

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
February 12, 2020

A public hearing of the Zoning Board of Adjustment was held on Tuesday, February 12, 2020 at 6:30 PM in the Auditorium, 229 Main Street, at City Hall.

Members in attendance were:

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

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. Suzanne R. Sullivan (Owner) Equivise, LLC (Applicant) 17 Curtis Drive (Sheet C Lot 793) requesting the following: 1) special exception from Land Use Code Section 190-112 to work within the 75-foot prime wetland buffer of Salmon Brook; and 2) variance from Land Use Code Section 190-16, Table 16-3, to encroach 15 feet into the 40 foot required front yard setback - both requests to construct a new single-family home. R40 Zone, Ward 9.

[POSTPONED TO THE 2-25-2020 MEETING]

2. Million Dollar View, LLC (Owner) 122 Manchester Street (Sheet 59 Lot 135) requesting variance from Land Use Code Section 190-17 (B) to allow more than one principal structure on one

**lot, one existing - four single-family detached homes proposed. RA Zone, Ward 2.**

Voting on this case:

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

Attorney Andrew Prolman, Prunier & Prolman, P.A., 20 Trafalgar Square, Nashua, NH. Atty. Prolman passed out an aerial photo of the subject property to the Board members. Atty. Prolman said that they are proposing four houses on one lot, and this would require a variance under Land Use Code Section 190-17 B. He said that the four houses would be under condominium ownership. He said that the details of the condominium documents haven't been decided upon yet.

Atty. Prolman said that the property is a 2.3 acre lot, which averages out to a little over a half-acre per unit, where the RA zone requires a minimum of 7,500 square foot lots, so the lot area is well exceeded. He said that the access would be via a private drive off of Manchester Street, as depicted on the plan, and the idea was to bisect the lot with the drive. He said that it would be a private drive, not a public roadway, no plowing, no city services, no city cost or maintenance.

Atty. Prolman said that they are aware that this site has seen a number of applications before, and are mindful of them, and are only proposing four units. He said that the last submittal had units right up against the setback line to the north, and due to only four units, the buildings can be pulled back a lot, and provide ample spacing to the abutters. He said that they are also proposing a no cut/slope protection buffer to the south, as shown on the plan. He said it will be part of the condominium documents, and will be recorded. He said that this will keep this great buffer for the neighbors, it helps with drainage as well.

Atty. Prolman said that the homes, their location specifically, are not cast in stone, but they'll be pretty close to where they are wanted to be, towards the middle of the lot, away from the neighbors. He said that the homes themselves will be buyer-

driven, so there are no set plans yet, they could be colonials or ranches, or a mix. He said that they expect the homes to come in around 2,200-2,500 square feet in size, but some buyers may want something bigger or smaller. He said that they don't have any building plans just yet. He pointed out the four new homes just north of here on Manchester Street, they may be similar to those if they are colonials.

Atty. Prolman said that this type of variance is one that the Board has seen many times in the recent past, especially some of the sites along West Hollis Street, very similar in that they have more than one principal structure on one lot.

Atty. Prolman said that the request is within the public interest, as it is a residential use in a residential zone, compatible with the neighborhood. He said that the character of the neighborhood will be maintained, the lot sizes will be larger than what the RA zone requires. He said that they will not adversely impact any public health, or safety or welfare with this proposal, as the homes should fit right in with the neighborhood, with no adverse impact to the neighborhood, and they will fit in with the spirit of the ordinance with this use.

Atty. Prolman said that substantial justice will be granted with a reasonable development of the property, and the applicant is looking to build four homes here, and considering the history of the site and other requests that have been made, it is believed that four homes is a reasonable request.

Atty. Prolman said that the homes would be compatible to the neighborhood, and there shouldn't be any impact to property values to the neighbors, and the new construction should add to the value to the neighborhood.

Atty. Prolman said that there are no other lots like this in the area, it is a unique lot, and are proposing a residential use in a residential district, which makes it a reasonable use, and the four proposed homes will be in character of the neighborhood.

Mr. Minkarah asked if they put in a street and create four individual lots, would they still need a variance.

Atty. Prolman said that is correct.

Mr. Minkarah asked why they don't want to put in a public street

versus a private road.

Atty. Prolman said that if they were to put in a standard street, they would be requesting probably six units, because the cost to install a 24-foot wide, granite curb with sidewalks and all the other amenities that go with a street, at \$500 per foot, it would have to be justified with six units, if not more, or perhaps duplex units. He said that with the private drive, and only four units, the feeling is that it is a good proposal.

