

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
January 11, 2022

A public hearing of the Zoning Board of Adjustment was held on Tuesday, January 11, 2022 at 6:30 PM, both in person at City Hall and via Zoom.

Steve Lionel, Chair, asked for a Roll Call.

Steve Lionel, Chair
Mariellen MacKay, Vice Chair (on zoom)
Jack Currier, Clerk
JP Boucher
Rob Shaw

Carter Falk, Deputy Planning Manager/Zoning
Kate Poirier, Zoning Coordinator (on zoom)

Mr. Lionel explained the Board's procedures, saying that real-time public comment can be addressed using Zoom, or by telephone, or in person. Mrs. MacKay said that real-time comments via audio will be addressed at the conclusion of the public hearing, and the public is encouraged to submit their comments for future meetings via email to the Planning Department, which is Planningdepartment@nashuanh.gov, or by mail, at P.O. Box 2019, Nashua, NH, 03061. 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. Paul A. & Rene L. Bodmer (Owners) Euddy Daniel Balbuena, Euddy Jewelry Corp (Applicant) 110 West Hollis Street (Sheet 86 Lot 47) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#116) to convert former barber/beauty salon into a jewelry store. RC Zone, Ward 4.**

Voting on this case:

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

Eileen Casaro, 110 West Hollis Street, Nashua, NH. Mrs. Casaro said that it is her husband's jewelry business, and is on zoom. She said that they offer fine jewelry to the public, a great selection for customers at an affordable price. She said that they sell bracelets, necklaces, pendants and custom orders, wedding rings, watches, jewelry for children. She said that their goal is to offer custom jewelry at an affordable price.

Mr. Currier asked about the rest of the structure, and if it is a home in the back.

Mrs. Casaro said that it is a home in the back, and believes that it is a two-family home, and the owner lives there. She said that she and her husband would be renting the commercial space in the front.

Mr. Currier asked if there is parking behind the store.

Mrs. Casaro said that there is, for the tenants and two spaces in front of the garage.

Mr. Shaw asked what the plans are for signage.

Mrs. Casaro said that they have a business logo, it would go in front of the store. She said that the owners are ok with the logo and the signage

Mr. Falk said that this is an RC zone, so it's a multi-family zone, and the uses on this property have been nonconforming for many years. He said that in the RC zone, applicants have a choice of one wall sign at a maximum of 6 square feet, or a 10 square foot ground sign, they can do either one or the other, not both. They would need to submit a sign permit and meet the sign ordinance.

Mrs. Casaro said that they would be going with the wall sign instead of the ground sign.

Mr. Lionel asked what the business hours would be, and how many employees they would have.

Mrs. Casaro said that it is just her and her husband for employees. She said that the hours would be 10:30 a.m. to 7:00 p.m. Monday through Saturday, and Sunday would be 11:00 a.m. to 4:00 p.m.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Boucher said that it meets the points for the variance, this location has had a business there before in the past, and the proposed use is not any more intense than the past ones.

Mr. Currier agreed, and said that businesses have come and gone there over the years, and this is a great opportunity to brighten up the neighborhood, and the hours of operation are consistent with other businesses that operate nearby, such as the gas station.

Mr. Shaw said that that the structure itself presents itself as a business, it's clearly not the residential part of the structure and it makes sense to allow it to continue to have a business there.

Mrs. MacKay said that she is in support for all the reasons already mentioned.

Mr. Lionel said that he is in support as well.

MOTION by Mr. Shaw to approve the use variance 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, given the special conditions of the property, as noted, this has been used for various businesses for quite a long time, decades, and the structure itself presents itself as a commercial part of the structure, and the usage is a reasonable one.

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 will be served.

SECONDED by Mr. Boucher.

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

2. William J. Jr. & Katherine Vassel (Owners) 25 Hunt Street (Sheet 102 Lot 30) requesting the following variances from Land Use Code Section 190-16, Table 16-3: Proposed Lot 30: 1) minimum lot area, 6,000 sq.ft required - 5,000 sq.ft proposed; and, 2) minimum lot width, 60 feet required - 50feet proposed; for proposed Lot 30-1: 3) minimum lot area, 6,000 sq.ft required - 5,000 sq.ft proposed; and 4) minimum lot width, 60 feet required - 50 feet proposed - all requests to subdivide one lot into two lots RB Zone, Ward 6.

