

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
March 8, 2022

A public hearing of the Zoning Board of Adjustment was held on Tuesday, March 8, 2022 at 6:30 PM, both in person at City Hall and via Zoom.

Mariellen MacKay, Chair, asked for a Roll Call.

Mariellen MacKay, Chair
Steve Lionel, Vice Chair
Jack Currier, Clerk
JP Boucher
Jay Minkarah

Carter Falk, Deputy Planning Manager/Zoning
Kate Poirier, Zoning 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 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. City of Nashua & Nashua Millyard Associates (Owners) 10 Whipple Street & "L" Pine Street (Sheet 77 Lot 5 & Sheet E Lot 1487) requesting special exception from Land Use Code Section 190-115 (B) for temporary and permanent impacts to the 75-foot prime wetland and wetland buffer of the Nashua River for land disturbance to allow public utility infrastructure improvements. GI/MU & RB Zones, Ward 4.**

Voting on this case:

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

Jay Minkarah

Nick Golon, Principal, TF Moran, 48 Constitution Drive, Bedford, NH. Mr. Golon said that he's attending on behalf of the Eversource Energy Team. He said that this project is a line rebuild, and is associated with prior approvals for the substation, it was a land swap between the City of Nashua and adjacent stakeholders to allow the relocation of the Millyard substation to promote economic development and also to provide Eversource the opportunity to provide reasonable power to the area.

Mr. Golon said that the relocation of the easement was reviewed very thoroughly by the City, through City Counsel, the Mine Falls Park Advisory Committee, the Economic Development Committee, the Nashua Planning & Economic Department and the Board of Alderman and the Mayor were all involved with the land swap, so this area that the easement resides in was vetted by the City very thoroughly, also with adjacent property owners and Eversource.

Mr. Golon said that part of it is the buffer zone, and the impacts have been minimized, and pole space location has been limited impacts to wetlands as well as the buffer. He said that the aggregate impacts to the site are rather small. He said that they have worked with the NHDES relative to how this area will be, and since it is in a primary resource area, it did require some level of review on the State's part, and there is correspondence in the Conservation Commission package from last week's meeting, from Fish & Game, as well as the Natural Heritage Bureau, and they've given an approval for the work to move forward under certain conditions. He said that the conditions have been added to the plan. He said that one was who TF Moran should contact involving invasive species.

Mr. Golon said that there were two items that the Conservation Commission had as stipulations. He said that one is to follow Best Management Practices, and the other is to evaluate the feasibility of installing an osprey nest. He said that there is a cost to that, and they realize that ospreys are in many locations relative to this site, and the State Wetlands Bureau has no record of ospreys in this vicinity.

Mr. Minkarah asked for an explanation relative to the Conservation Commission's rationale for the osprey nest.

Mr. Golon said that osprey is known to reside in the Nashua area, and the river itself is a logical place, and they'll investigate it.

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 he is in support, and it's for the benefit for the citizens of Nashua. He said that they've done a good job to minimize the impacts. He said that the Conservation Commission's wording for stipulation number two leaves it up to the applicant, it's not like it's a "must do".

Mr. Currier said that he is in support of the application, and agrees with Mr. Boucher's comment about the stipulation, in that it's not a requirement, it's not a mandate, it's just a consideration, and the applicant has considered it. He said that the permanent wetland impact is 12 square feet, which is very minimal, and only 60 sq.ft for the buffer.

Mr. Lionel said that he is in support for all the reasons spoken to already.

Mr. Minkarah said that he is in favor as well, as it is a necessary project and has been heavily vetted.

Mrs. MacKay said that she is in favor as well.

MOTION by Mr. Boucher to approve the special exception application on behalf of the applicant as advertised. He said that it is listed in the Table of Uses, Section 190-115 (B).

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

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

Mr. Boucher said that the special regulations have been fulfilled, it was supported by the Conservation Commission on March 1, 2022, with two stipulations of approval.

Mr. Boucher 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. Lionel.

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

2. Timothy B. Coker (Owner) 19 Brackenwood Drive (Sheet B Lot 2624) requesting variance from Land Use Code Section 190-17 (E)(1) to exceed maximum driveway width, 24 feet permitted, 22 feet existing - up to an additional 14 feet requested on left side of existing driveway to access proposed third garage bay, for a total width of 36 feet. R18 Zone, Ward 8.

Voting on this case:

Mariellen MacKay, Chair
Steve Lionel, Vice Chair
Jack Currier, Clerk
JP Boucher
Jay Minkarah

Timothy Coker, 19 Brackenwood Drive, Nashua, NH. Mr. Coker said that they are planning on a home addition with a third garage bay with some additional living space above and behind the garage. He said that the addition does not require a variance and is not part of this application. He said that the only request is for a portion of the proposed driveway.

