

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
January 22, 2019

A public hearing of the Zoning Board of Adjustment was held on Tuesday, January 22, 2019 at 6:30 PM in the Auditorium, 229 Main Street, at City Hall.

Members in attendance were:

JP Boucher, Chair  
Jack Currier  
Rob Shaw  
Steve Lionel  
Mariellen MacKay  
Efstathia Booras  
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.

**1. Linda Lancaster (Owner) 18 Smithfield Terrace (Sheet 56 Lot 138) requesting the following: 1) special exception from Land Use Code Section 190-15, Table 15-1 (#3) to construct an accessory (in-law) dwelling unit in second floor of existing house; and, 2) variance from Land Use Code Section 190-32 to exceed maximum size of accessory dwelling unit, 750 sq.ft allowed - 845 sq.ft proposed. RA Zone, Ward 3.**

Voting on this case:

JP Boucher  
Jack Currier  
Rob Shaw  
Steve Lionel  
Mariellen MacKay

Linda Lancaster, 18 Smithfield Terrace, Nashua, NH. Ms. Lancaster said that the ADU that is requested will allow her to

stay at her house for the rest of her life, as retirement will be soon, so the second floor will be the ADU. She said that upstairs it is 845 square feet in size. She said it could be under 750 square feet if one of the doors is closed and locked, but it would be unusable space. She said that the house has a two-car garage, and half of the garage would be used for the ADU.

Ms. Lancaster said that almost all the work would be interior, except for an exterior entrance to the second floor, an outdoor shed, and a small deck, all of which would be on the right side of the house. She said that she has submitted diagrams showing the existing and proposed first and second floors.

Mr. Lionel asked how the creation of the ADU will allow her to stay in the house.

Ms. Lancaster said that one of which would be if she had a caretaker, they could stay up there, or as she gets older, her younger sister could stay there. She said that the immediate use would be renting the ADU to help supplement finances.

Mr. Lionel asked about the stairway outside. He said it's the first ADU he's seen that involves an exterior stairway, which is generally associated with multi-family or apartment buildings.

Ms. Lancaster said that this is the only place to put the stairway within the setbacks, and it can't be on the front. She said that there will be some landscaping to block the stairway. She said that the stairwell will be made out of the same materials as the deck in front and back, which is trex, and vinyl, so it will be consistent with the look and feel of the house as it exists now. She said that there has to be a means to get up there.

Mr. Minkarah asked what the square footage of the first floor.

Ms. Lancaster said it is close to 1,700 square feet, plus, there is a full basement which is another 1,000 square feet.

Mr. Currier asked if the staircase internally will service both units.

Ms. Lancaster said no, the wall will be partitioned, and an interior door will be there, and said that by using the stairs

inside will require the tenant coming through her front door, and entering the first floor of the house.

Mr. Currier asked if there was any thought of having the staircase go upstairs through the garage.

Ms. Lancaster said it was considered, but there isn't enough space in there to get the appropriate stair dimensions, but it would take up at least half of one side of the garage, which would take away the parking area for the ADU inside the garage.

Mr. Boucher said that for the ADU, economic or financial issues cannot be considered in the Boards deliberation for any case.

Ms. Lancaster said that she understands.

Mr. Currier asked if the Berkeley Floor Plan "A" is her house.

Ms. Lancaster said the house was built by Etchstone in 2002, and it is her floor plan.

Mr. Currier asked if the proposed staircase would be covered, or open.

Ms. Lancaster said that she had not planned on it being enclosed.

Mr. Shaw asked if the landing for the stairwell would be towards the rear or front of the property.

Ms. Lancaster said the bottom landing to go up the stairs would be towards the front of the house, and the stairs would go up and land towards the back of the house.

Mr. Boucher read the nine special conditions for the ADU.

Ms. Lancaster agreed with all of them, and noted that there is the submitted variance to exceed the 750 square foot maximum.

**SPEAKING IN FAVOR:**

Nancy Durette, 20 Smithfield Terrace, Nashua, NH. Mrs. Durette said that she had some initial concerns, and was assured that with fencing and landscaping that it won't interfere with the aesthetics or the neighborhood, or her side yard. She said she

isn't for or against it, and mentioned that it is a good idea, and said that she'll make it look good.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

No one.

Mr. Currier said that he is struggling with the side staircase, and the Code states that there will be no entrance on the front or frontage, which is fine and appropriate language. He said that this isn't an entrance on the front, but having a staircase being constructed on the side, which you would see from the front, it's a struggle to determine if that is meeting the spirit and intent of the ordinance. He said that the application is very well detailed, and appreciates the thought that went into it, but is having concerns about the staircase, and would like to see an architectural plan of it so that it is nailed down.

Mr. Lionel said that the staircase is the problem for him. He said that it significantly alters the appearance of the house, to make it look like a multi-family house or apartment, which is contrary to the spirit and intent of the ordinance. He said that this is the first application that he is aware of where the ADU is not being constructed for at least by a family member, which is allowed. He said that the staircase will give the appearance of a multi-family, and would make it difficult for him to support.

