

NASHUA CITY PLANNING BOARD  
December 16, 2004

A meeting of the Nashua City Planning Board was held on Thursday, December 16, 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  
                                  Ald. Richard Larose  
                                  Mike Lowe, Mayor's Representative  
                                  Steve Dookran (City Engineer)  
                                  George Torosian

Also present:                   Mike Yeomans, Planning Manager  
                                  Howard Coppari, Planner I

**APPROVAL OF MINUTES**

**November 18, 2004**

**MOTION** by Mr. Lowe to accept the minutes of November 18, 2004, waive the reading, and place them on file.

**SECONDED** by Ald. Larose.

**MOTION CARRIED - Mr. Dookran abstaining.**

**COMMUNICATIONS**

Mr. Yeomans said the following items should be in the Board's folders:

Memorandum from the Planning Department concerning the workshop on January 13 and suggesting they meet at 6:30PM to hear the Lower Merrimack River Local Advisory Committee and the Department of Environmental Services. Another notice will be sent out prior to that time as a reminder.

Letter from Armand & Theresa Levesque concerning Case #2, Gil & Deborah Dubray.

Letter from James & Susan Forbes concerning Case #5.

Letter from Maryann Crowley & Sandra Celee (sp???) concerning Case #3, 32 Dublin Avenue.

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Letter to Susan Klassan from Bob Mack of TEP concerning Case #7.

Memorandum from Wayne Husband. He said it is his understanding that the case he has written about will be tabled or postponed.

**REPORT OF CHAIRMAN, COMMITTEE & LAISON**

Mr. Dufour said the Capital Improvements Committee is getting their packets in from the different departments.

Mr. Lowe said they are still discussing the land use codes. There will be another meeting on Tuesday of next week at 7:00PM.

Ald. Larose said that Kelly ???? took the oath at last Tuesday's Aldermanic Meeting (for appointment to the Planning Board).

He said at last Tuesday's meeting the Alderman on a vote of 14-1 cast a resolution saying that the City is in favor of commuter rail to Nashua. There are quite a few stipulations that have to be gone through before the City would have to bond 14 million dollars ad a match to the Federal transportation monies to get rail to Nashua.

Mrs. Lasky asked what the next step is.

Ald. Larose said it would be to find the site and find a developer who would be willing to do it. He said more than likely they would have to pass a mixed-use ordinance. They would have to pass a TIF (Tax Incentive Financing) ordinance. This means the additional property taxes that are generated from the new project would pay for the 14 million dollar bond.

Mrs. Lasky asked if the resolution that was passed is being forwarded anywhere.

Ald. Larose said it goes to the Mayor and the Mayor has to sign it. He said nothing can happen unless certain other things happen. A copy of the resolution goes to the DOT and the people who look at the federal monies and what will be done with it. There's 21 million dollars in escrow. He said his understanding is that it is in escrow for either commuter rail to Nashua or the widening of I-93.

Mrs. Lasky asked if this is also sent to the U.S. delegation.

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Ald. Larose said he imagines that it would at least go to Congressman Bass because he has been in the forefront of getting monies for this. It will probably go to a few senators also.

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.

#### **NEW BUSINESS - SITE PLANS**

7. **Dunstable Road, LLC (Owner) Petroleum Wholesalers, Inc. (Applicant) - Proposed amendment to NR307 for the conversion of the existing 1,575 square foot service station into a convenience store with drive-thru and associated access, parking and site improvements, 163 Main Dunstable Road, Sheet E - Lot 27, Zoned "HB" - Highway Business.**

Atty. Gerald Prunier. Atty. Prunier said there are some questions about traffic that need to be resolved. He asked that this case be tabled until the Board's meeting in January so that they have an opportunity to have the engineers to get together.

**MOTION** by Mr. Lowe to table Case #7, Dunstable Road, LLC until 1/13/05.

**SECONDED** by Ald. Larose.

**MOTION CARRIED UNANIMOUSLY**

**OLD BUSINESS - SUBDIVISION PLANS**

None

**OLD BUSINESS - SITE PLANS**

None

**NEW BUSINESS - SUBDIVISION PLANS**

1. **Vigilant Properties, LLC (Owner) - Proposed subdivision of one lot into two single family lots, 15 Williams Street, Sheet 20-Lot 68, Zoned "RB", Urban Residence.**

Richard Maynard, Professional Engineer, Maynard & Paquette. Mr. Maynard said decades ago this land consisted of two lots of record that were probably consolidated in the 50's when a house was built on the property. There was a garage to the rear.

He said the applicants took out a building permit to build another unit and connect it with a structure. They received a building permit for a duplex. The neighborhood has expressed a lot of concern about this with appeals to the Zoning Board and to court. In an attempt to work this out with the neighborhood, the applicant agreed to go to the Zoning Board and subdivide the property so they could have two single-family homes. The majority of the neighborhood preferred this. He said the Board may have a copy of the petition in their packet.

Mr. Maynard said the total square footage of both lots is 13,395 square feet. It is located in the "RB" Zoning District where duplexes are permitted by right. He said they recently received a variance from the Zoning Board to subdivide the properties. The frontage requirement was not met. Where 50' is required, they only had 49.98'. The lot width was only 49.98' where 60' is required. This allows a subdivision down the middle of the lot.

He said the minimum lot size in the "RB" district is 6,000 square feet. Their lots are about 6,700 square feet each. The majority of the lots in this neighborhood are 6,600 or 6,700 square feet. Over half of them have duplexes. Their proposal is for two single-family homes.

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He said there will be a driveway down the middle. There is 21.8' between the houses. There is an easement so that each side can have 10.5' for their driveway.

He said storm water drainage for the new house will be handled by leaching cisterns connected to the roof drainage system.

Mr. Dufour asked if there is pending court action on this.

Mr. Maynard said there is. He said there are a couple of pending court actions, which are being held in abeyance subject to the outcome of this action. He said the majority of the people in the neighborhood have expressed a desire for this subdivision.

Mrs. Lasky said it is her understanding that there is nothing pending that would cause the Board not to act on this case.

Mr. Maynard said there is nothing pending on this subdivision.

Mr. Dufour said if the Board approves this request and the neighbors win the case on the zoning issue, then whatever the Planning Board does tonight would go away.

Mr. Maynard said the zoning issue is with regard to the duplex and the connecting structure. He said that is the court action. He said this is a separate project with regard to the same property for a subdivision. He said there are no court appeals on the subdivision.

Ald. Larose asked if the time has lapsed for an appeal of the decision by the Zoning Board concerning the variance.

Mr. Maynard said he doesn't believe it has, but he is not aware of anyone filing for a rehearing on that decision.

Mr. Yeomans said it is getting close to the date, but there is still time for anyone to file a request for rehearing.

**SPEAKING IN OPPOSITION OR WITH CONCERN**

Bill Lambert, 19 Williams Street. Mr. Lambert said there is an appeal that they have started working on that has not yet been filed. They are waiting for the outcome of tonight's decision.

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He said there is a controversy over this project because the City issued a permit that should have never been issued. He said there is a law on the books dating back to 1990 that clearly states the way the applicant wanted to build this home that it could not be built.

Mr. Dufour asked if Mr. Lambert was referring to the duplex situation.

Mr. Lambert said "yes." He said the ruling that dates back to 1990 is referring to Orange Street - Miller vs. City of Nashua.

