

EXPANDED DRAFT MEETING SUMMARY
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ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
July 9, 2019

A public hearing of the Zoning Board of Adjustment was held on Tuesday, July 9, 2019 at 6:30 PM in the Auditorium, 229 Main Street, at City Hall.

Members in attendance were:

JP Boucher, Chair
Jack Currier, Vice Chair, Acting Clerk
Rob Shaw
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. **Evan Whitworth (Owner) 7 Santerre Street (Sheet 49 Lot 179) requesting variance from Land Use Code Section 190-16, Table 16-3, to encroach 6 feet into the 10 foot required left side yard setback to construct an attached 12'-5" x 21' garage. RA Zone, Ward 3.**

Voting on this case:

JP Boucher
Jack Currier
Rob Shaw
Jay Minkarah
Nick Kanakis

Carol Whitworth, Andover MA. Ms. Whitworth said that she is representing her brother. She said that the purpose of the variance is to allow a second garage bay to the premises. She said that a majority of the neighborhood includes homes with two-car garages, and by granting this request, it will not alter the essential character of the neighborhood, nor will it interfere with the public welfare. She said that the second garage bay will be added in such a way to match the current structure and it will be in character with the neighborhood.

Ms. Whitworth said that the purpose of the new garage bay is that the house was built in the 1960's, when two-car families were less common, and this addition will allow the family to preserve two vehicles on the property, and to give additional room for storage of lawn equipment and trash bins.

Ms. Whitworth said that the request will not diminish the property values of surrounding parcels, as there are many homes in the neighborhood already have two car garages. She said that the garage is solely for homeowner use with typical storage.

Ms. Whitworth said that when the house was built in the 1960's with appropriate side yard setbacks, the house was built in the middle of the lot, and the most logical place to add the second bay is adjacent to the current single bay and driveway. She said it would all be a one-story addition.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Board members all expressed support for the application.

MOTION by Mr. Boucher to approve the application on behalf of the owner as advertised. He said that the Board believes 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 cannot be achieved by some other method reasonably feasible other than the area variance, the Board found that there isn't anything really unique about the lot, but the proposed garage bay is consistent with many other homes in

the neighborhood.

Mr. Boucher said that the Board feels that it is within the spirit and intent of the ordinance.

Mr. Boucher said that it would not adversely impact surrounding property values.

Mr. Boucher said that the request is within the public interest, and substantial justice is served.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

2. Burgess-Cole Revoc. Family Trust (Owner) Kevin Burgess & Sarah Cole (Applicant) 43 Wood Street (Sheet 47 Lot 300) requesting variance from Land Use Code Section 190-16, Table 16-3, to encroach up to 2 feet into the 10' required left side yard setback to construct an attached two-story addition to rear of house. RA Zone, Ward 3.

Voting on this case:

JP Boucher
Jack Currier
Rob Shaw
Jay Minkarah
Nick Kanakis

Liam Leary, 282 Main Dunstable Road, Nashua, NH. Mr. Leary said that he is the general contractor. Mr. Leary said that the encroachment on the side would be up to two feet. He said that they'd like to continue the garage on a straight line back. He said that the original plot plan from 1956 shows that the garage is 10 feet, parallel to the property line, but the City's GIS maps show that the house and garage is slightly skewed, so it indicates about 10½ feet in the front, to 9½ feet in the back of the existing garage, and if it were to continue in a straight line, it would be about 8½ feet by the time you would measure to the back of the addition.

Mr. Leary said that this will not make any difference to the yard, or the neighbor, and the addition would still be over 9 feet away from the existing fence.

Mr. Shaw said that it's possible that they may be ok with the side yard setback, but to know for absolute certainty, it would have to be surveyed, versus applying for the variance, where it might be slightly encroaching.

Mr. Leary agreed, and City staff recommended that they apply for the variance, otherwise, getting the property surveyed is expensive and it may turn out with the same results.

Mr. Shaw asked to confirm that the proposed addition would be following the existing structure line as is, and not jogging out.

Mr. Leary agreed.

Mr. Minkarah asked what would be in the addition.

Mr. Leary said that directly behind the garage, it would be opened up for a third garage space, so two spaces would be back to back. He said that on the side, there would be a family room, and on the second floor would be a master bedroom suite.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Mr. Currier said that a survey would solidify what is needed or not, but the path they've taken is the variance, which would be the worst case situation. He said that it is a unique situation, and to jog the house over, with a wall with an angle, isn't in the plan. He said that the addition will look normal, and is comforted by the clarity of the design, and the owners thought that through, and it looks good.

