

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
January 24, 2023

A public hearing of the Zoning Board of Adjustment was held on Tuesday, January 24, 2023 at 6:30 PM, both in person at City Hall and via Zoom.

Mariellen MacKay, Chair, asked for a Roll Call.

Steve Lionel, Vice Chair
Jack Currier, Clerk
JP Boucher
Jay Minkarah
Josh Nehiley

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

Mrs. MacKay 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. Mrs. MacKay identified the points of law required for applicants to address relative to variances and special exceptions. Mrs. MacKay explained how testimony we 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. The Belanger Family Rev. Trust (Owners) David N. & Paula R. Belanger (Applicants) 11 Bramble Drive (Sheet B Lot 383) requesting variance from Land Use Code Section 190-16, Table 16-3, to encroach 1 foot into the 20 foot required front yard setback to construct a 6'x23' roofed farmers porch. R9 Zone, Ward 9.**

Voting on this case:

Mariellen MacKay
Steve Lionel
Jack Currier
JP Boucher

Josh Nehiley

Paula Belanger, 11 Bramble Drive, Nashua, NH. Mrs. Belanger said that they are looking to have a farmers porch located six feet off of the house, in order to fit a couple rocking chairs, and that people can walk past them without tripping. She said that if they met the ordinance, it would only come out five feet, which just isn't feasible, and people would be tripping. She said that she has an elderly family member and it would be difficult to walk by.

Mr. Currier said that Bramble Drive seems like a quiet street, but in the back yard, there is a very busy street, and asked if folks on the street mostly congregate on the front yard rather than the back, just due to the noise.

Mrs. Belanger said it is louder in the back with traffic going by, so they like to sit out front.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Lionel said that he is in favor, it is a reasonable request and it's a minimal encroachment.

Mr. Boucher said that he is in support of the application, it is reasonable, and no one will really know if it is one foot into the setback.

Mr. Nehiley said that the footprint of the home is a little bit closer to Bramble than the others, otherwise, it is reasonable and it will add to the character of the house and the neighborhood.

Mr. Currier said that he is in support of the application, and this request meets the spirit and intent of the ordinance.

Mr. Minkarah said that he is in support of the application for

all the reasons stated, and a six foot porch is practically the minimum necessary for this to be useful.

Mrs. MacKay said she is in favor, it is an adorable house.

MOTION by Mr. Boucher to approve the variance application on behalf of the owner as advertised. Mr. Boucher stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, the house is closer to the street, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to achieve, other than the variance.

Mr. Boucher said that the request is within the spirit and intent of the Ordinance.

Mr. Boucher stated that the Board does not believe the request will negatively impact property values.

Mr. Boucher stated that the request is not contrary to the public interest, and substantial justice will be served to the applicant.

SECONDED by Mr. Lionel.

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

2. Chestnut Woodburn, LLC & Axis Realty (Owners) James Gebro, Alpha Landscape Contractors (Applicant) 71½ - 73 Walnut Street (Sheet 81 Lot 67 & 70) requesting variance from Land Use Code Section 190-16, Table 16-3 for minimum land area, 9,279 square feet existing, 20,909 square feet required, to add two dwelling units on third floor of existing four-unit multifamily building, for a total of six dwelling units. RC Zone, Ward 4.

Voting on this case:

Mariellen MacKay
Steve Lionel
Jack Currier
JP Boucher
Jay Minkarah

James Gebo, 11 Highland Road, Windham, NH. Mr. Gebo said that he owns and manages 53 other multi-family units in the City of Nashua, and this particular building they've owned for two years, and have done some mild renovations to it already. He said that the third floor is very spacious, and it was, at one point, livable space, and there is very good access from the common areas to get to it, and there is also an excess of parking, there are 16 spaces available, and there is a second, double lot that is part of this building, it's just a parking lot with sixteen spaces for four units.

Mr. Lionel asked if there is one stairway going up to the third floor.

Mr. Gebo said that there are two stairways, they come from the common area, it must have been a two-family many years ago, that's why it has two address numbers.

Mr. Currier said that he did not see any handrails or bannisters.

Mr. Gebo said that they will all be brought up to Code if approved, and would build a knee-wall at the top, its closed at the bottom. He said that the knee wall would separate the living space from the edge of the stairwell.

Mr. Currier asked if the parking lot solely supports this building.

Mr. Gebo said it does.

Mr. Nehiley asked if anyone would be parking on the street.

Mr. Gebo said that they have plenty of parking, but can't categorically state that no one would park on the street.

Mrs. MacKay said that the application asks that they want to add two studio apartments. She said that generally, studio apartments has everything all in one room, and asked if they will not be studio apartments.

Mr. Gebo said that they'll be one bedroom units. He said that there will be a kitchen area, a bathroom, and living room, bedroom.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS, COMMENTS OR CONCERNS:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC HEARING:

Mr. Boucher said that he is in support of the application. He said that the lot comes with another side lot to it, and there is plenty of parking. He said that the building can accommodate the extra two units without impacting the neighborhood, which is mixed with several multi-family buildings in the neighborhood. He said that by fitting out the two new units, the building will be done to Code and there will be significant improvements made to the building, so all in all, it's a net gain.

