be out in the street playing, and said it's just too much into one property. He said he's glad that the house will be refurbished, it's been an eyesore for ten years, it's all overgrown, and the sidewalks are all heaved up from roots. He said that another house on this lot will not be good for the neighborhood.

SPEAKING IN FAVOR – REBUTTAL:

Atty. Jean said that the neighborhood has had the benefit of looking at an empty lot for a long time, and they like seeing the open space. He said that their enjoyment of such shouldn't outweigh the detriment to the applicant when the character of the neighborhood is such that it's been this way for 85 or 90 years now. He said that the existing two-family will not alter the impact on the neighborhood, in fact, the applicant will take down the garage in the back to expand how people can get in and out, and is taking down a porch on the side, and will have proper egress from the second story, and is proposing to put in a new home with a driveway and garage that would accommodate a family needs for parking, so the variances sought are asking the Board to consider the properties to exist as they have existed historically, and to make the best use for the property owner without presenting any harm or safety issues to the neighborhood.

Mrs. MacKay asked if either of the properties would be owner occupied, or rentals.

Atty. Jean said they don't know years in the future, but the present plan is to sell the single family lot to someone, and the two-family will be retained by G. Hurd Construction for rental purposes and for future family use. He said that the applicant has no plans to put the house on the market after refurbishing it, there may be plans for family members to live there.

Atty. Jean said that the garage and driveway will actually be on the other side, closer to the existing two-family structure, than to the Lewis Street side.

Mr. Boucher said it seems like the most impact would be to 1 Lewis Street, but they are not present tonight. He said that from the drawing, it looks as if there would be about 40 feet from the back of the house to the rear property line.

Atty. Jean said the reason is to give as much of a back yard as possible, and the lot gets somewhat narrower as it goes back from the front.

Mr. Currier said that for the existing lot, the requirement is to have 12,445 square feet in area, and it would have 5,348 square feet, essentially less than half of the requirement. He said that's a lot less than zoning requires.

Atty. Jean said that the applicant is asking for the historical and long-term use of the property sat on that 5,348 square foot parcel. He said for today's standards, it is less than half of what you would need to put in a new two-family home in an RB zone. He said that the home has always been there. He said that they're asking it to stay as is, and it's not uncharacteristic to have a two-family on a 5,200 square foot lot, as it's right in the same range as the other properties.

Mr. Boucher asked how many bedrooms are in the two-family.

Atty. Jean said that there are four, and two baths.

Mr. Boucher said that there will be sufficient parking, and the perception is that it's maybe tight.

Atty. Jean said that is one of the items that the applicant is trying to demonstrate here, that they are tearing down the garage and it allows space for people to turn around back there.

Mr. Currier asked if there will be an asphalt driveway where the garage footprint is.

George Hurd said that they feel that they have enough parking now, and the garage space will be green space. He said it's

quite a big driveway, and is almost double-car wide the whole way back.

Mrs. MacKay asked about the single-family home size, and if it will be in keeping with the size of the other single-family homes.

Mr. Hurd said it's a compact design, and they did it already on Pine Street already, it will be about 1,600 square feet, 3 bedrooms.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Mr. Haley said that the two-family house has a driveway on the right-hand side, its one-car wide, because the neighbor next door has a huge bush. He said it's double-wide at the beginning. He said it's too many vehicles for the amount of property that is there, and it will be an issue. He said that there's no green area behind the house. He said he doesn't see the advantage of another house being put in here.

Mr. Boucher said for the two-family, it's there, it's existing. He said he didn't see how denying anything that exists would change anything on this piece of property. He said that for the new property, we have a plan here, and the applicant clearly indicated that they can push the house frontwards and put the garage on the right side. He said that the 1 Lewis Street lot is the most impacted by this, but they're not here tonight. He said that the lot is at an angle, so there's one corner of the house that would be closer, but the other corner is further away. He said he' having a hard time finding sufficient reason to deny this proposal as it stands.

Mrs. MacKay said she concurs, and they want to create additional green space in the rear of the two-family, and they have parking now. She said she's hard-pressed to say no to the single-family, understanding that this is new, and it will change the aesthetics and the view of the neighborhood, and it's good that the setbacks will be met.

Mr. Currier said the new house would be analogous with the neighborhood. He said he's struggling with the existing two-family, it's a pretty big structure, and is struggling with the square footage of what is required. He said that he's compelled with hearing all the testimony to take another look.

Mrs. MacKay mentioned the size of a lot, what it should be, and it's less than half than is required. She said when she thinks of the size of her lot, with one house on it, and the size of this lot, and can't imagine two houses on a piece of property that is less than half the size of her own lot. She said she's not so sure of this request now, there may not be enough green space, and there may be too much encroachment.

