

NASHUA CITY PLANNING BOARD  
October 21, 2004

A meeting of the Nashua City Planning Board was held on Thursday, October 21, 2004 at 7:00 PM in the Auditorium at City Hall.

Bette Lasky, Chair conducted the meeting.

Members present were:      Bette Lasky, Chair  
                                 Ken Dufour, Vice Chair  
                                 Mike Lowe, Mayor's Representative  
                                 Ald. Richard Larose  
                                 Steve Dookran, City Engineer  
                                 William Slivinski  
                                 Hugh Moran  
                                 George Torosian

Also present:                      Roger Houston, Planning Director  
                                 Mike Yeomans, Planner  
                                 Richard Sawyer, Planner III

**APPROVAL OF MINUTES**

**October 7, 2004**

**MOTION** by Mr. Lowe to approve the minutes of 10/7/04, waive the reading and place them on file.

**SECONDED** by Mr. Larose.

**MOTION CARRIED 6-0-2, Mr. Dookran & Mrs. Lasky abstaining.**

**COMMUNICATIONS**

Mr. Houston said the following items should be in the Board's packets:

Communication dated 10/20/04 from Atlantic Traffic & Design Engineers relative to Costco Wholesale Gasoline Station.

Planning Board Agenda for 11/4/04 Meeting to determine any issues of regional impact.

Letter addressed to Michael Yeomans from Allan Fuller.

**REPORT OF CHAIRMAN, COMMITTEE & LAISON**

Mr. Lowe said they are still working on the land use codes. There is a public hearing scheduled for 11/16/04.

Mrs. Lasky went into the procedure of the meeting as follows:

After the legal notice of each site plan or subdivision is read by the Chair, the applicant or his representative will be given time to present an overview and description of their project. The applicant shall speak as to whether or not they agree with the staff stipulations.

The Board will then have the opportunity to ask questions of the applicant or staff. The Chair will ask for testimony from the audience, first anyone wishing to speak in opposition or with concern to the plan may speak. Come forward to the microphone and state their name and address for the record. This would also be the time to ask questions they have regarding the plan.

Next follows testimony coming from anyone wishing to speak in favor of the plan before the Board. The Board asks that both sides keep their remarks to the subject at hand and try not to repeat what someone else may have said.

After the public testimony is given the Board will discuss the issue and render their decision.

**OLD BUSINESS - SUBDIVISION PLANS**

None

**OLD BUSINESS - SITE PLANS**

1. **Costco Wholesale Corporation (Owner) - Proposed construction of an automobile fueling station with 12 fueling locations and associated access, parking and site improvements, Costco Drive, Sheet A - Lot 795, Zoned "HB" Highway Business. (Postponed from August 12, 2004 Meeting)**

**MOTION** by Ald. Larose to remove from the table.

**SECONDED** by Mr. Lowe.

**MOTION CARRIED UNANIMOUSLY**

Atty. Morgan Hollis, Gottesman & Hollis, 39 E. Pearl Street, Nashua, NH. Atty. Hollis said he appeared before the Board in August and at the time he understood that Corporation Counsel for the City had an issue as to whether the site plan should be heard

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by the Planning Board. The Board has certain standards they have to adhere to in making that decision. If the Board decides that the threshold standards are not met then the Board doesn't take jurisdiction of the site plan. Also, at that meeting he was asking for a postponement due to the fact that he was fairly new on the case and there was a lot of information that he had not been able to obtain.

He said they have reached an agreement with the party that was in opposition - which they are aware of.

He said the traffic consultant on the project is attempting to get answers to certain questions from the City. The original report from the consultant is dated December 2003. He said the City received an addendum today and the Planning Board can't be expected to digest that, given the time.

He said there were multiple issues the last time this came to the Planning Board five years ago. He said he has also had some brief dialog with the counsel for the opposition to this case and explained that there was a report being filed and he didn't expect that his traffic consultant had the opportunity to review it and address it this evening.

Atty. Hollis said he has no objections to either proceeding forward with making the case as to whether or not there is substantial change in the plan since 1999 or whether there is a substantial change in the circumstances which would allow the Board to review the plan on its own merits or having the Board table the matter since the Board may not have had the opportunity to review the traffic report.

Mrs. Lasky asked if the report was pertinent as to the Board's decision whether to hear the case.

Atty. Hollis said in his opinion it isn't. He said there are two standards that the Board has to follow as to making the decision on whether or not to hear the case. He referred them to the City Corporation Counsel's communication. They have to identify that the application for the use is materially different in nature from the application in 1999 or if there is a material change in the circumstances affecting the merits of the application since 1999. The traffic studies go to the merit of the site plan.

Mr. Lowe said that Mr. Dookran might want to review the traffic report before making a decision as to whether the Board should rehear the case.

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Mr. Dookran said he believes that this is correct. He said he would want to read it and digest it to see if there is any connection.

There was some discussion about the CMAC report, which is the information that Atty. Hollis indicated the traffic consultant was trying to obtain from the City.