Mr. Nehiley said that he is in support for all the reasons stated by Mr. Boucher.

Mr. Currier said that Mr. Boucher captured his thoughts as well, and there is a housing shortage, but this approval will help with that issue.

Mr. Minkarah said that he agrees with all the aforementioned comments, and given the double lot, the density is consistent with the neighborhood.

Mr. Lionel said that he is in support as well, it is consistent with the neighborhood.

Mrs. MacKay said that she is also in favor of the application.

MOTION by Mr. Boucher to approve the variance application on behalf of the owner as advertised. Mr. Boucher stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, the home sits on a double sized lot, and the size of the current home is such that there would be no exterior changes that need to be done, it is existing space in the third floor, and it fits right in with the density of the neighborhood., and the benefit cannot be achieved by some other method reasonably feasible for the applicant to achieve, other than the variance.

Mr. Boucher said that the request is within the spirit and intent of the Ordinance.

Mr. Boucher stated that the Board does not believe the request will negatively impact property values.

Mr. Boucher stated that the request is not contrary to the public interest, and substantial justice will be served to the applicant.

SECONDED by Mr. Minkarah.

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

3. McChandler, LLC (Owner) 36 Chandler Street (Sheet 42 Lot 203) requesting variance from Land Use Code Section 190-16, Table 16-3 for minimum land area, 19,483 sq.ft existing, 55,757 sq.ft required - to maintain 16 dwelling units, where 5 units are permitted. RC Zone, Ward 3.

Voting on this case:

Mariellen MacKay
Steve Lionel
Jack Currier
JP Boucher
Josh Nehiley

Attorney Elizabeth Hartigan, Gottesman & Hollis, 39 East Pearl Street, Nashua, NH. Atty. Hartigan said that this building has been maintained as a 16-unit building since 1989, and the request is to ask for approval that this building remain with the 16 units. She said that her clients have owned the building since 1984.

Atty. Hartigan said that this issue came to light when they put the building up for sale, and the finance company asked for evidence that all the units were legal, and there really isn't any evidence that they are. She said that there have been inspections over the years by the Fire Marshall and Code Enforcement.

Atty. Hartigan said that the variance will not be contrary to

the public interest, and it will not impact the character of the neighborhood, there have been 16 units since 1989, and there will be no change to the exterior of the building, and will not threaten the public health, safety or welfare. She said that the proposed use will observe the spirit and intent of the ordinance, and it will not impact the property values of adjacent properties, and substantial justice will be done for the applicant by granting the variance, as this building has had this existing use, with no changes. She said in 1989 there was an incident on the property where the Fire Department came, and there was an inspection where they installed a fire sprinkler system, and that is when the City began taxing this property as a 16-unit building, and it shows on the 1990 taxes as a 16-unit building. She said that by the Board granting this, there will be no harm done to the public, and will not diminish the values of anyone's property values, and special conditions exist such that literal enforcement of the ordinance will not be fair to remove eleven units, there are multiple types of units in the building, with varied bedrooms, it is not overly dense, and there is no overcrowding issues, it is a diverse building.

Mr. Lionel confirmed that the present owners have owned this building since 1984, but somehow in 1989 it went from five units to sixteen units, so the current owners made that change.

Mr. Nehiley asked if they still have the variance, or permission, to park in the church parking lot.

Atty. Hartigan said that nothing has changed, and there has never been a parking issue.

SPEAKING IN FAVOR:

No one.

SPEAKING WITH QUESTIONS OR CONCERNS OR OPPOSITION:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Nehiley said that this is a fascinating case, with the metamorphosis of the building. He said that they were before the Zoning Board in 1980 saying that they were doing five law offices, and no one would live here, and they didn't want to

deal with tenants, and then, in 1984 it changed to one office and five apartments, and in 1992 it goes to apartments over eight, which is how it was taxed, and in 2022 they got caught. He said that it is an interesting time with the housing crunch in Nashua, and we need housing, and with the current state of affairs, it will be hard for us to go back to five units here, or offices. He said that he will be voting in favor. He said that by denying it or approving less units would be an unnecessary burden on the displaced residents.

Mr. Currier said that at first it seemed like a big ask, until he saw it. He said that it speaks volumes that no one is speaking against it. He said that Nashua's downtown Master Plan is for higher density in this part of the City, and is in support.

Mr. Minkarah said that he supports the application, for all the reasons already stated, and it's been there for over 30 years, and the City has been taxing it for a 16-unit building. He said that directly next door is the Xavier House, which has 34 units of assisted housing, a very consistent density in a high density area.

Mr. Lionel said that given that this building has been occupied as 16 units for thirty-plus years, and that the City recognized it through tax records, he said that he can't see any good reason to deny this application.