Mr. Lambert said it's the same situation. It was a roof.

Mr. Dufour said that this is not what the Planning Board is talking about tonight.

Mr. Lambert disagreed. He said it's the same principal. He said when the applicant put the house up and the neighbors were told that a carport roof was going to be constructed to connect the two houses together the neighbors protested because they didn't want it in their neighborhood. He said the Miller ruling was the case they cited and the courts upheld it.

He said what has happened now is that before the last Zoning Board meeting there was a proverbial gun held to their heads. The applicant still had a valid permit in place. They were basically told that if they signed the petition so that the applicant could split their lot into two or the applicant would pursue a three-family unit. He said after the Zoning Board heard the neighbor's case, they vacated the building permit. He said as far as he is concerned he didn't have a choice but to sign the petition even though he didn't want to sign it.

Mr. Lambert said the applicant was told by the judge that they could put a house on the foundation and go no further and said if they went any further that it was at their own peril. He said the house is finished. The heat is in. The street connection has been made. He said the applicant has thumbed their nose at the neighborhood. He said this neighborhood on Williams Street won't have it. He said they are sticking together and they don't want the house at all. They want it gone.

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He said on the new house there is a side door. The code states there has to be a 3' platform with a set of steps coming out of the house. After that is done, the driveway is going to drop down to 7'.

Mrs. Lasky said she knows that this is a volatile issue, but the Planning Board doesn't have any control over what Mr. Lambert is talking about.

Mr. Lambert said if the Planning Board makes a decision in favor of the applicant tonight, they are asking that a new permit not be issued until after this is settled in court.

Mrs. Lasky explained that there is a thirty-day appeal period so that whatever the Planning Board does tonight is in abeyance because there is a thirty-day appeal period so it will give the neighbors time to do whatever it is they want to do with the courts. She said nothing can be done within that time frame. She said it's not a stipulation they have to make - it's the law.

Mr. Lambert said they have already started working on their appeal. He said they haven't filed it yet because they didn't know exactly what they want to put in it until they know the outcome of tonight's decision.

Kathy Lambert, 19 Williams Street. Mrs. Lambert said she wanted to support everything that her husband has said. She said there is no neighbor in the entire neighborhood who has expressed delight at this. She said every neighbor has opposed it from day 1.

She said they have gone to court and there is a ruling that is pending and due to be heard on January 11. It concerns the issue of the two-family dwelling unit or duplex (or whatever it is called), but it is the same house. She asked the Board to put their ruling off until after the court date.

Mrs. Lasky said the thirty-day period would be after the court date Mrs. Lambert is talking about.

There was further discussion on this issue with Mrs. Lasky indicating that there are some things the Board can't grant.

Mrs. Lambert asked if a building permit can still be issued.

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Mrs. Lasky said they won't be issuing it. She repeated that there is a thirty-day appeal period and during this time they can file an appeal of the Planning Board's decision. Nothing would happen within this time period.

Barbara Fraulini, 8 Williams Street. Mrs. Fraulini said that the whole process they gone through since July has been a joke. She said they have made applications to the Planning Board that were ignored. They filed a petition with eighty some odd signatures that was "lost" for four days. She said it is discouraging because they have spent a lot of money to get this far and she doesn't think a citizen of Nashua should have to go through so much when it has been ruled already in 1990 that what has been going on is illegal.

Mr. Lowe said this has never come to the Planning Board.

Mrs. Fraulini said the neighbors had a petition in July. She said she talked with Mr. Yeomans and Carter Falk and Mr. Lambert brought the petition to the office. She said they took the petition, but they never said that this wasn't really what they needed to do. She said petitions don't work anymore, but they didn't tell them what they needed to do. They hired a lawyer and the lawyer sent her to City Hall where she spoke to Mr. Yeomans again and he told her that there isn't a form - you write a letter. She told him that she thought that was what their petition was. There was a letter on top of the signatures that said they were opposed to what was going on. She said this petition "disappeared." She said even the judge had a hard time understanding how it could disappear. However, five days later the petition reappeared in the folder, but it wasn't good enough.

She said they paid a lawyer to send a formal letter to tell the City that the neighbors were opposed to this. She said then they complained that they hadn't met the thirty-day limit. She said their petition was accepted on July 21. The building permit was issued on July 30.

She said they didn't know that their petition was going to be "circular filed." She said they were waiting and waiting and nothing was happening and then all of a sudden there is a foundation on the property. That is when they started asking what happened to the petition and why they hadn't been heard.

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Mr. Dufour said he has been serving for ten years and every time he hears somebody like this lady speak he feels like banging his head against the wall. He said it's an overall misunderstanding of the process. He said first of all they don't react to petitions, where a politician may react.

Mrs. Fraulini said maybe they should put a public notice out so they need to know what they need to do to get them to react. Mrs. Fraulini said the process they have gone through has cost \$1500. She said she doesn't think they should have to pay a lot of money in order to be heard by the City.

Mrs. Lasky said there is a process that has to be gone through when an application is made to either the Zoning Board or the Planning Board and direct abutters are notified. She said Mrs. Fraulini would not have been notified because she is not a direct abutter.

Mrs. Fraulini and Mr. Lambert, who spoke from the audience, said that they were never notified in any way, shape or form.

Mrs. Lasky said they were notified about this meeting that was taking place tonight. She said she couldn't speak as to what happened as far as the Zoning Board is concerned because she doesn't serve on that Board. She said there is a process that needs to be followed and that is all they are trying to do this evening.

She said she knows the neighbors have grievances with the Zoning Board and that it is in litigation. The Planning Board can't speak to that. All they can speak to is the subdivision that is before them tonight. It is her understanding that the subdivision meets the criteria the Planning Board has to go by.

Mrs. Fraulini said the applicant applied for a variance in order to get a subdivision of the land for the two single-family homes that are in place. They were going to be connected by a carport. Her question is why one wouldn't start at the beginning and ask for the variance first.

Mrs. Lasky said this is for the courts to decide. She said it is out of the Planning Board's jurisdiction.

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Mrs. Fraulini said if somebody came to her desk with a petition with eighty names on it, that she wouldn't have the courtesy to say that this is not the method that is used - that one needs to file an application or whatever one needs to do.

Mrs. Lasky said the Board can't speak to this. She said this is an internal/administrative function. She said if one comes to the Planning Board with a petition with 800 names as abutters and as people at a public hearing, she said that is something their Board would look at. She said they can't speak to what happened administratively and that is not what the Board is making a decision on tonight.

Malcolm Ledoux, 28 McKean Street, Nashua, NH. Mr. Ledoux said when Vigilant Properties was issued their permit they were telling the City they were going to build a duplex. He asked Mr. Dufour if this is a question that is being addressed now with the State - what constitutes a duplex.

Mr. Dufour said he had no idea.

Mr. Ledoux said that is something he would like to know. What is a duplex? He said it's not in the planning book at all. He said in most duplexes that he has seen the right side of the house mirrors the left side, whether there is a garage or breezeway. He said he's been in the construction trade for 35 years and that is all he's ever seen.

He said this company came into the neighborhood and they received an illegal permit to put a second house on the same property. Their proposal was to put a roof between the two buildings and call it a two-family home. He said all houses have different roof pitches. Both houses are not in line and both houses have two different heights. He said he'd like to know how they were going to put a roof on those two buildings and connect them and enhance their neighborhood. He said there are no other buildings like this anywhere around.

