

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
August 23, 2016

A public hearing of the Zoning Board of Adjustment was held on Tuesday, August 9, 2016 at 6:30 PM in Room 208, City Hall.

Members in attendance were:

Gerry Reppucci, Chair
Robert Shaw
Mariellen MacKay
Jack Currier
Kathy Vitale

Carter Falk, AICP, Deputy Planning Manager/Zoning

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.

Mr. Reppucci said that the Board will consider Case #8 as the second case on the Agenda.

1. 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. [TABLED FROM 7-26-16 MEETING]

Voting on this case:

Gerry Reppucci
Kathy Vitale
J.P. Boucher
Mariellen MacKay
Jack Currier

MOTION by Mr. Reppucci to table the request to the September 27, 2016 meeting.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 5-0.

- 2. Olivax, LLC (Owners) 1617 Southwood Drive (Sheet G Lot 557) requesting variance to exceed maximum wall sign area, 149.5 sq.ft existing, 150 sq.ft permitted - an additional 14 sq.ft proposed for a total sign area of 163.5 sq.ft. PI Zone, Ward 2.**

Voting on this case:

Gerry Reppucci
Mariellen MacKay
Robert Shaw
Kathy Vitale
Jack Currier

John Koutsos, 3 East Dunstable Road, Nashua, NH. Mr. Koutsos said that Alec's Shoe Store is moving to this location, and is asking for relief to put a sign on the rear southwest face of the building, it's the same one on the existing building in downtown Nashua.

Mr. Koutsos said that they are allowed 150 square feet for wall signage. He said that they have the sign that says "Alec's", but don't have the square footage room to put "shoes" underneath it. He said that the building is 240'x160', so there's 20,000 square feet of wall area.

Mr. Koutsos said that the vantage point of the side and back can't be seen from anywhere else, and you cannot see the sign on the front and the proposed one at the same time, so there won't be any visual pollution. He said it's a unique, free-standing building, you can see all four sides of the building when you drive around it, and the back is visible from Trafalgar Square and the hotels, and you can actually see it from the Market Basket parking lot when the leaves are off the trees in the fall. He said that substantial justice will be served, it will not diminish anyone's property values, and it will add a little glow to that side of the building, making it a little safer at night.

Mr. Currier asked about signage on the free-standing sign that's up near the intersection.

Mr. Koutsos said that there are two signs by the intersection, one is for the park, with Dartmouth Hitchcock on the sign, that sign serves all the properties that do not have road frontage. He said that they won't be on that sign, but do have an existing ground sign, about a hundred yards up from that, right now it says Oasis on it, and it will be converted to Alec's Shoe Store.

Mr. Falk said that ground signs and wall signs are computed separately, the owner is allowed 150 square feet, and they have 149.5 square feet already approved, and they want to add this additional small sign.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Reppucci to approve the variance application as advertised on behalf of the owner as advertised. Mr. Reppucci said 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.

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

Mr. Reppucci said that it will have no negative impact on surrounding properties. He said it is not contrary to the public interest, testimony was that the building will be identified clearly, and in this particular location will be a benefit, and substantial justice is served to the owner.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 5-0.

3. Jose G. Balderas (Owner) 65 Nagle Street (Sheet 102 Lot 201) requesting variance for minimum lot area, 7,077 sq.ft existing, 12,446 sq.ft required - to convert a single-family home into a two-family home. RB Zone, Ward 6.

Voting on this case:

Gerry Reppucci
Kathy Vitale
Robert Shaw
Mariellen MacKay
Jack Currier

Crystal Balderas, 65 Nagle Street, Nashua, NH. Mrs. Balderas said that they are requesting a variance to make the home a two-family. She said that at one time, it was a two-family, and the previous owners made it into a single-family, and the request is to change it back to a two-family. She said that they won't diminish any of the property values, it's a beautiful home and area, and would like to keep it like that. She said that there is no plan to add onto the house, it'll be the same layout. She said that they have parking for all of their cars.

Mr. Reppucci asked when the property was changed from a two-family to a one-family.

Mrs. Balderas said she didn't know.

Mr. Falk said it was in 2005, he said that there was a building permit to change it from a two-family to a single-family, but there was never a final building inspection done on it.

Mr. Reppucci asked if the Assessor's Office considers it a two or a one family.

Mr. Falk said a single-family.

Ms. Vitale asked if the property was approved for two curb-cuts, as there are people parking on both sides of the house.

Mrs. Balderas said that they've only been there for three weeks, there's a gravel layout on one side, and that was how it was presented to them when they bought it.

Mr. Currier asked how the house was displayed to them from the realtor.

Mrs. Balderas said it was a single family, and the realtor came to City Hall to verify it.

