

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
January 10, 2023

A public hearing of the Zoning Board of Adjustment was held on Tuesday, January 10, 2023 at 6:30 PM, both in person at City Hall and via Zoom.

Steve Lionel, Vice Chair, asked for a Roll Call.

Steve Lionel, Vice Chair
Jack Currier, Clerk
JP Boucher
Rob Shaw
Jay Minkarah
Josh Nehiley (arrived at 6:50)

Carter Falk, Deputy Planning Manager/Zoning
Kate Poirier, Planning Coordinator

Mr. Lionel explained the Board's procedures, saying that real-time public comment can be addressed using Zoom, or by telephone, or in person. Mr. Lionel said that real-time comments via audio will be addressed at the conclusion of the public hearing, and the public is encouraged to submit their comments for future meetings via email to the Planning Department, which is Planningdepartment@nashuanh.gov, or by mail, at P.O. Box 2019, Nashua, NH, 03061. Mr. Lionel identified the points of law required for applicants to address relative to variances and special exceptions. Mr. Lionel explained how testimony we 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.

- 1. Darian Guzman (Owner) Daniela Guzman (Applicant) 60 Blossom Street (Sheet 94 Lot 85) requesting special exception from Land Use Code Section 190-47 (B) to allow a major home occupation for an in-home nail salon. RB Zone, Ward 6.**

Voting on this case:

Steve Lionel
Jack Currier
JP Boucher
Rob Shaw
Jay Minkarah

Daniela Guzman, 60 Blossom Street, Nashua, NH. Mrs. Guzman said that she'd like to open a nail salon in her home. She said that they have a four car garage and there is plenty of parking. She said that she would only have one client at a time, and it won't be noisy.

Mr. Currier asked if any clients would be parking on the street.

Mrs. Guzman said that the driveway is pretty big, they'll park there.

Mr. Currier asked if she is licensed by the State.

Mrs. Guzman said that she has her manicurists license.

Mr. Shaw said that she's filled out the major home occupation affidavit, and asked for the record if she is able to adhere to the stipulations.

Mrs. Guzman said yes.

SPEAKING IN FAVOR:

Rosemary Johnson, 58 Blossom Street, Nashua, NH. Mrs. Johnson said that she is in favor, and is in support, the lot is large and there is plenty of parking available.

Helen Vacca, 47 Gilman Street, Nashua, NH. Mr. Falk said that there is an email from Mrs. Vacca in support of the application.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Boucher said that he supports the application.

Mr. Shaw said that he also supports the application.

Mr. Minkarah said that he is in support of the application.

Mr. Currier said that he's in support, and there is plenty of parking.

Mr. Lionel said that he is in support.

MOTION by Mr. Boucher to approve the special exception application on behalf of the owner as advertised. Mr. Boucher stated that the use is listed in the table of uses, Section 190-47 B.

Mr. Boucher said that the use will not create undue traffic congestion or unduly impair pedestrian safety.

Mr. Boucher said that the use will not overload public water, drainage, sewer or other municipal systems.

Mr. Boucher stated that all special regulations are fulfilled, the applicant filled out the affidavit stating that they meet the major home occupation criteria.

Mr. Boucher indicated that the use 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.

SECONDED by Mr. Shaw.

MOTION APPROVED UNANIMOUSLY 5-0 PER VERBAL ROLL CALL OF THE VOTING MEMBERS.

2. JKS Realty, LLC & LJJ Realty, LLC (Owners) Lot "L" Fairmount Street and "L" Hutchinson Street (Sheet 62 Lot 100 & Sheet 127 Lot 131) requesting special exception from Land Use Code Section 190-114 & 284 to encroach into the 40-foot wetland buffer at two separate location to construct access driveways for a four-building, 183-unit multi-family development. RC Zone, Ward 4. [ORIGINALLY APPROVED AT 2-26-19 ZBA MEETING, TWO-YUEAR EXTENSION OF APPROVAL GRANTED 12-8-2020].