Mr. Coker said that their driveway is 49 feet long, and from the front property line, it is 38 feet. He said that the request is primarily to add a taper from roughly the 18 foot mark from the house down to the front property line. He said that they wouldn't increase the width of the driveway at the street, it would be roughly 11 feet from the road where it starts to taper. He said that their driveway would be consistent with several other driveways in the neighborhood, and he referred the Board

to some submitted examples and pictures.

Mr. Coker said that the side setback to the adjacent neighbor on the left side, it is currently about 45 feet, and with the additional it still would be 30 feet from the adjacent neighbor's property line, even with the driveway. He said that both of the neighbors on either side have extensions on their driveway, that currently come closer to their property lines. He said that they feel that the request is consistent with the neighborhood.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Currier said that he is in support, even though he's not a fan of larger driveways, but appreciates that this design does not have overage over the property line, and the proposal is to swing over past the property line. He said that this request is consistent with many other driveways in the neighborhood, and the request is tasteful. He said that the applicant has put a lot of thought into the addition, with the architect, so an in-depth analysis has been done, and is in support.

Mr. Lionel said that the neighborhood doesn't have a lot of three-bay garages, and there are a lot of "swoop" driveways, many probably were installed without a variance. He said he'd support the application, but is not too happy about it.

Mr. Minkarah said that he is in support, primarily because they made a great effort to minimize the impact, and likes that it is not wider at the street, and they have attempted to minimize the triangular area, while still allowing access to the third bay. He said he appreciates the thorough application and the examples that were provided.

Mr. Boucher said he will support the application.

Mrs. MacKay said that she is in support as well.

MOTION by Mr. Boucher to approve the variance application on behalf of the applicant 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, 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 stated that the applicant made a great effort to minimize the impacts, and the driveway opening width is not increasing, it's just within the 20 foot setback that will be a taper, and is needed to access the garage straight on.

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. Minkarah.

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

3. William Cronin & Kathryn Krustapentus (Owners) Tracy Turmelle (Applicant) 12 Farmington Road (Sheet A Lot 764) 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 existing basement; and 2) variance from Land Use Code Section 190-32 (B)(1) to exceed maximum size of accessory dwelling unit, 750 sq.ft allowed - 778 sq.ft proposed. R9 Zone, Ward 7.

Voting on this case:

Mariellen MacKay, Chair
Steve Lionel, Vice Chair
Jack Currier, Clerk
JP Boucher
Jay Minkarah

Tracy Turmelle, GM Roth, 12 Murphy Drive, Nashua, NH. Mr.

Turmelle said that for the variance, the goal was to stay within the maximum size. He said that they put the kitchen and living room where the existing sliders are, and the bedroom where the existing window is for egress. He said that there is an existing bathroom down there, but it will be renovated and it will stay in the same place, to avoid having to cut concrete and drain lines. He said that they would connect the existing bathroom space to the living space, and that put the square footage a little over what is allowed.

Mr. Turmelle said that the special exception is for the ADU. He said that they're not even using the entire basement space, there is access from there to the house, and access to the exterior, there is parking on-site, and it will not impact the neighborhood at all.

Mrs. MacKay asked about the points of law for the special exception. He said that all of them would be satisfied, except for the 750 square foot size, in which a variance is submitted for deliberation on this agenda.

Mr. Currier asked to confirm if there will be any exterior expansion, and it's using the existing basement to work well.

Mr. Turmelle said that it is an existing finished basement, it does have a bathroom down there, and rather than taking the bathroom and fixtures and moving it over a few feet, it would be quite an endeavor, to only gain 28 square feet.

SPEAKING IN FAVOR:

Mrs. MacKay read a letter of support from Ted and Sue Carey, 10 Farmington Road, Nashua, NH.

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 support of the variance, it is very minimal, and they're working within the existing space in the basement.

Mr. Currier said that he is in support, and the application

meets all the criteria, and it's all internal improvements.

Mr. Minkarah said that to move the bathroom just a few feet to meet the ordinance would be unreasonable, and is in support of the request.

Mr. Boucher said that he is in support.

Mrs. MacKay said that she is in support, and it would be very cost prohibitive to move the bathroom.

MOTION by Mr. Lionel to approve the special exception application on behalf of the applicant as advertised. He said that it is listed in the Table of Uses, Section 190-15, Table 15-1 (#3).

Mr. Lionel stated that it will not create undue traffic congestion or unduly impair pedestrian safety.

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

Mr. Lionel said that the special regulations have been fulfilled, and a variance was submitted for the first one about the size of the unit.

Mr. Lionel 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 UNANIMOUSLY 5-0 BY VERBAL ROLL CALL VOTE OF THE MEMBERS.

MOTION by Mr. Lionel to approve the variance application on behalf of the applicant 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 basement is being remodeled, and it's already there, and in trying to reduce the square footage would be unnecessarily an injustice, 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.