Mr. Slivinski said in scanning the report it is basically the increased traffic that's expected for the site. He said he wasn't present in 1999 when the original case was rejected, but he can say that since 1999 the Board has approved a lot of building along the corridor that increased traffic counts. If traffic was the key consideration for this project, why the Board would approve several additional building sites that increased traffic. He said if traffic was the key consideration he would be in favor of taking the time to read the report carefully in conjunction with what is happening now.

Mrs. Lasky said as she understands it that there are other things that may have changed, other than traffic, that Atty. Hollis may wish to present in order to have the Board consider whether they should hear the case again or not.

Atty. Hollis confirmed that this is correct.

Mr. Moran said that it might be better to get this all done together so if they hear the information and then decide to hear the case that they go ahead and hear the case right after rather than waiting until the next meeting so the information is fresh in their minds.

Mr. Dufour said it's already been stated that they expect the presentation to be more than one meeting. He said they haven't stopped approving plans on the corridor because of the traffic. He said they will end up listening to the case. He said he thinks they should start this evening, even though it will not be completed this evening. This will give them the time to review the report. They might even address some of the Board's concerns this evening which will enhance their decision making at the Board's next meeting.

Ald. Larose said if they table this case, his understanding is that they have to make a decision within 45 days.

Mr. Yeomans commented that the applicant has provided a waiver for the 45 day rule. If necessary they can further waive the time

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frame. It is to their advantage to do so.

Atty. Malcolm McNeil. Atty. McNeil said he has been involved with this case since 1999. It is a traffic case and was denied on the basis of traffic in 1999. If they get to the state where they hear the case, the expert's testimony will relate to traffic.

He said they were present on 8/12/04 speaking for Cumberland Farms. He said their traffic expert is present tonight as is one of the principals from Cumberland Farms. He said Atty. Hollis indicated that he was unable to proceed the evening of 8/12/04, although Cumberland Farms was ready to proceed. He said since that date they have monitored the file to see if there was any new information. They have attended a hearing with regard to changes in Daniel Webster Highway to see what bearing it might have on this case. He said Atty. Hollis called him Tuesday to inform him that another traffic report would be forthcoming.

He said he doesn't generally practice in Nashua. His practice is almost exclusively land use, but it's more in the Seacoast. He said there are many wards in the Seacoast that have what is called a "five day rule" and that means that if something isn't in the Board's packet so that they can look at it or so that the attorney can look at it, the case doesn't go forward.

Atty. McNeil said one of the City's representatives gave him the report, which he thought was a little letter at about 7:02. He said he doesn't know what it says or what it means. He said when Mr. Dufour speaks to the issue of there being other projects that have been approved in the interim, he sure that was the case in 1999 when this case was not approved. He said they have to look at the circumstances and conditions.

He said the issue for Cumberland Farms is whether they go forward where they go forward where they don't know the totality of the evidence this evening, despite the fact the case could be bifurcated between the threshold issue of whether they have the right to be before the Board at all. There is a standing court order that prohibits the use. In the legal world this is called "res adjudicata" - it's over, it's done. He said he thinks the City's Corporation Counsel has reflected that concern - namely what's new about this. He said in the context of what's new about this, the element of traffic is a significant component of what is or isn't new.

He said he doesn't have the full "bag" of evidence for him to consider this important case and he didn't believe the Board did either.

There was discussion about the availability of the attorneys for the next meeting. There was also discussion about materials that might be made available for the Board and the attorneys that should be made available by November 10, 2004.

**MOTION** by Ald. Larose to table until November 18, 2004.

**SECONDED** by Mr. Moran.

**MOTION CARRIED UNANIMOUSLY**

**NEW BUSINESS - SUBDIVISION PLANS**

- 2. William Wilkes (Applicant) Beatrice Weisman Revocable Trust, Beatrice P. & Robert Weisman Trustees (Owner) - Proposed subdivision of one lot into two single-family lots, 5 Lamb Road, Sheet B - Lot 90, Zoned "R40" Rural Residence.**

Richard Maynard, Professional Engineer, Maynard & Paquette, Nashua.  
Mr. Maynard said the request is for a subdivision of one lot into two lots. This is a 2 ½ acre lot at 5 Lamb Road, about 300' to the west of East Dunstable Road.

He said the proposal is to subdivide the front lot off to just under an acre for the existing house and to have a flag lot for the rear lot with 1.6 acres in size.

He said a variance was approved in August for lot frontage and lot width to allow the subdivision to go forward. He said they have agreed to a stipulation of a 20' no disturb buffer into the rear along the south property line. They have also proposed that both the new driveway and the existing driveway come out in the same location - same curb cut. They will be separate and then merge as they reach the right-of-way entry.

He said the lot is on City water and sewer. They will be installing sidewalks along the frontage. He said the Department of Public Works has a preliminary plan to upgrade the area of Lamb Road. He said he isn't sure how far they are going to go. They will have to coordinate the sidewalk work with the Department of Public Works. He referred the Board to Note #24 shown on the plan.

