

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
July 26, 2016

A public hearing of the Zoning Board of Adjustment was held on Tuesday, July 26, 2016 at 6:30 PM in Room 208, City Hall.

Members in attendance were:

Gerry Reppucci, Chair
J.P. Boucher, Clerk
Rob Shaw
Mariellen MacKay

Marcia Wilkins, Planner I, Planning Department
Mindy Lloyd, Zoning Coordinator, Planning Department

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

- 1. John J. Flatley Company (Owner) Expose Sign & Graphics, Inc. (Applicant) 1 Tara Boulevard (Sheet A Lot 721) requesting variance to allow for three off-premises sign panels on an existing ground sign - 30 sq.ft for Homewood Suites, located at 15 Tara Boulevard, 30 sq.ft for new restaurant to be built, address undetermined, and 9.3 sq.ft for the Tara Heights Apartments, located at 6-30 Digital Drive. PI Zone, Ward 8.**

Voting on this case:

Gerry Reppucci
Mariellen MacKay
J.P. Boucher
Rob Shaw

Attorney Gerald Prunier, Prunier & Prolman, P.A. As the sign company was not present, Attorney Prunier requested that the case be tabled to the end of the meeting.

MOTION by Mr. Reppucci to table the case to the August 9, 2016 meeting.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 4-0.

2. Million Dollar View, LLC (Owner) 6-8 Girouard Avenue (Sheet 47 Lot 198) requesting variance for minimum lot width, 75 feet required, 57.2 feet proposed - to subdivide one lot into two lots. RA Zone, Ward 3.

Voting on this case:

Gerry Reppucci
Mariellen MacKay
J.P. Boucher
Rob Shaw

Paul Chisholm, Keach-Nordstrom Associates. Mr. Chisholm gave an overview of the proposed subdivision. He explained that there was a 3-family home on the lot which burned down. The remaining foundation will be removed and two new single-family homes will be built on the two new lots.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Mr. Shaw said the lot is unique, and all of the other dimensional requirements will be met.

Mr. Reppucci said there will be less impact on the neighborhood having two single-family homes rather than a 3-family.

MOTION by Mr. Shaw to approve the variance application as advertised on behalf of the owner as advertised. He said there will be less impact to the neighborhood having two new single-family homes rather than a 3-family dwelling. The variance is needed to enable the applicant's proposed use of the property, and given the special conditions of the property, the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than the

area variance. The spirit and intent of the ordinance is being kept in good faith. Property values should not be negatively impacted. The request is not contrary to the public interest. Substantial justice is served to the applicant.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 4-0.

3. Heritage Baptist Church of Nashua, Inc. (Owner) Heritage Baptist Academy (Applicant) 105 Lock Street (Sheet 41 Lot 49) requesting use variance to allow a school, grades 1-12, within an existing church. GI Zone, Ward 3.

Voting on this case:

Gerry Reppucci
Mariellen MacKay
J.P. Boucher
Rob Shaw

Attorney Gerald Prunier, Prunier & Prolman, P.A. Attorney Prunier gave a brief overview of the proposal.

Pastor Larry Hileman, Bible Baptist Church, 105 Lock St. Pastor Hileman described the operation and curriculum of the proposed school.

Mr. Reppucci asked if the school meets all State requirements.

Pastor Hileman said yes, they meet State requirements for curriculum and approval for attendance.

Mr. Reppucci asked if the number of students could potentially increase from the proposed 12-14 students.

Pastor Hileman said he would have no issue coming back to the Board should the intensity increase.

Attorney Prunier proposed a cap of 50 students.

Ms. MacKay asked if the school would provide accommodations for students with disabilities. She noticed that the school does not provide transportation.

Pastor Hileman said the new church meets current ADA requirements for accessibility. The church does not provide transportation, but he would be more than happy to meet all requirements to enable students with disabilities to attend the school.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Ms. MacKay to approve the variance application as advertised on behalf of the owner as advertised, with the stipulation that if the school reaches 50 students, the school is requested to come back before the Board for further consideration. The variance is needed to enable the applicant's proposed use of the property, and given the special conditions of the property, the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than the area variance. The spirit and intent of the ordinance is being kept in good faith. Property values should not be negatively impacted. The request is not contrary to the public interest. Substantial justice is served to the applicant.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 4-0.