Voting on this case:

Steve Lionel
Jack Currier
JP Boucher
Rob Shaw
Jay Minkarah

Attorney Andrew Prolman, Prunier & Prolman, PLLC, 20 Trafalgar Square, Nashua, NH. Atty. Prolman handed out two handouts to the Board, one being the original Conservation Commission approval, and the other the Soil Scientists letter to Mr. Tamposi.

Atty. Prolman said that they are simply requesting a two-year extension of the wetland special exception that was originally approved in 2019, and again, extended in 2022. He said that they have vacant land at the end of Hutchinson Street, just off of Baldwin Street, off of the Broad Street Parkway. He said that nothing has changed since the original approval by the Board. He said that the proposed roadway that would access the development is the same, and it cuts through two wetland areas, and there is approximately 3,000 square feet of buffer impact, the same as from 2019.

Atty. Prolman said that the Conservation Commission had five stipulations that they will still carry forth with this extension, and will continue to meet all the criteria for the special exception, and the site has been delayed as it is a very complex site, it is challenging to get to, challenging to develop with the topography, and there are access issues, and it may or may not tie into the Tannery property which potentially will be developed in the future, also, covid over the past few years has made it difficult to get the project off the ground.

Atty. Prolman said that he's aware that there have been some comments by neighbors, and the issues they raised would best be brought up by the Planning Board.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Dan & Julie Van Kalken, 55 Baldwin Avenue, Nashua, NH. Mr. Lionel said that their letter requests that the case be postponed, and the Board will not be doing that.

Dionisi Dendromisis, 22 Hutchinson Street, Nashua, NH. Mr. Lionel said that his letter about increased traffic does not involve the Board, and will be addressed by the Planning Board.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Lionel said that there no need for rebuttal in favor.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Shaw said that there are no changes, and is in support of the application.

Mr. Minkarah said that there are no changes, and is also in favor.

Mr. Currier said that he was part of the original decision, and is still in support.

Mr. Boucher said that he is in support.

Mr. Lionel said that he is in support of the application.

MOTION by Mr. Shaw to approve the special exception application on behalf of the owner as advertised. Mr. Shaw stated that the use is listed in the table of uses, Section 190-114 and 190-284.

Mr. Shaw said that the use will not create undue traffic congestion or unduly impair pedestrian safety.

Mr. Shaw said that the use will not overload public water, drainage, sewer or other municipal systems.

Mr. Shaw stated that all special regulations are fulfilled, the applicant indicated that they will adhere to the five stipulations of approval from the Conservation Commission.

Mr. Shaw indicated that the use 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.

SECONDED by Mr. Boucher.

MOTION APPROVED UNANIMOUSLY 5-0 PER VERBAL ROLL CALL OF THE VOTING MEMBERS.

3. Steven Fritz (Owner) 105 Vermont Avenue (Sheet 4 Lot 25) requesting variance from Land Use Code Section 190-17 (E)(1) to exceed maximum driveway width, 24 feet permitted,

40 feet existing - requesting to maintain an additional 16 feet of recently added driveway width. R9 Zone, Ward 7.

Voting on this case:

Steve Lionel

Jack Currier

JP Boucher

Rob Shaw

Josh Nehiley

Steve Fritz, 105 Vermont Avenue, Nashua, NH. Mr. Fritz said that he had the additional width installed a little over a year ago, there was no permit pulled, and didn't think there was an issue until a couple months ago, and is trying to rectify the situation.

Mr. Fritz said that he was made aware that the driveway is only supposed to be a maximum of 24 feet wide. He said that there are other driveways in the area that exceed 24 feet, and showed the Board pictures of those. He said that Exhibit B, 3 Connecticut Avenue, their driveway is well over 24 feet. He said that the driveway does not negatively impact the property values of neighboring houses, in fact, it should increase values. He said that there is no harm to the general public or individuals to allow the driveway, and the benefit is that he is a plumbing contractor and can park his work vehicles on the driveway instead of on the street, without interfering with anyone.