Mr. Maynard said along the pavement of the road there is an unusual piece of right-of-way that he has talked to John Lebrun about. He said this will be worked out with the Engineering Department.

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He indicated all the stipulations recommended by staff are fine. Mr. Dookran said there is money that has been appropriated for the Engineering Department in the Capital Improvements Fund. It does need approval of the Alderman.

Mr. Slivinski said when you pull out of the driveway you can't see anything because of shrubs and trees. There are cars coming up over the hill.

Mr. Maynard said the only obstruction is the sun in the morning. He said there is adequate site distance.

Mr. Slivinski said he has pulled out of this driveway and he thought the visibility was not good at all. He said now there will be double the trips coming out. He said he is surprised that the person who lives there hasn't at least taken down some of the shrubs.

Mr. Maynard said they could remove some of the shrubs. He said some of that area is going to be covered by the City's proposed project.

Mr. Lowe said he has a problem because they are going to land up with five flag lots in a row out here. During the wintertime and during school hours this is probably going to be one of the busiest intersections in the City. He said it's very dangerous. You are coming up a hill and down a hill. It's on the north side where there is a lot of ice.

Mr. Moran said between the existing property at 1 ½ Lamb Road and where this proposal is he noticed that there is a small water flow - brook or stream - on the border of the two properties. He asked if this would be affected.

Mr. Maynard said "no." He said it is not on this property and they aren't going to affect it.

Mr. Dookran said the plan shows that sidewalk will be going behind trees to avoid taking the trees along the stretch. He said he understands from John Lebrun that the owner is concerned that putting sidewalk behind the trees will be impacting their shrubs and flowers, etc. and he would prefer to see the sidewalk along the edge of the road. He asked if this is true.

Mr. Maynard said they haven't mentioned that to him. He said they are all in favor of saving trees and that is what this plan is attempting to do and he can't see anybody objecting to that.

Flowers and shrubs are fairly easy to replant. Trees can take forever to grow.

Ald. Larose asked if this is the City's right-of-way if the sidewalk is going behind the trees.

Mr. Maynard said "yes." He showed where the sidewalk is intended on the plan that was displayed.

Mr. Slivinski said if they are going to put in sidewalks and they can put them behind trees and still be in the City right-of-way he prefers that over putting them at the edge of the street. It's a whole different feeling when the sidewalk is behind the trees.

#### **SPEAKING IN OPPOSITION OR WITH CONCERN**

Ken Siegal, 3 Lamb Road. Mr. Siegal said he is an abutter and is opposed to this request.

He said he is concerned with the impact on the area of the lot of the second structure. He said the decision of the Zoning Board is under appeal based on what he feels are mistakes they made in their decision.

He said he has a problem he has with the 20' "no disturb zone." He said large trees have root structures. If you go out 20' and you cut the roots of a tree, that tree is going to die. He doesn't want to see a picket fence. He said the "do not disturb" buffer should be significantly larger. The variety and types of trees back there is such that a 20' buffer is unlikely to provide much cover.

He said Atty. Prunier is not present tonight, but at the Zoning Board meeting he had mentioned a larger buffer zone. He said he doesn't know if the Zoning Board really stipulated twenty feet.

Mr. Siegal said it's not clear what structure is going to be put on this lot. He said the other structure is straddling the lot line, which the Zoning Board overlooked. It is not clear whether this would be removed.

He said he shares the concern of the Board about the traffic. The plan shows the existing driveway, but there doesn't seem to be a continuing driveway onto the back lot. He said that will have a material impact on his property. He said there is a stream. When he was investigating putting in his own private driveway he was told explicitly that because of that he would have to drain that in such a way that it would cost him \$100,000 to put a driveway in.

Mrs. Lasky said any decision the Planning Board makes this evening would be contingent upon what happens with the appeal before the Zoning Board.

Mr. Siegal said there were ways by which Mr. Weisman, who wants to maximize his return, could have done so without any of this. Mr. Weisman is a developer who is looking to profit by putting in an additional house.

**SPEAKING IN FAVOR**

Richard Maynard, Professional Engineer. Mr. Maynard said Mr. Siegal's flag lot has a swale that is about 30' - 40' away from their lot. He has to have his driveway on the adjacent lot by easement with his neighbor. He said Mr. Siegal's flag lot that is similar to what is being proposed.

He said they are proposing a 20' non-disturb - no cut, no nothing buffer. He said there is already a 40' setback so there are no structures to be built back here.

He said there is a shed on the front lawn, which is not in violation.

He said the fact that they are putting one more house using the same driveway, same curb cut does not create a significant traffic impact. He said they are sharing a driveway curb cut just like Mr. Siegal shares a driveway curb cut.

Mrs. Lasky said the staff has recommended a turn-around.

Mr. Maynard said the staff recommended the turnaround the same as the Fire Department has.

Mr. Slivinski said he would have liked to have the information about the Zoning Board approval and the fact that the decision was being appealed. He asked if there was a reason why it was left out.

