

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
August 25, 2020

A public hearing of the Zoning Board of Adjustment was held on Tuesday, August 25, 2020 at 6:30 PM, via WebEx.

Mrs. MacKay asked Mr. Falk for a Roll Call. All members present, along with alternates Mr. Minkarah and Mr. Kanakis. All members stated that they are alone:

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

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

Mrs. MacKay explained the Board's procedures, stating that the Board is operating under the Governor's Executive Order via WebEx. Mrs. MacKay 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. Mrs. MacKay including the points of law required for applicants to address relative to variances and special exceptions. Mrs. MacKay 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.

Mrs. MacKay stated that Case #4 has been withdrawn from the Agenda.

Mr. Falk said that Staff received an email from the applicant's attorney that they have withdrawn the case, so there will be no discussion on that case this evening.

Mrs. MacKay stated that the address for case #4 is 8 Merritt Parkway, it has been withdrawn.

1. **David Matthew Smith (Owner) 21 Columbia Avenue (Sheet 65 Lot 208) requesting special exception from Land Use Code Section 190-15, Table 15-1 (#3) to allow a home addition for a master bedroom and an accessory dwelling unit (in-law) in rear of house. RA Zone, Ward 3.**

Voting on this case:

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

David Smith, 21 Columbia Avenue, Nashua, NH. Mr. Smith said that his friend Ed Campbell is with him. He said that they are looking for an ADU unit off the existing rear of the house. He said that it will also consist of an addition for a master bedroom as well, with a 12'x12' bedroom for the in-law apartment. He pointed out on the drawing where the in-law unit and the home addition would be located.

Mr. Smith said that the existing playroom would have a kitchenette added to it.

**** Mr. Smith's audio kept breaking up ****

Mr. Falk said that the ADU would be 521 square feet in size, it is under the 750 square foot requirement. He said that the home addition meets all yard setbacks.

Mrs. MacKay asked if Mr. Smith is aware of the accessory dwelling unit special regulations.

Mrs. MacKay read the accessory dwelling unit points of law, to which Mr. Smith agreed with all of them.

SPEAKING IN FAVOR:

Ed Campbell, 29 Sargent Road, Hollis, NH. Mr. Campbell said that he is Mr. Smith's friend, and said that he can answer questions if need be. He said that he is a building contractor.

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. Boucher to approve the application on behalf of the owner as advertised. Mr. Boucher stated that the use is listed in the Table of Uses, Section 190-15, Table 15-1 #3.

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 or sewer or other municipal systems.

Mr. Boucher said that all the nine special regulations are met per testimony of the applicant.

Mr. Boucher said that the request will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of residents.

SECONDED by Mr. Lionel.

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

2. B & A Construction, LLC (Owner) 32 Groton Road (Sheet D Lot 265) requesting variance from Land Use Code Section 190-223 for minimum lot area, 40,000 sq.ft required - between 21,400 sq.ft and 26,050 sq.ft proposed, for individual sewage disposal systems for Lots #1 - #9 inclusive for Meadow View Estates Conservation Subdivision. R40 Zone, Ward 5.

Voting on this case:

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

Chad Branon, Fieldstone Land Consultants, 206 Elm Street, Milford, NH. Mr. Branon said that they are looking to develop this property into a conservation-style subdivision, it is on the south side of Groton Road. He said it is 10.375 acres of land and has 645 feet of linear frontage on Groton Road. He said that the land is primarily wooded with some existing structures. He indicated that the soils are Hinckley sand, which is an excellent soil, very well drained, and the site has slopes ranging from 3-8%.

Mr. Branon said that the property is surrounded by residential properties to the east, west and north, and on the south, it borders the Dunstable Mass town line, which is also conservation land.

Mr. Branon said that this site is zoned R40, which requires 40,000 square foot lots for a conventional subdivision, with 120 linear feet of frontage. He said that conventionally, this property could support up to 11 lots, but rather than increasing the density and maximizing the infrastructure and other impacts, he said that his client has chosen to opt with a conservation-style subdivision where infrastructure, pervious cover, and the overall impacts can be reduced. He said that the proposal will yield 9 conservation lots within the conservation subdivision, ranging from about 21,000 square feet to 26,000 square feet, and being that these lots are smaller in nature, will reduce the overall footprint of the project and allow for 3.8 acres of the property to be permanently protected in conservation area.