Voting on this case:

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

Attorney Andrew Prolman, Prunier & Prolman, 20 Trafalgar Square, Nashua, NH. Atty. Prolman said he is representing the owners, who are attending on zoom. Atty. Prolman said that this is a one lot into two subdivision. He said that it is in the RB district, and four variances are proposed.

Atty. Prolman said the lot is exactly 10,000 square feet in size, and in order to realize the owners goals of subdividing the property, the thought was best to split the lot right down the middle, creating two nonconforming lots, as opposed to one larger lot that met the ordinance and one much smaller nonconforming lot.

Atty. Prolman said that the neighborhood is an old neighborhood, laid out many years ago with generally 50'x100' lots. He said that the area is mixed, with single-family homes, duplexes, and multi-family units scattered throughout. He passed out a GIS

highlighted map showing lots that are 50 feet in width and between 5,000 - 6,000 sq.ft in size, which shows that the proposed request meets the overall character of the neighborhood. He said that the frontage is met, and the width is 50 feet, where it needs to be 60 feet, and the lots need to be 6,000 sq.ft, and the proposed lots would be 5,000 sq.ft. He said that many lots in the neighborhood are exactly what the proposed lots would be.

Atty. Prolman said that the request is not contrary to the public interest, and will not impact public health, safety or the character of the neighborhood. He said that they're requesting 10 feet of width, and 1,000 square feet of area, and there still remains sufficient space for a nice house with a yard.

Atty. Prolman said that the request will do no harm to the public, and the substantial justice would be met.

Atty. Prolman said that they've received a letter from a neighbor expressing their concerns about property values, and respectfully disagree, as a newly constructed house on the new lot, and renovation of the existing home will only improve the values in the neighborhood. He said that this is a residential use, in a residential neighborhood, and it is reasonable.

Mr. Currier asked if the existing home is a single-family home, as well as the proposed home.

Atty. Prolman said the existing and proposed home are single-family.

Mr. Lionel asked if the requirements would change if they want a two-family.

Mr. Falk said they would need more land area, for a two-family, they would need 12,445 sq.ft of land area, where 5,000 sq.ft is proposed. He said that a two-family is a larger structure, taking up more space on the lot, and requires additional parking as well. He said that they would need a variance for a two-family for land area. He said that a two-family use is allowed in this zone, provided it has the proper amount of land area.,

SPEAKING IN FAVOR:

Mr. and Mrs. Vasel attempted to speak in favor, however, the audio to allow them to speak was not available.

Atty. Prolman said that the owners only wanted to say that they're looking at single-family homes on each lot.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Mr. Lionel said that there is a letter in opposition from Chris Barnett, 26 Hunt Street, Nashua, NH.

SPEAKING IN FAVOR - REBUTTAL:

Atty. Prolman said that he has nothing further to add, he said that the request would be consistent with the character of the neighborhood.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Shaw said that he is struggling with this application. He said he doesn't see the limitation that the applicant has. He said that the property is clearly supporting a single-family home already, and appreciates that some number of the smaller lots in the neighborhood are around, but it's a relatively small percentage, maybe 15% or so, and many of the closest lots in the area are larger. He said that he's just not convinced that there is a need to subdivide the lot, and add nonconformance.

Mr. Currier said he's struggling a bit. He said he looked at the property after receiving the neighbors letter, and thought he'd see a large lot property like 25, although 26 Hunt was very close to the road, and looks like a denser property.

Mr. Boucher indicated that there is proof of lots scattered around the neighborhood with different sizes and configurations. He said that some of the large lots have houses right where they're supposed to be. He said that the neighborhood is mixed in feeling, as some homes are right on the street that feel denser, even though they have more land, so there's a mix of all kinds of things going on here. He said that it's a reasonable request, and will fit in, and meet the dimensional requirements for setbacks. He said it's only one new house to be added, and should be a benefit to the neighborhood as it will be new construction, and there shouldn't be a negative impact on density.