Mr. Yeomans said the Zoning Board action is shown on the plan, Sheet 1. He said the Zoning Board has denied the rehearing request. He has no information on whether a request has been submitted to Superior Court.

Mr. Maynard said that he is unaware of any court action either. However, anything that happens tonight is conditioned on the

outcome of any court case.

Mr. Siegal said the Lamb Road subdivision had nothing to do with him. He had some other comments, but they could not be understood.

Mr. Dufour said it's not out of character with the neighborhood. There are flag lots everywhere here. The 19' driveway is approved and it works. It's a shared drive. They are going to clean up the visibility as best they can. He said the Board doesn't have a good track history of refusing back lots. The court overruled the last one they denied. He said the 20' buffer zone was how the Zoning Board approved it.

Mr. Lowe said he thinks he has more of a concern for the kids that are coming up the hill. That's the side that the City is putting in sidewalk all the way. There are a whole bunch of children coming up the hill and they're going to go behind a bunch of trees and then come out again and there are cars whipping up and down.

Mrs. Lasky said the driveway is existing. There will be one more single-family house.

Mr. Dufour said sidewalks are only going to enhance the situation, whether this lot is approved or not. He posed the question of how much increased traffic there would be with the one additional single-family house.

**MOTION** by Mr. Slivinski to approve the subdivision of one lot into two single-family lots at 5 Lamb Road with the finding that the plan meets NRO 16-108 and with the following stipulations:

1. Prior to recording the subdivision plan bonding for work in the public right-of-way shall be approved by the Division of Public Works and Corporation Counsel.
2. Prior to recording the subdivision plan any final drafting corrections shall be approved by the Division of Public Works.
3. Prior to recording the subdivision plan the storm water operation and maintenance plan shall be submitted to the Planning Department for review and recorded with the plan.
4. Prior to the issuance of the certificate of occupancy all work within the public right-of-way shall be completed to the satisfaction of the Division of Public Works.
5. Per plan review comments by Nashua Fire Rescue the driveway

shall not be less than 12' wide and a turnaround provided adjacent to the residence. The Fire Department shall review and approve the turnaround area prior to the issuance of the building permit.

6. Brush and shrubs to be removed along Lamb Road to improve visibility to the satisfaction of the City Engineer.
7. Sidewalk location to be determined by City Engineer.

**SECONDED** by Ald. Larose.

**MOTION CARRIED 7-1, Mr. Lowe opposed.**

**NEW BUSINESS - SITE PLANS**

3. **Rochette Funeral Home, Paul S. & Louise G.C. Rochette (Owners) - Proposed amendment to NR 1762 to show the construction of a 2,166 square foot addition to the existing funeral home and the removal of an existing building on Lot 48 and the construction of 19 space parking lot, 19, 21 & 23 Kinsley Street and Walnut Street, Sheet 82 - Lots 48, 55 & 101, Zoned "RC" Urban Residence.**

Richard Maynard, Professional Engineer, Maynard & Paquette. Mr. Maynard said the proposal is for a 2,166 square foot addition to the east side of the present funeral home. This property is located on the corner of Walnut Street & Kinsley Street. Right now there are three lots of record. There is a stand alone parking lot, the funeral home, and what used to be a four-unit apartment building that has recently been demolished. A parking lot containing 19 spaces will be constructed on this newly vacant lot.

He said in August 2004 the Zoning Board granted a variance for the expansion of the use and the 19-space parking lot. The three lots together will be consolidated and the green space will be increased from 25% to 31%. Therefore, there will be less runoff. He said there will be a recharge leaching system where storm water will recharge to the ground, which will further reduce the amount of runoff.

Mr. Maynard referred the Board to the plan. He showed where a curb cut will be eliminated. The curb cut to the garage and the funeral home will remain and another curb cut relocated. There will be two curb cuts where there were three.

He referred the Board to the architectural elevation for the site that was done by John Rudolph, PMR Architects. He said the addition will match the existing building that has a brick face.

He said this is a funeral home and all major activities are during off-peak hours. Funerals tend to be after commuter hours as are visiting hours. It doesn't contribute to peak hour traffic. There was a four-unit apartment building that has been removed that would affect the traffic more than this proposed addition.

Mr. Slivinski said the Zoning Board has indicated they would only be able to have two wakes going on at a time. He asked if there are times when there are two wakes going on the way the business stands at this time.

Mr. Maynard said the proposal is not to increase the operations. The current operation is two wakes at one time.

Mr. Lowe asked how many parking spaces the funeral home has now.

Mr. Maynard said the lot at the corner is a "stand-alone" lot. He said there are some 40 odd parking spaces on the street that are in the general vicinity. He said the Zoning Board permitted a reduction in the parking requirements.

Ald. Larose said the Rochette Funeral Home has been here a long time. The funeral home across the street, Zis/Sullivan has also been here a long time. He recalls a time when there was no off-street parking, so they are starting to get some off-street parking. This is a positive, even though they don't meet the requirements.

