

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
May 28, 2019

A public hearing of the Zoning Board of Adjustment was held on Tuesday, May 28, 2019 at 6:30 PM in the Auditorium, 229 Main Street, at City Hall.

Members in attendance were:

JP Boucher, Chair
Mariellen MacKay, Clerk
Jay Minkarah

Carter Falk, Deputy Planning Manager/Zoning

Mr. Boucher explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Boucher 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. Boucher also explained procedures involving the timing light, as well as the projector in front of the stage for plans to show the audience.

1. Paula E. Smith 2014 Rev. Trust (Owner) Charles Okorie (Applicant) 12 Gettysburg Drive (Sheet 48 Lot 239) requesting variance from Land Use Code Section 190-16, Table 16-3 to encroach 5 feet into the 10 foot required right side yard setback to construct an attached 22'x26' two car garage with room above. RA Zone, Ward 3.

Voting on this case:

JP Boucher, Chair
Mariellen MacKay, Clerk
Jay Minkarah

Mr. Charles Okorie, Architect, Nashua, NH. Mr. Okorie said that the applicant is requesting a two-car garage with room above, with an attached breezeway. He said that the room above the garage will be used for children, and family members that visit. He said that the owner has an existing shed, and the setback of the shed is 5 feet from the side property line. He said that the proposed garage would keep the same setback as the shed, and the side of the garage facing the neighbor would not have any

windows on it. He said that the garage is needed to protect the cars from the elements. He said that this request will allow family members a better opportunity for visiting and allowing for overnight accommodations as well. He said that the room above the garage will not be a living unit. He said that after the garage is completed, it will match the existing house perfectly, and no one will be able to tell what part was the addition and what part was the original construction.

SPEAKING IN FAVOR:

Ann Vose, 3 Gettysburg Drive, Nashua, NH. Ms. Vose said that the owner, Paula Smith, is a very valued member of the community, keeps a neat house, and has gotten along very well with the neighbors, and it would be a great disappointment if this case were not supported. She said she is fully in support of the request.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Richard O'Keefe, 14 Gettysburg Drive, Nashua, NH. Mr. O'Keefe said he lives directly next door. He said that he has a great relationship with Ms. Smith, but have concerns. He said that he is concerned about the value and appeal of his home should this be constructed, and believes the value will go down with it being so close to the property line. He said that the encroachment is unnecessary.

Mr. O'Keefe said that the garage could be attached to the house, and remove the breezeway, and they wouldn't need a variance. He said he wants to give his house and property a voice in saying that he has concerns about the setback encroachment. He showed some pictures from his cell phone on the projector showing the area between the two houses, and it shows the shed and a fence.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Okorie said that he was very conscientious about privacy, and that is why the addition was designed with no windows on the side, also, that the addition was not further into the setback than the existing shed.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Mr. O'Keefe said that the shed is much smaller than a two-story

structure, and it is very close to the property line.

Mr. Minkarah said he's struggling a bit with this case, having a two-car garage is certainly a reasonable and customary use for a single-family home, and many homes in the area have garages. He said another house has a breezeway and a one-car garage, and asked if they contemplated that, and they would have met the setback. He said that a problem would occur if they don't have the breezeway, and putting the garage flush with the house, as the windows would not match up.

Mr. Boucher agreed, and is concerned about the visual impact, and the garage is larger than the shed. He said he isn't sure what the exact visual impact would be whether its five feet or ten feet.

Mrs. MacKay said that removing the breezeway is not an option in her opinion, that's a lot of work. She said that the two-car garage is needed for the owner, her children and grandchildren, we have harsh winters here, and to have an enclosed breezeway without walking outside is important. She said the 5-foot setback, with the existing shed being there, is an existing guideline, although the garage is taller and longer. She said she's not against it, it is five feet, and does find support for it.

Mr. Minkarah said that the house at 14 is a little close to the property line. He said although he sympathizes with the neighbor, he supports the application.

MOTION by Mr. Boucher to approve the application on behalf of the owner as advertised. He said that the Board believes 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 the variance. He said that a special condition is the placement of the home, the original construction of the home, the existing breezeway and the construction of the garage would be more of a burden if it was built right up against the house.