Mrs. MacKay stated that she doesn't think that the request is unreasonable, and it meets most of the criteria, she said that she is somewhat stuck on what the hardship is. She said that there are all different size homes and lots in the neighborhood. She said that she is a little stuck on the hardship and special conditions. She said at this point, she is more not in favor than in favor of the request.

Mr. Lionel said that he is struggling with this one, partly because it's an existing lot, and the lots near it are all larger, and this particular section of Hunt Street tends to have larger lots, and this is a self-imposed hardship, because there are no special conditions of the property other than it's big enough in size so that the owner wants to subdivide it, and that, in and of itself, is not reason to grant the variance. He said that he is leaning against the request.

MOTION by Mr. Boucher to approve the variance application on behalf of the applicant as advertised, with all requests taken together. Mr. Boucher stated that the variances are 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; the Board found that some of the special conditions that exist are that this neighborhood has a mixed look type of neighborhood, meaning that there are definitely lots in the neighborhood that are larger, and there are homes that sit right on the street, giving the appearance that it is much denser than what they are, so in the totality of it, this neighborhood and the street have different looks at different properties, so as a special condition of this, the history of the existing house definitely sits on the side of the lot and was done that way in anticipation of an additional house to the left.

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 will be served.

SECONDED by Mr. Shaw.

MOTION CARRIED 3-2 BY VERBAL ROLL CALL VOTE OF THE MEMBERS (Mr. Shaw and Mr. Lionel).

3. Amie Weber (Owner) 16 Shady Lane (Sheet B Lot 1484) requesting the following: 1) Special exception from Land Use Code Section 190-15, Table 15-1 (#3) to allow an accessory (in-law) dwelling unit in lower level of home; and, 2) variance from Land Use Code Section 190-32 (B)(8) to not have an interior door between primary dwelling unit and accessory dwelling unit, where one is required. R9 Zone, Ward 9.

Voting on this case:

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

Amie Weber, 16 Shady Lane, Nashua, NH. Mrs. Weber said that her father, last year, lost his housing, and they'd like to convert some space in their basement for him. She said that when they purchased the home, this space was considered as potential for an in-law, it's already plumbed, the bathroom is fully plumbed, and in the back, there is plumbing for a small kitchen. She said that since her father lost his housing, they've been looking at this space in preparation for him for a place that he can call his own.

Mrs. Weber said that the space has its own separate entrance, and will not change the look of the house at all, nothing would change on the exterior of the home, it has a parking space already next to the driveway where he can walk around back. She said that they are looking for a variance with no connecting door from the main home to the potential in-law, as there is an exterior door there, and there is a window in the proposed bedroom for the second means of egress, so it meets the building code. She said that if they were to add an interior door between the two, it would involve cutting through the foundation.

Mr. Weber said that it is an unusable space at this point, and

looking to make it useful. He said that the prior owners used it as a pool house for their pool in the 1970's, and the pool is no longer there.

Mr. Shaw asked if they are aware of the nine criteria for an accessory dwelling unit, and meet them other than the interior door.

Mrs. Weber said that they've gone through those with Mr. Falk, and it's just the interior door that needs a variance.

Mr. Currier said that it looks like perhaps a header can be put in, and saw through the concrete. He asked if that is not the case.

Mrs. Weber said that they'd prefer not to do that, and are trying to keep costs lower, and are refinancing their home to do this.

Mr. Weber said that the foundation for the main part of the house has slowly dipped about three inches, so the floorboards and structural integrity would be compromised by cutting through. He said that the concrete foundation wall sits almost in the middle of the house, and they'd like to keep that intact as much as possible.

Mr. Currier asked if there is a possibility of having a staircase added, so instead of going horizontally, from basement to basement, or lower level to lower level, you could go from lower level to upper level.

Mrs. Weber said that directly above it is the center of the living room, so that wouldn't be an option. She said that if they were to do it in the front of the house, where the proposed kitchen would be, that would be right in the mudroom.

