

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
February 24, 2021

A public hearing of the Zoning Board of Adjustment was held on Wednesday, February 24, 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
Jack Currier, Clerk
JP Boucher
Rob Shaw

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. Christopher J., Kathy A. and William J. Fokas Rev. Trust (Owners) 8-8½ School Street (Sheet 79 Lot 30) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#193) to convert an empty building into a personal storage building. D-1/MU Zone, Ward 4.**

Voting on this case:

Steve Lionel, Chairman
Jack Currier, Clerk
Rob Shaw
JP Boucher

William Fokas, 185 Main Street, Nashua, NH. Mr. Fokas said that he wishes to convert the existing building into a personal

storage use. He said that the building has been vacant for over 30 years, and its last use was for a commercial kitchen, used for off-premise catering for Martha's Exchange out of this building. He said that the building is in disarray, and needs a new roof, plumbing, electrical, drywall, flooring, windows, and possibly a mural painted outside by Positive Street Arts.

Mr. Fokas said that his goal is to convert it into a space where he can store personal items. He said that the building has been overrun by vagrants and drug use, it's even been boarded up, but they find a way to get in. He said that it will be a major upgrade to the neighboring buildings and to the tenants that are adjacent to the building. He said that anything to improve this building is a huge plus for the City and for the abutters.

Mr. Currier asked to clarify the personal storage use, and if it is different from a storage building.

Mr. Falk that the application listed the proposed use as a personal storage building. He said that it's just another name to describe it, he said it's just a storage use. He said that there are about seven or eight storage categories in the Ordinance, of which none are allowed in the D-1/MU zone. He said it's a small lot and a small building, and staff advertised it as written on the application.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING.

Mr. Currier said that the building is in bad shape, but looks like the proposal would be a great improvement to the neighborhood, and the building is rehabbed as the applicant stated.

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 stated, the building is in disrepair, and has sat empty for many many years, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible 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, in fact, will be a definite improvement.

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 4-0 BY VERBAL ROLL CALL OF THE VOTING MEMBERS.

2. SCR Real Estate, LLC, Pathik Patel (Owner) Hairo Rodriguez (Applicant) 14A Broad Street (Sheet 62 Lot 68) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#35) to operate a men's barbershop in a portion of existing building. GI Zone, Ward 4.

Voting on this case:

Steve Lionel, Chair
Jack Currier, Clerk
JP Boucher
Rob Shaw

Jairo Rodriguez, 80 Cypress Lane, #12, Nashua, NH. Mrs. Rodriguez said that they want to open up a men's barbershop in the plaza. She said it will be to serve the public of Nashua, and it would be consistent with the rest of the plaza, and wouldn't bring any negative impacts to the plaza. She said it differs from a salon, as it would service more men. She said that the space that they wish to rent is not occupied, and has been closed for some time now.

SPEAKING IN FAVOR:

Pathik Patel, 6 Mead Circle, Lexington MA. Mr. Patel said that he is one of the owners of this property. He said that all they want to do is to get a tenant in the space, as it's been empty for about a year and a half, and it will be good for both the City and the parcel itself.

SPEAKING WITH QUESTIONS, CONCERNS OR OPPOSITIONS TO THE CASE:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Currier said that this is the site of the old Whitney Screw Company, which pre-dated zoning, and that is why it is zoned GI, and it hasn't changed. He said that when this was changing over to the current development, there was a lot of opposition to retail, but the Board felt that the retail wasn't as aggressive as the General Industrial zone. He said that he believes that there is less impact on the neighbors with retail, as when it was the manufacturing facility. He said that he is in support of the application, and it is consistent with other uses.

Mr. Boucher said it is pretty straightforward to him, and there is a similar type of business nearby.

Mr. Shaw said that he is in concurrence, as there is close to a twenty year history of retail usage at this site, and the use is not especially an intensive use and it makes sense for support.

Mr. Lionel said that the property has a rich history of use variances, and doesn't find that this request will be more intense than previous ones.

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, there is a long-standing history of similar retail businesses at 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 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 4-0 BY VERBAL ROLL CALL OF THE VOTING MEMBERS.

3. Debra Milne Revocable Trust (Owner) 16 Hideaway Road (Sheet G Lot 147) requesting the following variances: 1) from Land Use Code Section 190-192 (C) to exceed maximum driveway width, 24 feet permitted, requesting to maintain existing 11 foot wide driveway on Hideaway Road and 24-foot wide driveway on Robin Lane for a total width of 35 feet; and, 2) variance from Land Use Code Section 190-209 (C), to maintain new driveway expansion within 50 feet of an intersection, 47 feet proposed. R18 Zone, Ward 2.

Voting on this case:

Steve Lionel, Chair
Jack Currier, Clerk
JP Boucher
Rob Shaw

Debra Milne, 16 Hideaway Road, Nashua, NH Ms. Milne said that she is present with her partner, Dennis Fonacolta. Ms. Milne said that the variance is a follow-up to the original variance that was approved last March by the Board. She said that the request was to take a one-car garage and convert it into a two-car garage. She said that the driveway for the garage was expanded, so all this work was already done. She said that when the inspector came out to inspect the work, he noticed that there is another driveway that touches onto Hideaway Road, and the expanded driveway touches Robin Lane. She said that the original home, prior to when she bought it, had a horseshoe driveway that connected to each street. She said that she expanded one driveway to accommodate the second car in the garage, so the driveway on Robin is 24 feet wide, and would like to maintain the other one, it's basically a parking space.

