

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
August 13, 2019

A public hearing of the Zoning Board of Adjustment was held on Tuesday, August 13, 2019 at 6:30 PM in the Auditorium, 229 Main Street, at City Hall.

Members in attendance were:

JP Boucher, Chair
Steve Lionel, Vice Chair
Jack Currier, Acting Clerk
Rob Shaw
Efstathia Booras
Nick Kanakis
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, as well as the projector in front of the stage for plans to show the audience.

- 1. 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. [TABLED FROM THE JULY 9, 2019 MEETING.]**

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Jack Currier, Acting Clerk
Rob Shaw
Nick Kanakis

Nathan Chamberlain, Fieldstone Land Consultants, Milford, NH. Mr. Chamberlain said that the case was here last month, and was tabled, and the Board mentioned the density and spirit and intent of the Ordinance. He said that the request is for the use variance for a residential use in the PI zone, with a little bit of the lot in the GB zone. He described the property location.

Mr. Chamberlain said that this really cannot be developed as a commercial or industrial use. He said that the three lots in question are off the main road, so there is no viable visibility, and the street is not at a signalized intersection. He said that any business would want visibility and proper access. He said that the property is just not large enough for any industrial business of any size.

Mr. Chamberlain said that for the spirit and intent, the whole purpose of the zoning ordinance is to prevent against haphazard development, and to make sure it meets the safety and welfare for citizens, and this development does that, as it will be new construction with low cost housing, and it fits the neighborhood. He said that the street is already residential. He said that the adjacent Deerwood Drive has some residential units developed, and they're still building.

Mr. Chamberlain said that they reviewed the density that is proposed, and took out some units to make the front setback consistent. He said that they dropped a unit from the middle building, which provides more green space. He said that they've gone from 18 units to 16 units, and it is consistent with the RC zone density. He said that they've submitted a colored map that shows the density. He said with the proposed 16 units, it would be 3,757 square feet per unit. He described the density for some of the other multi-family developments. He reiterated that by taking three properties that are in sad shape and putting in a high-quality new construction would fill a need for the City. He said that he doesn't see this site being developed for commercial or industrial use, and believes that the abutters wouldn't want those uses either. He said it will be safe and meet housing needs, and will increase the tax base from what is there now.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Mr. Currier said that he appreciated the applicant's consideration of the Boards comments of lowering the density, particularly with the front yard setback. He said he is struggling with the same issues he originally had, and feels that this stretch of houses on the two streets has been mostly single-family homes since its inception, and still sees this as a single family neighborhood now. He said that Deerwood Drive has more multi-family units, but to go from a density of three houses to 16 units is a lot.

Mr. Shaw agreed, and said that there didn't seem to be an attempt to truly marketing the property for a use that would be allowed, even though the street is very residential. He said that the lots have been functioning as single family residential, but to go to the proposed density is a pretty significant difference, and the multi-family on Deerwood Drive has a different look and feel than Dumaine Avenue. He said he is not convinced that there is sufficient justification to approve the proposed development.

Mr. Minkarah agreed, and continues to have the concerns he had originally. He said he was happy to see that the applicant addressed the issues brought up by the Board at the last hearing. He said that the reduction in the density does have some rational basis, whereas before, it may have been arbitrary. He said he also has concerns about the zoning or rezoning.

Mr. Boucher said he is struggling in that this is a PI zone. He said that he feels that it does fit into this neighborhood, it's a unique neighborhood, and it would be hard for anyone to develop this property for what it's zoned for. He said that it is interesting that no abutter has come forward with any comments.

Mr. Shaw said that the property is zoned for something other than the way it's been historically been used, and doesn't believe that there's any reason why this street can't be completely redeveloped with a bunch of single-family homes, as there are a lot of people that want to be close to goods and

services right off of Amherst Street, there is a lot of access to shopping and dining and you don't have to go very far, and for some people, that may be really appealing. He said that perhaps the Board of Aldermen may need to look at a rezoning of this area, as there just was one right down Amherst Street. He said he's not seeing how we can approve going from a low density to a relatively high density at this location.