Mr. Boucher said that the Board feels that it is within the spirit and intent of the ordinance.

Mr. Boucher said that it would not negatively impact surrounding property values, and there was no testimony either way towards that.

Mr. Boucher said that the request is within the public interest, and substantial justice is served.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 3-0.

2. Raymond W. Ennis, Sr. Revocable Trust (Owner) Lefavor Folio, LLC (Applicant) 111-113 Lock Street (Sheet 41 Lot 14) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#15) to remove existing building and construct two multi-family buildings with a total of 18 units, along with associated site improvements. GI Zone, Ward 3.

Voting on this case:

JP Boucher, Chair
Mariellen MacKay, Clerk
Jay Minkarah

Attorney Gerald Prunier, Prunier & Prolman P.A., 20 Trafalgar Square, Nashua, NH. Atty. Prunier passed out a package to the Board relative to the property. He said it is in the GI zone, and there are no GI-related uses in the area. He said that the site has an old building now, with a couple tenants.

Atty. Prunier said that the proposal is to remove the building and build residential units, which is more in character with the neighborhood. He said that they can build the townhouses without requesting any other dimensional variances, and at this time, described the drawings in the packet he handed out.

Atty. Prunier said that the neighborhood has changed, it is more residential. He said that there are single-family homes, multi-family units, a church, a tennis center, and then there is the existing building. He said that the character of the area, and the suitability of the proposed use has substantially changed. He said that when a neighborhood changes, it can be viewed as meeting a hardship. He said that the spirit of the ordinance has evolved to more residential than industrial, and the proposed residential conforms to the existing residential in the

area. He said that substantial justice would be done to the owner to be able to use the property in compliance with the present character of this neighborhood. He said that the use will not diminish the property values of surrounding properties, in fact, the proposed use will give new life to the area, it'll be the removal of an old building and allow new construction to be there.

Mrs. MacKay asked if the townhouses would be for moderate or middle income families, or high end.

Atty. Prunier said that the developer will look at the area, the existing housing stock, and will build something to conform to the existing status.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Mr. Minkarah said that in looking at the area, the plan is consistent, and in looking at the larger industrial zone, this property is cut off by the river, and the balance of that area is the BAE parking lot. He said that functionally, he didn't see this property as being part of an industrial zone, and the history of variances granted for this site speaks to that. He said that a residential use is reasonable for this site.

Mr. Boucher agreed, and this area just isn't an industrial area anymore, and the use should fit right into the area, and is in support.

Mrs. MacKay also agreed, and that the proposed building would be more aesthetically pleasing, and will probably increase the property values in the neighborhood, and it would add value and green space.

MOTION by Mr. Boucher to approve the application on behalf of the owner as advertised. He said that the Board believes that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, the Board talked about the changes in the neighborhood over the past

several years, and that multi-family use would fit perfectly into the neighborhood, and that there are several other multi-family uses in the neighborhood, 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 Board feels that it is within the spirit and intent of the ordinance.

Mr. Boucher said that it would not negatively impact surrounding property values, and there was no testimony either way towards that.

Mr. Boucher said that the request is within the public interest, and substantial justice is served.

SECONDED by Mr. Minkarah.

MOTION CARRIED UNANIMOUSLY 3-0.

3. Benjamin & Mary Jane Lugo (Owners) 11 Penobscot Road (Sheet C Lot 961) requesting the following variances: 1) from Land Use Code Section 190-16, Table 16-3, to encroach up to 17 feet into the 20 foot required front yard setback to construct an attached 26'x26' two car garage; and, 2) from Land Use Code Section 190-192 (C), to exceed maximum curb-cut width, 18 feet existing on right side of lot - an additional 18 foot wide driveway proposed for new garage on left side of lot - for a total width of 36 feet, where a maximum of 24 feet is permitted. R9 Zone, Ward 5.

Voting on this case:

JP Boucher, Chair
Mariellen MacKay, Clerk
Jay Minkarah

Mary Jane Lugo, 11 Penobscot Road, Nashua, NH. Mrs. Lugo placed some photos for the projector. She said that the request is to add a two-car garage to the existing house. She said that her parents will be moving in with them, each one with a vehicle, and this will allow the cars to be off the street, also, there are two teenagers with cars. She said that the garage will make better space and will help greatly with parking.

