

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
September 24, 2019

A public hearing of the Zoning Board of Adjustment was held on Tuesday, September 24, 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
Mariellen MacKay, Clerk
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. **David & Steven Linatsas, Trustee of the Linatsas Family Trust (Owner) Ali Bird (Applicant) 1 Hardy Street (Sheet 62 Lot 152) requesting use variance from Land Use Code Section 190-52 (A) for a fenced in area for outdoor use for a dog day care. LB Zone, Ward 4.**

TABLED FROM 9-10-19 MEETING

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Nick Kanakis

MOTION by Mr. Boucher to re-open the Public Hearing for this case, as it was tabled from the September 10, 2019 meeting, to specifically get information from the applicant on what the Board specifically asked for from the last meeting. He said that all the testimony from the previous meeting is incorporated

into the record. He said that there will be an opportunity for those speaking in favor or in opposition, with rebuttal specifically limited to what has been brought up this evening.

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 4-0.

Chris Guida, Fieldstone Land Consultants, 206 Elm Street, Milford, NH. Mr. Guida said that it's his understanding that one of the key issues was that the Board was looking for some sort of waste management plan, specifically the management of dog waste. He said that he understands that the Board received a copy of the WyshiWash product, that is an antibacterial cleaning product that you spray right on the area, although is not sure of the manufacturer's recommendations, but it will be applied per the instructions.

Mr. Guida said that the waste will be picked up immediately from the dog area, put in a closed container, double-bagged. He said that for hygienic reasons as well as proper management, it will be done right after the dogs go. He said that he is well aware of canine behavior.

Mr. Lionel asked about the dog urine, and it kills the grass quickly.

Mr. Guida said that they will dilute the area and spray it down, and the bacteria in the soil will help break it down.

Mr. Boucher asked about the future of the grassed outdoor area.

Mr. Guida said if the business is doing well, and there's a financial capability to install some sort of an AstroTurf, it would be done, perhaps within a couple years.

Mr. Boucher asked if the artificial turf be for the whole area.

Mr. Guida said it would be anywhere where the animals are isolated in would have the turf.

SPEAKING IN FAVOR:

Mr. Boucher said that for public testimony, it will be limited to what the applicant just spoke about. He said that all the other previous testimony is on the record.

Dave Mackie, 6 Indiana Drive, Nashua, NH. Mr. Mackie said he lives right across the street from where Ms. Bird is using the lot as a dog day care. He said that as soon as they moved in, the flowers and landscaping were updated and kept nice. He said that he hasn't had any issues with dogs or odors, and it's been a pleasure having her as a neighbor.

Richard Hookey, 8 Indiana Drive, Nashua, NH. Mr. Hookey said that he's never seen a dog loose, and has never heard the dogs barking. He said that odors haven't been an issue, and hasn't had any problems with her being there at all.

Mr. Boucher said that several letters of support were submitted, from Gina Bielawski, Debra Gleeson, Shawn St. Lee, Nicole LeBlanc, Sue Dolens, and Billy Brown, Lydia Foley. He said that all the letters are in the record.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Judy Hogan, 71 Wason Avenue, Nashua, NH. Mrs. Hogan said that they strongly oppose the business at this location. She said that the same applicant was denied the same application back in May 2019 at 154 Amherst Street. She said that the Board should apply the same concerns to this application at this location as well, and deny this request. She said that in the last denial, the Board found that there are plenty of other businesses that could be supported at this site, and that the overall level of activity would be too much for that neighborhood. She said that the Board also found that the location of a dog day care could devalue and disturb the businesses as well as the homeowners nearby, also, that the use was contrary to the public interest, and substantial justice was served not to support it. She said that the Board should apply these same concerns to this site and deny the application. She said that the neighborhood should not be subjected to the noise, odors and destructive activity. She said that they also advertise dog boarding, and 24/7 activity.

Mrs. Hogan said that they visited four other dog day care facilities, and all were on industrial sites, with no neighborhoods to disrupt, and they are perfect locations for dog day cares. She said that this neighborhood needs to be kept

safe for everyone.

Clayton Alexander, 1 Amherst Terrace, Nashua, NH. [his testimony very difficult to make out from recording]. Mr. Alexander said that he has issues with waste disposal, runoff issues, disturbance and increased traffic coming to and from that location. He said that Ms. Bird submitted an almost identical waste management plan and got rejected and it included artificial turf. He said that they don't comply with Section 190-52 of the Ordinance, and believes that they need more variances to apply for, and they should have a 20-foot setback from adjoining property lines. He said that the backyard area will be very hard to keep clean, as it is not a hard concrete surface. He said that there is not a hardship here; this is not the right location. He said that there is already fair and reasonable use as commercial property.