Mr. Lionel asked what the name of the paving contractor is.

Mr. Fritz said he didn't want to cause any issues for anyone, he said he's just trying to rectify this.

Mr. Lionel said that lately, several driveways have been widened without any permits, beyond what the code allows. He asked Mr. Fritz who would be responsible for removing part of the driveway if this is denied.

Mr. Fritz said he would be.

Mr. Boucher asked how wide the original driveway was.

Mr. Fritz said it was one car wide, much less than 24 feet.

Mr. Boucher asked if vehicles can park behind one another.

Mr. Fritz said it would be hard, as the driveway is shallow, and he has work vehicles.

Mr. Currier asked if there was a consideration for the driveway to extend to the right side of the garage, as there are some driveways in the neighborhood that do.

Mr. Fritz said that with the distance that it is now, there really isn't any extra distance, even within the 24 feet, to park anything on the side, maybe it can go just a couple feet on the side of the garage, but not enough to actually park vehicles next to it.

Mr. Boucher asked what is on the side of the garage that is preventing adding a driveway on the right side.

Mr. Fritz said it's mostly just the yard, and there is a dumpster that will be removed soon.

SPEAKING IN FAVOR:

Mr. Lionel read a letter in favor from Ron Parker, 101 Vermont Avenue, Nashua, NH in support of the driveway.

SPEAKING IN OPPOSITION OR WITH QUESTIONS, COMMENTS OR CONCERNS:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC HEARING:

Mr. Currier said that he's struggling with the application, and recalled the case by exit 5 off of Kinsley Street, where the owner paved a second driveway, and that driveway was on the back corner of the property, on a quiet street, and it was for safety reasons, and did it without a permit, and the Board approved it. He said that case had a hardship with the property. He said that he looks at cases like this as if it's an initial request. He said that he's struggling to see any of the criteria with the land.

Mr. Minkarah said that he sympathizes with the applicant, but is also struggling with the application, and cannot find support,

and doesn't see anything about the property that distinguishes it from any other property in the area, as the lots are all similar in size, and the positioning of the houses are all about the same, it's only the wish for a wider driveway.

Mr. Shaw said that there are other homes that have similar wide driveways, there is a shallowness of the driveway to the garage itself, so there is very limited multi-car parking available, it seems that even if the applicant were to do a 24 foot driveway, perhaps there could be a second car could park back to back by the side of the garage, there is still limited parking overall for the home.

Mr. Boucher said that he can see some justification for support of the application. He said there could be reasoning for much more than 24 feet, maybe not 40 feet, and we have an abutter that is the most affected by it, and he is in support. He said that removing the extra width wouldn't benefit anyone in the neighborhood. He suggested that perhaps there should be a way to educate the public for folks widening their driveways, on some message board. He said that as of now, he's on the fence with this one.

Mr. Nehiley said that the Board has seen quite a few of these types of cases, where it's an after-the-fact issue. He stated that one idea is to ask how we'd handle this if it came before the Board ahead of time, asking what they want. He said that there is a dumpster, a conex box there. He said that he is all about consistency with decisions, and the City has legislation that driveways cannot exceed 24 feet, and some of the recent applications were not approved, and for consistency purposes, would not be in favor of this request.

Mr. Lionel said that he doesn't look at after-the-fact requests the same as a before-the-fact requests, and doesn't blame the homeowner for not being up on the ordinances, but does blame the paving contractor for deceiving the homeowner, they should know what the rules are. He said that this driveway looks like almost a convenience store parking lot, and the fact that there are other driveways in the area that are wider, perhaps they got variances, or maybe no one has called the City on them. He said he would not be in favor of this application if it had come before the Board before the fact, and is not in favor of it now.

MOTION by Mr. Lionel to deny the variance application on behalf

of the owner as advertised. Mr. Lionel stated that the variance is not needed to enable the applicant's proposed use of the property, that there are no special conditions of the property, and require the applicant's benefit to be achieved by other methods.

Mr. Lionel said that the request is not within the spirit and intent of the Ordinance.