Mrs. Lugo said that the garage would be in keeping with the other houses in the cul-de-sac. She said that the property values will not be diminished, and all the houses along the cul-de-sac are valued higher than their house, so this will be in keeping with the neighborhood. She said that all the other houses have two-car garages, so this will fit in, and they thought that they had enough land to do this, but found out where the exact right-of-way line is, and it appears to go far into the side yard area.

Mr. Boucher said that the garage really can't be pushed back, and asked if they had looked into that.

Mrs. Lugo said it would take up a lot of the backyard, and all the other houses have garages that keep the same line as the house, they'd prefer it to be in line with the house, and it has to go on the left side, there isn't any room on the right side.

SPEAKING IN FAVOR:

Al Turner, 15 Penobscot Road, Nashua, NH. Mr. Turner said that there is a large area of right-of-way along the beginning of the cul-de-sac bulb at the applicant's lot, so it appears as if it is part of their property. He said that if the garage is constructed as planned, it will fit in and not appear as if it is encroaching into the street. He went over all the points of law in support of the applicant.

Steve Rousseau, Rousseau Enterprises. Mr. Rousseau said that he is the contractor, and after it was discovered how much additional right-of-way exists, and how the garage would encroach, they applied for the variance. He said that everyone was surprised how much extra land is there for the right-of-way.

Mr. Boucher said that it is his understanding that it is just a garage, with no finished space or rooms above.

Mr. Rousseau agreed.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Mr. Minkarah said that a garage is a normal and customary use, especially in this climate, and what distinguishes this is less

the amount of right-of-way, it's really how the house was situated on the lot, the other homes around the cul-de-sac are built somewhat parallel to a straight street, and can easily see how someone looking at the home would perceive that the lot is much larger. He said that overall, the lot is not that large, and adding a garage and pushing it back on the lot would impact the owners usability of the back yard. He said that because the right-of-way is large, it wouldn't appear visually that the garage is too close to the street. He said that he is supportive. He said that little would be gained by requiring that the existing driveway on the right be pulled up, and there was no objection to that driveway.

Mrs. MacKay agreed, and there was concrete testimony from a neighbor in support.

Mr. Boucher said that he is also in support of the application.

MOTION by Mr. Boucher to approve the application on behalf of the owner as advertised, with both requests considered collectively. He said that the Board believes that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, the Board spoke about how the house is situated on the lot, and observed that other homes on the cul-de-sac did follow the curve, and this request is in keeping with other houses that have two-car garages, and the Board observed that the City right-of-way is somewhat excessive, and the visual impact would be negligible, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible other than the area variance.

Mr. Boucher said that the Board feels that it is within the spirit and intent of the ordinance.

Mr. Boucher said that it would not negatively impact surrounding property values.

Mr. Boucher said that the request is within the public interest, and substantial justice is served.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 3-0.

4. Jacob Diamond (Owner) 13 Fulton Street (Sheet 100 Lot 13) requesting the following variances from Land Use Code Section 190-16, Table 16-3: 1) to encroach 6'-3" into the 7 foot required side yard setback; 2) to encroach up to 8'-5" in the 10 foot required front yard setback (on Brook Street); and, 3) to encroach up to 6'-8" in the 10 foot required front yard setback (on Fulton Street) to construct a third-story addition with balconies and related home improvements on the existing building footprint. RC Zone, Ward 6.

Voting on this case:

JP Boucher, Chair
Mariellen MacKay, Clerk
Jay Minkarah

Jacob Diamond, 13 Fulton Street, Nashua, NH. Mr. Diamond said that in looking at the structure, it looks big, but on the inside, it has three chimneys, and two protrude out, and one is capped off in the attic, and there are two sets of stairs that go up to the second floor and attic, so the existing layout of the property is awkward inside, and there is a lot of unused space. He said that he considered doing the work in the basement, but there isn't enough floor space.

Mr. Diamond said that he's contacted Dig Safe, and knows the location of the utilities. He said that there are other structures that are higher than his on the street, and it will not diminish the property values, as the house needs new paint, a new roof, front door, landscaping, and the front patio is starting to crack and chip away. He said the property directly in back of his on Brook Street is just a garage and scrap metal.