#### **SPEAKING IN OPPOSITION OR WITH CONCERN**

David Glennick. Mr. Glennick said he owns the property directly adjacent to the proposed addition to the funeral home. He said he thinks there is an error when it is said there is no parking there. He said this is used for parking. They plan to build the addition on the parking lot.

He said there is a serious parking and traffic problem here because of the funeral home. At the Zoning Board several other funeral homes that did not comply, but they neglected to mention the Zis Funeral Home across the street which meets the parking requirements. He said the Dumont Funeral Home on Main Street also

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has the required parking spaces.

He said the people who go to the funeral home park on both sides of Walnut Street in front of his building and stop his tenants from getting into their parking spaces. There have been serious traffic accidents at the intersection of Walnut & Kinsley Street due to traffic problems from the funeral home.

Mr. Glennick said he doesn't object to the expansion of the business, but he is suggesting that it could be done in a better way by making the expansion a two story and taking down the existing house and then there would be adequate parking.

He said this is shown as an amendment to site plan NR1762. He said he filed a detailed complaint with the City on the violation of the existing site plan. The City did not allow this to be heard by the Board. He said NR1762 is still not in compliance.

He said these businesses need parking. They have to comply. The regulations were made for a purpose. He said there are other funeral homes in the north end that don't meet the parking requirements, but they haven't modernized and they aren't expanding. This funeral home is modernizing and expanding.

He said despite what the applicant has said there will be more traffic. There are going to be bigger rooms, multiple times bigger than what they can accommodate now so there are going to be more people, which means more traffic, more parking, and more cars.

He said he objects to this until they can solve the problem of the current non-conformance of NR1762 and until they provide the parking that the funeral home requires.

#### **SPEAKING IN FAVOR**

Mr. Maynard said Mr. Glennick was addressing a problem that is a civil matter - it's about an easement that doesn't exist any more.

He said there is legal on-street parking all through this area as demonstrated in the staff memo. They are providing a 19-space parking lot, which is more than there is today. They have 11 spaces today.

He said he thinks he has represented over half of the funeral homes in Nashua at one time or another and none of them have adequate parking. Funeral homes were developed in the old days when everybody relied on on-street parking. Nobody had a parking lot,

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especially a staging area for the hearse and the other vehicles. That is why these funeral homes are trying to get at least some minimal parking. He said it's impossible for funeral homes to meet the requirements for parking because they have to meet the requirements in the ordinance for places of assembly.

He said if you notice, these operations are run during off-peak hours. They have people directing traffic if they expect a large gathering. Everybody has to park legally. It gets crowded in any funeral home, but they are making something better than what it is today. They are not asking for an increase in the business, just trying to serve the clientele better by giving more space inside instead of waiting outside. They have agreed to have no more than two wakes at a time, which is what they currently do.

Mrs. Lasky asked if the variance was granted to reduce the parking requirements.

Mr. Maynard said the variance was granted to reduce the requirement for the parking for the addition. He said the existing funeral home is 100% grandfathered and has no on-site parking. The addition increases the non-conformity and when you do this you have to meet the requirement.

Mr. Lowe said he is looking at the plan where there is going to be a new building on a parking lot. He asked if this isn't part of the site.

Mr. Maynard said there are three lots of record. One is a stand-alone parking lot, one is the funeral home, and the last one was a four-unit apartment building. They are not tied to each other.

Mr. Lowe said they would be tied to each other once they put the addition on.

Mr. Maynard said this is correct. It will be one big lot.

Mr. Dookran asked how many vehicles can park in the current parking lot.

Mr. Maynard said eleven. He said it is not exclusive to the funeral home - it's not part of the funeral home site. It is available to the funeral home to utilize from time to time. He said funeral homes in this area do share parking with each other if they don't have wakes or funerals at the same time.

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Mrs. Lasky asked if people visiting the funeral home would utilize the proposed 19 spaces or if some of the spaces would be taken up with hearses and other vehicles belonging to the funeral home.

Mr. Maynard said if it's a wake, 100% will be for visitor parking. He said if it's a funeral, the hearse tends to be on the street and the people that will be following the hearse would be in the parking lot.

Mr. Dufour said there will be 19 spaces that will be created. He asked if all 19 would be available to the funeral home.

Mr. Maynard said they would be exclusively for the funeral home.

Paul Rochette, Owner Rochette Funeral Home. Mr. Rochette said the hearse and the limo are parked in the garage. Some of this testimony could not be understood, but he did say there will be no vehicles in the parking lot. He said the only time he would utilize the parking lot is if he would be washing them and this would not be during the time a wake or funeral was taking place.

Mr. Dookran asked how much parking the business needs.

Mr. Maynard said he didn't do the calculation, but if it were to be 100% conforming it would need around 198 spaces to meet the requirements in the ordinance.

Mr. Dookran asked if the applicant would be willing to fix the sidewalk along the frontage of this parcel on Walnut Street. He said he doesn't think it meets ADA requirements.