Mr. Branon said that the State regulations for open space in conservation subdivisions contemplate the entire land area, which is 10.375 acres, and contemplate site loading and septic designs, and accounting for the entire property, as the State takes the standpoint that they are trying to promote land preservation, and don't look at individual lots for land preservation. He said that the City regulations under Section 190-40 (A) states that conservation subdivisions are permitted in any residential zoning district, so this is a permitted use in the district. He said that the conservation subdivision regulations do not address minimum lot sizes, but rather, focus on land preservation and the goals and objectives of land preservation and layout.

Mr. Branon said that under Section 190-223 of the Code, this section addresses minimum lot sizes relative to lots that are

serviced by on-site sewage disposal systems, and this section states that lots must be 40,000 square feet in size. He said that the ordinance does not make any exclusions for conservation subdivisions, which makes this particular ordinance somewhat contrary to the goals and objectives of the conservation subdivision ordinance. He said it's also contrary to the State regulations as well. He said that this ordinance is really geared towards conventional style subdivision, and not for conservation subdivisions.

Mr. Branon said that the road is about 550 feet long, called Leonora Lane, and it will service the 9 lots. He said that that the probable footprint is shown on each lot to scale, with one curb-cut onto Groton Road. He said that the lots show the proposed septic locations, shown as rectangular sections on the lots, one is shaded and one is a white area in front. He said that the State requires them to show two septic locations on each conservation lot, that is the only requirement that the State requires. He said that this proposal does meet all the other requirements of the zoning ordinance, and that it meets the intent of the subdivision ordinance, and will be a benefit to the surrounding properties, as there is increased buffering, and there is continuity to open space.

Mr. Currier asked what the circles are, and the overlap they show to other ones on the diagram.

Mr. Branon said that they represent the proposed wells that would service each lot, and it is not uncommon in a conservation subdivision that the radiuses would extend over the lot lines, but as long as they don't extend into the septic areas, they are technically compliant to any regulations, as it is a very common type of layout. He said that the proposed layout allows each homeowner to own their individual lot, so they are not condominiums. He said that they show a 75-foot radius.

Mr. Currier asked what the proposal is for the open space, if it would be community-owned, and if there will be any trails or any common use of the land.

Mr. Branon said that there wouldn't be much for maintenance, the documents associated with the conservation lot would restrict any future development, but would allow passive recreation, so there could be trails through the property to adjacent conservation land. He said that the construction of a trail is

not proposed at this time, but that is something that could be contemplated as the project goes to the Planning Board.

Mr. Currier asked about the 40,000 square foot minimum in the City regulations, and if it were adhered to, what would could be developed on this parcel.

Mr. Branon said it could support between 10-11 conventional lots, but it would have a longer public road, which would be more to maintain by the City, and there would be more drainage and infrastructure that would ultimately be maintained by the City, and there would be no open space area. He said it would not be a conservation style development, and these style of developments have been supported by Boards in the past here. He said that the proposed project would allow for a nice continuity of open space, increased buffer areas to neighbors, and a nice setting to offer this portion of the City. He said that if this were a conventional subdivision, there may be lots with frontages along Groton Road, and there may be a road behind it servicing the lots in the back, which would yield more curb-cuts and traffic movements on Groton Road.

SPEAKING IN FAVOR:

Joshua Becker, 341 Silver Lake Rd, Hollis, NH. Mr. Becker said that there is a certain spirit of that neighborhood that has been developed and maintained by the Terrell and Holt Family that he is trying to maintain. He said that there is a lot of conservation land around this lot, and the intent is not to impact the overall neighborhoods greatly that it would lose all the beauty and appeal of the area, which is the main reason why they didn't want to maximize the lot with every bonus and every single house that could be crammed in there.

Pat Holt, Groton Road, Nashua, NH. Ms. Holt's audio was not working but she indicated that she is in favor of the proposal.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Minkarah said that he initially struggled with it, but what brought him around was the size of the parcel, and the fact that

there is a large open space, and it is within the spirit and intent of the ordinance in that open space conservation developments are allowed, the density proposed is consistent with what is allowed, both conventionally and in terms of open space, and providing more open space and reducing the amount of roadway that would need to be maintained is certainly within the goals of the ordinance, and is in support.