Mr. Diamond said that the addition will be within the existing footprint, so it's not encroaching any more into the setbacks, and actually is encroaching a little less. He said that the only occupants of the house is him and two other individuals, so parking is not an issue, and no new occupants will be added with the addition, the intention of it is for a game room, bath and nursery.

Mr. Minkarah said it looks like a three bedroom single-family home, with one and a half baths.

Mr. Diamond agreed.

Mr. Minkarah asked if this will continue to be a single-family home.

Mr. Diamond said it will. He said that this is not a for-profit property, it will be a single-family house. He said he bought this property when he was 21 years old.

Mr. Boucher said that there were a few letters in opposition, and asked about the parking.

Mr. Diamond showed a short video from his laptop on the projector. He said that there are a lot of cars parked on the street, it's a narrow street and they are not his. He said many times, he cannot even fit his own car into his driveway. He said he will not be adding to this problem. He said that from time to time, he has friends stay with him when they are on leave from the service. He said that he has two cars and a motorcycle.

SPEAKING IN FAVOR:

Jason Pelletier, 58 King Street, Nashua, NH. Mr. Pelletier said he used to live with Jacob at the property. He said he is in support of the case because the property does need some work, and this will help make the neighborhood look better.

Frank Bonanno, 121 Clement Road, Pelham, NH. Mr. Bonanno also said that he lived with Mr. Diamond for a short time, and said that the parking there was challenging. He said that he is in support of the request.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Mr. Boucher read emails in the record from Rick Markiel, 7 Brook Street, Nashua, Kyle Mandravelis and Chad Radkevitch all in opposition to the proposed request.

Rick Markiel, 7 Brook Street, Nashua, NH. Mr. Markiel said he's speaking on behalf of his family, as they own several properties in this area. He said that the issue that bothers them more than anything is the magnitude of the project. He said that there are a lot of vehicles here, and it's not in keeping with what you would see in a single-family home. He said that he

wants to add a whole third story, which seems suspect. He said that it's his opinion that the owner may expand within and get creative and do some other alterations after the fact. He said that he's questioning why he needs so much additional space on the same footprint, if he only intends to maintain it as a single-family home. He said it's possible that he does these improvements in the basement. He said that there are a lot of people coming and going, and is concerned that with extra space added, that it will only expand the activity.

Patricia White, 16 Fulton Street, Nashua, NH. Ms. White said that her concern is that every night, there are four vehicles parked beside the house, and they want to add another floor. She said that she believes that the owner will have additional tenants, and wondered where everyone will park. She said that Fulton Street is very narrow.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Diamond said he is just as concerned about the parking on the street as everyone else is. He said that the friends that have stayed with him have paid no rent or signed any lease. He said that this is not a for-profit property. He said that this is an attic remodel to gain more usable space for himself and his family. He said that he is a general contractor and is well aware of the work to be done. He said that he does not plan on adding any additional occupants, and it is not a for-profit property.

Mr. Minkarah asked if he designed the addition himself, or hire a designer, and asked if he thought of having the addition look like the windows are lined up.

Mr. Diamond agreed that he didn't think about the windows. He said he put the design together, as he designs kitchens and bathrooms all day at work. He said that he appreciated the comment, and will go back and look at the windows.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Mr. Markiel said that it is his own opinion that the applicant contradicted his own intentions with regarding occupants. He said he always has friends stay over, and it seems as if he may allow additional occupants that he may sub-let to or rent to, even though they may be short-term. He said that there has just

been too much activity of individuals coming and going since he moved in. He said he is not comfortable with the third story, and all that extra room on this single-family house.

Mr. Minkarah said that he appreciates the concerns on this that were raised. He said that the concerns seem to be focused on the occupancy in the building, and parking. He said that the applicant testified that the cars on the street aren't all coming from him. He said that he is here because the home encroaches into the setbacks, and he is seeking to build up. He said that the use as a single-family is allowed. He said he is not aware of a prohibition of having friends and family stay over. He said that even an accessory dwelling unit is a permitted use as a special exception, and both two-family and multi-family uses are allowed in this zone, and exist in the neighborhood. He said that this is about a 2,000 sq.ft home, 3 bedrooms, which is relatively modest in size, and what is being added to it doesn't seem to be beyond reasonable. He said that he is supportive of the addition, but does understand the concerns.