Mr. Reppucci asked if the house has two kitchens in it.

Mrs. Balderas said yes, but one of them didn't have the cabinets, so they were put up.

SPEAKING IN FAVOR:

Gary Graves, 61-63 Nagle Street, Nashua, NH. Mr. Graves said he's lived there since 1991. He said it was a two-family back then, there were two owners that used it for a two-family, and they had a lot and a half, and they subdivided it and put in the stone driveway on the left side of the house, along with a stockade fence on either side of the house. He said it was 65-67 at the time, and now, 67 is a brand new house. He said he has a petition signed by many neighbors that do not have an issue with this to put it back to a two-family house. He submitted it to the Board. He said if they move their fences back a little bit, they could even park ten cars there. He said that the house was built in 1946 as a single-family house, then, they added the second floor.

Mr. Currier asked about the subdivision and the lot was split, and in that action, the house had to be changed to a single-family. He asked what year that occurred, and that the Board has no record of that tonight.

Mr. Graves said that he's not sure, but it's been a two-family house since 1991.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Dennis O'Brien 67 Nagle Street, Nashua, NH. Mr. O'Brien said he lives next door. He said he's been there a little over three years ago, as a single-family house. He said that in 2005, around the time of the subdivision, the City compelled the owners to change the house to a single in order to accommodate the subdivision. He said that it should be denied, for now, since no reasons have been shown to him to support the need for the variance. He said what he observes now, is two families plus what appears to be other single unrelated tenants, with a minimum of six to seven vehicles regularly filling the paved drive and the gravel driveway on the other side. He said that often, vehicles are parked on both sides of the street, creating choking situations for vehicles to pass through.

Mike Richer, 48 Nagle Street, Nashua, NH. Mr. Richer said that they subdivided the lot, and were told to make the house into a single family, what's fair is fair. He said that the lot is half of what they need. He submitted a petition indicating neighbors not in support.

Stephanie Blais, 62½ Nagle Street, Nashua, NH. Mrs. Blais said her house was the result of a subdivision from 62 Nagle Street, and in 1994 built her house. She said her concerns are about the cars, there are about ten cars parked there every day and cars and buses can't make it through. She said she's also concerned about the number of people in the home, and they're blocking the street. She said that she has concerns about the safety of the children.

Mr. Reppucci said as far as the driveway, there is a 24-foot curbcut allowed, and it can be divided into two driveways, there could be two 12 foot driveways there. He said that issue is not before the Board, and the Board is not an enforcement Board.

SPEAKING IN FAVOR - REBUTTAL:

Crystal Balderas, 65 Nagle Street, Nashua NH. Mrs. Balderas said that she's not here to upset the neighbors or make anyone mad, she said she's only been living there for three weeks. She said a lot of the cars are people coming to see their new house. She said that she has a vehicle, her husband has a vehicle and a work vehicle, and the same thing as her brother-in-law. She said she'd try to sweep up any gravel that goes in the road. She said that when they bought the house, the gravel driveway was already there. She said that she is a mother to five children, so there are a lot of people there, and they're a family of seven, and upstairs, the couple has two small boys. She said that sometimes, she watches one child. She said she's trying to keep the house nice.

Ms. Vitale said that the variance is for the land area, it's smaller than required for a two-family. She said she heard that it's possible to move the fence back to allow for more parking.

Mrs. Balderas said that she heard that we could move the fence back, but doesn't know the process of doing so, she said it can be done to make people happy.

Mr. Reppucci asked how many cars can be parked off the street.

Mrs. Balderas said six.

Mrs. MacKay asked if the real estate agent stated that it was one or two driveways.

Mrs. Balderas said two driveways.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Mike Richer, 48 Nagle Street, Nashua, NH. Mr. Richer said if it's a two family, they'll have to have another meter. He said that when he looked on the GIS map, the driveway was 32 feet wide.

Mr. Reppucci said that you can't go by the GIS map, and the testimony of the applicant was that they weren't sure what the driveway width was. He said that the driveway width isn't before the Board.

Mr. Currier said it looks as if it was a two-family, there are two driveways. He said the Board has been presented with information that seems consistent, but nothing in writing that when it was subdivided, there was a stipulation that the two family goes to a single family, which is a very different situation. He said he'd like to review that issue, also, the driveway, as there are certainly two there, and we should get that clarified because it's oversized, he questioned whether it would be prudent for the Board to approve it as a two-family when it's not known.

Ms. Vitale said she'd like to know about the driveway, and more of the history of the stipulation from the house next door when it was subdivided.

Ms. MacKay agreed with Mr. Currier and Ms. Vitale. She said it was a two-family for years and years, and if there's still two meters and two kitchens. She asked if the second driveway was put in with permission, or if there is something written somewhere. She said she really doesn't have enough information right now to make a determination.