He said he is actually in favor of them getting the two houses on separate lots, but he doesn't like the way it was done and he doesn't like what was done. If they were allowed to put the roof on as proposed, they would have another dump on Williams Street looking like the one that just got done on Underhill.

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Mrs. Lasky said that there are certain laws in which they work. She said some of what Mr. Ledoux is saying are things which he should say to his Alderman. She said there may be things that need to be changed within the law. They are working on the City Ordinances and she, for one, will be looking into what they call a duplex and what is not a duplex.

Mr. Lowe said the Board isn't approving a duplex tonight. They are approving a subdivision with no connection between the two buildings.

Mrs. Lasky agreed.

Mr. Lowe said that there are two existing houses. He said he looked at both. He thought it was a little crowded, but the way it is set up they are two lots. He said they have the problem that the Zoning Board approved this. He said this Board can either approve the plan or send it back to the Zoning Board and ask them to take another look at this.

Mrs. Lasky said they can't send this back to the Zoning Board.

Mr. Yeomans said once the Zoning Board has taken an action, whether it is for or against, there is an appeal period of thirty days.

Kathy Lambert, 19 Williams Street. Mrs. Lambert told Mr. Dufour that she takes issue with his apathy and lack of sensitivity to what the neighbors are talking about. She said it was this Planning Board that acted illegally in granting the building permit in the first place.

Mrs. Lasky said the Planning Board does not issue permits.

Mr. Dufour said he is probably more on Mrs. Lambert's side than he is on anybody's side. His frustration is in how, over the years that he has sat on the Board, the public loses the communication they need to get. He said that is the reason he felt like banging his head against the wall and breaking down in tears. Every time he hears something like this he feels that somehow the City failed.

Mrs. Lambert asked if they would instruct Mr. Yeomans to make the rules clear because the public is coming to the City for assistance because that is their job.

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Mrs. Lasky said that Mr. Dufour has served the City diligently and the citizens of the City diligently for many years. She said there are times when things do break down and oftentimes things get better as a result. She said they had an incident where neighbors were not notified. Now they have green signs on the sites that are proposed to be developed that are a result of citizens like Mrs. Lambert coming forward and the City realizing that there was a breakdown in the process.

Mrs. Lambert said this land doesn't meet the standards that the Board says it does. The driveway is 21.4' wide. There's a door there about 2' from the ground where they need to extend out as her husband explained. They will not be able to fit two cars in the driveway after they extend the platform. She asked if they will be paving the yard to accommodate the parking.

She said the judge instructed the neighbors to tell the Board that this is in the judicial system. There is a judge waiting to rule on this and they are asking for the Board's compliance in just putting it off. She said the Planning Board can send this back to the Zoning Board.

She said if the Board is upset about the citizens not knowing the rules, the people who are in the Building Department need to be instructed to show the people who need instruction the way to proceed. They probably wouldn't be here tonight.

Bill Lambert, 19 Williams Street. Mr. Lambert asked if there is a particular amount that they would have to have for a driveway as far as the width goes.

Mrs. Lasky said not as far as approving the subdivision is concerned.

Mr. Lambert said they are going to end up with a 7' wide driveway. This isn't enough room to park a car. He asked if they will be parking on the street. He said the code says that when there is an entry door there has to be a 3'X3' minimum landing and then the steps. Once this is done, the driveway will be 7' wide. He presented pictures to the Board.

He also asked if there is anything the applicant has to do as far as a sidewalk is concerned. He asked if it is asphalt or concrete.

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He said the whole neighborhood has concrete sidewalks and asphalt driveways. He said he would like to see concrete on the sidewalk to help match the rest of the neighborhood.

Mrs. Lasky said the sidewalk has not been addressed.

Barbara Fraulini, 8 Williams Street. Mrs. Fraulini said on the building permit application .... (she didn't get any further) as Mrs. Lasky said the Board wouldn't know the answer because this is not a form they are familiar with. Mrs. Lasky said the Board is there to approve subdivision and site plans. She said the Planning Department is a different entity.

Mrs. Fraulini said she wasn't aware of this.

Mrs. Lasky said that the people in the Planning Department are available from 8:00AM - 5:00PM in City Hall.

Mrs. Fraulini said they have gone this route. She asked if there is somebody higher up that one can go to in the Planning Department - someone that oversees the Planning Department.

Mrs. Lasky said when you go in you can ask to see whomever in the Building Department. She said the Planning Board doesn't deal with the Building Department.

Mr. Yeomans said he would try to add a bit of clarification on the driveway issue. He said the maximum width is 24' for any single-family home. If anyone prefers that they have 48' of asphalt out here that could be arranged because each lot is entitled to have 24' each, subject to zoning regulations. He said when the plan came in he thought it was a good deal because there is less impact to the street and one less curb cut.

Mrs. Lasky asked what the minimum width is.

Mr. Yeomans said there is no minimum, however, a typical driveway would be 12' wide.

He said in his experience the sidewalk will match the existing sidewalk materials.

Mrs. Lasky said that has been her experience as well.

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**SPEAKING IN FAVOR**

Atty. Peter Nicosia. Atty. Nicosia said he represents Vigilent Properties in matters related to the City of Nashua for the development of this piece of property.

He said there has been a lot of dialog on where this has been and where it is going. He said he wanted to respond to some of what was said by the abutters.

He said the Planning Board tonight has the job of interpreting the components of the plan that were presented by the engineer as to whether or not they fall within an acceptable compliance of Section 16-108 of the local rules for a subdivision and that is all they have to do. Depending upon the Board's decision, both sides have the right to appeal from that point forward.

He said the building permit that was issued in this case was for a two-family dwelling - something that is allowed as a matter of right in the RB Zone. That is why the Building Department issued the permit before notifying abutters.

He said once the neighbors saw activity on the property they did a few things. They filed two equity actions in Hillsboro County Superior Court on the zoning issue of whether a two-family in this fashion (with a carport) would be allowed or not. Around the same time they also hired a lawyer to petition the Zoning Board of Appeals at the local level to revoke the permit as being outside the bounds of the Building Officer's authority.

Atty. Nicosia said the judges in Superior Court are hesitant to act as local zoning agents. The Court became aware that the Zoning Board was going to visit the issue on whether the permit should have been issued or should be revoked. They stayed the proceedings based upon that issue.

He said on November 23 there was a hearing in front of the Zoning Board in which the duplex would be allowed in the zone or not. There was a debate about whether the type connection between two structures would matter. All the arguments made by the abutters tonight relate to zoning issues in pursuit of a two-family development of this parcel and has nothing to do with what is being presented tonight. All those issues become moot by virtue of the subdivision.

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He said the Zoning Board of Adjustment, based upon a prior court decision, revoked the building permit stating that this type of two-family is not allowed based upon what was presented. Obviously that is a "win" for the abutters.

He said his clients are trying their best to fit into the neighborhood. They got wind of the fact that the neighbors would be much more satisfied with a proposed subdivision, which is what is being presented. Therefore, they tried to pursue a less intrusive alternative - something that would be more aesthetically acceptable to the neighborhood. The Zoning Board has approved the request for a variance on the dimensional requirements.