Mr. Boucher said that he is in support for all the reasons stated. He said that this was found out as they are going through a refinance or a sale, but it would have been discovered some day. He said that there isn't a density issue, and the parking lot was never full.

Mrs. MacKay said that she will support the application for all the reasons mentioned as well.

MOTION by Mr. Lionel to approve the variance application on behalf of the owner 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, the property has been occupied and taxed as a 16-unit development for over thirty years, and there are no changes proposed to the exterior of the building, and the benefit sought by the applicant cannot be achieved by some other methods reasonably

feasible, other than the area variance, if this were to be denied, many long-standing tenants would have to vacate, and the Board does not want to do that.

Mr. Lionel said that the request is within the spirit and intent of the Ordinance, the density within the neighborhood is similar to what this building has.

Mr. Lionel stated that the Board believe that there is no negative impact to the property values of surrounding parcels.

Mr. Lionel said that the request is not contrary to the public interest, and substantial justice is found to grant to the applicant.

SECONDED by Mr. Boucher.

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

4. **City of Nashua (Owner) 10 Whipple Street - Mine Falls Park (Sheet E Lot 1487) requesting special exception from Land Use Code Section 190-111 through 190-117 to work within the 75-foot prime wetland buffer of the Nashua River for tree removal work to allow for sewer siphon rehabilitation. RB Zone, Ward 4.**

Voting on this case:

Mariellen MacKay
Steve Lionel
Jack Currier
JP Boucher
Jay Minkarah

Amy Gill, P.E., Senior Engineer, City of Nashua Department of Public Works, 9 Riverside Street, Nashua, NH. Mrs. Gill said that this special exception is related to removing 3 trees in one location of the park, and 4 trees in another location at Mine Falls Park. She said that it is needed to enable vehicular access to two locations for rehabilitation of sewers. She said in 1968 a large sewer interceptor was constructed in order to stop the flow of discharge into the rivers and streams, the interceptor allows for the most direct route to the wastewater treatment plant, which requires crossing underneath waterways.

Mrs. Gill said that in Mine Falls Park, there are two locations, one near Exit 6, near where the Department of Motor Vehicles is for the State, and the other one is by the Mohawk Tannery. She said that there are large concrete chambers that are about 10'x15' in size. She said that recently, the City has begun inspection of the sewer system, and have come up with the most critical infrastructure needs work first, and found that some of the concrete pipes have deteriorated on the inside, and these pipes need to be lined using a trenchless technology, there needs to be access to these chambers within the park, with a vehicle. She said that they put a lining inside the pipes, it's done inside out, they start at one of the concrete chambers, put the sock in, and it's sealed, and it turns into a brand new pipe. She said that they have to cut down some trees to get to these locations with work vehicles.

Mrs. Gill said that this request will not cause any traffic congestion in the park, and this work will take three or four days to do this work at each location.

Mrs. Gill said that they went before the Conservation Commission and received a positive recommendation on January 3rd, with two stipulations of approval.

Mr. Boucher asked if they agree to follow all the nine special wetland conditions

Mrs. Gill said that they will.

Mr. Currier asked if the City does the work, or is it contracted out.

Mrs. Gill said that they contract it out. She said that the pipes are 36 inches, 48 inches, 8 inches in diameter.

Mr. Currier asked if this carries the sewer flow from all of northwest Nashua.

Mrs. Gill said that it is, this is one of the longest and largest interceptors the City has.

SPEAKING IN FAVOR:

No one.

SPEAKING WITH QUESTIONS, COMMENTS OR CONCERNS OR OPPOSITION:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Currier said it meets all the criteria for a special exception, the application stands on its own, and it's needed.

Mr. Minkarah said that he also supports the application, it is clear that the impacts are temporary.

Mr. Lionel said that he is in support.

Mr. Boucher said that he is in support.

Mr. Nehiley said that he is in support.

Mrs. MacKay said that she is also in support.

MOTION by Mr. Boucher to approve the application as advertised on behalf of the applicant. He said that it is listed in the Table of Uses, Sections 190-111 through 190-117.

Mr. Boucher said that it will not create undue traffic congestion, or unduly impair pedestrian safety.

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

Mr. Boucher said that all special regulations are fulfilled, the nine special wetland conditions are all met per testimony.

Mr. Boucher said that it 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 special conditions, it was approved by the Conservation Commission on January 3, 2023, with two stipulations of approval.

SECONDED by Mr. Lionel.

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

VOTING MEMBERS.

MISCELLANEOUS:

REHEARING REQUESTS:

None.

REGIONAL IMPACT:

There is extra time in the schedule, staff will email the Agenda when it's available.

MINUTES:

January 10, 2023:

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

SECONDED by Mr. Boucher.

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

ADJOURNMENT:

MOTION by Mrs. MacKay to adjourn the meeting at 7:25 p.m.

Submitted by: Mr. Currier, Clerk.

CF - Taped Hearing