Mr. Fonacolta said that the original driveways did not meet the ordinance with respect of them being outside the 50 foot distance to the intersection, and there is no way to make that possible.

SPEAKING IN FAVOR:

Mr. Lionel read a letter of support into the record from Deborah Woelflein, 11 Hideaway Road, Nashua, NH.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Board members all expressed support for the application.

MOTION by Mr. Shaw to approve the application on behalf of the applicant as advertised, with both requests considered collectively. Mr. Shaw stated that the variance is needed to enable the applicant's proposed use of the property, this basically came about from the addition of the garage and the widening of the driveway to accommodate that, and the location is at the end of a corner lot, but is at essentially a very small street and the other street is a dead end, so any traffic considerations are essentially of nil concern, and there will be no negative impact on the neighbors, in fact, there is support from one of them.

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

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

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

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 4-0 PER VERBAL ROLL CALL OF THE VOTING MEMBERS.

1. **B & A Construction (Owner) 8 Airley Avenue, a.k.a. 32 Groton Road (Sheet D Lot 265-4) requesting variance from Land Use Code Section 190-16, Table 16-3, to encroach 12 feet into the 50 foot required rear yard setback to construct an attached 12'x16' deck. R40 Zone, Ward 5.**

Voting on this case:

Steve Lionel, Chair
Jack Currier, Clerk
JP Boucher
Rob Shaw

Chad Branon, Fieldstone Land Consultants, 206 Elm Street, Milford, NH. Mr. Branon said that the request is for a rear yard setback encroachment. He said that it is one lot of a conservation subdivision that was recently approved by the Planning Board. He said that the proposal is to construct a home on the lot, and noticed that the depth of the lot, on a cul-de-sac, is reduced, and in order to provide for the appropriate amenities, it would have a rear yard encroachment.

Mr. Branon said that if decks are a reduced height, under four feet, it can go up to 5 feet to the property line, and this deck would comply. He said that the topography falls to the rear of the lot, and the deck is over four feet in height, and therefore, the variance is required.

Mr. Branon said that the rear yard setback is 50 feet, and 38 feet is proposed. He said that there is a significant conservation area that abuts the property to the rear which is about 120 feet in width, so there is certainly no neighbors to the rear, and believe this request is reasonable. He said that they have addressed all the points of law in the application.

Mr. Shaw asked how high the deck would be.

Mr. Branon said it will be about 8 feet off the ground, the topography is such that the house will have a walk-out basement.

Mr. Currier asked what the thought, or impact, if the deck were to be built on the right side instead of the rear.

Mr. Branon said that the proposed homeowner has selected a certain house design, and one of the features of this

development that is nice is that the homes abut a conservation land out back that offers a lot of privacy. He said it is much more optimal to have the deck out back instead of on the side. He said that the layout of the house lends itself to have the deck out back instead of the side. He said that the deck would be much more appropriate to the rear of the home, and not on the side, facing the side property.

Mr. Branon said that this deck would be permitted if the deck were only four feet high, but due to the topography, it cannot be that low. He said that they don't anticipate asking for relief on the other lots in the cul-de-sac for decks such as this, and the other lots have a little more depth to use.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Currier said that he's struggling with this application, he said on one hand, there's a large conservation area to the rear, but it is supposed to be open and undisturbed. He said that he believes that the Board should be respecting the setbacks, and this application is really all about the new owner's personal preference. He said it's more of a self-created hardship.

Mr. Boucher said he is in support. He said that he understands the topography challenge and believes that the applicant's explanation of the yard is accurate and credible. He said that if the deck were four feet shorter, they wouldn't be here. He said it's become a height issue and there would not be any impacts to anyone or anyone's value.

Mr. Shaw said that for the spirit and intent of the ordinance, to have the increased setback for the deck that is higher than four feet is to address the issue that there is a looming kind of structure, and in this case, there is no chance or opportunity for another home or someone's rear yard to be affected by this. He said he doesn't see that as a factor, and a good reason to support the application.

Mr. Lionel said he recognizes Mr. Currier's concern about the undeveloped piece of land that is protected, and said that the reason for this part of the ordinance is to avoid an impact on neighbors, and there is nothing here. He said he doesn't see the impact to the setback to be significant in this zone, and is in support.

MOTION by Mr. Shaw to approve the application on behalf of the applicant as advertised. Mr. Shaw stated that the variance is needed to enable the applicant's proposed use of the property, the special conditions of the property are that there is topography off the back of the lot such that the deck would be higher than four feet off the ground, which necessitates the larger setback. He said that the depth of the building envelope is relatively shallow to begin with.

Mr. Shaw said that the request is within the spirit and intent of the Ordinance, as there are really no neighbors to the rear of the lot.

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

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

SECONDED by Mr. Boucher.

Mr. Currier said he is voting in denial of the Motion.

Mr. Shaw said he votes in favor.

Mr. Boucher said he votes in favor.

Mr. Lionel said he votes in favor.

MOTION CARRIED 3-1 (Mr. Currier) per verbal vote of the members in favor of approving the request.

MISCELLANEOUS:

MINUTES:

2-9-2021:

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 4-0 PER VERBAL ROLL CALL OF THE VOTING MEMBERS.

REGIONAL IMPACT:

The Board did not see any cases of Regional Impact for the March 9, 2021 meeting.

ADJOURNMENT:

MOTION by Mr. Shaw to adjourn the meeting at 7:25 p.m.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 4-0 PER VERBAL ROLL CALL OF THE MEMBERS.

Submitted by: Mr. Currier, Clerk.

CF - Taped Hearing