Mr. Reppucci said he doesn't know if the driveways are right or not. He said if they're not right, the Board can make a

stipulation that they need to be right. He said he looked at this as an area restriction on this structure, it used to be a two-family, certainly there's reasons why they went from a two-family to a single-family perhaps for the property assessment reasons. He said this all happened in 2005, and it's 2016 now, eleven years later, and things evolve. He said he has no problem looking at this as just what it is, it's got 5,000 square feet less than what it needs for a two-family. He said that there are changes coming soon about in-law apartment laws. He said he's not opposed to tabling it.

Mr. Falk said that for all we know, the gravel driveway has been there since 1977, when they had a permit to convert a single-family into a two-family. He said if it's been there for 40 years, whether it's 24 feet wide or not, we're not going to go after something that's been there for that long.

Mr. Shaw said he thinks the driveway issue is a lesser item here. He said the house apparently can accommodate a lot of people, regardless of whether it's a two-family or a single-family. He said that by having the extra driveway is extra off-street parking which furthers the issue that neighbors have about safety concerns, as less cars are on the street. He said he has more issues with the fact that it went from a conforming two-family on a large lot to two lots, and it was converted back to a single-family to keep the conformance. He said that now, even after 11 years has past, they want a two-family again, so there in essence would be three dwellings in the original lot configuration. He said he sees it as an overall intensity of use, that wasn't envisioned or supported by the actions of the Planning Board taken 11 years ago.

Ms. Vitale said that there are a couple other two-family dwellings on the street, but property size, it doesn't match, it is a smaller property.

Mr. Reppucci said it's a 10-room, 5-bedroom house. He said that maybe it's a flawed assumption that making it go from a two-family to a single-family is going to reduce the intensity, because it's physically the same size structure, with the same number of bedrooms and bathrooms.

Mr. Currier said he feels that it's doing diligence on behalf of the applicant to ask for that record of the subdivision, because maybe it didn't happen. He said he'd prefer to take an

exhaustive look at the record and find out, and would prefer to table the case.

Mrs. MacKay said that by doing due diligence on behalf of the applicant makes logical common sense, because all we have is oral testimony that there may have been something on this property, and in a court of law, that's inadmissible. She said we need this backup information. She said that this needs to be clarified.

Mr. Shaw said he supports tabling the case, it's reasonable to get this clarified.

Mr. Reppucci asked if the Board should table to just a public meeting, or to have more public information.

Mr. Currier said most likely, just to the public meeting, where we have, or have not, more information about this property, specifically any old subdivision.

Discussion ensued.

MOTION by Mr. Currier to table this request because the Board is seeking to clarify the criteria for the property if it was previously subdivided into two lots, to the September 13, 2016 meeting, where it will be first on the Agenda, and that Planning Department Staff will search for that record, and the Board will have a public hearing at that point, and we'll open the public hearing with that new information. He said the Board could receive any new testimony on the matter up to that point.

Mr. Reppucci said he thought that the Board would not table it to a public hearing, that we'd table it to a public meeting, so that our Board members will consider the information that's coming in from the Planning Department that we are requesting, and we'll make it clear to everyone in the audience tonight that if information is provided to us that justifies going forward with it, that we'll reserve the right to open the public hearing again at that time. He said he didn't want to put ourselves in the position where we have to go through this whole hearing again, if we open it up to the public hearing, we'll have to go through this whole thing all over again. He said we should just go to the public meeting, get our information, and if we decide to open it up, we could put everybody on notice, and there may

be an opportunity to speak to the new information that becomes available.

Mr. Currier said he's good with that, so he clarified the motion, so that the motion is to table the public meeting until the September 13, 2016 meeting, so the Planning Department can seek that record, and we'll consider other information comes, we'll consider that, and if the Board is so inclined to open the meeting to a public hearing, the Board may choose to do so at that time, but at this time, it's only tabled to a public meeting, but may open the public hearing if need be.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 5-0.

MISCELLANEOUS:

REGIONAL IMPACT:

Mr. Falk said that there's an extra week in the scheduling, and will email out the Agenda when it becomes available.

REHEARING REQUESTS:

None.

MINUTES:

6-14-16:
6-28-16:
7-12-16:
7-26-16:
8-9-16:

MOTION by Mr. Currier to approve all five sets of minutes as presented, waive the reading, and place the minutes in the file.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 5-0.

ADJOURNMENT:

Mr. Reppucci called the meeting closed at 8:22 p.m.

Zoning Board of Adjustment

August 23, 2016

Page 11

Submitted by: Mr. Currier, Acting Clerk in Mr. Boucher's
absence.

CF - Taped Hearing