Mr. Shaw said he is in support, and agreed with Mr. Currier's testimony.

Mr. Minkarah said he agreed as well. He said that the encroachment is diminimis, and the scale is proper and it will be in keeping with the character of the neighborhood.

Mr. Kanakis said that it is a minimal encroachment into the setback, and it is the most natural route extending the addition back in matching the house.

Mr. Boucher said he agreed as well, for all the points that have been raised.

MOTION by Mr. Shaw to approve the application on behalf of the owner as advertised. He said that the Board believes that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, and as discussed in testimony, the existing structure is potentially slightly encroaching into the side yard setback, and the structure is placed at a slight angle to the property line according to the GIS map, although the original plot plan indicates otherwise, but if the angle is continued with the addition as planned, the encroachment could be up to two feet into that setback, so the addition will follow the existing structure line, so there wouldn't necessarily be an additional visible encroachment into the side yard setback, and it is a reasonable way for the applicant's addition to their home.

Mr. Shaw said that the Board feels that it is within the spirit and intent of the ordinance.

Mr. Shaw said that it would not adversely impact surrounding property values.

Mr. Shaw said that the request is within the public interest, and substantial justice is served.

SECONDED by Mr. Minkarah.

MOTION CARRIED UNANIMOUSLY 5-0.

3. Interconnect Investments, LLC & GIMACK Properties, LLC (Owners) GIMAK Properties, LLC (Applicant) 7, 9 & 11 Dumaine Avenue (Sheet H Lots 82, 141 & 128) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#15) to remove two existing single-family homes and construct a total of 18 multi-family units in three separate buildings, along with associated improvements. PI & GB Zones, Ward 2.

Voting on this case:

JP Boucher
Jack Currier
Rob Shaw
Jay Minkarah
Nick Kanakis

Chris Guida, Fieldstone Land Consultants, 206 Elm Street, Milford, NH. Mr. Guida said that there are three adjacent lots, with two existing homes, one was just razed and is vacant. He said that the current single family homes do not meet the current zoning code, and the plan is to combine the lots and build multi-family units on the property.

Mr. Guida said that the area has a lot of underutilized vacant commercial buildings, and the multi-family market is in much higher demand. He said that the proposed use is in character with the neighborhood, as there are some similar condominiums recently approved and built on Deerwood Drive. He showed a proposed elevation drawing of what the units would look like.

Mr. Guida said that the request would not be contrary to the public interest, the general area consists of a mix of uses of commercial and residential properties, single family homes, as well as multi-family homes, and it would be in keeping with the general area.

Mr. Guida said that the proposed use would observe the spirit of the ordinance, as the properties in the neighborhood are zoned PI and GB, and comprise a significant amount of residential housing that pre-dates the zoning ordinance. He said that the proposed development will be in keeping with the current character of the neighborhood, and is consistent with the surrounding properties.

Mr. Guida said that substantial justice would be done, as it will allow for the removal of two older homes to be replaced with a more modern multi-family use, allowing a higher density in proximity to commercial use.

Mr. Guida said that property values will not be diminished as well, as the use is consistent and compatible with the

surrounding uses, and will not diminish other nearby property values with new buildings to be built.

Mr. Guida indicated that for hardship, this area is zoned PI and GB, and there is residential use surrounding the area, and this proposal stays in character with the neighborhood, since the residential housing pre-dates the adoption of the zoning ordinance, and if it were to be developed with commercial or industrial use, those would be out of character with the neighborhood, and with the size of the lots, commercial or industrial usage would be difficult to utilize.

Mr. Kanakis asked if there was any intent to get a general business or park industrial use for this property.

Mr. Guida said multi-family is in much higher demand than industrial uses in the area, as there are already vacant buildings adjacent and behind the subject lots. He said that the proposed use is a much higher and better use.

Mr. Currier asked if there are any wetlands on this property.

Mr. Guida said that there are none, the soils are sandy, Windsor soils, well drained.

Mr. Currier asked what the underlying density would be in the general neighborhood.