4. Scupp Realty, LLC (Owner) Boston Sign Company (Applicant) 323 Daniel Webster Highway (Sheet A Lot 384) requesting variance to exceed maximum wall sign area, 112.5 sq.ft allowed, 112 sq.ft permitted on 7-1-16, one additional 37.12 sq.ft wall sign proposed for a total wall sign area of 150 sq.ft. HB Zone, Ward 7.

Voting on this case:

Gerry Reppucci

Mariellen MacKay
J.P. Boucher
Rob Shaw

Attorney Gerald Prunier, Prunier & Prolman, P.A. Attorney Prunier gave an overview of the existing and proposed signage on the site. He said the building is unique because the parking lot and entrance are at the back of the property. The proposed sign will be located so that it is only visible to patrons driving on Costco Dr.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Shaw to approve the variance application as advertised on behalf of the owner as advertised. The property is unique and the building shares several tenants. The proposed sign will only be seen from Costco Dr. and will help guide the public to the store's entrance. The variance is needed to enable the applicant's proposed use of the property, and given the special conditions of the property, the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than the area variance. The spirit and intent of the ordinance is being kept in good faith. Property values should not be negatively impacted. The request is not contrary to the public interest. Substantial justice is served to the applicant.

SECONDED by Ms. MacKay

MOTION CARRIED UNANIMOUSLY 4-0.

Attorney Gerald Prunier, regarding Case #1. As the sign company was still not present, Attorney Prunier requested that the case be tabled to the August 9, 2016 meeting.

MOTION by Mr. Reppucci to table the case to the August 9, 2016 meeting.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 4-0.

5. **Leemilt's Petroleum, Inc. (Owner) Cross America Partners - Carolyn Parker (Applicant) 485 Amherst Street (Sheet H Lot 112) requesting the following variances: 1) to encroach 16'-8" into the 20' required front yard setback to construct a 36'x45' overhead canopy over existing gasoline pumps; and, 2) to exceed maximum number of wall signs, 3 permitted - 6 proposed. HB Zone, Ward 2.**

Voting on this case:

Mariellen MacKay
J.P. Boucher
Rob Shaw

(Gerry Reppucci recused himself)

Carolyn Parker, Cross America Partners. Ms. Parker gave an overview of the proposal. She said the gas station was closed for a short time but is now open again. She said her client is looking to install an overhead canopy that is set back a couple feet further than the previous canopy. As there is no space on site for a freestanding sign, they are looking to place price signage and three logo signs on the canopy.

Mr. Reppucci asked Ms. Parker if she had any communication with the State regarding potential future roadway widening on Amherst St.

MS. Parker said no. She will make her client aware of this.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Ron Campagna, Owner, Camps Car Wash/Quick & Clean Laundromat. Mr. Campagna said he owns the car wash and laundromat that abuts the property. The car wash is set back from the road, and the proposed canopy will block their ground sign. Poor visibility of

the sign causes people to slam on their breaks and turn into their driveway very quickly, which is a hazard. Mr. Campagna provided pictures to the Board.

Mr. Reppucci asked Mr. Campagna if the laundromat he is speaking of is adjacent to the car wash.

Mr. Campagna said yes.

Mr. Reppucci recused himself from the case. He said he owns a laundromat in Nashua. He asked Mr. Shaw to Chair the case.

Michael Campagna, Owner, Camps Car Wash/Quick & Clean Laundromat. Mr. Campagna said the installation of the canopy would be an issue of public safety, as the speed limit on Amherst St is 40mph and people tend to travel faster than that. Without visibility of their sign, drivers make quick turns into their driveway. The laundromat brings in a lot of customers from out of town who are not familiar with Amherst St. and need good visibility of the signage.

Mr. Shaw asked if Mr. Campagna had any objection to the proposed signage.