Mr. Currier said that there was an email in the package about the width of the street, and a response from the Fire Marshal.

Chris Guida, Fieldstone Land Consultants. Mr. Guida said that the roadway will be adjusted to 20 feet wide, and they have spoken with the Fire Department, and the Fire Department will be ok with it.

**SPEAKING IN FAVOR:**

No one.

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

Mark Littlefield, 120 Manchester Street, Nashua, NH. Mr. Littlefield said he's not completely opposed, but this is a step in the right direction from previous plans. He said that there are some really large standing dead trees in there, he said that one of them could fall down in a storm. He said that he is concerned with trees along the abutter's property lines. He said that there are many other trees that are tall, and has some concerns about several of them. He said he understands that the house sizes and styles are not concrete yet, but would like to have a little more detail on them. He said that there are no drainage plans as well, as some flow may come into his yard. He also wanted to know where the snow storage would be located. He said that he'd like to see the proposed homes to verify if they are comparable to the existing homes.

Mr. Boucher said that as far as the housing location and style, there are no specific regulations on that, the plan just shows a building envelope and they're working hard to make this development compatible. He said that the drainage plans would be addressed by the Planning Board, but all drainage has to be maintained on site, so they cannot cause drainage off the site.

He said that the Planning Board is also the proper Board to discuss where they would store snow, too. He said that duplex units are not allowed in this zone, so they would need a use variance to have those.

Mr. Currier asked if Mr. Littlefield could see the second house.

Mr. Littlefield said he could see all of the second house, and probably the side of the third house, but wouldn't be able to see the last house.

Andrew Johnson, 3 Edith Avenue, Nashua, NH. Mr. Johnson said that his specific concern is that his property is on a hill, and his property line doesn't go all the way to the bottom, and asked if they will be digging, if there would be some sort of a retaining wall to stop his property from sliding down the hill. He asked if they plan to plant trees there.

Gary Wingate, 15 Sherman Street, Nashua, NH. Mr. Wingate said there is a lot of uncertainty with the plan. He said it seems like it is very preliminary now, and the abutters want more certainty. He said that the big issue is the no cut/slope protection area. He said he'd like to see some certainty of the dimensions of the no-cut area, so it's more defined and everyone knows that trees will not be cut down, and no cutting into the slope. He said that he likes the way that the houses are spread out, and they have good setbacks to the northern property line. He said he'd like more certainty with the setbacks and numbers. He asked why this is a condo development with a private road, or if an association takes care of it, which maybe minimizes the City taking care of these things. He said that it seems as if they're on the road to the Planning Board, but there are still some issues that are vague, and they'd like some certainty between now and the Planning Board meeting, and would like the developer to keep in touch with the neighbors.

Mr. Boucher said that a lot of the issues brought up are Planning Board issues, but all the points brought up are very valid.

Mr. Wingate said that the existing house is an old house, which will be demolished. He asked about asbestos, and wants assurance that it will be looked at and worked with appropriately.

Mr. Boucher said that many contractors are aware of what to look for in cases like this, and it would have to be done responsibly, following any protocol.

**SPEAKING IN FAVOR - REBUTTAL:**

Atty. Prolman said that the process that they're following, is to apply for a variance to allow four principal structures on one lot. He said that the Planning Board submittal will be much more in depth. He said that they still need to finalize condominium documents, and there is a lot of work to do before the Planning Board. He said that most all the questions raised tonight are not germane to this Board, but do come into play in the future.

Atty. Prolman said that in the demolition phase, he stated that there are numerous departments that must sign off on it, including all utility companies, before it can be issued. He said that it is handled professionally, and if there is any lead paint or asbestos issues, they will be addressed in the demolition permit process.

Atty. Prolman said that there may be some dead trees that should come down, as they could pose a risk. He said that the intent is to leave the slope alone as much as possible. He said that at the present time, they don't have a meets and bounds description of the no cut/slope protection area, but Fieldstone will put meets and bounds on the plan, and it will be carried forward.

Atty. Prolman said that a question was raised about duplex units. He said that there will be no duplexes on the site, and want to proceed with the plan brought forward tonight. He said that the contractors will be well aware of the slope, and Fieldstone is well aware of the site, the drainage, and the soils are outstanding, and drainage goes from south to north, and there will be a swale and detention system.

Mr. Shaw said he is thinking about a stipulation to try to implement a 25 foot setback, so the houses would have a rear yard concept. He said that he wasn't sure if they thought of that in this initial proposal, and asked if they had any disagreements towards trying to maintain those setbacks.