Mr. Lionel stated that the Board does not have an opinion on the property values of surrounding parcels, also, that the Board does not have an opinion about it being contrary to the public interest as well as substantial justice, but given that it does not meet two of the points of law, the motion is to deny the request.

SECONDED by Mr. Currier.

MOTION CARRIED 3-2 (Mr. Boucher and Mr. Shaw) PER VERBAL ROLL CALL OF THE VOTING MEMBERS.

4. Lumnije & Milaim Brajshori (Owners) 28 Hampton Drive (Sheet F Lot 167) requesting variance from Land Use Code Section 190-17 (E)(1) to exceed maximum driveway width, 24 feet permitted - 40 feet existing - requesting to maintain an additional 10 feet of recently added driveway width. R18 Zone, Ward 1.

Voting on this case:

Steve Lionel
Jack Currier
JP Boucher
Rob Shaw
Jay Minkarah

Lumnije Brajshori, 28 Hampton Drive, Nashua, NH. Mrs. Brajshori said that they are requesting to maintain the additional 10 feet of driveway width, that was done unintentionally. She said that they did call City Hall, and it was done in 2020, and to her knowledge, they didn't extend the driveway, they just cleaned the edges, and didn't touch the curbs. She said that the edges were constantly freezing, and people constantly walk across their driveway with children, and she fell on it recently. She said that she talked to Mark Jennings, and didn't know that a

permit was needed to do what they did.

Mrs. Brajshori said that they don't believe what was done is a harm to the public, as a matter of fact it is cleaner, safer for people to walk on, and the neighbors are very happy with the work. She said that the work done will not hurt any property values in the area, in fact, it should add to the values.

Mr. Minkarah asked if the driveway wasn't in fact actually widened.

Mrs. Brajshori said it was about 30 feet to begin with, and they made the edges next to the sidewalk cleaned up, without touching the curb on the outside, so the curb cut itself didn't actually change.

Mr. Minkarah asked if the edges were unpaved.

Mrs. Brajshori said it was unpaved.

Mr. Currier asked how the driveway work done remedied the problem with ice.

Mrs. Brajshori said that it is all level now, and the way it was before with the dirt it had water in it that froze.

Mr. Currier asked if the water on the driveway runs to the right or to the left.

Mrs. Brajshori said that it drains from the top near the house and runs down towards the street.

Mrs. Brajshori's brother (name not known) said that it pitches favoring towards the mailbox, and said that they haven't extended the curbs, it was just removing that section of dirt and paving over it, and cleaning it up, and there is no ice forming there anymore. He said that they didn't touch the curbs.

Mrs. Brajshori's brother said that before they paved it, the existing driveway was well over 24 feet wide already to begin with. He said that what was done was to remove the rock walls, and paved over that area.

Mr. Shaw said it seems like the 40 feet is now where the

driveway aprons out, so the majority of the driveway is not 40 feet wide, it's pretty much 40 feet at the curb cut and then it quickly comes in, and it seems to be about 30 feet width. He said he believes that what Mr. Jennings indicated that the 30 feet is what is displayed by GIS. He asked if it was a straight 30 foot wide driveway to the street, and there was dirt, and the curb cut was wider.

Mrs. Brajshori said yes, it was, and a little bit was filled in where the walls were.

Mr. Shaw said it appears that in many ways the driveway hasn't changed that much, and perhaps it's only a little wider overall, and now it's only significantly wider just at the street.

Mrs. Brajshori said that the difference when they bought the house in 2018 and now is 10 feet at the end, and that is what Mr. Jennings was looking at.

Mrs. Brajshori's brother said that because of the dirt piles, paved over, now it's 40 feet.

Mr. Lionel asked staff if there is any previous variance granted for this property.

Mr. Falk said that staff did not see any evidence of previous variance. He said that they measure the width of the driveway at the property line, and every house has different sized aprons, past the property line, there really isn't a set design standard, it can depend on the width of the right of way, and the distance from the property line to the actual street pavement, the slope of the property, every house is different.