Atty. Nicosia said his clients wish to develop the property one way or the other - either as a two-family or as a subdivision. Until they are successful in one vein, they have to pursue all avenues of appeal. They have, with his assistance, applied for a timely rehearing before the Zoning Board of Adjustment before bringing that issue up before Superior Court. If they are unsuccessful with the Planning Board, they have appeal rights as well. They are hoping that a favorable ruling tonight ultimately will resolve the neighborhood controversy. It makes the two-family issue moot. He said the City, as a whole on the local level, can re-visit in whatever forum is appropriate, the definition of what a two-family is or is not.

Mrs. Lasky asked if the house that was put on the vacant lot placed there before the setback variances were approved.

Mr. Maynard said Vigilant Properties was issued a permit for a duplex. As part of that permit, the structure was erected. In the middle of the construction process the neighbors took it to court. That is why they are at this point. The house is erected, but not connected. He said as he understands it some utilities were finished off and maybe some interior finishes.

Atty. Nicosia said that a two-family home is allowed as a matter of right in this particular zone. The issue is whether or not bringing in a separate structure and connecting the two structures by virtue of a carport is a two-family and therefore allowed as a matter of right. He said based upon the literal language of the current ordinance definition he is confident that it would qualify as a two-family.

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Howard Chain, Manager - Vigilent Properties LLC. Mr. Chain said he has first hand knowledge about how the house ended up being built. He said they applied for a building permit to have a duplex, which is what they intended to build. It would be similar to other duplexes that they have successfully built in the City. Around July 30 the Building Department issued them a permit to construct the duplex. He said the design is similar to what they have done before. He said they waited thirty days, which he understands is an appeal period, before beginning construction. The second building is a prefabricated modular home which was built indoors and brought to the site. Then the two buildings were going to be connected with the connecting structure.

He said about 52 days out they were informed that an appeal had been filed and would be heard. They already have a house ordered and it's on the way to the site. Mr. Maynard marked the location for the foundation and the house was set. Since then they have made the house weather tight. It is not connected to utilities, although utilities have been brought in off the street before the street is closed. The house is sitting there without heat and power. They put up walls on the second floor and have done a rough electrical. He said they had bids on a contract to join the two structures together.

He said that he had an understanding from a number of neighbors that they had no problem with a new house going up in the neighborhood - that it would increase values, but they didn't want to see them tied together.

Mr. Chain said he has been in the real estate business in Nashua for over twenty years. He's usually in City Hall to get a building permit for what's allowed. He doesn't go for any variances. He said in this case the reason they went for the variances was to try to appease the majority of the abutters and other people in the neighborhood and keep it as two separate houses. Initially they had no intention of building two separate houses - they were looking for a duplex.

He said the doorway on the house is toward the rear of the house and no matter what they project out from the doorway there is adequate parking - he believes about 40' to the street. In that space they can park a total of four cars (two cars per unit). The plan with the carport would have allowed for the same parking.

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Mr. Maynard said if the construction of the duplex had not been interrupted eventually one would have seen a connection between the two buildings. He said they were interrupted and that is why it is two separate structures.

He referred the Board to the plan and said the distance from a point in the driveway (which he showed) to the right-of-way line is 40'. There is another 10' to the street. This is sufficient for two cars. The doorway and the landing is to the rear.

He showed the Board a map of the neighborhood. All the lots are similar in size with either similar or the same frontage. He said the lots that are circled in pink are existing duplexes. He pointed out a lot that is half the size they are talking about that has a duplex that fills up the lot. He pointed out some more of these lots with the same situation. With the subdivision they will have two single-family homes, not a duplex.

Mr. Torosian asked whether the Planning Board does have a right to send this back to the Zoning Board.

Mr. Yeomans said the Zoning Board has acted in a lawful manner and this is now in an appeal period. He does not believe the Planning Board has the right to send this back to the Zoning Board. He said they can appeal the decision as a body or as an individual that's aggrieved in some manner.

Mrs. Lasky said in all her years she has never seen this happen and there have been times when the Board has not been happy with what the Zoning Board has done.

Mr. Dufour said there are many issues that led to this evening. First there was the duplex issue and now there is the single-family issue. They have to start off on the basis that a landowner has the right to develop their property. They first attempted to develop it as a duplex. He said there are a number of structures in Nashua that look like what this was going to look like. The neighbors have their concerns so the developer looked at it to find out what their options could be. They are trying to maximize their return on the existing lot so they are trying to develop it as two single-family lots, but they can't do this until they get approval from the Zoning Board because they don't meet the minimum frontage and width requirements. They are granted the variances by the

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Zoning Board to create two lots. Once they have the approval it comes to the Planning Board for approval or non-approval. The Planning Board can't deny it because it doesn't meet the frontage or width because the Zoning Board has granted the variance. In any case, they have the right to develop their land. He said the way he sees it they are trying to develop it in the manner that is least offensive to the neighborhood.

Mr. Dookran said a favorable decision by this Board would help the Court with their decision. He said this Board should do the right thing and accept the plan as presented. It is a better plan than what they started with.

Mr. Lowe said he had a problem in that they are subdividing something that has already been subdivided because of the granting of the building permit. He said if they had seen this before the building went up they might have had some things they could have tweaked and done things with. They can't do this now because the house is already there. The Planning Board's job is to make sure that the house is on the lot in such a way that it doesn't disturb the neighborhood. He said they could have said to move the house 5' in another direction and put a driveway on the other side. They are being put in the position of approving a subdivision that's already been approved by the Zoning Board.

Mr. Dufour said they have to understand what happened here. It was one parcel of land that they received a permit to build a duplex on and they started building that duplex. There was already an existing house and they put another house on the other side. That came to a stop and the developer had to deal with the issue so they decided to subdivide the land. They had to get variances from the Zoning Board in order to do this and the Zoning Board granted the request. He said he believes this house could not have been moved left or right because of the setbacks that are involved. It is probably located where it can go.

**MOTION** by Mr. Dufour to grant the subdivision of one lot into two single-family lots at 15 Williams Street with the finding that it meets Section 16-108 and with the following stipulations:

1. Prior to recording the subdivision plan the storm water operation and maintenance plan and driveway easement shall be submitted to the Planning Department for review and recorded with the plan.

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2. 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.

**SECONDED** by Ald. Larose.

Ald. Larose said he has looked at Section 16-108 and this subdivision meets all the criteria. He said he knows that some of the neighbors don't want to see this happen, but the Board's hands are also tied. If they deny something that is legally permissible they don't have a shot of winning if it goes to court.

He said there is a court case and the judge is waiting what this Board has to say. He will rule according to what they have done. He may feel that what they are doing is wrong and make his decision based on that. The neighbors do have an appeal process to follow. Although he sympathizes with them, the Board doesn't have much of a choice. Their duty is not to stop things from happening unless they don't meet the criteria.

Mr. Dookran said he thinks due process might have been fogged up a bit and some feelings might have been hurt. All of this is outside the Planning Board's ruling and the Planning Board has to make their decision.

Mrs. Lasky said she does think that there was either some miscommunication or whatever. She said hopefully some corrections can be taken from this. If nothing else, maybe the courts will be more specific on the definition of a duplex.

She said she does know from her personal experience that the Planning Board, the Zoning Board, and the staff try to do the best thing for everyone concerned. Nobody is trying to act other than in the best interest of every citizen of the City.