Mr. Falk said that in the RC zone, single-family uses are allowed, and the City has it assessed as a single-family. He said that a few years ago, a request was not supported to convert it into a two-family. He said that the submitted plans do not indicate a kitchen or an extra unit, basically all he is doing is changing the roof to have more usable space, and the height limit in the RC zone is 100 feet. He said he is only here to encroach into the setbacks on the existing structure by building up from the foundation. He said that people can have guests and family and friends stay at your house.

Mr. Boucher said that if this is supported, City building inspectors will be looking at this, for rough and final inspections.

Mrs. MacKay said that one of Mr. Diamonds' friends lived there for eight months, a long time. He said that the applicant spoke about his family, his friends, many of them in the service. He said it is not the Boards purview to look at what an owner has for vehicles. She said that this will not be a renter type of situation, and there will not be an extra kitchen. She said that she heard a lot of thoughts and suppositions and opinions on who would be living there. She said she fully supports the application.

Mr. Boucher said he supports it as well. He said that he understands the concerns, especially when something new is proposed such as an addition like this in an established neighborhood, as it can be stressful for some people.

MOTION by Mr. Boucher to approve the application on behalf of the owner as advertised, with all requests considered collectively. He said that the Board believes 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 other than the area variance. He said that it is a home that existed prior to zoning laws, and it encroaches into the existing setbacks, and it exists in a neighborhood that is older and the structure is almost right on the property lines, and it is in a neighborhood of multi-families, and it is a single-family, so it's not out of character for another story to be added.

Mr. Boucher said that the Board feels that it is within the spirit and intent of the ordinance.

Mr. Boucher said that it would not adversely impact surrounding property values.

Mr. Boucher said that the request is within the public interest, and substantial justice is served.

SECONDED by Mr. Minkarah.

MOTION CARRIED UNANIMOUSLY 3-0.

5. Aldebaran Properties, LLC & Peter Q. Nash Rev. Trust (Owners) State Farm c/o Carolyn A. Parker (Applicant) 87 Amherst Street (Sheet 60 Lot 21) requesting the following variances from Land Use Code Section 190-101, Table 101-7: 1) To exceed maximum number of ground signs per premise, 1 permitted, 1 existing (off Sargent Avenue) - 1 additional ground sign proposed (off Amherst Street); and, 2) to exceed maximum ground sign area for the premises, 10 sq.ft permitted, a total of 18 sq.ft proposed. RA Zone, Ward 3.

Voting on this case:

JP Boucher, Chair
Mariellen MacKay, Clerk
Jay Minkarah

Carolyn Parker, 3 Lorion Avenue, Worcester MA. Ms. Parker said that they are seeking a variance for a second ground sign on the property. She said that the building has six tenants, and it is a corner lot. She said that there is an existing small ground sign facing Sargent Avenue that was granted a variance in 2015. She said that the current request is for an 8 square foot ground sign for State Farm facing Amherst Street. She said that the property does not have a tenant directory sign, there is currently a real estate sign but that will be replaced with the proposed sign.

SPEAKING IN FAVOR:

Brianna Dos Santos, 24 Blanchard Street, Nashua, NH. Ms. Dos Santos said that the other sign on the property is not hers, so she would only have the one sign.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Board members all expressed support for the application.

MOTION by Mr. Boucher to approve the application on behalf of the owner as advertised. He said that the Board believes 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, he stated that it is a corner lot.

Mr. Boucher said that the Board feels that it is within the spirit and intent of the ordinance.

Mr. Boucher said that it would not negatively impact surrounding property values.

Mr. Boucher said that the request is within the public interest, and substantial justice is served.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 3-0.

MISCELLANEOUS:

REHEARING REQUESTS:

None.

MINUTES:

None.

REGIONAL IMPACT:

The Board did not find any cases of Regional Impact.

ADJOURNMENT:

Mr. Boucher called the meeting closed at 8:42 p.m.

Submitted by: Mrs. MacKay, Clerk.

CF - Taped Hearing