

EXPANDED DRAFT MEETING SUMMARY
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ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
June 25, 2019

A public hearing of the Zoning Board of Adjustment was held on Tuesday, June 25, 2019 at 6:30 PM in the Auditorium, 229 Main Street, at City Hall.

Members in attendance were:

JP Boucher, Chair
Steve Lionel
Rob Shaw
Mariellen MacKay, Clerk

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. Michael H. & Amanda M. Basmaji (Owners) 4 Faxon Avenue (Sheet 9 Lot 33) requesting special exception from Land Use Code Section 190-47 (B) to allow a major home occupation for an in-home music teaching studio. RB Zone, Ward 7.

Voting on this case:

JP Boucher, Chair
Steve Lionel
Rob Shaw
Mariellen MacKay, Clerk

Michael & Amanda Basmaji, 4 Faxon Avenue, Nashua, NH. Mr. Basmaji said that they want to run a home music studio, called AB Music School. He said that his wife is the primary instructor, and there are no other employees, and he does the books, taxes and accounting for the business. He said that she

teaches brass, woodwinds, strings and piano in private lessons, one student at a time. He said that he submitted a weekly student schedule for the package. He said that most of the students are on Monday, with a few on Tuesday and Wednesday.

Mr. Basmaji said that the Land Use Code identifies the business under number Use #251. He said that this use is a Conditional Use, requiring Planning Board approval, which has been applied for. He said that since they would have more than three visits per week, they are also required to apply for the Special Exception for the major home occupation use.

Mr. Basmaji said that they are in compliance with all of the conditions set forth for the special exception. He said that they are only using 64 square feet is being used for the business, and his wife is the only employee. He went over the other points, which are all met. He said typically, there would only be one additional car parked at their house, and if there are two, it's only for the transition of one client leaving and one client arriving. He said that most clients arrive between 10:00 am to 5:30 or 6:00 pm. He said that there is no undue traffic congestion or pedestrian safety issues, and there is no impact to public utilities or services. He said that the use will not impair the integrity or the character of the neighborhood.

Mr. Shaw asked to confirm that the owners are the only persons employed for the business, and asked about the hours of operation, if they would be willing to state, and/or limit the times.

Mrs. Basmaji agreed. She said that they are more than willing to accommodate any issues, with hours, or anything with the neighborhood if they are impeding, and would be more than willing to move students around.

Mr. Basmaji said that his wife has a part-time job Wednesday through Friday, and are not anticipating adding any more students on any other day other than maybe Tuesday.

Mr. Shaw said that there could be some concern about weekend classes, or evening classes.

Mrs. Basmaji said that she's made it clear to her students that she is not going to work on Thursday and Friday, or the

weekends. She said that unless it's a once every six-month make-up class, that's the only time it could happen.

Mr. Basmaji said that they'd be happy to limit it to Monday through Wednesday.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Boucher to re-open the Public Hearing to hear opposition.

SECONDED by Mr. Shaw.

MOTION CARRIED 4-0.

Dina Declorozenti, 3 Faxon Avenue, Nashua, NH. Ms. Declorozenti said it is a small dead-end street, it's very quiet. She said that trash barrels go in front of 4 Faxon Avenue. She said that the trash pick-up is sometimes impeded with cars parked in front of their property. She said that she has had issues with trash pick-up and cars for their property.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Basmaji said that he's never heard any of these concerns directly related to the trash pick-up. He said that they've wanted to have an open dialogue with the neighbors. He said the very first week they moved in, there was an issue with the trash pick-up, and they didn't know that the trash for the whole dead-end street was put in front of their house.

Mrs. Basmaji said that one time, her trash was not picked up, because she put their lawn clippings next to the trash barrels, and it wasn't three feet away.

Mr. Basmaji said that they wrote a letter of apology to the neighbors, gave them their contact information. He said that another incident was in the winter, a holiday, where the trash was picked up the following day, and their trash barrels were

put out by 7:00 am, and they had to shovel out areas in front of the house, and had to move the trash cans across the street to clear the space, and the neighbors husband came out and threatened to call the police, because his personal property, the trash barrels, were touched and moved, even though they are owned by the City. He said that he didn't think it was an issue, it was all hashed out. He said that they'd be happy to talk to them about this.

Mrs. Basmaji said that her first students on Monday morning, which is trash day, don't arrive until 10:30 am, and trash pickup is usually around 7:00 am, and to clear space, she returns the barrels. She said that she's always tried to accommodate the barrels. She said that there is enough room in the driveway to park on both sides of the road, and to allow cars to come up and down the street, there is definitely enough room for cars, and they use their own driveway for turnarounds.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Ms. Declorozenti said that she has a four car driveway. She said that she never parks in her driveway. She said it is a small street. She said that she would like everyone in the neighborhood to work together to get the snow cleaned up.