Atty. Prolman said no, and because they're only proposing four units, there is the flexibility on site to shift the houses around so that they are as far away as possible from the property lines. He said that it is one lot, so there are two sides, a rear and a front. He said if you want to apply the standard setbacks for the individual condo units, that is ok with them, and can make it work. He said that they can have the 25 foot rear, that's fine, for each of the units.

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

None, all abutters nodded that they had no further comment.

Mr. Currier said he is in support, he said that the biggest issue is to clarify with a stipulation about the rear yard setback. He said it doesn't seem like the houses would move in that direction, but its prudent assurance to have that stipulation present. He said he thought of the previous plan with the rather massive amount of earth removing, and it's like this plan takes all the testimony we've heard before into consideration, and the four proposed lots do match the neighborhood, and while the square footage isn't set, he doesn't see that the houses would be 10,000 square feet and be out of character, the testimony was that they would be like the houses just built a little further north on Manchester Street. He said he has every confidence that they'll be built in character with the neighborhood.

Mr. Shaw said that the idea of essentially treating this as if they were single lots, and having that kind of treatment really makes this much more amenable to the kind of use of this property that is reasonable with the four units. He said he is in support.

Mr. Lionel said he is in support, but hearing that the private driveway will meet the requirements of the Fire Marshal, and that the distances between these four houses with the adjacent properties is more than sufficient, that this is a good use of the property.

Mr. Minkarah said he was a little disappointed to hear the answer as to why it wasn't proposed as a public street, it seems to be a cost issue. He said that the special condition is the slope, and it won't be a factor. He said that if they wanted to do a conventional subdivision, it may necessitate cutting into

the slope, but protecting the slope is key. He said that the plan proposed is consistent with the neighborhood, it will add value, and it's good that they have the slope protection area as shown, and it would be good if they show metes and bounds descriptions to it, would be positive. He said that they should make an exception for dead, diseased and dying trees.

Mr. Boucher said that he is in support of the application, it's a good plan for this lot and they've made it compatible for the neighborhood, and supports the application with the stipulations that have been discussed.

Mrs. MacKay agreed with all the comments that have been made. She said that the private street versus a public street is a cost factor, not something that the Board considers. She said that she likes that they'd go along with the stipulation of the setbacks and protecting the slope and liked the respect the neighbors were given, and their working relationship with the neighbors speaks volumes.

**MOTION** by Mr. Currier to approve the variance on behalf of the owner and applicant as advertised. He said that the proposal is for four single-family detached homes.

Mr. Currier said that a special condition of approval is to clarify that they will be single-family homes, not duplexes. He said that the rear yard setbacks of the units of the proposed houses will match the rear yard setbacks of the RA Zone, so to clarify, technically, the rear yard setbacks are side yard setbacks, but the stipulation is that the rear of the homes will have the rear yard setback equivalent of the RA Zone.

Mr. Currier said that with the stipulation, this variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, it is a long, narrow lot with a significant slope on the southern side of it, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible.

Mr. Currier said that the four single-family homes are within the spirit and intent of the ordinance.

Mr. Currier said that the Board finds that the use will not adversely affect the property values of surrounding parcels to

allow these four homes, which will look in kind with the existing homes.

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

**SECONDED** by Mr. Shaw. Mr. Shaw asked if the motion should include the identified no cut/slope protection area.

**AMENDED MOTION** by Mr. Currier to add that on the plan before the Board tonight, there is a no cut/slope protection area, and it was testified tonight that it is not precisely set, but in principal, the slope will be protected in perpetuity, and dead and dying or threatening trees could be removed, but this no cut/slope protection is to be maintained moving forward.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**MISCELLANEOUS:**

**MINUTES:**

1-14-2020:

**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 CARRIED UNANIMOUSLY 5-0.**

**REGIONAL IMPACT:**

The Board did not see any cases of Regional Impact.

**OFFICERS FOR 2020:**

**MOTION** by Mr. Boucher to nominate Mrs. MacKay for Chair, Mr. Lionel for Vice Chair, and Mr. Currier for Clerk.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 5-0.**

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Mr. Boucher said that there was a flyer about the Spring Planning & Zoning Conference for those who wish to attend.

**ADJOURNMENT:**

Mr. Boucher called the meeting closed at 7:30 p.m.

Submitted by: Mrs. MacKay, Clerk.

CF - Taped Hearing