Mr. Falk said that there is quite a disparity in density, the single family homes on the street are on 9,000 to 18,000 square foot lots, and there is a dense multi-family development on the south side of Deerwood Drive. He said that the new developments on the northern side of Deerwood Drive are smaller, and estimated that they are somewhat consistent with an RC zoned density, but wasn't exactly sure of the numbers.

Mr. Guida said that the proposed development meets all applicable setbacks, and would also go before the Planning Board.

Mr. Shaw asked what the density calculation would be for this development, with 18 units.

Mr. Falk indicated that the density would be approximately 3,322 square feet per dwelling unit, which is slightly denser than the

RC zone, which calls for 3,484 square feet per unit. He said that the open space appears to be met, and there is a picnic area in the front, and the applicable setbacks are met.

Mr. Shaw said on the right side of the development, where the seven-unit building is, it appears as if the setback is 10 feet.

Mr. Guida said that lot is in the GB zone, and the zone line comes right down the middle, and it has different setbacks than the PI zone.

Mr. Shaw said that his concern is that relief is requested to allow multi-family residential in the PI and GB zones, and is concerned about the 10 foot setback, even though it meets the GB front yard setback.

Mr. Guida said that they were trying to meet the zoning setbacks as it is now.

Mr. Shaw said he understands that it's a tradeoff, in maximizing the density and meeting the setbacks, while proposing a use that is not permitted in these zones. He said he is considering whether meeting the zoning setback is actually appropriate for this type of structure.

Mr. Guida said it is something that they can look at.

Mr. Falk said that the RC zone front yard setback is 10 feet, with 7 on the sides, and 20 feet to the rear. He said that the PI zone setbacks are much more significant, with 30 feet in the front.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Mr. Minkarah said he is struggling with this one. He said that he doesn't see how it meets the spirit and intent of the ordinance. He said that the existing single-family homes presumably pre-date the zoning ordinance. He said that he assumed when the City forefathers zoned this land, it was

perhaps with an understanding, or an assumption, that over time, these lots would be developed in a way that is consistent with the district, which would be a consolidation of these smaller parcels, which is exactly what has happened today, however, the proposed use is one that is not permitted in either of the zoning districts. He said with that, he said he doesn't know how this could meet the spirit and intent of the zoning ordinance. He said that this property directly abuts industrial uses that are allowed in this zone. He said that there is a lot of commercial development on Amherst Street, and a lot of new ones going in, and doesn't see why this couldn't be used for a general business use, and there are numerous uses that are permitted in both the PI and GB zones that could go here.

Mr. Kanakis agreed, and although the proposed use may look better than the homes are there now, as the homes are not in great shape, but said he is concerned about the lack of a search for a reasonable commercial or industrial use.

Mr. Currier said that he is hung up on the density for this application. He said that for the units that are under construction on Deerwood were before the Board, there was testimony by abutters that the character of the neighborhood was single-family homes, but this Board ultimately approved them, and they look nice. He said that he is a little hung up on the density, because while it's not zoned residential, there are single-family homes, with a fair amount of space around them, and with 18 units proposed, it's a lot tighter than what is in the area, and it may be a little denser than the RC standards. He said that what are in the neighborhood are certainly less than 18 units on this site.

Mr. Shaw said it is existing now as residential, and there is a new proposal that may be more dense than an RC development, but this is a conundrum, as it is an area where it is zoned one way, and functioning that way, but the Board should be careful, as it could be looked at as piece-wise rezoning this area as well. He said it looks as if it's a nice proposal, it would generally be an improvement to what is there now. He said that if they're going to take down some residential structures and redevelop the land, there should be some way to show that it's not possible to put businesses or functions in there that the property is intended to be. He said another avenue would be for the applicant to petition the Board of Aldermen to rezone this area to a residential zone. He said that there is an RC district on

the other side of Amherst Street, and there are a lot of different zones along this area of Amherst Street, but it's almost like the Board is put in a compromised position to endorse a greater residential density, even though it was already nonconforming and grandfathered.

Mr. Boucher said that this area is not acting like a PI or GB Zone. He said that there are some areas of Nashua that just don't meet the current zoning district. He said that he has questions about the density that is proposed, and is concerned about the setbacks of the building that is close to the street. He said that this is abutting one residential property right now to the right, and to the side is that industrial commercial use. He stated that he thinks it's a good use, it's very similar to what was approved on Deerwood Drive, it's the same idea, and all of those came out nice, they are well done. He said he feels that this is more of a multi-family type of neighborhood, even though the zoning is PI and GB.