**MOTION CARRIED - 5-1, Mr. Lowe opposed.**

**NEW BUSINESS - SUBDIVISION PLANS**

2. **Gil & Deborah Dubray (Owner) - Proposed subdivision of one lot into two single-family lots, 713-715 West Hollis Street, Sheet F - Lot 53, Zoned "R9" - Suburban Residence.**

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**MOTION** by Ald. Larose to accept the letter received in connection with this case and place it on file.

**SECONDED** by Mr. Dufour.

**MOTION CARRIED UNANIMOUSLY**

Richard Maynard, Professional Engineer, Maynard & Paquette. Mr. Maynard said to the east of this property is the "Levesque" house. The letter which was just accepted by the Board was written by these people and it is in favor of this project. Further to that is Norma Drive, which leads into the Hollis Landing single-family condominium project. On the other side there is a convenience store, a few other businesses and maybe one or two residences.

He said the lot in question contains 42,168 square feet. It has two existing residences that have existed since prior to 1945, one towards the front and one towards the rear.

He said in August they went to the Zoning Board and received variances, principally to be allowed to subdivide the property and create a house lot to the rear with a shape that is otherwise known as a flag lot. He said they have a width variance for the property with the two houses and a variance for the frontage and width for the flag lot. He said they also received a variance to allow the two principal dwellings to remain on one lot.

He said the lot in the front would have 14,801 square feet and the new lot will have 27, 287 square feet. The R9 Zone requires lot sizes of 9,000 square feet.

Mr. Maynard said the principal stipulation of the Zoning Board was that there continue to be only one driveway serving these properties. That driveway exists today and will remain in place and continue back to serve the proposed new house to the rear as well as the existing houses. There will be a shared driveway easement document.

He showed where the utilities come into the site. He said the Department of Public Works requires that the sewer service be separate so there will be a separate sewer service for the new lot. There will be a water line coming in through the rear. Storm water management for the new house will be handled by infiltration cisterns connected to the roof.

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He said the several stipulations contained in the staff report appear to be reasonable.

Mr. Lowe said they will be moving one of the houses. He asked if that house is right on the line right now.

Mr. Maynard pointed out where it is right now. It will be 15'-16' off of the existing line.

Mr. Lowe asked if the existing fences would remain.

Mr. Maynard said they will.

Ald. Larose asked if it is safe to say that there will be a house at the end of the back lot.

Mr. Maynard said there is a high point roughly in the middle of the lot.

Ald. Larose asked if it is safe to say that this might be subdivided again to put in another house.

Mr. Maynard said it would be highly unlikely. Somehow you would have to get a road in there. There are limits with what you can do with flag lots.

Ald. Larose asked if there is any wetlands involvement.

Mr. Maynard said this is very high and dry.

Mr. Lowe asked the length of the driveway.

Mr. Maynard said on the order of 225' - 250', maybe 300'. He said the property owner intends to build his own home here.

**SPEAKING IN OPPOSITION OR WITH CONCERNS**

No One.

**SPEAKING IN FAVOR**

No One.

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**MOTION** by Mr. Lowe to approve the subdivision plan of one lot into two lots for 713-715 West Hollis Street, Gil & Deborah Dubray (Owners) with the finding that it meets Section 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, if required.
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, driveway easement, and utility easement 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 Zoning Board approval no other access or entrance to West Hollis Street is permitted except what is shown on the plan considered by the Board.

**SECONDED** by Ald. Larose.

**MOTION CARRIED UNANIMOUSLY**

3. **Mile High Real Estate, LLC (Owners) - Proposed subdivision of one lot into two single-family lots, 32 Dublin Ave., Sheet 53A - Lot 84, Zoned "R9" - Suburban Residence.**

**MOTION** by Ald. Larose to accept the communications on this project in opposition from Sandra Seale and Marion Crowley and place them on file.

**SECONDED** by Mr. Dufour.

**MOTION CARRIED UNANIMOUSLY**

Richard Maynard, Professional Engineer, Maynard & Paquette. Mr. Maynard said the proposal is to subdivide the lot at 32 Dublin

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Avenue into two lots. The existing lot is 45,076 square feet. There are residences on either side and to the rear is the Horse Pond Fish & Game Club. The lot containing the existing house would contain 26,282 square feet and the new lot would be 18,794 square feet.

He said in this area Dublin Avenue takes a curve. The site distance for the existing driveway is inadequate. The right-of-way has been allowed to be overgrown with significant brush. In fact, some of the branches may protrude into the pavement itself so the sight line for the existing driveway is totally obscured.

He said this area of Dublin Avenue is posted for a 20 MPH speed limit. According to the guidelines that would require 150 linear feet of sight distance. If it were 25 MPH it would require 175 feet of sight distance and 30 MPH would require 225 linear feet of site distance.

Mr. Maynard said City Traffic Engineering has asked the applicant to provide 225' of sight distance for the proposed driveway. It would be located to the far side adjacent to the lot line. He showed where the distance would be measured. According to their calculations if they clear the brush from the right-of-way on the curb they can achieve the 225'. If that lands up to be a problem when they go to do it, they have an alternate location for the driveway on the other side of the lot line, which would be through an easement, but would give them another 20' - 30' of sight distance.

He said Dublin Avenue is on the priority list for sidewalks. He said they have agreed to construct 290' of sidewalk. He showed the location of the sidewalk they plan to construct. He said the Planning Staff has reviewed the situation and has a determination that their side of Dublin Avenue would be the more appropriate place to put the sidewalk as opposed to the opposite side. Several years ago there was some thought to put in a sidewalk on the opposite side of the street, but there are several encumbrances in the right-of-way, especially utility poles.

He said storm water for the new house will be handled by infiltration cisterns connected to the proposed roof drain.

Ald. Larose asked if Mr. Maynard would address the driveway.

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Mr. Maynard showed where they propose the driveway for the new lot. He indicated it is their estimation that they can get 225 linear feet of sight distance by clearing all the brush and the other obstructions within the right-of-way.

Ald. Larose said the land is sloped over here.

Mr. Maynard agreed. He said they might have to cut some it back. They may have to put in a wall. They won't know until they get in to do the work. However, if it's still not adequate, he does have the opportunity to put the driveway on the other side with an easement and be able to get another 30' of sight distance if he needs it.

Ald. Larose asked if the driveway will have some kind of a turn around so that they can head out of the driveway and not backing out into the street.

Mr. Maynard said he doesn't mind a stipulation concerning this. He said the design plan shows a turn-around in the driveway.

Mr. Lowe said this is within walking area of the Birch Hill School. He asked if they shouldn't put in some striping. The kids are going to walk right across to Woodlawn and walk up Woodlawn to Birch Hill Drive.

Mr. Maynard said they are talking about adding one house. He said their one house is not creating the need for a sidewalk or a crosswalk. He said if there is a need for a crosswalk they will pay for the paint, but somebody else should be doing the work. They are already putting in sidewalk - more than their frontage.

Mrs. Lasky asked the site distance for the existing driveway.

Mr. Maynard said 250' - 300'.

Mrs. Lasky asked if everything would be cleared or if anything would remain or grow back and need to be maintained.

Mr. Maynard said it will end up being a standard City shoulder and eventually a sidewalk will be constructed.

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Mrs. Lasky asked if the City would be responsible for maintaining the clearing of the vegetation so that the sight distance would remain.

Mr. Dookran said that's expected.

Mr. Maynard said most of the houses in this area were built in the 50's and 60's. He doesn't think anybody has touched the vegetation since then.