Mr. Weber said that they could put in some sort of an escape hatch that folds down, like you see in an attic, so it could be framed into their section of the house, as the living room in the main house sits directly over this unit. He said that the proposed accessory unit has three means of egress, it has the door, and a window in the bathroom and the bedroom, all would meet the building code.

Mr. Falk said that he talked to the applicant at length about

this. He said that that the sentiment he got is that while it may be possible to have an interior connection, it would be a burden to the primary structure, as it would be right in the middle of their living room or by the mudroom area. He said that for Staff, the biggest thing is the safety of all residents, and they would have three means of ingress and egress to the unit. He said that most in-law apartment situations have walkie-talkies or an intercom and cell phones for contact, but staff's primary concern is the safety of the residents living there.

Mr. Lionel said that he thought the interior door requirement was not for egress specifically, but to make it feel less like a two-family house. He said that the Board has approved many ADU's where the owner said that there would be a door, but it would be locked.

Mr. Falk said that he's found that a lot of ADU's have a door, and it is locked, and it's never opened. He said that the applicant is on the back of the house.

Mr. Shaw said that for accessory dwelling units, the Code used to mandate that there used to be a familial relationship, but that is no longer part of the ordinance.

Mr. Currier asked about the three means of egress, and asked if that is for the existing structure and the proposed unit, or three for the whole house.

Mrs. Weber said that it is three for just the proposed unit. She said that there will be two full-sized windows and the door, and the windows meet the code for egress.

Mr. Falk said that the windows meet the height for an egress window, it has to be five square feet, and they've already confirmed this with the Building Department.

Mr. Lionel asked to confirm, in looking at the picture of the back of the house, that the house was originally built it was about half the width it is now, and a previous owner extended it off to the side and created this isolated area that was used as a pool house.

Mrs. Weber said yes, it's the right side of the structure, the whole right side is the addition that was put in in the early

1980's. She said that the basement portion was added at that time as well.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Shaw said that he is in favor, and was anxious to get to the meeting tonight to see why this issue with the interior door, and why is there this space that wouldn't have a connection. He said that it makes a lot of sense, and it is a special condition that is occurring here and is satisfied with the variance and the special exception.

Mr. Currier said that he is in favor of the special exception, and is struggling with the variance. He said that as far as the main structure sagging, does not feel like it is the criteria that this Board should deal with, it should have an engineer look at it and try to rectify it, not that they just don't want to do it. He said that the previous ADU's that the Board approved, the door remains locked, and is not surprised by that, and would be more surprised if it did happen. He said that a very crucial component of the relaxed ADU laws was the interior connection door to prevent it from turning into a two-family home. He said that they don't have any dimensions of the mud room, that would be a perfect spot for an interior door.

Mr. Boucher said that he agrees with Mr. Shaw, it is a special condition of the property, and this property is unique where this room is, and you'd never know that this unit is back there. He said that he is in support.

Mrs. MacKay said that the sticking point for her is the door. She said that if this is no longer requiring a familial relationship, and if this is to remain as an ADU as opposed to a tenant situation, or two-family, then that door needs to stay, as once there is no door, then it makes it different as there is more sense of individuality and not connectivity. She said that she looks at this the same way Mr. Currier does, and disagrees

with the door issue. She said she does not remember any other case where an applicant did not want a connecting door, or any other issues with an ADU. She said that she cannot support this application due to the door.

Mr. Lionel said that the door is an issue for him, but in reality, the requirement for connecting door is somewhat superfluous because we've had applicants in the past where they've been straightforward and said that they'd keep the door locked and no one will go through it. He said that the law allows for no familial connection now, and people are renting them out to non-family persons. He said that given the design of this house, he said that he is reluctant on insisting that they build a stairway up into the main part of the house or cutting through the concrete wall for something that is not likely to be used. He said that he's in favor of the special exception, and is leaning towards approving the variance.

Mr. Shaw said that the Board has approved other variances associated with the special exceptions, most notably, many for the area being greater than 750 square feet, and for the curb-cut at least one time, just for the nature of the property for the second driveway. He said that the Board has approved variances associated with ADU's before, as none of these things ever fit completely neatly into the restrictions. He said that the Board has had units over the garage and there was a stairwell, like an outside entrance out back going to an interior hallway. He said that he finds in this case that it is unique, and it is a special condition of the property.