Mr. Shaw said that when the Board reviewed the units on Deerwood Drive, it was known about the apartment buildings across the street. He said that there are not a lot of them, but there are single-family homes on this street. He said in looking at the zoning map, the RC zone is the closest residential zone to this area, and it is also on the other side of Amherst Street, so there is a mix of residential use nearby, as well as an R18 zone. He said he didn't think that this should be looked at as a clear cut RC area. He said there is still a concern about the density usage, and if the Board is willing to state that this has been used as a long-term residential, and can continue as residential, despite the zone, given the intensity of use, it is still questionable.

Mr. Currier said if other properties on Deerwood and Dumaine were to be developed in this fashion, it could be an enormous amount of density ending up there, and it's questionable since they would be allowed as variances for a higher density. He said that there is RC, R18 zones nearby, and was stunned by the amount of traffic to get on or off these streets, and it wasn't rush hour. He said he doesn't really think that someone can state that this is an RC type of area.

Mr. Minkarah said that there has been a lot of discussion on whether this is more like an R18 or RC zoned area, which is

really outside the realm of variance, it's more of a policy discussion, which should be held by the Board of Aldermen.

Mr. Shaw said that the only use that is sensible is for single-family homes, which is what these lots are used for, but with all the testimony about the density, it's really a question of what the zoning district should be.

Mr. Falk said that to have a single-family home just a few hundred feet away from a very busy Amherst Street is questionable, but perhaps 40 or 50 years ago when they were constructed, they were fine, as this was considered way out of town.

Mr. Boucher said it is interesting that no abutter has shown up to voice concern about this request. He said that thirty or more years ago, these single-family houses fit right in, but the neighborhood has changed and everything has built up all around them.

Mr. Currier said he values what the density would be. He said he would like to see what the balance of the density is on the street, and obviously the places on Deerwood. He said that the proposal looks greater than the RC zone. He suggested tabling this to have this information come back to the Board ahead of the meeting.

Mr. Minkarah stated that he appreciates the idea, but it wouldn't make a difference for him, and said that he's not inclined to support it.

Mr. Shaw said it probably wouldn't change his view, but wouldn't mind looking at the data, and it may afford the applicant an opportunity to re-consider the proposed density for this project as well.

Mr. Boucher said he'd support a motion to re-open the meeting to ask about density.

MOTION by Mr. Currier to re-open the Public Hearing so that the Chairman can ask the applicant specifically to address the Board's concern about density, and perhaps a change in density.

SECONDED by Mr. Shaw.

MOTION CARRIED 4-1 (Mr. Minkarah).

Mr. Boucher asked if Mr. Guida and his client would entertain looking at the density.

Mr. Guida said that they can look at the density a little bit closer, he said that it seems like the Board is somewhat walking the fence between a rezoning and a variance. He said that they are willing to table the request.

Mr. Shaw asked if they can provide information regarding Dumaine and Deerwood about the densities of these developments, as there is a mix of single-family and multi-family structures.

Mr. Currier said that they're looking for square foot of land per unit.

Mr. Boucher said that they can also look at their own density as well. He said it looks as though they could go on the first meeting in August.

Mr. Guida said that the first meeting in August should be fine.

Mr. Falk said that staff will be mailing out the packages to the Board members on August 6th, so all the information would be needed by staff by then.

MOTION by Mr. Shaw to table the request as advertised to the August 13, 2019 meeting, to allow the applicant to provide some additional data regarding the density of the surrounding properties, specifically on Dumaine and Deerwood, as well as offering the applicant the opportunity, if they are interested, to possibly propose a lower density use for this application.

SECONDED by Mr. Currier.

MOTION APPROVED 4-1 (Mr. Minkarah).

MISCELLANEOUS:

REHEARING REQUESTS:

None.

MINUTES:

6-25-19:

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

SECONDED by Mr. Shaw.

MOTION APPROVED UNANIMOUSLY 5-0.

REGIONAL IMPACT:

The Board did not find any cases of Regional Impact.

ADJOURNMENT:

Mr. Boucher called the meeting closed at 7:55 p.m.

Submitted by: Mr. Currier, Acting Clerk.

CF - Taped Hearing