Mr. Campagna he only has an objection to anything that will block his ground sign.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Ms. Parker said the proposed canopy and signage would improve business at the gas station. Patrons are currently not able to see the gas prices with the existing signage. Mr. Campagna's ground sign looks very close to the road; she questions whether it is grandfathered and/or does not meet current setback regulations. If there is an issue with traffic pulling into their site, Mr. Campagna may need to improve his curb cut. The proposed canopy is standard and meets the requirements for fire suppression.

Mr. Boucher asked if there was a compromise that would allow for a canopy that would still provide sight lines to the car wash ground sign.

Ms. Parker said she would need to conduct further research to answer that question. She would prefer to continue the meeting.

Mr. Shaw asked how much the original canopy encroachment.

Ms. Wilkins said the original canopy was 17'10". A variance was received back in 2001.

Mr. Shaw the new proposal is 16'3", so less of an encroachment.

Mr. Michael Campagna said fire suppression currently exists on site at the end pumps. He didn't believe a canopy was required to provide fire suppression. Even though the proposed canopy will be less of an encroachment, it will still block their ground sign.

Mr. Shaw asked what the current setback for ground signs are in the HB zone. He said the car wash may be benefitting from having their sign closer to the roadway than what is currently permitted.

Ms. Wilkins for signage under 20ft. in height, the front yard setback is 10ft.

Mr. Shaw asked whether the height of the canopy might make a difference in sight line visibility.

Mr. Boucher asked what the height restrictions would be.

Ms. Wilkins said canopies are considered to be part of a structure, so they cannot be any higher than the district's regulations for structures. In the HB zone, the maximum height is 60ft.

MOTION by Mr. Shaw to reopen the public hearing to obtain the applicant's testimony regarding the Board's discussion of the canopy height.

SECONDED by Ms. MacKay.

MOTION CARRIED UNANIMOUSLY 3-0.

Ms. Parker said it is atypical to have a canopy that is not the standard 15ft. in height with a 3ft. fascia. Fire suppression is a maximum of 15ft. for the nozzles, so if they canopy were higher the nozzles would be hanging down.

Mr. Shaw asked if Ms. Parker would be open to researching whether or not the canopy height can be increased or the canopy itself can be shortened.

Ms. Parker said she would be in favor of continuing the meeting so that she can conduct further research.

MOTION by Mr. Shaw to table the case to the August 23, 2016 meeting.

SECONDED by Ms. MacKay.

MOTION CARRIED UNANIMOUSLY 3-0.

REGIONAL IMPACT:

Ms. Lloyd said she would provide a copy of the tentative 8/9/16 agenda to Board members via email.

REHEARING REQUESTS:

Mr. Reppucci said a rehearing request was received regarding the following case:

Nabil & Ihsane Eloufir (Owners) 3 Dora Street (Sheet 111 Lot 100) requesting special exception for a major home occupation for an in home day care for four children. R9 Zone, Ward 6. [APPROVED AT 6-14-16 ZBA MEETING]

The request was submitted by Smith-Weiss Shepard, P.C., representing Dianne Sylvester of 2 Dora St. Mr. Reppucci said it's submitted within the rehearing date window, so it's a valid rehearing request.

MOTION by Mr. Reppucci to go forward with hearing the rehearing request.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 4-0.

Mr. Reppucci asked if there is any procedural error, including improper notice or denying someone the right to be heard, etc.

The Board members unanimously said no.

Mr. Reppucci asked if it were an illegal decision, in other words, did the Board fail to completely address each of the points of law required for the special exception and/or variance.

The Board members unanimously said no.

Mr. Reppucci asked if the request for rehearing contains any new information not presented or available to the Board at the original public hearing.

The Board members unanimously determined that there was no new information related to the case.

Mr. Reppucci asked if there is anything that could/would cause the Board to make a different decision.

The Board members unanimously determined that there is nothing that could or would cause them to make a different decision.

MOTION by Mr. Reppucci to deny the rehearing request for 3 Dora St, because the Board has unanimously answered the four questions as "no" per testimony and discussion on record.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 4-0.

MINUTES:

June 14, 2016; June 28, 2016; July 12, 2016:

No action taken.

ADJOURNMENT:

Mr. Reppucci called the meeting closed at 8:45 p.m.

Submitted by: Mr. Boucher, Clerk.

ML - Taped Hearing