Mr. Shaw said he has the same concerns about the staircase, even though it's on the side, it almost functions as if it's in the front of the structure. He said that the Board cannot deliberate on whether it will be used for a family member or not, as the State law was changed to remove the requirement that it had to be used for a family or marriage relative. He said that the applicant intends to make this seamless, added landscaping, and working with abutters.

Mr. Boucher said that he has no issues with the extra square footage on the second floor, and it makes sense that she is doing it that way. He said that the only other reasonable way is to have the staircase inside the garage, but that would take away that parking spot. He said that it is noble that the owner is dedicating the garage space for the ADU instead of outside. He said it's a beautiful home, with detailed plans, and the

owner has taken steps to meet with the abutters. He said he isn't sure if there is any other choice for the staircase for this house. He said perhaps it could be off the back of the house, but doesn't know how practical that would be. He said that the stairway that is proposed may be a safety issue as a second exit.

Mr. Currier said it is a relatively small two-car garage to begin with, and perhaps a closet could be moved over or something, maybe they need to take a hard look at another place for the staircase. He said that the owners' proposal is right in line with the revised zoning laws, which is to allow for someone to remain in their house, and to create an ADU, its right in line with the ADU regulations.

Mr. Minkarah said that he is struggling whether the ADU is really incidental to the principal use, and whether it's really subordinate, there is about a 30% difference between the first and second floor, and at what point is this a two-family versus an ADU, and if the ADU is such a significant percentage of the home, that it no longer is accessory or incidental.

Mr. Boucher said that the testimony was that the first floor was 1,600 or so square feet, with 1,000 square feet in the basement.

Mr. Minkarah said that in looking at the plans, the second floor is clearly not 50% smaller than the first. He said that there is an open area, but there is dwelling space above the garage. He said that he checked the Assessing records, the square footage on the first floor is 1,240 square feet, and proportionally, that looks about right in looking at the house.

Mr. Falk said that there used to be a provision in the ordinance that an ADU could not exceed 30% of the size of the home, and that was taken out when the ordinance was revised.

Mrs. MacKay said that she is struggling with the staircase. She said that the owner needs another access for the ADU, and why the inside staircase couldn't access the ADU itself. She said that the shed and deck weren't really discussed; the plans show a shed and a patio deck, so perhaps the shed would be a visual barrier. She said that the staircase is what it makes it look more conducive like a second family in an apartment as opposed to a one-family with an ADU.

Mr. Shaw said that the interior stairway in the house is about right in the middle of the living space, and it doesn't seem like there is any good way to seal that off to have a private entrance, without a lot of shared space. He said that it looks like the construction in the existing floor plan doesn't look like it could be converted into a private entrance, and it doesn't look like there is a good way to add a second stairway interior-wise, without major encroachment. He said he sees problems with all of this, and it is hard for the owner to stay within the bounds of the special exception, there are some real struggles here, it's the way this house was built and laid out, isn't lending itself to an easy solution.

Ms. Booras said that she concurs with statements and concerns raised by the Board, the stairway is an issue.

Mr. Shaw brought up the possibility of the Board tabling this case to allow the owner to look at diminishing or even removing the stairway, to see what other opportunities may be available, as the stairway seems to be the big hang-up for the Board.

Mr. Currier agreed, it will allow the applicant to explore options a little further. He said that he thought that the dropping of the 30%, and the adoption of the 750 square foot size was in consideration of smaller structures, where homeowners could only get really small units.

Mr. Minkarah said that if it were 750 square feet, it wouldn't trouble him, but this is going beyond that.

**MOTION** by Mr. Boucher to re-open the Public Hearing on behalf of the applicant to specifically ask when, or if, she would like this case to be tabled.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 5-0.**

Ms. Lancaster said that she has all the architectural house plan drawings, and has scale drawings available. She said that she would like the Board to table the case.

Mr. Boucher said that the Board is looking for more of a three-dimensional type drawing to explore other alternatives for the staircase, and to have the owner come back with more detail.

Ms. Lancaster asked when she needs to submit the information.

Mr. Falk explained the upcoming schedule, and Ms. Lancaster said that she'd go to the February 26<sup>th</sup> meeting.

MOTION by Mr. Boucher to table this case to the February 26, 2019 meeting, and the whole case will be re-opened to a public hearing.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**2. Menauhant Realty North, LLC (Owner) Cliff Conti, Classic Signs (Applicant) 169 Kinsley Street (Sheet 87 Lot 218) requesting the following variances: 1) from Land Use Code Section 190-102 to encroach 15 feet into the 25 foot required setback from the intersection of St. Joseph's Drive and Kinsley Street for a proposed ground identification sign; and, 2) from Land Use Code Section 190-108 (C)(8) to allow a 12 sq.ft wall sign on front of building, 6 sq.ft allowed, where wall signs are allowed in lieu of ground identification signs in residential zoning districts. RB Zone, Ward 6.**

Voting on this case:

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

Cliff Conti, Classic Signs, Amherst, NH, and Jay DeCoteau, 169 Kinsley Street, Nashua, NH. Mr. Conti said that they've looked at the property, and all things considered, drivers have to turn left onto St. Josephs Drive to get into the property as the parking lot is in back of the building, so if you miss the building, you would have to drive all the way around.