Mr. Currier said that these lots fall somewhere between R9 and R18 size for density. He said that if this application were not approved, the Board is not saying that they must put a park industrial use in there, the Board is saying it's probably somewhere between an R9 and R18 now, and they're asking for RC, and it seems like the Board feels that it is too much, it's perfectly fine the way it is now, as it matches the rest of the street, and the proposed RC is too dense. He said he'd really have to see why an RC sized density is necessary.

Mr. Lionel said that the Board is not responsible for rezoning parts of the City. He said that the street is largely single-family residential and the proposed use doesn't seem to be quite in character. He said he doesn't see this street as a good fit for PI and GB either, but that is what it is, and perhaps this should be taken to the Board of Aldermen to see if a rezoning is appropriate.

Mr. Boucher said that he would vote to not support the application, and perhaps they could come back if it's rezoned.

Mr. Kanakis said that the proposed development just doesn't fit in with the single-family nature of the street, and it is beyond the scope of the Boards duties by allowing this development.

MOTION by Mr. Shaw to deny the application on behalf of the owner as advertised. He said that the Board believes that the variance is not needed to enable the applicant's proposed use of the property, as it is not appropriate, given the special conditions of the property, while there is an issue with the fact that this is zoned PI and GB zoned, historically this has been single-family homes and this would be significantly and drastically more dense than the current usage.

Mr. Shaw said that the Board feels that it is not within the spirit and intent of the ordinance, as there are several single-

family homes on the street, and the proposal has greater density.

Mr. Shaw said that it would not negatively impact surrounding property values, and there was no testimony either way towards that.

Mr. Shaw said that the request is contrary to the public interest, and substantial justice is served by not supporting this request.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 5-0.

2. Kathleen K. Paulsen (Owner) Christopher Long (Applicant) 27 Serotta Avenue (Sheet D Lot 22) requesting special exception from Land Use Code Section 190-15, Table 15-1 (#3) to allow an accessory (in-law) dwelling unit. R40 Zone, Ward 5.

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Jack Currier, Acting Clerk
Rob Shaw
Efsthathia Booras

Christopher Long, 27 Serotta Avenue, Nashua, NH. Mr. Long said that he is applying on behalf of his mother-in-law to allow an accessory dwelling unit in the basement. He said it would be 748 square feet in size, it will have a kitchen, bathroom, one bedroom. He said that they meet all the points of law.

Mr. Boucher asked if there would be any alterations to the house.

Mr. Long said that access to the unit would be from the back, there will be no traffic issues, and there will be no changes to the exterior of the house. He said that they meet all the special conditions for the accessory dwelling unit

Mr. Lionel asked if the Association By-laws have anything to say regarding the accessory dwelling unit.

Mr. Long said that the Association has nothing to say about it.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Mark Detering, 43 Diamondback Avenue, Nashua, NH. Mr. Detering said he is here as a follow-up to a letter he submitted. He said that he is not pushing for acceptance or denial, but wants the Board to be aware of special circumstances to consider. He said that Groton Woods has a number of shared septic systems, and they were approved based upon the number of bedrooms that feed the systems. He is concerned that if additional bedrooms are added, it would exceed the capacity of the systems. He said that adding one bedroom may not be a problem, but if multiple homes start doing this, it can be, or, it could significantly decrease the life of the systems. He said that the owners all share the cost of the septic systems, so if a system on Serotta Avenue goes over its capacity, the owners on all the other streets are going to be affected financially by the ramifications of a system that fails. He said that he is concerned that this may create a precedent for the Board should this case be approved.

Mr. Lionel said that there is no precedence for zoning cases, just because one case is approved, it does not mean that another similar case would be approved. He said that the applicant will meet the required parking, as any accessory dwelling unit needs to provide one off-street parking space, which they have, as they have two garage bays.

Mr. Detering said that their By-laws do not provide the Board of Directors the ability to deny an owner from adding an in-law apartment, the only thing that the By-laws allow for the Board to deny is if someone is trying to change the grading and water flow.