Mr. Dookran said in the applicant's effort to provide the sight distance they will be clearing and probably grading in front of someone else's property and possibly a retaining wall.

Mr. Maynard said he didn't think so, but possibly.

Mr. Dookran asked if they had talked with the neighbor about this.

Mr. Maynard said not at this time. He said any work they do will all be done within the right-of-way of the City. He said whether they clear it for sight distance or whether the City later clears it for sidewalk construction, it's almost the same thing. He said he doesn't want to build a retaining wall and doesn't think he needs to, but right now he doesn't have sections to fully understand what is at the site. In some sections it is steep, but it looks fairly stable. At some point he might possibly have to talk the abutter, but he doesn't think they will have to. He said you can't see the abutter's house from the street.

Mrs. Lasky asked if the sight distance is such that it is what it has to be, will there still be a sign that states "blind driveway."

Mr. Maynard said there will be a sign for the other driveway, which will be somewhat blinded. If they have the proper sight distance for the new house, the driveway would not be blind, but the other one will continue to be blind because it doesn't have the benefit of the distance.

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

Ald. Kathy Vitale, 8 Massasoit Road. Ald. Vitale said she had a couple of concerns. The main one is the sight distance at this area. She said the road does curve right there and there is

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testimony that the right-of-way will be cleared. She said she drives by here probably every single day more than once. She said she doesn't see how that is going to be cleared without putting in a retaining wall. She said if a retaining wall is put in she can't imagine how it can be done without affecting the abutter's property. Even grading without the retaining wall, she can't imagine the Board passing this subdivision this evening when they don't have the information.

She said the existing house is rented out. She would like to know if the new house would be a rental as well.

She said it is her understanding that there is a letter from the neighbors that they are in agreement with the clearing. She said this should be on file.

She said right now there are problems with traffic on this road. It is one of the roads she gets the most calls on. They are discussing improvements on Dublin Road. Traffic calming is one of the main components. There is speeding on this road and they are aware of the curve. It's a dangerous area. The high school traffic affects how many vehicles go through the area. Woodland Avenue is right across the street from this. People run through the stop sign.

She said it is her understanding that a proposal for this lot had come to the Board previously and was denied and she would like to know if that is true.

Ald. Vitale said if the driveway had to be moved over if it would have to go into the setback area of the existing house.

Tom Gebro, 31 Dublin Avenue. Mr. Gebro said safety is one of the issues. When you come up the street you make a sweeping right up a hill to a flat area and then down to the right. The line that Mr. Maynard is talking about would have to be in relation to the moving car and the obstruction would be Mr. Goodspeed's hill. You have to cut into the "Goodspeed" hill (30 Dublin Avenue) to get that line of sight to the driveway. He said that particular movement to the right - up and down, in that area if it's wet or if it's ice, there have been six accidents in the last eighteen to twenty years.

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He said the sidewalk issue is not resolved. He said it does make sense to put it on the east side of the street. Sidewalks have been started on Dublin Avenue. He is assuming when they construct this property that they would give the City money to build sidewalks.

He is also assuming that this will be another rental property and he is assuming that it will be maintained like the property at 32 Dublin Avenue. This would be a real shame because it is turning the neighborhood into somewhat of a slum and they don't appreciate that.

Marion Crowley, 36 Dublin Avenue. Mrs. Crowley said when the house at 34 Dublin Avenue was built a few years ago, her husband went to a hearing. There was a problem with the driveway. That's why the house at 34 Dublin Avenue has its driveway next to her house - so it would be a safer view. She said she is used to walking the street with her dog as well as riding her bicycle. The view is not there and she doesn't understand how this is going to be resolved.

She said the alternate choice of putting the driveway on the other property puts it right in front of the house at 32 Dublin Avenue. She said when she moved into her home Sam Tamposi lived in that house. She had always hoped that it would again be a family house and not a rental property. It will be difficult to sell the house if the driveway for Lot 86 is encroaching onto the property at 32 Dublin Avenue.

Ann Marie Cahill, 34 Dublin Avenue. Mrs. Cahill said the concern she has is the same as expressed in the handout, which is the single most critical issue - adequate sight distance. She said as a resident of Dublin Avenue she can attest to the fact that this corner is extremely dangerous. She has had to call the Police on two occasions because cars have gone off the road with one ending up in her front yard. Another time a car landed on its roof. There were a direct result of the corner. Both parties involved said that they had problems maneuvering the corner. She said although she can appreciate that the brush will be cleared, she drives this every single day and she doesn't see that clearing trees will solve the problem. Putting in a retaining wall or eliminating a hill may, but she doesn't see how the hill can be eliminated without going into Mr. Goodspeed's property.

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She said the second concern she has is that 32 Dublin Avenue is a rental property and on two occasions in the six years she has lived in her home there have been a minimum of five people renting and that's five automobiles at one time, not to mention significant others who come and go, creating more traffic and more of a danger.

She said there are children walking on this street and she is afraid that another property is allowed to be put into this neighborhood there will be a serious accident involving a child because she doesn't see how the blind spot can be eliminated.

Mr. Dookran asked Mrs. Cahill if she knows of any accidents that between a car exiting a driveway and a car that is traveling on Dublin Avenue.

Mrs. Cahill said she doesn't know of any, however when she was leaving her driveway (which has a turn around) she was almost hit by a sport utility vehicle which came around the corner too quickly. One of the accidents she spoke of involved a group of young teenagers and their car ended up on the roof of the car at 2:00AM and she had to call the Police. She said two teenagers came to her door for help and they told her that they had had a difficult time maneuvering. She said she was afraid to go outside because she didn't think the people in the car would be alive. The second time she saw the accident occur. The driver lost control at the corner and went into her neighbor's yard. The impact was so severe that parts of the vehicle were in the neighbor's back yard.

Naima Cunha, 33 Dublin Avenue. Mrs. Cunha said she is the neighbor that Mrs. Cahill was talking about. She had just moved into her home on 3/27/04 and on 5/4/04 the accident occurred. The vehicle almost hit her car. Her yard was literally destroyed. It was two teenagers and they were coming around the corner. It was not raining and it was not icy. It was a nice day. Their car was totaled and parts of the car were in her back yard. The speed limit is 20MPH, but she doesn't see people obeying the limit.

Christopher Cahill, 34 Dublin Avenue. Mr. Cahill said he can see the only reason to build another house on the property is for residual income from a rental property. There is already a large house there with a minimum of five bedrooms and four bathrooms. The building is not kept up at all. He said he lives right beside it and all the leaves from their property blow into his yard and he

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has to take care of it. The roof is in disarray. The owner doesn't take care of the property.

He said he has a problem coming out of his driveway. If there is a driveway closer to the corner than his it is only going to make it more dangerous.

Mr. Lowe asked about cutting back the hill, which he thought was on Mr. Cahill's property.

Mr. Cahill said he is on the other side. The hill is at #30 - Mr. Goodspeed's land. He said the hill would have to be cut back considerably. The corner itself makes it dangerous. They would have to take at least 15'-20' back from the street to get the line of sight that is needed. He said it won't help the situation. It's going to hinder it even more because people can see they will go a little faster. There is a slight incline when you make the turn so when you come up the street. The faster you are driving, the faster you are going to lift off the street. If you have to then make a sharp turn around the curve and swerve out of the way you are now going to go full bore into the yard across the street and end up in the house.