SPEAKING IN FAVOR:

Mr. Lionel read a letter of support from Barbara Koonz, 29 Hampton Drive, Nashua, NH.

SPEAKING WITH QUESTIONS OR CONCERNS OR OPPOSITION:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Nehiley said that it is a beautiful property, and it looks

great. He said he initially wondered about how people were slipping, and it was interesting to hear the owner discuss the flare out, with dirt at the end, and they basically just cleaned this whole area up, and it's great for the neighborhood. He said that he would be in favor of this variance, primarily because they to see anyone slipping, so the public access around the house is improved.

Mr. Boucher said that he is in favor. He said that he looked at some historical photos from 2019, and saw what the original setup was, it was a wall, and as you look at 2020, it was under construction, and now, it's done. He said that he can verify what the owner has stated. He said that the property line is right in the middle of the sidewalk, and there was always that flare there, and they just cleaned it up, and the useable driveway has basically remained the same.

Mr. Shaw said that he is in support as well. He said that there is really not much true change to the usage, the appearance is certainly much better, but it's not like it went from a narrow driveway to a wider one. He said that perhaps there is an overall widening, but most of it may be in the right of way with the flares, but from an overall appearance, the use is a minimal change, and its cleaned up.

Mr. Minkarah said that he is in favor. He said that it already was a wider driveway, even prior to the applicant purchasing the property. He said that it does appear that that the curb cut hasn't changed, and can see the logic of them calling the City, and getting the response they did, because the curb cut is usually the issue, so it looks like they were proceeding in good faith.

Mr. Currier said that he's still struggling with the application. He said that he'll assume the driveway was 30 feet wide, and the application said that there was some ponding and people slipping, and they want to clean it up and widen it to 40 feet. He said he is having a hard time tying those issues together, the correction of the ponding and widening the driveway.

Mr. Lionel said he's somewhat conflicted on this one. He said that it doesn't visually look all that much wider than before, but certainly it is much more attractive and cleaned up. He said that they're not doing it to provide additional parking,

it's to resolve some puddling and icing issue. He said he's not happy about after-the-fact requests, but it does seem like the applicant did try to do the right thing. He said that overall, he would vote in favor, as there is some benefit here.

MOTION by Mr. Shaw to approve the variance application on behalf of the owner as advertised. Mr. Shaw 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 methods reasonably feasible, other than the area variance, he noted that through discussion with the applicant and the Board, this driveway was already about 30 feet wide, and there was no change to the curb cut, and because of where the property line is, where the flare out is, there had even been an effective use of the flare out that was not paved, it had dirt, and effectively was cleaned up by the new asphalt, and the driveway has been framed by previous block walls, and now stone walls, where it appears that there was some further widening, but the actual effective driveway width overall has changed very little, also, part of the increase and the pavement that was added by the sidewalk was done to rectify what was a safety concern in the wintertime with icing.

Mr. Shaw said that the request is within the spirit and intent of the Ordinance.

Mr. Shaw stated that the Board believe that there is no negative impact to the property values of surrounding parcels.

Mr. Shaw said that the request is not contrary to the public interest, and substantial justice is found to grant to the applicant.

SECONDED by Mr. Boucher.

MOTION CARRIED 4-1 (Mr. Currier) PER VERBAL ROLL CALL OF THE VOTING MEMBERS.

MISCELLANEOUS:

REHEARING REQUESTS:

None.

REGIONAL IMPACT:

The Board did not see any cases with Regional Impact.

MINUTES:

December 13, 2022:

MOTION by Mr. Shaw to approve the minutes as presented, waive the reading, and place the minutes in the file.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 5-0 PER ROLL CALL OF THE VOTING MEMBERS (Mr. Lionel abstained, Mr. Nehiley voting).

ADJOURNMENT:

MOTION by Mr. Minkarah to adjourn the meeting at 7:42 p.m.

Submitted by: Mr. Currier, Clerk.

CF - Taped Hearing