Mr. Maynard said they cannot afford to do this. He said the applicant is making a major investment in the property. If that had been a concern, he would have liked that to be mentioned on the original comments when the Engineering Department reviewed it. He was told it was all in order. He said they are not impacting Walnut Street. They are taking out a curb cut, which is an improvement.

Mr. Dookran said that they are putting access from the building onto Walnut Street and with the kind of business that is being operated from here and he believes there should be accommodations for pedestrians.

Mr. Maynard said the sidewalks that are shown on the rear of the building toward Walnut Street are for emergency egress. All the activity comes through the front of the building at the traditional entrance. His client doesn't want more expense than he has

already.

Mr. Glennick said Mr. Maynard spoke of legal parking spaces. He said in front of his building on Walnut Street it is illegal to park. It is a one-way street and there is parking only on one side of the street. People often park on both sides because there is no other room. He said Mr. Maynard also mentioned there are 44 legal sites in the area, but he doesn't know where those are. He said he also mentioned it was not unusual to have 100 people at a wake. He said 100 people are more than 44 cars. If there are two wakes going that means there are 50 - 100 people at each wake.

He said there is a common driveway between the existing parking lot and his building. He said this is a deeded right-of-way for his property. He said he wanted to make sure that this project complies.

Mr. Dufour said he thinks if there is a deeded right-of-way there's nothing that the Planning Board can do to change that.

Mr. Glennick said that it's on NR1762, but Mr. Rochette never complied with it.

Mrs. Lasky said this is not within the purview of the Planning Board.

Mr. Glennick said if Mr. Rochette is going to comply with this particular proposal he should be allowing for the 9' driveway that is on both their deeds.

Mrs. Lasky addressed the issue of the 50 - 100 people at a wake. She said these people don't stay the entire duration of the calling hours.

Mr. Maynard said that Mr. Glennick is talking about a "so called easement", but anybody has been out there and observed the property, the fire escape is smack in the middle of it. If Mr. Glennick didn't have the fire escape, the building would be non-conforming to the Life Safety Code. He said by Mr. Glennick's own actions he has eliminated the easement by obstructing it. There is a letter on file from Atty. Currier that specifically addresses this. He said Mr. Glennick has brought this up before the Zoning Board and others for about three years now, but it is a civil matter.

Mr. Glennick said if it doesn't exist he would suggest getting a

copy of both deeds. The deeds validate that the easement exists. He said he did put up a fire escape after the Fire Department made him take an existing fire escape down and put up a different one. Mrs. Lasky said as she understands it Mr. Maynard indicated they will not be doing a site plan that will violate whatever the existing deed says.

Mr. Glennick said that Mr. Maynard said that the easement was null and void and that his plan would be done on that basis.

Mrs. Lasky said it is still a matter that is between himself and the funeral home.

Mr. Slivinski said for the last ten years he has driven by this facility usually between 5:30PM - 7:00PM. He said he's never had a problem with the traffic. There are times when there are wakes going on and somehow people find a place to park. He said it seems like the preferred place of parking for this facility is on the street. He said the parking spaces are increasing.

He said that the Planning Board has approved many plans that are downtown oriented that have used public facility parking. The testimony from the applicant is that the business is not increasing. He said he doesn't see what the problem is.

**MOTION** by Ald. Larose to approve the site plan for the construction of a 2,166 square foot addition to the existing funeral home and the removal of an existing building on Lot 48 and the construction of 19 space parking lot for 19, 21, & 23 Kinsley Street & Walnut Street with the finding that it meets NRO 16-123 and with the following stipulations:

1. Prior to ANY work being conducted, a pre-construction conference shall be set up with the Planning Department to review the overall details of the plan.
2. Prior to a building permit being issued, final approval of the necessary covenants and easements for the storm water management system shall be obtained from the Planning Department and Corporation Counsel. The cost associated with recording the document shall be submitted to the Planning Department and the document shall be recorded.
3. Prior to a building permit being issued, bonding for all public improvements, shall be submitted to and approved by the Engineering Department and Corporation Counsel.

4. Prior to a building permit being issued, the plans shall reflect that the building shall have a sprinkler system.

**SECONDED** by Mr. Torosian.

Mr. Dookran said that the sidewalk along the Walnut Street frontage is in bad repair. After the construction of the building and the landscaping is in place he said he could guarantee that there would be further deterioration.

Mr. Dufour said if this was an issue it should have been brought to the applicant's attention when they went through the process with Mr. Dookran's department; not after the plan has been presented.

Mr. Dookran said he didn't believe that there is anything wrong with bringing this up now. It should be addressed. Some of his other comments could not be understood.

Mr. Moran asked what the cost would be to fix the sidewalk.

Mr. Dookran guessed \$2,000 - \$3,000 tops.

Mr. Slivinski said they can all make their own guess on what it would cost to do this.

Mr. Maynard said that they are replacing the sidewalk in the front. He referred the Board to the area that is crosshatched on the plan.

Mr. Slivinski asked if this is on the side of the street where there is no parking. If anyone is parked along here during a funeral or a wake they would get a ticket.