Dan Hogan, 71 Wason Avenue, Nashua, NH. [his testimony was illegible from the recording].

Mr. Boucher said that the Zoning Board does not draw the zoning lines for the City; the Board is here to decide cases. He said that this property is the Local Business zone; it's not a residential zone. He said that the zoning line runs down the center of Amherst Terrace, and on the south side, it's zoned LB, and the north side is residential. He said that it has been this way for decades. He said that the only body that can change the zoning districts is the Board of Aldermen.

Mr. Lionel said that this is a permitted use, the only reason why the applicant is here is for the outdoor display or use, and City staff has determined that a variance is required for that issue. He said that a dog day care is a permitted use in this zone.

Mr. Hogan spoke but his testimony was illegible.

Alison Hogan, 7 Hardy Street, Nashua, NH. Ms. Hogan said that the property got changed over to business in 1983 when Dr. Linatsas got approval for the chiropractor use. She said that their long term plan does not address sufficient way to control the odor, as just hosing down the area will create a mess, the grass will deteriorate over time, and the runoff will go off site, and it will be an issue, which is against the public interest. She said that there is a concern that the odor will

cause an issue with property values, and said that she submitted information from a licensed real estate agent that did an assessment of the property, and the result was that it would affect the property values, it would result in a loss. She said that the applicant does not address property values, and does not address unnecessary hardship or public interest and the spirit of the ordinance, all of the statements are conclusory in nature, it is a logical fallacy. She said that the business will create noise and odors. She said that the application does not address the odor issue, and the burden of proof is on the applicant, it is not upon the abutters or residents. She said that they did not do their due diligence. She said that she is concerned for the health and safety of the dogs, and that there is an ordinance that if there is any noise between 10:00 p.m. and 6:00 a.m., the animal control officer can issue citations. *[her testimony was difficult to understand as well].*

SPEAKING IN FAVOR - REBUTTAL:

Mr. Branon said that he heard a couple issues that were outside of what we are talking about tonight. He said that this is a permitted use, and to have a permitted use without bathroom facilities, is like a hotel room without a bathroom. He said that as far as odor goes, the staff will pick up the material, bagging it, and there is no odor when it's double-bagged and disposed of weekly. He said that the urine does not have an odor when it's sprayed down. He said that in winter conditions, it's actually easier to pick things up because the ground is frozen.

Mr. Branon said that the only time there is an odor issue is when you step in it, and get in your car in an enclosed space. He said he has dogs that go in his back yard, and there is no odor out there.

Mr. Branon said that he feels that a lot of people are confusing noise from a dog day care with a kennel, or breeder. He said that usually a barking dog is a single dog in someone's back yard. He said that people go to a dog day care so that they don't have their dog barking all day long, which is a benefit. He said that dogs communicate 95% of the time non-verbally, they wag their tails, and communicate through body language, not barking. He said that they bark when they're hungry or need something, and the facility strives to meet those issues, and pay attention to the animals, and keep them engaged. He said

that dogs just do not bark 24/7. He said that if there is such a dog barking like that, there is recourse, an abutter can call up and file a claim with the Police Department.

Mr. Branon said that sometimes, if you ask different real estate agents, you might get different answers. He said that he believes that there's some sort of a misunderstanding, and doesn't believe that noise will be an issue with this type of facility.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Mr. Alexander said it's just the nature of the business, there will be noise issues and waste issues. He said that this just isn't the right location for this type of business. He said that the application is inadequate, they don't adequately address the problems. He said that the ordinance is just not adequate to regulate the outdoor area. He said that there isn't enough materials to review how they'll address the dogs outside will be regulated. He said that they should apply for several variances. He said that his office is right across the street, and will hamper his ability to do his job and conduct his business. He said that this just is not the right location. He said that the outdoor area for the dogs is just not the right area for this business.

Mr. Boucher said that there was credible testimony from both sides. He said that this is a difficult request, because it's a permitted use, and is questioning whether the plan is feasible the way it's laid out.