He said he believes Mile High Real Estate owns more properties around the City of Nashua and has bought a few of them from the "Tamposi" family. He said "Tamposi" will not sell to them any more because of the condition they leave the properties in.

#### **SPEAKING IN FAVOR**

Atty. Gerald Prunier, 20 Trafalgar Square, Nashua. Atty. Prunier said a lot of people have talked about traffic. He said they are trying to put in a lot. It didn't cause any of the accidents that have been talked about. He said he lived just down the road on Franconia Avenue for twelve years. There was a stop sign at the corner of Dublin Avenue so that cars would stop before going around the corner. He said the stop sign isn't there any more and maybe if the stop sign would help out - or a stop sign on all corners would help. He said whether they place a house in here or not they are not going to solve the traffic problem. He said the removal of the brush along that corner is going to help. He said this area of Broad Acres has always been a problem as far as the traffic is concerned.

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He said one of the conditions of the subdivision approval is that the sight distance is achieved to satisfy the City Traffic Engineer. If they don't, they don't receive a certificate of occupancy. They meet the zoning requirements.

He said he believes 34 Dublin Avenue was built by Mile High Realty and sold as a single-family home and is used as a single-family. The new house will be sold as a single-family.

Mrs. Lasky asked what happens if they can't do either driveway and meet the sight distance requirement.

Atty. Prunier said they will have to go to Mr. Goodspeed and see if they can cut down some of the hill on his property. He said if he were Mr. Goodspeed he would probably say okay because it would make his driveway safer.

Mr. Dufour said the traffic issue is something they have heard in the past. At one point there was a light there and then there was a stop sign. He said he didn't know why the stop sign is gone. He said the Board has to weigh whether by allowing the subdivision and adding another driveway if the corner is significantly at risk compared to what it is today.

He said the other issue is the existing house as well as the new house. The neighbors are concerned about whether both of the houses will become income-generating properties. They are concerned about the existing eyesore, which has an effect on their neighborhood and values.

Atty. Prunier said the new house is being constructed to be sold as a single-family house. He is assuming that the owner will want to fix up the other house if he is going to sell the new one. He said he will advise the realtor that there are problems and that the City may make some investigations to see if there are any violations.

Atty. Prunier said in order to get the one lot subdivision, they have to improve the sight distance at the corner. If they don't, they can't build a house. They are going to help the safety in that area. What he is hearing about tonight sounds like people speeding around the corner. He doesn't know if putting a stop sign back is going to help the situation.

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Mr. Lowe asked if they would object to the Board tabling the subdivision plan in order for them to talk to Mr. Goodspeed to see if he is amenable to knocking down that part of the hill that needs to be done so that sight distance can be improved.

Atty. Prunier said according to Mr. Maynard this won't need to be done, but they can do it. He said one of the conditions of the subdivision is that sight distance be met - otherwise there will be no certificate of occupancy.

Mr. Dookran said he assumes that Mr. Goodspeed would probably want his driveway brought to sight distance standards.

Atty. Prunier said when you talk about a driveway that hasn't got any sight distance, it's that driveway. He said if he were Mr. Goodspeed he would be very happy to give some frontage as long as he didn't run into any zoning problems. He's sure the City isn't going to leave this corner the way it is so it may be the City will do a taking.

Tom Gebro, 31 Dublin Avenue. Mr. Gebro said in 1984 the Traffic Engineers pulled the political stop signs in the City. Dublin Avenue is a through street and, as such, can have no stop signs. This is a through street and therefore the sign was removed. The City had a monitor at Woodland & Birch Hill, but not at Dublin. Mr. Aborn, who lived in Mr. Tamposi's house at the time and he came before the Board asked that the stop sign be placed back on Dublin to give the children a safe way across Dublin to Birch Hill School. They were told that it was a through street and therefore could not have a stop sign. He said the safety issue could be resolved with a three way stop. It would stop the cars coming up the hill before they make the turn and drop and they wouldn't be able to get their speed up before they could see the driveways. Mr. Goodspeed's driveway is right there and then 32 & 34. As you go down the hill on Dublin they did put in a stoplight. The neighbors complained and they got rid of the stoplight, but there are stop signs there. The concern about the change in Dublin with two sidewalks and a bike path and narrowing of the street to slow the traffic down can be done with a stop sign.

Ald. Larose said there is an Alderman in the audience and she is taking notes. He assumes she is going to take a look at it and try to bring in appropriate legislation. He said as far as his

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knowledge is concerned, State law says you are not supposed to use stop signs to slow traffic down. There are criteria that have to exist in order to have stop signs and that's why a lot of them were removed back in 1984 or 1985. He said he was on the Traffic Committee at the time representing downtown. There was a problem on Charlotte Avenue because there was a resident who wanted to put stop signs all over Charlotte Avenue. That is where the study came from about getting rid of some of the four-way stop signs. The Police Department was part of the Committee.

Mr. Gebro said he didn't agree or disagree. He listened to the law and they have lived with it. He said there are stop signs on Dublin to allow school children to cross the street. The political stop signs are back up in other parts of town and if there are laws the question becomes why they are back up.

Richard Maynard, Professional Engineer, Maynard & Paquette. Mr. Maynard said you cannot use stop signs to slow traffic down. He said there is an intersection and an intersection can be controlled with a three-way stop sign.

He said the Board has the Traffic Engineer's memo of October 19, 2004. The speed limit is posted at 20 MPH. He said the applicant is proposing a site distance that is for 30 MPH. The stipulation is that if they can't provide 225' of site distance, they can't get a driveway permit. If they can't get a driveway permit, they can't build on this lot. Speeding is the problem - not an additional driveway.

Marion Crowley. Mrs. Crowley said that Mr. Goodspeed does know how bad his driveway is and that is why he continued it all the way around his house. It exits after the bad curve, closer on the Broad Street side of his property.

**MOTION** by Ald. Larose to grant the subdivision of one lot into two single-family lots, 32 Dublin Avenue with the finding that it 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 final drafting corrections shall be approved by the Division of Public Works.

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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.
4. Prior to any work being conducted, the applicant and their contractors shall hold a pre-construction conference with Planning Staff to review construction related activity.
5. 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.
6. Prior to the issuance of the certificate of occupancy all landscaping shall be completed.
7. A driveway turn-around shall be installed on the new lot so that automobiles may drive out head first.

Ald. Kathy Vitale, 8 Massasoit Road. Ald. Vitale asked if they could add something about the 225' is line of sight to the oncoming traffic and also add that this be completed before any additional work is done to the property.

Mrs. Lasky said the first half of what Ald. Vitale spoke is implied in the stipulation and the note to the plan. She said to answer the second part, they will not be allowed to build if the requirement can't be met.

Mrs. Lasky asked if it is correct that the Board cannot stipulate a stop sign. She knows that the Board of Alderman is involved.

Ald. Vitale said a stop sign is a piece of legislation. They would have to go through the standard procedures in having Traffic look at it. She said this is not normally one of the places they would put a stop sign.

Ald. Vitale asked if they could keep on file that they approached the neighbors for any work that would need to be done.

Mrs. Lasky said they only have to if they were going to encroach on someone else's property.

Mrs. Lasky said in the past the Board has made stop lights a condition of approval.

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Mr. Yeomans said he thinks they may have had a series of recommendations prepared by traffic engineers to control intersection improvements and that it was necessary in order to construct the project.