Mr. Maynard said they are supposed to.

Mr. Slivinski said the City is asking them to build a sidewalk on the side where nobody is supposed to park so he assumes everybody would park on the other side and there is a sidewalk there.

Mr. Dookran said he is asking for the applicant to replace the pavement on the sidewalk. This means removing the old asphalt and repaving it. It doesn't cost \$75 a foot. He believes it will cost around \$2,000 or less. He said construction destroys old asphalt and it will happen here. Equipment will be crossing over the sidewalk to access the property, etc.

**AMENDED MOTION** by Mr. Dookran to repave the sidewalk along the Walnut Street frontage.

**AMENDED MOTION SECONDED** by Mr. Lowe.

Mr. Dufour said he supposes it isn't an unreasonable request, but it seems like this is something that should have been worked out prior to the meeting instead of blindsiding the applicant at the meeting.

Mrs. Lasky said she agreed. She said this kind of discussion has gone on too frequently in the last few months. Much of this could have been settled prior to the meeting so the Planning Board doesn't have to be the arbitrators.

Ald. Larose said he feels very similar to Mrs. Lasky's feelings. He does understand what Mr. Dookran is saying and that he has the right idea. He said he recalls that when he first became a member of the Planning Board they would have lots that would be subdivided and the developer is bringing in his proposal and then at 5:00PM the night of the meeting somebody decided that sidewalks were needed. He said they finally got away from that and developers know what has to happen. He said this is the same type of situation. He said there are times that the Board adds things that will cost money to the developer, but that usually happens because a neighbor has come up with something that nobody thought of. He said he doesn't like to see this coming in at the last meeting when it should have been done at the review stage.

Mr. Dookran said to treat him as a neighbor tonight. Other comments could not be understood.

Mr. Slivinski said it is difficult to think of all the things that might happen and that is one of the reasons the Board takes a look at things. He said he thinks it's unreasonable to chastise Mr. Dookran and his department for not having picked this up. The Board adds stipulations when they believe that something needs to be done and it's not a neighbor complaining. The things they put in as stipulations do add cost to the developer and generally they are pretty mild. In this particular case, it is generally low cost compared to what he is going to invest. He understands that it will improve the safety to the people who will be walking on that side of the street. If the pavement is bad and it's at night they can trip and fall.

He said for a minor expenditure this will improve the value of the property. The funeral homes gets a lot of traffic coming down Walnut Street because of his location.

**AMENDED MOTION FAILS 4 - 4**

**ORIGINAL MOTION CARRIES 6 - 2, Mr. Lowe & Mr. Dookran opposed.**

- 4. Congress Supply, Clermont G. & Raymonde A. Labonte (Owners) - Proposed amendment to NR 1593 for a parking lot and driveway expansion with associated site improvements, 12 Mercier Lane, Sheet E - Lot 14, Zoned "PI" Park Industrial.**

[The transcription for this case is sketchy due to the fact that the speakers, whether it was the applicant's representative or the Board members, could not be understood.]

Scott Murphy, Hayner/Swanson. Mr. Murphy said they are seeking approval for an expansion of their parking/driveway area to improve truck maneuverability.

He said the lot contains 1.1 acres zoned Park Industrial. In March 1990 a site plan for a 12,279 square foot warehouse was approved with 15 parking spaces. He said recently the owner purchased about 10,600 square feet of right-of-way from the State of New Hampshire with the intent of making improvements.

He said they will expand the parking on the left side of the site as well as the drive aisle on the south side. Trucks will be able to maneuver more easily around the building.

He said the storm water runoff will be collected through catch basins and will overflow into the City's drainage.

Mr. Lowe said as he understands it the trucks will be going between the two buildings.

Mr. Murphy said this is correct. He said this is what they are doing right now.

**SPEAKING IN OPPOSITION OR WITH CONCERN**

No One

**SPEAKING IN FAVOR**

No One

**MOTION** by Mr. Dufour to approve the site plan for a parking lot and

driveway expansion with associated site improvements at 12 Mercier Lane with the finding that it meets NRO 16-123 and with the following stipulation:

1. Prior to the start of construction erosion control shall be installed on site, and the storm water operation and maintenance plan recorded.

**SECONDED** by Ald. Larose.

Mr. Lowe said he believes there should be a stipulation that the building (dwelling) has to be vacated. They already have a stipulation on the discontinuance of Mercier Lane that the building be vacated and it still isn't vacated. That was about 1½ years ago.

Mr. Slivinski said that the Board did put in a stipulation that the house was supposed to be vacated when they heard the case for discontinuing Mercier Lane and it isn't vacated. He asked for a reason that it isn't vacated.

Mr. Murphy said he doesn't know why. He said he wasn't involved with the discontinuance.

Clermont Labonte. Mr. Labonte said the house will be coming down this spring. He gave the reasons it hasn't come down, but the recording could not be understood.

Mr. Slivinski said he agrees with Mr. Lowe about putting in another stipulation.