Mr. Lionel said that the only reason that they're here is for the outdoor area for the dogs, as staff has determined that it is outdoor display, which is not permitted except by variance. He said that the dog day care is permitted in this zone, it's clear in the ordinance. He said he keeps coming to the thought that this is a permitted use, and a lot of the objections seemed to be on the theoretical side. He said that his neighbors have two dogs, and they don't bark, they're outside a lot, and they're well trained. He said that he has another neighbor across the street that has a dog that barks all the time in their fenced back yard. He said that a properly cared for dog isn't going to be barking a lot. He said that they have a waste management plan that seems appropriate. He said that the Board recently approved a dog day care on West Hollis Street which was

also in the LB zone. He said that the applicant's last request was a use variance, as it was not a permitted use in that zone. He said in listening to the testimony and reviewing the case, he is in support.

Mrs. MacKay said that it is a permitted use, however, this is like a chair with three legs, it is in an area that abuts a residential zone, but this site is not zoned residentially. She said that she sympathizes with and understands the neighbors' concerns, she said that she listened to the neighbors who live next door to the applicants existing dog day care location, and they don't have the complaints, in fact, they'd love to keep them there as a neighbor. She said she has two dogs, and the only time they bark is if someone comes to the door, and generally, they don't bark. She said that she is in favor of the application.

Mr. Kanakis said that he is in favor as well, it is an allowed use within the zone, and a lot of the objections the Board heard were based upon the use, which is permitted. He said that the use fits within the zoning, and there is recourse for the noise.

Mr. Boucher said that this will be going to the Planning Board, and asked if there is anything that the Board should be aware of before it passes onto the Planning Board.

Mr. Falk said that the improvements on the site are already there, the driveway, buildings, and most all the fencing, the landscaping and utilities. It will be predominantly an as-built plan, and the applicant will have to identify the outdoor area for the dogs. The site data table will have to list all the dimensional criteria for the property, and identify the outdoor area on the plan. He said that the Zoning Board and Planning Board are two different Boards, with different roles and responsibilities as defined in the State of New Hampshire RSA's. He said that the Zoning Board looks at the use of the land, while the Planning Board looks at how the site functions. He said at this point, the Planning Board will be reviewing an as-built plan for the most part.

Mr. Boucher said that he's been on the fence, and Mr. Lionel's statements made sense, and is in support.

MOTION by Mr. Boucher to approve the request on behalf of the applicant 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 the 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 negatively impact surrounding property values.

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

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 4-0.

2. Joseph & Bernice Thomas (Owners) 5 Benton Drive (Sheet 56 Lot 49) requesting variance from Land Use Code Section 190-16, Table 16-3 to encroach 3.9 feet into the 10 foot required right side yard setback to construct an attached 12'x22' garage addition. RA Zone, Ward 3.

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Nick Kanakis

Joseph Thomas, 5 Benton Drive, Nashua, NH. Mr. Thomas said that their application is for a one-car addition, with an encroachment into the side yard setback, so it will be a two-car garage. He said that the encroachment would be 3.9 feet into the side. He said that they had the property surveyed by Meridian Land Surveyors, so there is an existing plan and a proposed plan. He said that they also submitted a plan that shows aesthetically what it would look like with the expansion.

Mr. Thomas said that the requested variance will not be contrary to the neighborhood, and will not be out of character. He said that Benton Drive is a quiet street, with only four houses, and they all have two-car garages.

Mr. Thomas said that the proposal would meet the spirit of the ordinance, as the intended use is strictly for personal use, for two cars. He said that this request meets the essential character of the neighborhood, and pointed out the pictures submitted in the package of other houses with two-car garages.

Mr. Thomas said that for hardship, there is no other reasonable location for the garage addition, it is logical and makes sense to put it where it's next to the single car garage, and it's a reasonable request.

Mr. Lionel asked if they will be widening the driveway.

Mr. Thomas said it's pretty wide right now, it's black-topped for the single car garage, and there already is a parking area on the right side that is gravel.

Mr. Lionel said that the ordinance allows up to 24 feet. He asked if they will be keeping the shed in the back by the garage.

Mr. Thomas said that they will be keeping it.

Mr. Boucher asked if there will be space above the garage, such as living space.

Mr. Thomas said no.

Mr. Falk said that if in the future, the request is to build a room above the garage, the construction of it would be in the setback, and a variance would be necessary.

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. Lionel 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, which is the closeness of the existing garage to the property line, 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 Board feels that it is within the spirit and intent of the ordinance.

Mr. Lionel said that it would not negatively impact surrounding property values.

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

SECONDED by Mr. Kanakis.

MOTION CARRIED UNANIMOUSLY 4-0.

3. 28 Pond Street Realty, LLC (Owner) John R. Roberts, Manager (Applicant) 28 Pond Street (Sheet 18 Lot 74) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#6) to convert an existing office building into a two-family residential building. D-3/MU Zone, Ward 7.