Mr. Boucher said that he doesn't doubt that there has been some parking or trash pickup issues. He said he doesn't have an issue with this, if there is a stipulation that clients have to park in their driveway. He said that there are not multiple students; it's a limited scope for the home occupation. He said that they meet the ten special conditions for approval.

Mr. Lionel said he's been a music student in someone's home, and is familiar with how things are run. He said he doesn't have a problem with the application, but obviously there is some friction in the neighborhood. He said that if this is granted, that students should park in the driveway, and not in the street. He said that the lessons are only in the beginning of the week, during the day.

Mr. Shaw agreed with the stipulation of students parking in the driveway, and the applicant has agreed to it. He said that there are two main concerns, for traffic and safety, and said that special condition number ten, is that the use will not cause any vehicular traffic that is substantially different from

that which currently exists in the street, and the other major concern is that the use will not create undue traffic congestion or unduly impair pedestrian safety. He said that there is a fairly limited number of vehicular trips involved for the business, but it's potentially more than what might be expected to come to a given residence.

Mr. Boucher said that for the undue traffic or pedestrian safety, he said that by putting in the stipulation, for the limited trips that the business would have, it would eliminate any traffic congestion on the street. He said that he didn't think that the traffic that the business would have is like a day care when multiple cars all come at the same time for drop-off and pickup.

Mrs. MacKay agrees with what has been said already. She said that for their schedule, on Monday there are nine students, two on Tuesday, and three on Wednesday, which doesn't seem like a lot of traffic coming and going on the street. She said that she is good with or without the stipulation on parking in the driveway. She said that even lawn care companies come with a flatbed, with a lot of equipment, and sometimes do several yards, where for this business, the cars just drop off a student and aren't there. She said she is in favor of the application.

MOTION by Mr. Boucher to approve the special exception as advertised on behalf of the applicant. He stated that the use is listed in the Table of Uses, Section 190-47 B.

Mr. Boucher stated that the use will not create undue traffic congestion or unduly impair pedestrian safety, as this was discussed at length, and the Board came to the conclusion that this business does not rise to that level.

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

Mr. Boucher said that all special conditions are fulfilled by testimony.

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

Mr. Boucher said that for a special condition of approval that

the parking for the in-home occupation will be in the driveway.

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 4-0.

2. Tolles Street Properties, Inc. (Owner), Larry Kittle (Applicant) 7 Tolles Street (Sheet 42 Lot 194) requesting the following: 1) special exception from Land Use Code Section 190-119 to expand a nonconforming use; and 2) variance from Land Use Code 190-16, Table 16-3 to encroach 5 feet into the 7 foot required right side yard setback to maintain an existing 5'x14' open deck. LB Zone, Ward 3.

Voting on this case:

JP Boucher, Chair
Steve Lionel
Rob Shaw
Mariellen MacKay, Clerk

Larry Kittle, 7 Tolles Street, Nashua, NH. Mr. Kittle said originally, this had three steps down from the side of the house, and they came out about three feet. He said that instead of building that, they built a deck that came out five feet, because five feet out from the side of the building there is a stone wall, with a five foot drop, so building the deck made it a lot safer for the occupants. He said that the building is nonconforming, so the side setback of seven feet, the left side there is only four feet of land, and the right side of the house there is only seven feet of land, so just to get out of the house to get to the ground makes it nonconforming. He said that the building was built about one hundred years ago, prior to zoning laws, and the neighborhood is full of nonconforming uses and structures. He said that they just wanted to create a nice, safe environment for the occupants. He said that the work had to be done, it is a benefit to the property, and is not a detriment to anyone.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Board members all expressed support for the application.

MOTION by Mr. Lionel to approve the special exception as advertised on behalf of the applicant. He stated that the use is listed in the Table of Uses, Section 190-119.

Mr. Lionel stated that per testimony, the use will not create undue traffic congestion or unduly impair pedestrian safety; in fact, the Board believes that this will improve safety all around.

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

Mr. Lionel said that all special conditions are fulfilled by testimony.

Mr. Lionel stated that the use will not impair the integrity or be out of character with the neighborhood or be detrimental to health, morals or welfare of the residents.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 4-0.

MOTION by Mr. Lionel 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, as there are tight boundaries to the property line, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible other than the area variance.

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

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

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

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

3. Matthew M. Lambert (Owner) 90 Lake Street (Sheet 102 Lot 9) requesting variance from Land Use Code Section 190-16, Table 16-3, for lot density - to reduce existing 13,610 sq.ft lot with a 3-unit multi-family building to a 7,610 sq.ft lot - 18,669 sq.ft required - by subdividing off one 6,000 sq.ft lot to construct a new single-family home. RB/LB Zones, Ward 6.