Mr. Shaw asked what if consideration would be given to the septic come into play during the building permit submittal.

Mr. Falk said it would be reviewed. He said that they are here basically for the extra kitchen, as it is still a single-family home, and staff does not regulate the number of bedrooms, dining

rooms or living rooms. He said that he understands that their Association is concerned, but this is the first Accessory Dwelling Unit that has come before the Board since that development was built about 15 years ago.

Mr. Detering said he is here as an owner, not part of any governing body of the Association.

Mr. Boucher said that there were two letters of concern submitted, from Hyacinth McKenna, 44 Diamondback Avenue, and from James and Dorothy Della Gatta, 73 Diamondback Avenue.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Long said it is his wife and children and mother-in-law that live there, so there will be no new residents, and the addition of the ADU will not cause any more water use or any new septic use than what already exists.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

No one.

Board members all expressed support for the application.

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

Mr. Lionel said that the use will not create undue traffic congestion or unduly impair pedestrian safety.

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

Mr. Lionel said that all special regulations are fulfilled per the applicants testimony.

Mr. Lionel stated that the use will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of the residents.

SECONDED by Ms. Booras.

MOTION CARRIED UNANIMOUSLY 5-0.

3. John Card & Pamela Cox (Owners) 16 Pollard Road (Sheet C Lot 1281) requesting variance from Land Use Code Section 190-16, Table 16-3, to encroach 2.3 feet into the 10 foot required left side yard setback to construct an attached 18'x38' garage. R9 Zone, Ward 9.

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Jack Currier, Acting Clerk
Rob Shaw
Jay Minkarah

John Card & Pamela Cox, 16 Pollard Road, Nashua, NH. Ms. Cox said that they are requesting to build a two-car garage on the side of the house where the entry currently is into the kitchen. She said that the garage would have two cars front to back. She said that the corner would encroach into the setback only, as the house is placed at an angle on the lot. She said that their elderly mother lives with them and in winter weather it is difficult to access into the house from outside due to the ice. She said that there are similar garages in the neighborhood.

Mr. Currier stated that if there was more room on that side, they could construct a standard, square sized garage, and they are doing their best to respect the side yard setback, as the garage is thinner and longer, and only encroaches into the corner.

Mr. Shaw asked if this will be one story.

Ms. Cox said it will be single-story.

SPEAKING IN FAVOR:

Jason Varney, 14 Pollard Road, Nashua, NH. Mr. Varney stated that he is the abutter, and is in favor of the request.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Board members all expressed support for the application.

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, the owners wish to add a two-car garage, which is very common in this neighborhood, and there really is no other place to put the garage, it is on the left side, but the placement of the house on the lot is slightly shifted, which leads to the encroachment of the 2.3 feet into the back corner, and there is no other means to pursue, other than the area variance.

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 negatively impact surrounding property values.

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

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 5-0.

Attorney Gerald Prunier stepped up to the podium, representing Case #6, for John Flatley, and would like to withdraw their variance application.

Mr. Boucher said that the variance application for Case #6 for John Flatley has been withdrawn.

4. Matthew J. & Leah R. Donohue (Owners) 4 Cushing Avenue (Sheet 64 Lot 104) requesting variance from Land Use Code Section 190-264 to exceed maximum accessory use area, 40% permitted, 61% proposed, to install a 17'x31'-6" in-ground swimming pool. RB Zone, Ward 3.

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Jack Currier, Acting Clerk
Rob Shaw
Nick Kanakis

Matthew & Leah Donohue, 4 Cushing Ave, Nashua, NH. Mr. Donohue said that they are looking to exceed the maximum accessory land use, it would be an additional 21%. He said that they won't be in conflict with the spirit and intent of the ordinance, and this should result in an increase in value for the house and surrounding homes. He said that they have a letter from their pediatrician that supports having the pool.

Mrs. Donohue read the letter for her daughters pediatrician, stating that the activity of swimming is extremely helpful for her medical condition and physical therapy, more so than any other activity. She said that swimming is her sport.