Mr. Kanakis said that he is in support as well, and said that he is glad that they decided to go along with the conservation subdivision, and likes the open space that would be provided.

Mr. Currier said that his sense that conservation easements have their place, and it all depends on the size and configuration of the lot, and thought a conventional subdivision would fit here just as well, and would still be in the character of the neighborhood.

Mr. Boucher said he is in support, and understands the regulations, and supports the case. He said that this will minimize the impact on the neighborhood.

Mr. Shaw said that there is a sufficient benefit for developing this with a conservation type of development. He said that he likes the open space that will be provided, and the overall area of the parcel supports the equivalent of the 40,000 square foot lots, and this is a good usage of the property.

Mr. Lionel said that he supports the application.

Mrs. MacKay said that she supports the application, it is increased conservation, so the green space is there, and there is less sprawl so to speak, and likes the applicant's thought process behind this.

Mr. Currier said that after listening to other Board members points in support, he said that he is in support now.

Mr. Falk said that if there was available sewer, they would not be here, as there is no minimum lot size for a conservation subdivision.

MOTION by Mr. Lionel to approve the application on behalf of the applicant as advertised. Mr. Lionel stated that the variance is needed to enable the applicant's proposed use of the property,

given the special conditions of the property, this is a conservation subdivision and large sections of the lot are being left conserved, 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. Lionel said that the request is within the spirit and intent of the Ordinance.

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

Mr. Lionel 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. Eric Daniel & Margaret K. LaChance (Owners) Andy Erickson, ALL, LLC (Applicant) 4 Marquis Avenue (Sheet 101 Lot 79) requesting special exception from Land Use Code Section 190-15, Table 15-1 (#3) to construct an attached garage addition with accessory dwelling (in-law) unit above. RB Zone, Ward 6.

Voting on this case:

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

Eric LaChance, 4 Marquis Avenue, Nashua, NH. Mr. LaChance said that he purchased his grandfather's house, he had owned it since 1962. He said that his mother and uncle live in the house as well. He said that he is seeking approval for an in-law apartment above the garage for himself. He said that it will be above a new 24'x35' garage, and a 24'x30' space studio-style ADU above, built where the existing carport is, which will be removed. He said that the size of the addition will be consistent with the neighborhood. He said that the number of people in the home will not increase, and it will not be an increase to traffic on the street.

Mr. LaChance said that he already has existing parking for the vehicles residing in the house.

Mr. Currier asked where the garage is, and it looks like it will be a detached garage, or would it be attached.

Mr. LaChance said it will have a breezeway style addition.

Mrs. MacKay said that there are special regulations for an accessory dwelling unit, and asked if Mr. LaChance has read them.

Mr. LaChance said that he's read them.

Mrs. MacKay read the special conditions, to which Mr. LaChance agreed to all of them.

SPEAKING IN FAVOR:

No one.

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. Boucher to approve the application on behalf of the applicant as advertised. Mr. Boucher stated that the use is listed in the Table of Uses, Section 190-15, Table 15-1 #3.

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 or sewer or other municipal systems.

Mr. Boucher said that all the nine special regulations are met per testimony of the applicant.

Mr. Boucher said that the request will not impair the integrity or be out of character with the neighborhood or be detrimental

to the health, morals or welfare of residents.

SECONDED by Mr. Lionel.

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

4. Hannaford Bros. Co (Owner) Merritt Place, LLC (Applicant) 8 Merritt Parkway (Sheet C Lot 2544-8) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#15) to allow up to 160 multi-family dwelling units in one building. R30/FUOD Zone, Ward 9. [POSTPONED FROM THE AUGUST 11, 2020 MEETING.]

CASE WITHDRAWN BY APPLICANT.

MISCELLANEOUS:

REGIONAL IMPACT:

Board members stated that they did not see any cases of Regional impact.

Mrs. MacKay said that it will be on September 9th, which is Wednesday, since Tuesday the 8th is the NH Primary.

MINUTES:

None.

ADJOURNMENT:

MOTION by Mr. Shaw to adjourn the meeting at 7:46 p.m.

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 5-0 PER VERBAL ROLL CALL.

Submitted by: Mr. Currier, Clerk.

CF - Taped Hearing