Voting on this case:

JP Boucher, Chair
Steve Lionel
Rob Shaw
Mariellen MacKay, Clerk

Richard Maynard, Maynard and Paquette Engineering Associates, Nashua, NH. Mr. Maynard stated that the property is at the corner of Lake Street and Lakeside Street, in the RB zone. He said that the lot contains an existing three-family dwelling, on 13,610 square feet of land. He said that the minimum lot size in the RB zone is 6,000 square feet.

Mr. Maynard said that the proposal is to subdivide off a 6,000 square foot lot for a new single-family home. He said that the existing three-family home would remain on a 7,610 square foot lot, with a per-unit density of 2,537 square feet per unit. He said that the area is a very mixed neighborhood commercial and high density neighborhood. He said to the south, is the Courville residential development, with 146 units and a per-unit density of 1,151 square feet. He said that to the north, is a thirty unit building with a per-unit density of 1,276 square feet. He pointed out a map that was submitted, showing all the lots nearby that do not conform to the current requirements per square footage for residential. He said that nearby, are retail stores, auto repair, office, commercial warehouses, and other high density residential uses. He said that roughly half of the nearby lots are nonconforming.

Mr. Maynard said that after subdivision, the lots would have 55% and 62% green open space, versus the Ordinance requirement of 35%.

Mr. Maynard said that the existing parking is along Lake Street, which requires tenants to back out onto Lake Street to exit, which is an unsafe situation. He said that the proposal would change the parking to the rear of the property, accessed by a driveway off of Lakeside Street, which would be a significant safety improvement, and also improve the appearance of the property. He submitted a letter from Blackwood Realty, indicating that the proposal will enhance property values. He said that the proposal will increase property values, and is in character with the neighborhood, and will benefit the public interest.

Mr. Maynard said that he reserves the right to be heard before a full five-member Board.

Mr. Lionel disagreed, and said that it is not a requirement.

Mr. Boucher said that it appears as if this is a self-imposed hardship. He said that it is already a nonconforming lot, with the three-family, and it would be made more nonconforming.

Mr. Maynard said that the character of the neighborhood is covered in the variance application. He said that this neighborhood is substantially nonconforming with lot sizes, along with the density as well. He pointed out some nearby developments with densities that do not meet the ordinance. He said that all they're doing is something that would be in conformance with what already exists in the neighborhood. He said it's not a self-imposed hardship.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Mr. Boucher pointed out that there is a letter related to property values that they will not go down.

Mr. Shaw said that he cannot support this. He said he does not see the hardship to justify taking something that is already significantly nonconforming and making it extremely nonconforming. He said he understands that the lot has an open

area, that may beg for this type of thing, but said it is a self-imposed situation, as it is already nonconforming, and it would bring greater density to this piece of property, even though there are a lot of other higher density properties nearby.

Mr. Lionel agreed with Mr. Shaw, it's already a nonconforming use, and didn't think that this request is within the spirit and intent of the ordinance, and cannot support this.

Mrs. MacKay said that this is a huge ask. She said the three-family on 7,610 square feet is asking a lot. She said that even though the applicant indicated that it is not a self-imposed hardship, she believes that it is, they're taking something that is already nonconforming, and making it even worse. She said she knows the neighborhood and what is nearby, but agrees that this should not be supported.

Mr. Boucher said he can't agree with the hardship, and understands that there is a lot going on around Lake Street, but in his judgement, this is a self-imposed issue, and can't support this.

MOTION by Mr. Shaw to deny the application on behalf of the owner as advertised. He said that the Board believes that the variance is not needed to enable the applicant's proposed use of the property, it is not a sufficiently unique setting, even though there was testimony that the area has higher densities, but this would be taking an existing very high nonconforming use and making it significantly more so.

Mr. Shaw said that the Board feels that it is not within the spirit and intent of the ordinance.

Mr. Shaw said that there was a letter submitted that this request would not adversely impact surrounding property values, but the Board feels that there wouldn't be a significant affect one way or another regarding property values.

Mr. Shaw said that the request would be contrary to the public interest, and substantial justice is served by not granting this request.

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 4-0.

MISCELLANEOUS:

REHEARING REQUESTS:

None.

MINUTES:

5-28-19:

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

SECONDED by Mr. Shaw.

MOTION APPROVED UNANIMOUSLY 4-0.

6-11-19:

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

SECONDED by Mr. Lionel.

MOTION APPROVED UNANIMOUSLY 4-0.

REGIONAL IMPACT:

The Board did not find any cases of Regional Impact.

ADJOURNMENT:

Mr. Boucher called the meeting closed at 7:36 p.m.

Submitted by: Mrs. MacKay, Clerk.

CF - Taped Hearing