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Nick Kanakis

John Roberts, 400 Worcester Street, Wellesley, MA. Mr. Roberts said that he is the owner and manager of this lot, and 300 Main Street, which was part of the acquisition in 2001 of Simoneau Plaza, and have redeveloped the Globe Plaza. He said that he used this building as office space when he took over the shopping center, and about four years ago, moved into part of the shopping center by the rear of Workout World, a rear entrance.

Mr. Roberts said that this building has been vacant, and has been used for storage. He said that it is not a real viable office building, it actually looks like a house, it has four

rooms on each level, like a raised ranch. He said that each floor has a half-bath. He said that this building really only works as a duplex, which isn't allowed in this zone. He said that there is residential use on Harbor Avenue, and there are duplex units nearby. He said that there really isn't any other use for this. He said that it would be hard to meet all the requirements for accessibility if it were to be an office, and it's too small to install an elevator.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Mr. Boucher said he's familiar with this site, and always thought it was a residential use. He said that he doesn't have any issues with this request.

Mr. Lionel said that it does look like a duplex use, and sees no reason to object to it.

Mr. Kanakis said that it is a reasonable use, and it does look like a residential house.

Mrs. MacKay said that she has no concerns with this request.

MOTION by Mr. Kanakis to approve the request on behalf of the applicant 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 the variance.

Mr. Kanakis said that the Board believes that it is within the spirit and intent of the ordinance.

Mr. Kanakis said that it would not negatively impact surrounding property values.

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

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 4-0.

4. L. & P. Wozniak Rev. Trust (Owner) Paul & Laura Wozniak (Applicants) 61 McKean Street (Sheet 21 Lot 81) requesting variance from Land Use Code Section 190-44 (A) to exceed maximum fence height, 6 feet permitted - 7 feet requested, for a 56-foot section on right side yard property line and for a 110-foot section on left side yard property line. RB Zone, Ward 7.

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Nick Kanakis

Laura & Paul Wozniak, 61 McKean Street, Nashua, NH. Mr. Wozniak said that they are requesting the variance for the 7-foot tall fence. He said that the 56-foot part of it is way in the back yard, and the only people who can really see it is one neighbor, who is in agreement to support the request. He said that the other side, it would be 110 feet long, and the neighbor on that side, her house blocks the fence from anyone else, and it only shows about 15 feet and then her garage is there. He said that when you walk out his slider door, the deck is elevated, so this will be a privacy issue for both his house and his neighbors as well. He said that the fencing will not change the landscaping of the neighborhood or the surrounding area, it will be installed by Gate City Fencing.

Laura Wozniak said that they currently have a 6-foot tall fence, it's very old, and the extra one foot in height will provide the needed privacy to both their neighbor and themselves.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Board members all expressed support for the proposed fence height.

MOTION by Mr. Lionel 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 sight lines between neighbors, and the benefit sought by the applicant cannot be achieved by some other means to pursue, other than the area variance.

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

Mr. Lionel said that it would not negatively impact surrounding property values, in fact, it may improve property values.

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

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 4-0.

5. Dolan Family Rev. Trust (Owner) 3 Pilgrim Circle (Sheet I Lot 63) requesting variance from Land Use Code Section 190-16, Table 16-3 to encroach an additional 2 feet into the 40 foot required rear yard setback, 28 feet permitted from variance approved on 2-14-12, 27 feet existing, 25 feet proposed - to convert existing deck into a three-season porch. R30 Zone, Ward 1.

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Nick Kanakis

Matt Dolan, 3 Pilgrim Circle, Nashua, NH. Mr. Dolan said that they are requesting a variance to allow a 25-foot rear yard setback, the reason is to enclose an existing deck, it's a little on the short side, so the additional two feet will make it more practical to make the investment to close it in. He

said that their homeowners association was fine with the request, and had no issues, as it would add to the value of the home. He said that the architecture of the addition would match the house, which would be in keeping with the spirit of the neighborhood. He said that it is private back there, as there are trees and bushes. He said that he did talk to a few neighbors, but no one raised any concerns.

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. Kanakis 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, and given the special conditions of the property, 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. Kanakis said that the Board feels that it is within the spirit and intent of the ordinance.

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

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

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 4-0.

MISCELLANEOUS:

REHEARING REQUESTS:

None.

REGIONAL IMPACT:

The Board did not find any cases of Regional Impact.

MINUTES:

None.

ADJOURNMENT:

Mr. Boucher called the meeting closed at 8:11 p.m.

Submitted by: Mrs. MacKay, Clerk.

CF - Taped Hearing