Mr. Donohue said that all the setbacks and open space issues are all satisfied, and said that he worked with the Planning Department on that.

Mr. Lionel asked about a protective fence.

Mr. Donohue stated that they will have the protective fence and gates.

Mrs. Donohue said that the yard is already fenced in.

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, the Board discussed that the calculations are based on the fact that there is a detached garage, and it takes up some space, and the percentage is exceeded due to the pool. He said that the request cannot be achieved by some other method reasonably feasible other than the area variance.

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.

5. Janet A. & Ike Mattie (Owners) 12 Watersedge Drive (Sheet H Lot 189) requesting variance from Land Use Code Section 190-16, Table 16-3, to encroach 6 feet into the 20 foot required right side yard setback to construct an attached 27'x28' two-car garage. R18 Zone, Ward 2.

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Jack Currier, Acting Clerk
Rob Shaw
Efsthathia Booras

Mr. Boucher said that the encroachment of 6 feet into the side setback is correct, but the size of the garage is 27'x28'. He said that even though the setback encroachment is worded correctly, the garage would be three feet longer. He asked the Board members if this should be accepted as it is, or to re-advertise.

Mr. Lionel said that the ad description says 24'x24', but the drawing says 27'x28'.

Mr. Falk explained that when the application was submitted, it had both figures, and he called to get some clarification, as the application language said 24'x24', but the drawing indicated 27'x28'. He said that it was indicated to him that it was the 24'x24' garage, so that's how it was advertised, but always had the same 6 foot encroachment. He said that after the case was already advertised, it was brought to his attention that it was

actually the larger size, but it would have the same encroachment.

Mr. Shaw said that the encroachment is the major factor, but the Board should consider the scope and scale of the addition, it's still relatively similar in size. He said that there is no further incursion into the setback, and within a general 10% type of range.

Mr. Minkarah agreed, the encroachment into the setback hasn't changed and is accurate, the difference in the size may not make a material difference. He said that the owner did share the construction plans with the most affected next door abutter, and the abutter was aware of the dimensions.

Mr. Lionel agreed.

Mr. Boucher said that the abutter is actually in the audience, and is ok with the request.

Janet Mattie, 12 Watersedge Drive, Nashua, NH. Mrs. Mattie said that the request is for an attached two-car garage. She said that her neighbors are in favor of it, and needs the garage to not shovel the back deck to get the snowblower to clear the driveway. She said that it is very difficult in snowy winter weather, and there have been reports of people breaking into cars in driveways, so this will be safer to have the cars in the garage.

Mrs. Mattie said that the garage will be one-story high.

Mr. Minkarah said that 27'x28' is a large two-car garage, and asked why this size is requested.

Mrs. Mattie said that there is a chimney on this side of the house, and it will take up space. She said that they need the room for the cars, lawn equipment, snowblower, and trash barrels. She said that there is an entrance on the back of the garage to get into the house.

SPEAKING IN FAVOR:

Susan Picard, 14 Watersedge Drive, Nashua, NH. Mrs. Picard said that she has reviewed the plans, and they are in favor of the garage, there is plenty of room.

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 by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance, he said that the applicant indicated that there is an existing chimney where the garage would be, and that is why they are requesting for additional space and the encroachment, and there is positive testimony from the direct neighbor.

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 negatively 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.

6. John J. Flatley Company d/b/a John Flatley Company (Owner) 200 Innovative Way (Sheet A Lot 798) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#15) to allow the construction of 268 multi-family dwelling units and 28 townhomes. PI Zone, Ward 8.

CASE # 6 WITHDRAWN BY ATTORNEY GERALD PRUNIER FOR THE OWNER.

MISCELLANEOUS:

REHEARING REQUESTS:

None.

MINUTES:

7-23-19:

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

SECONDED by Mr. Lionel.

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 8:08 p.m.

Submitted by: Mr. Currier, Acting Clerk.

CF - Taped Hearing