Mr. Boucher said that this is not the first time we've seen a request like this. He said that usually, when we have concerns is when they ask for multiple variances on one lot. He said that these two properties are completely within the envelope of the setbacks in this zone. He said that they're removing the porch. He said that the two-family is already existing, it's not like they're coming in and asking to build it, it's already there, and they're removing some of the structures on the property to increase open space. He said that they testified that the parking meets the ordinance, and said that what they propose will improve on what is there now.

Mr. Currier said some of the key information is the proposed removal of the garage and the side porch. He said that the way he'd expect the property, the way it's been used for decades, is that families have that yard for their space, so with the removal of the porch, there is room on the side and in the back. He said his vision of how this property has been used is that there is this two-family, but there's this yard and people can use that, and is concerned about how tight that property is, and learned tonight that the garage and porch will be gone. He said he'd like to take another look at it, and see if he's comfortable with that additional space.

MOTION by Mr. Currier to table the application as presented to the next meeting, to allow another look at the open space, to the April 25, 2017 meeting.

SECONDED by Mrs. MacKay.

Mr. Boucher said that if he didn't agree with the tabling of the case, it would be a stalemate, but said he'd agree with it to move the case along, as a 2-1 vote wouldn't do anything.

MOTION CARRIED UNANIMOUSLY 3-0.

5. **Jacob Poulose (Owner) 20-22 Central Street (Sheet 83 Lot 15) requesting the following variances: 1) minimum open space, 35% required – 22% proposed; 2) to allow parking in front yard setback, 10 feet required, 0 feet proposed, and 3) to allow parking spaces and driveway within 50 feet of an intersection, 40 feet proposed – all requests to maintain a recently paved parking area off of Vine Street. RC Zone, Ward 4.**

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay

Jacob Poulose, 20-22 Central Street, Nashua, NH. Mr. Poulose said he bought the property in 2013, it was a foreclosed property, with no tenants. He said that there are two entrances, one on Vine Street and one on Central Street. He said that the tenants park on the Vine Street side. He said the area was used for parking, but it was not paved, and when it rained, it was muddy and messy, and the tenants asked to have it paved. He asked the Building Department if he can pave the parking lot, but he said he was not aware that the space was not for parking. He was told that he could, and didn't need a permit, but in reality, it wasn't a parking lot. He said that it is already paved, and is in good condition, and is good for the tenants.

Mr. Currier said on Central Street, one tenant parks on the left of the building. He asked if that was the dirt area that was recently paved, or the one on Vine Street, or both.

Mr. Poulose said he did not pave on the Central Street side, he said he paved on the Vine Street side.

Mr. Currier asked if the Central Street area is asphalt now.

Mr. Poulose said it is, but it's torn apart. He said he paved on the side of the house, but put dirt on top of it to make it appear as green space, and put some flowers and plants on the top. He passed out a couple pictures for the Board.

Mr. Boucher stated that Vine Street is a one-way street towards Central Street and asked how many lanes are there now.

Mr. Poulose said it isn't two lanes, but there is space is for almost two. He said that on Vine Street, you can park there all night.

Mr. Currier asked if there is a curb-cut on the Vine Street side for the lot.

Mr. Poulose said that there is a little gap between the road and the pavement, he said that the area is not designed as a parking space, as it is a little higher than the road.

Mr. Boucher asked if he has to drive over a curb to get to the parking.

Mr. Poulose said no, there is not this 6-inch area. He said it's almost at grade.

Mr. Falk said it appears as if there isn't a curb-cut, and the sidewalk is not raised high.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Mr. Boucher it is a home on a very small lot, and sees what the challenges are, it's very compact. He said that Vine Street is a one-way street, and it's not like you're trying to back out with traffic coming both ways. He said he believes that the property has been used that way for parking. He said he didn't see an overwhelming detriment to the neighborhood to have this area paved, and it may alleviate some of the parking problems in the area, as the area has homes on small lots and it is compact. He said that the applicant admitted that he made a mistake in paving it, it was a misunderstanding on what was required and he came in to make it right. He said he didn't see the benefit in making him remove the pavement, and it's reasonable.

Mrs. MacKay concurred, and it makes it easier for his tenants to park, and it's better in inclement weather. She said she wouldn't make him remove the pavement, and would leave it in place.

Mr. Currier said his thoughts were covered by Mr. Boucher and Mrs. MacKay

MOTION by Mr. Boucher to grant the variance as advertised on behalf of the applicant, all taken collectively. He said that the variance are 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 said that the Board mentioned that the area is very compact, and there is some history of vehicles parking in this area all along.

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

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 3-0.

MISCELLANEOUS:

REGIONAL IMPACT:

The Board determined that there are no cases that involve regional impact.

BY-LAWS:

Mr. Falk passed out the original version, which was signed by the Officers.

MINUTES:

None.

ADJOURNMENT:

Mr. Currier called the meeting closed at 8:20 p.m.

Submitted by: Mrs. MacKay, Clerk.

CF - Taped Hearing