

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
January 26, 2021

A public hearing of the Zoning Board of Adjustment was held on Tuesday, January 26, 2021 at 6:30 PM, via Zoom.

Steve Lionel, Chair, asked for a Roll Call. All members stated that they are alone:

Steve Lionel, Chair
Mariellen MacKay, Vice Chair
Jack Currier, Clerk
JP Boucher
Rob Shaw
Jay Minkarah

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

Mr. Lionel explained the Board's procedures, stating that the Board is operating under the Governor's Executive Order via Zoom. Mr. Lionel explained how public access is available by telephone, and additional access means by video or other electronic access, as well as the meeting being streamed through the City's website on Nashua's Community Link and also on Channel 16 on Comcast. Mr. Lionel identified the points of law required for applicants to address relative to variances and special exceptions. Mr. Lionel 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.

1. Ernest & Constance Gagnon Family Trust (Owner) JLS Holdings, LLC, by its Attorney, Thomas Hildreth, McLane Middleton Law Firm (Applicant) 49 Buckmeadow Road (Sheet C Lot 18) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#148) to allow a landscaping business and landscaping equipment storage. R40 Zone, Ward 5.

[CASE POSTPONED TO THE FEBRUARY 9, 2021 MEETING.]

2. Prabhakar Properties, LLC (Owner) 537 Amherst Street (Sheet H Lot 652) requesting variance from Land Use Code Section 190-16 (F)(4) to encroach a maximum of 10 feet into the 20 foot required front yard setback to allow parking spaces. HB Zone,

Ward 2.

Voting on this case:

Steve Lionel, Chair
Mariellen MacKay, Vice Chair
Jack Currier, Clerk
JP Boucher
Rob Shaw

Attorney Brad Westgate, Winer and Bennett, 111 Concord Street, Nashua, NH. Atty. Westgate said that the variance is for the front yard setback requirement of 20 feet in the HB zone. He said that the plan is to construct parking spaces about ten to eleven feet from Amherst Street. He said that the property has the NTB property to the left, and to the right is the Barons Appliance Store, formerly Fletchers Appliance. He said that these properties were subdivided from a larger parcel, originally this was the site of Nathaniel's Restaurant with some auto repair. He said that when it was Nathaniel's, the site was heavily paved, and, the pavement along Amherst Street was considerable right along and very close to Amherst Street.

Atty. Westgate said that the lot is about .58 acres, and the NTB lot is about $\frac{3}{4}$ of an acre. He pointed out on the plan where the proposed building will be located, a one-story commercial building with a dental office on the left and retail or another permitted use on the right, 4,800 sq.ft one-story building with a basement. He said that there would be parking in the front along Amherst Street within the setback, and some parking close to the building as well as a few spaces in the back for staff-related parking.

Atty. Westgate said that the Board granted a Variance for the NTB development to allow parking within the front yard setback on Amherst Street, in 2016. He said that in looking at the concept plan, the idea was that a similar arrangement for parking would be employed for the property at 537 Amherst Street. He said that the properties share a common curb-cut and driveway entrance from Amherst Street, and there is a cross-easement that was established to allow both lots to use the curb-cut, and there is also a common utility easement arrangement as well. He said that it was always contemplated that there would be a commonality in development, for the curb-

cut, for the alignment of parking spaces and alignment for the drive-aisle as well. He said if the variance were not to be supported, the parking would be pushed back into the lot, and the drive aisle would be pushed back into the lot as well, and would throw the development scheme always planned out of kilter. He said that the project has to also go before the Planning Board with a site plan.

Atty. Westgate said that there are no other dimensional variances that are needed for this project other than the one requested for the parking spaces, and there would be about 13 spaces partially located in the front yard setback. He said that the property is serviced by local water, sewer.

Atty. Westgate said that the request would not be contrary to the public interest, especially to allow 13 spaces to be in a part of the front yard setback from Amherst Street, given the variance that was granted in 2016 to the NTB site, and for the commonality of development and alignment of parking and drive aisles that clearly was contemplated initially, and the fact that they do share this common curb cut and access.

Atty. Westgate said that the request will observe the spirit and intent of the ordinance, it is going to be using sound planning and land use concepts, guiding commercial development into existing built areas, and minimizing development in outlying undeveloped areas, as well as being consistent with the NTB site with the shared access.

Atty. Westgate said that substantial justice would be done in approving this request, to allow the thirteen spaces in the front setback, as it provides good planning practice the way the adjacent lot was developed, and for consistency, and there will be no harm to the general public.

Atty. Westgate said that the property values of surrounding parcels will not be diminished, as allowing the variance to permit the spaces to be partly in the front yard setback to accommodate this type of new development would not adversely affect surrounding property values, as it turns a vacant lot in to a nicely developed lot for professional and commercial uses.

Atty. Westgate said that the hardship will be met, and see that there are a few special conditions on the lot, it is a fairly rare, modest sized vacant parcel along this developed sector of

Amherst Street and it was recently subdivided from the Nathaniel's site, which included paved parking very close to Amherst Street. He said that it has always been clear that the properties would be developed in a common manner, especially given the single curb-cut. He said that this will allow consistency in adjacent property development, and there is no fair and substantial relationship between the purpose of the ordinance and the imposition of the ordinance of this case. He said that the request is reasonable, especially to be consistent with the adjacent property.

Mr. Currier asked if the front spaces in front of NTB, if they are paved and used for parking.

Atty. Westgate said that he believes that they are.

Mr. Lionel asked how many staff members would typically be parking at this site during the day.

Dr. Praveena Bhat, 613 Amherst Street, Nashua, NH. Dr. Bhat said that she has six employees, and hoping that three or four of them could park in the back. She said that they hope to have one portion of the building rented out for retail purposes, but no one is in mind.

SPEAKING IN FAVOR:

No one.

SPEAKING WITH QUESTIONS, CONCERNS OR OPPOSITIONS TO THE CASE:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Board members all expressed support for the application.

MOTION by Mr. Boucher to approve the application on behalf of the applicant as advertised. Mr. Boucher stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, as this property was subdivided from a larger piece of property, and there was a development done in 2016 for NTB and contemplated that there would be a building here, and was designed with a shared driveway off the NTB site, and the benefit sought by the

applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than the variance.

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

Mr. Boucher stated that the request will not adversely affect the property values of surrounding parcels.

Mr. Boucher said that it is not contrary to the public interest, and substantial justice to the owner will be served.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0 BY VERBAL ROLL CALL OF THE VOTING MEMBERS.

3. First Church of Christ Scientist (Owner) Crimson Properties, LLC (Applicant) 115 Concord Street (Sheet 48 Lot 49) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#15) to remove existing church and construct a multi-family building with 10 units. RA Zone, Ward 3.

CASE POSTPONED TO THE 2-9-21 ZBA MEETING.

MISCELLANEOUS:

MINUTES:

None.

REGIONAL IMPACT:

The Board did not see any cases of Regional Impact.

ADJOURNMENT:

MOTION by Mr. Shaw to adjourn the meeting at 7:05 p.m.

SECONDED by Mr. Boucher.

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

Submitted by: Mr. Currier, Clerk.

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