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

Mr. Lionel stated that the request will not adversely affect the property values of surrounding parcels.

Mr. Lionel 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.

- 4.175 Ledge Street Realty Trust, LLC (Owner) Nik Shah, Fastsigns of Woburn (Applicant) 175 Ledge Street (Sheet 87 Lot 271) requesting the following variances from Land Use Code Section 190-101, Table 101-7: 1) to exceed maximum number of ground signs, one permitted, two existing - two additional ground signs proposed for a total of four ground signs; 2) to exceed maximum ground sign area, 100 sq.ft permitted, 110 sq.ft existing, an additional 25 sq.ft proposed for a total sign area of 135 sq.ft proposed; and, 3) to encroach 4'-6" into the 20 foot required front yard setback for one of the two proposed ground signs. PI Zone, Ward 4.

Voting on this case:

Mariellen MacKay, Chair
Steve Lionel, Vice Chair
Jack Currier, Clerk
JP Boucher
Jay Minkarah

Nik Shah, Fastsigns of Woburn, 155 New Boston Street, Woburn MA.

Mr. Shah said that ConRes is seeking a new street sign that would be next to the existing sign. He said that the existing street sign that is there is for 165 Ledge Street, the other building after you enter the driveway. He said that is really difficult for customers to locate them. He said that another small sign is proposed for Infor, which would be similar to the other ground sign on site, the one for ConRes in front of their space. He said that the goal is to help people identify where they need to go, the building is on a slight elevation and is

set back far from the road, and there are a lot of trees.

Mr. Currier said that it looks like the existing sign is on the property line between 165 and 175, and asked how this happened.

Mr. Shah said that the sign is for the other building, there are two large buildings here, and all the tenants on the existing sign are for 165 Ledge Street. He said that their best option is to place the new sign next to the existing one.

Mr. Falk said that this is a unique site. He pointed out the drawing, and it shows the existing sign with Ferrite and ARC on it, and at the top of the sign, it says 165, which is the building next door. He said that this all used to be one large property, with the two buildings, but it was subdivided, and the line straddles where the sign is. He said that the owner of 165 never moved it over, so the request is for their own ground sign on their own property. He said that Ledge Street has a very wide right-of-way, so to put the sign on the left side of the 165 sign, it would leave most of it in the right-of-way, so the best other alternative for the sign would be to place it on the right side of the existing sign. He said that 175 Ledge Street would only have one ground sign, on their property, near the street, and the other sign is much farther up on the lot. He said that both of the signs proposed are about twelve square feet.

Mr. Boucher asked if there is a sign proposed off of Simon Street.

Mr. Shah said there is not, it's just the two on the application.

Mr. Lionel asked to confirm if the 165 sign is on 175 Ledge Street property or straddling the lot line.

Mr. Falk said that the proposed 175 sign will be exclusively on their lot, and the 165 sign does straddle the sign. He said that the setback issue is from the front yard towards Ledge Street, they are asking to encroach 4'-6" into the setback.

SPEAKING IN FAVOR:

John Perkins, ConRes, 175 Ledge Street, Nashua, NH. Mr. Perkins said that the sign is very much needed, and many of their

customers cannot find them, because there is no sign out at the street. He said that when he bought the building in 2007, there weren't that many tenants at 165, so Continental had space on the sign that belonged to 165, in fact, the power that lights that sign comes from his building at 175. He said that eventually, there was no more space on the sign, and they were left with nothing. He said that the other sign they want for Infor is very difficult to see, as the building is located higher than the street and there are a lot of trees in the way.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

END OF PUBLIC HEARING, BEGINNING OF PUBLIC MEETING:

Mr. Minkarah said he is in support of the application, it is an unusual circumstance, and it is clear that they need a sign to identify their property and business.

Mr. Boucher said that he is in support, there really isn't any other option for them.

Mr. Currier said he is in support, and it makes sense what they want to do.

Mr. Lionel said that he is in support.

Mrs. MacKay said that she is also in support.

MOTION by Mr. Boucher to approve the variance application on behalf of the applicant 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, 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 stated that this lot was split into two lots in 2007, and the existing sign for 165 Ledge was on the property line, and 175 Ledge currently has no identification on the street, and needs the sign for the general public, and the other sign is needed as there are two different businesses in the building.

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. Lionel.

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

MISCELLANEOUS:

REHEARING REQUESTS:

None.

REGIONAL IMPACT:

The Board did not see any cases of Regional Impact for the 3-22-22 meeting agenda, per verbal roll call.

MINUTES:

2-22-22:

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

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 4-0-1 PER VERBAL ROLL CALL OF THE VOTING MEMBERS (Mr. Minkarah abstained).

ADJOURNMENT:

MOTION by Mrs. MacKay to adjourn the meeting at 7:39 p.m.

Submitted by: Mr. Currier, Clerk.

CF - Taped Hearing