Mr. Dufour said he doesn't think the word "vacated" is the correct word to use. He said as he understands it, the building is supposed to be razed as part of the street discontinuance agreement.

**AMENDED MOTION** by Mr. Lowe to add another stipulation:

2. Building #14 (dwelling) shown on the map shall be razed in compliance with the Mercier Lane discontinuance stipulation prior to June 1, 2005.

**SECONDED** by Ald. Larose.

**AMENDED MOTION CARRIED UNANIMOUSLY**

**ORIGINAL MOTION AS AMENDED CARRIED UNANIMOUSLY**

**OTHER BUSINESS**

**1. Review of tentative agenda to determine proposals of regional impact.**

**MOTION** by Mr. Dufour with a finding that there are no issues of regional impact on the tentative agenda.

**SECONDED** (tape ends & not heard)

**MOTION CARRIED UNANIMOUSLY**

**2. Referral from the Board of Alderman on proposed O-04-19, amending the Planning and Zoning Ordinances of the City of Nashua in their entirety. (Tabled from June 3, 2004 Meeting)**

No Motion was made to remove from the table.

**3. Adoption of the "2005 Meeting & Deadline Dates" for the Nashua City Planning Board.**

The Board discussed the dates to see if anything where a lot of members might be absent. There were only two or three dates where there was a conflict with some of the members, but overall it appeared there were no problems with the schedule as is.

**MOTION** by Ald. Larose to adopt the 2005 Meeting & Deadline Dates for the Nashua City Planning Board.

**SECONDED** by Mr. Lowe.

**MOTION CARRIED UNANIMOUSLY**

**4. Request by Allan Fuller, 93 Taylor Street, to change name of owner on 2-lot subdivision plan approved by the Planning Board on July 15, 2004.**

Mr. Yeomans said on July 15, 2004 the Board approved a two-lot subdivision for this lot. He said this is an unusual request. Corporation Counsel said to bring it forward for the Board's consideration.

Allan Fuller. Mr. Fuller said a request was made by the lawyer of the people who are buying the property asking that their name be shown as the owner on the subdivision plan. There is no change in what is being done. The closing is scheduled for tomorrow.

Mr. Yeomans said that according to the letter from Mr. Fuller the new owners are Mark & Shirley Freeman.

Discussion ensued about how this should be changed and/or how it should be referenced on the plan.

**MOTION** by Mr. Lowe to approve the request to change the owner to owner of record on the plan approved by the Planning Board on July 15, 2004 for 2-lot subdivision at 93 Taylor Street.

**SECONDED** by Mr. Dufour.

**MOTION CARRIED UNANIMOUSLY**

5. Referral from the Board of Alderman on proposed O-04-50, amending the zoning map by changing a tract located easterly on Spring Street and southerly on Foundry Street from General Industrial (GI) to General Industrial Mixed Use Overlay District (GI/MU).

Mr. Lowe said that he would like to have a map so that the Board can see what this looks like.

Mrs. Lasky said it is her understanding that there will be a public hearing on November 16 in the Aldermanic Chambers in front of the Planning & Economic Development Committee.

**MOTION** by Mr. Lowe to table.

**SECONDED** by Mr. Moran.

**MOTION CARRIED UNANIMOUSLY**

**Discussion Item**

None

Mrs. Lasky said there seems to be issues that can be cleared up prior to coming to the Board so that everyone has the chance to look over material that has been submitted and things can be worked out ahead of time. She apparently was referring to the site plan for Rochette Funeral Home, but her comments could not be fully understood.

Mr. Dookran made some comments, but again they were not understood.

Ald. Larose said that he thinks Mr. Dookran's amendment should have been along the lines of whatever damage is done should be repaired. It would have been a lot easier.  
Mrs. Lasky asked if the discussion they had tonight about the sidewalk couldn't have been done earlier with Mr. Dookran's department instead of tonight at the last minute.

Mr. Dookran said it could. Sometimes he makes observations at the last minute and that's what happened with this case. He said the Board has to make sure that the City and the citizens are protected. He said he will do his best to do these things before they get to the Board.

Ald. Vitale came forward to ask a question, but could not understand the tape. It apparently was about the same issue because Mrs. Lasky's response followed along the same lines of hoping to be able to get problems that might be seen ahead of time worked out before coming to the Board and the Board landing up being the mediator.

There was a lot of further discussion on this matter, including discussion about how the developer gets more than one chance with the various departments involved to get his plan lined up and how an abutter gets only one chance, with some disagreement with other members.

Mrs. Lasky said Saturday, October 30, there is a Planning & Zoning Conference at Waterville Valley Conference Center.

**ADJOURN**

Mrs. Lasky declared the meeting closed at 9:30PM

**APPROVED:** \_\_\_\_\_  
Bette Lasky, Chair, Nashua City Planning Board

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COPIES OF TAPES MAYBE MADE AVAILABLE UPON 48 HOURS ADVANCED NOTICE AND PAYMENT OF THE FEE.**

LT  
Taped Meeting