Mr. Currier said that the spirit and intent of the ordinance must be met, and in cases where folks have not had that interior connection, it is in perpetuity, it's not there.

Mrs. MacKay said that she remembers a specific case where they had to maneuver through the garage, and remembers other cases where people went over on square footage, but does not remember eliminating all together a requirement. She said that eliminating the door does not make it an ADU, and that is the sticking point. She said that she understands the amount of construction work that would need to be done, but is struggling with the lack of the door, as ADU's have a connecting door.

MOTION by Mr. Shaw to approve the special exception application as advertised on behalf of the applicant. He said that it is

listed in the Table of Uses, Section 190-15, Table 15-1 (#3).

Mr. Shaw stated that it will not create any undue traffic or unduly impair pedestrian safety.

Mr. Shaw stated that it will not overload public water, drainage, or sewer or other municipal systems.

Mr. Shaw stated that all special regulations are fulfilled, with the exception of the variance for #7 for the interior door, or the applicant will put in an interior door so the variance would not be needed.

Mr. Shaw stated that it 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. Boucher.

MOTION CARRIED 4-1 BY VERBAL ROLL CALL VOTE OF THE MEMBERS (Mrs. MacKay)

MOTION by Mr. Shaw to grant the variance as advertised on behalf of the owner as advertised.

Mr. Shaw said that the variance is needed to enable the applicants proposed use of the property, given the special conditions of the property, this home had a relatively large addition added quite a while ago, where the lower level, or basement level part of the structure was constructed such that there is no connection to the rest of the interior of the existing home, or the first floor of the home, and was used apparently as a pool house type of structure for a pool that used to be on the property, and no door is currently between this part of the structure and the rest of the home, and for that reason, the variance is required.

Mr. Shaw said it would be within the spirit and intent of the ordinance.

Mr. Shaw said that there is no indication of any negative impacts on property values of surrounding properties.

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

SECONDED by Mr. Boucher.

MOTION FAILS 2-3 PER ROLL CALL OF VOTING MEMBERS (Mr. Currier, Mrs. MacKay and Mr. Lionel).

MOTION by Mr. Currier to deny the variance as advertised on behalf of the owner as advertised.

Mr. Currier stated that a majority of the Board believes that a door nonetheless could be added and the Board finds that without having the door it is not within the spirit and intent of the ADU ordinance.

Mr. Currier said that the Board doesn't have a comment about the property values of surrounding parcels.

Mr. Currier said that the Board finds that by not having the connecting door, the spirit of the ADU is met and is therefore not contrary to the public interest, and substantial justice is not served with the request.

SECONDED by Mr. Lionel.

MOTION CARRIED 3-2 PER ROLL CALL OF VOTING MEMBERS (Mr. Shaw and Mr. Boucher).

MISCELLANEOUS:

REHEARING REQUESTS:

None.

MINUTES:

12-14-21:

MOTION by Mr. Shaw to approve the minutes as presented, waive the reading, and place the minutes in the permanent file.

SECONDED by Mr. Boucher.

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

REGIONAL IMPACT:

The Board did not see any cases of Regional Impact for the 1-25-22 meeting agenda.

ELECTION OF OFFICERS FOR 2022:

MOTION by Mr. Lionel to nominate Mr. Currier for Clerk.

SECONDED by Mr. Shaw.

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

MOTION by Mr. Shaw to nominate Mr. Lionel for Chair, and Mrs. MacKay as Vice Chair.

SECONDED by Mr. Boucher.

MOTION FAILS 2-3 PER VERBAL ROLL CALL OF THE VOTING MEMBERS (Mr. Currier, Mrs. MacKay and Mr. Lionel).

MOTION by Mr. Currier to nominate Mrs. MacKay as Chair, and Mr. Lionel as Vice Chair.

SECONDED by Mr. Shaw.

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

ADJOURNMENT:

MOTION by Mr. Lionel to adjourn the meeting at 8:11 p.m.

Submitted by: Mr. Currier, Clerk.

CF - Taped Hearing