Mr. Conti said that they want to put the sign back to where one was for 30 years, and the proposed sign is all new, but it would be a different size than the old one. He said that right now, there is a temporary cover on the sign. He said that they looked at other signs in the neighborhood, and most signs are right on the street. He said that the sign would be about 10

feet from the sidewalk. He said that many of the existing signs on the street are actually much closer than the proposed sign. He said if the sign meets the requirements, they would have to remove some landscaping, but the sign would be close to the building in an awkward spot.

Mr. Conti said that the second thing they are requesting is to place a sign on the wall. He said in this zone, you can have either a wall sign or a ground sign, not both. He said the proposal is just good identification for the business, it looks like a house. He said that the ground sign would only have identification on one side, as it is a one-way street. He said the sign will not block any vehicular views. He said that the sign will not be contrary to the public interest, it will help to retain the nice landscaping as well. He said that the property is used for a medical facility, and with the one-way street system, the proposed signs are needed for identification.

Dr. DeCoteau said that they made a "demo" sign and placed it where the existing old sign is, and then moved it to where the sign would be to meet the ordinance, and it just doesn't look right, and wouldn't be in the best spot. He said the wall sign also helps to identify the building. He said aesthetically, it will balance the site. He said that there was a medical-related use there for the past 30 years. He said that the wall sign will not be lit, and the ground sign will have a shaded downward light on the top.

Mr. Currier asked if there ever was a sidewalk here, or if one was planned.

Dr. DeCoteau said that there is no plan on his part to put a sidewalk there, and is not sure if the City has one planned.

Mr. Lionel asked how a driver would know to turn onto St. Joseph's Drive to get to the parking lot.

Dr. DeCoteau said that new patients, or first-time visitor, his staff expresses the way to get to park in the back, to turn right before the sign. He said that they want to have drivers or patients avoid missing the turn and having to drive all the way around.

Mr. Shaw asked what the square footage is of the existing sign and the proposed sign.

Mr. Conti said the new sign would be 12 square feet, it's the allowed size.

Mr. Falk said that they are allowed 12 square feet for the ground identification sign, for a medical use. He said that although the sign may appear larger, the bottom half of the sign is just a blank face with no text or any identifier. He said that there would be a horizontal line dividing the sign, and staff only counted the top part. He said the height is ok. He said that another example is an auto dealership off of Graham Drive, it has a rather large sign, but the area where the text is located is limited, this is a smaller version.

**SPEAKING IN FAVOR:**

Chris Texiera, 13 Bellaire Avenue, Nashua, NH. Mr. Texiera said that he is an abutter, and is in favor, they have done a nice job with the property.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

No one.

Board members all expressed support for this application.

**MOTION** by Mr. Currier to approve the variance application on behalf of the owner as advertised, with both requests considered collectively. He said that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, which is a continuum of a thirty-plus year history of a physician's office, or medical office, and while it is the RB zone, there is a stretch of homes on this side of the street for many years that have been businesses, and all have like signs of what is being proposed tonight.

Mr. Currier said that it is within the spirit and intent of the ordinance, He said that there is no indication of any adverse effect of the adjoining parcels property values, and there was testimony that the property is kept up nicely.

Mr. Currier said that the request it is not contrary to the public interest, and substantial justice is served.

Mr. Currier said that for a special condition, that the proposed ground sign would be externally lit, and the wall sign would not be illuminated.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 5-0.**

3. Marcia I. Michaud & Lori L. St. Laurent (Owners) 7 Hawthorne Lane (Sheet D Lot 51) requesting variance from Land Use Code Section 190-16, Table 16-3, to encroach 8 feet into the 10 foot required side yard setback to construct an attached 18'x24' one-story garage on right side of existing house. R9 Zone, Ward 5. [CASE WITHDRAWN BY OWNER PRIOR TO PUBLIC HEARING].

**MISCELLANEOUS:**

**REHEARING REQUESTS:**

None.

**MINUTES:**

1-8-19:

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

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**REGIONAL IMPACT:**

Mr. Falk said that there is no Agenda for the next meeting, as no new applications were submitted.

**SLATE OF OFFICERS FOR 2019:**

**MOTION** by Mr. Currier for the following:

Mr. Boucher remain as Chair  
Mr. Lionel for Vice Chairman  
Mrs. MacKay remain as Clerk.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**This is the second consecutive meeting for the Officers for 2019, meeting the By-Laws regulation. Officers are now set for 2019.**

**ADJOURNMENT:**

Mr. Boucher called the meeting closed at 7:42 p.m.

Submitted by: Mrs. MacKay, Clerk.

CF - Taped Hearing