**SECONDED** by Mr. Lowe.

Mr. Dufour said the big issue is the safety issue and it is one that is already existing. He said he didn't think there would be any significant change with this subdivision.

He said he is concerned about the condition of the existing dwelling, although it is not within the Planning Board's jurisdiction. He encouraged the staff to see if there is anything that can be done as far as code enforcement is concerned.

Mrs. Lasky said she is not comfortable with this proposal, whether or not this will add to a reason for an accident. It may be luck that a car exiting one of these driveways has not caused an accident. She has not been assured that there can be stop signs. She knows this is a terrible intersection.

**MOTION CARRIED - 5-1, Mrs. Lasky opposed.**

Christopher Cahill, 34 Dublin Avenue. Mr. Cahill said the owner wants to sell the house on the right hand side to a family and then, if he has to, get an easement for the driveway on the other land. The owner is going to make \$70,000 - \$80,000 on the property. If the renters for the other house don't like the fact that there is an easement they can always move out. Right now this is in the process of happening because the people who rent don't like the condition the house is in.

Mrs. Lasky said Atty. Prunier will relay the information to the owner.

**4. 339 Main Dunstable Road, LLC (Owner) - Proposed subdivision of one lot into two single-family lots, 339 Main Dunstable Road, Sheet C - Lot 102, Zoned "R9" - Suburban Residence.**

Tony Basso, Senior Project Manager, Hayner/Swanson. Mr. Basso said this land consists of about .65 acres. This parcel is located at the corner of Edmatteric Drive in the southwest section of Nashua. The lot with the existing home on it will have 11,122 square feet

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after subdivision and the new lot will have 16,885 square feet after the subdivision.

He said they have gone to the Conservation Commission in order to allow grading within the 40' critical wetland buffer. The buffer they are getting into is predominately cleared. As a compromise with the Conservation Commission they are going to replant the inner 20' of the buffer and re-grade in the outer 20'. They are not putting in any structures within the buffer. They were granted a special exception by the Zoning Board of Adjustment.

He said they are proposing to demolish the large existing residence. They will be dedicating a right-of-way for the curb. They will be constructing sidewalk and granite curbing along the entire frontage of the site on Main Dunstable Road. The City staff is also asking for them to take sidewalk all the way up Edmatteric. He said normally R9 lots have 90' of frontage. He pointed out the distances involved along Main Dunstable Road and Edmatteric Drive and the applicant feels that he is doing his part by constructing only on Main Dunstable Road.

Mr. Lowe said the wetland improvements are one of the best he's seen.

**SPEAKING IN OPPOSITION OR WITH CONCERN**

No One.

**SPEAKING IN FAVOR**

Atty. Gerald Prunier. Atty. Prunier said he wanted to reinforce Mr. Basso's comments concerning Edmatteric Drive. He said it is not on the high priority list. They will be constructing sidewalk and curbing of over 300' for these two lots. He said the Board has considered waivers for streets that are not on the priority list, such as in the subdivision on Taylor Street. He said they feel they are doing their fair share in this particular case.

Ald. Larose said he would be talking about putting sidewalk on the other side because there are sidewalks and a cul-de-sac at the end.

Mr. Yeomans referred the Board to their packet and the air photo contained within it. He said it summarizes why the staff feels it's an important issue to bring to the Board. He said in the

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upper area is Arthur's Lane and they should be able to see sidewalk. He said they might ask why it is there because it isn't on a priority street either. He said under the code the Board may require the construction of sidewalks or a contribution, or waive them when there are other pedestrian facilities available. He said the sidewalks on top of this hill were built because somebody thought they were important to have. The applicant really is obligated to construct sidewalk on the frontage, although it meets the criteria that it could be waived. In this particular case he feels there is justification to continue the sidewalk along the frontage.

Mr. Torosian said there isn't a lot of foot traffic up in the area of Arthur's Lane. There aren't a lot of houses there. There are three small cul-de-sacs. He said he thinks it's a bit excessive to have the applicant put in a sidewalk on Edmatteric.

Ald. Larose said he could support having them construct sidewalk if he knew the City was going to do the 130' gap at the same time. He doesn't think the City is in a position to do this at this point in time. The part they are doing on Main Dunstable Road is going to extend what's already there.

Mr. Dufour said he knows the City will never put in sidewalk unless there is a driving force, which would be for the sidewalk to be constructed by the applicant on the frontage and then the City doing the rest. He said the Board has asked for sidewalk in segments all over the City in hopes that they eventually they get connected. He said if they don't take advantage of this opportunity, it will never happen.

John Picard, 4 Rita Street. Mr. Picard said when he purchased this property he met with the engineer and Atty. Prunier and with the Conservation Commission a couple of times. He said they came to an agreement that he would spend between \$4,000 - \$6,000 to clean up the stream area and do the additional plantings that he is doing. He said this is a large expense for him. He said they are trying to improve the stream. There are tires in it. The homeowners who live in the area have been dumping their trash in it. He took it upon himself to do this and they came to this agreement. Now they are talking about a further burden of a sidewalk going nowhere. He said the wetland plantings are expensive. He said there should be a little bit of leeway here.

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Mr. Dufour applauded the applicant for working with the Conservation Commission. He said the sidewalk issue has been a concern all along. He has to believe that the Planning Department expressed their desire to have sidewalks.

Mr. Yeomans said when one goes to the Conservation Commission they are typically there to talk about environmental matters. He said the issue of sidewalk came up during the technical review process. He said they basically agreed to disagree. The applicant made their position known and the staff made their position known and now it is before the Board.

**MOTION** by Mr. Lowe to approve the subdivision of one lot into two single-family lots, 339 Main Dunstable Road with the finding that it meets Section 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 and conservation easement shall be submitted to the Planning Department for review and recorded with the plan.
4. Prior to any work being conducted, the applicant and their contractors shall hold a pre-construction conference with Planning staff to review erosion control, demolition, and related construction activity.
5. Prior to the issuance of the final certificate of occupancy all work within the public right-of-way shall be completed to the satisfaction of the Division of Public Works.
6. Prior to the issuance of the final certificate of occupancy all landscaping, including planting within the conservation easement, shall be completed.
7. This plan is subject to compliance with all Zoning Board and Conservation Commission conditions of approval.

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Mr. Lowe said he didn't feel that a sidewalk is needed on the Edmatteric frontage. He said they've done it before when there has been an excessive amount of sidewalk to be put in for two lots. They will be asking the applicant to put in about 400'-500' of sidewalk. They are going to run into this every time they run into a corner lot and you want to subdivide. The frontage on Main Dunstable Road is needed whereas the one on Edmatteric Road would be nice to have, but it's not something they have to have. Cleaning up the wetlands is something they really need to do.

**SECONDED** by Mr. Torosian.

**MOTION CARRIED UNANIMOUSLY**

5. **John Cox & Dawne Lambert, James & Susan Forbes, David Simoneau & Maria Arango (Owners) - Proposed lot line relocations, 3 Randolph Street, 492 Broad Street, and 5 Dedham Street, Sheet F - Lot 94, 182, and 412, Zoned "R9" - Suburban Residence.**

**MOTION** by Ald. Larose to accept the communication from James & Susan Forbes and place it on file.

**SECONDED** by Mr. Lowe.

**MOTION CARRIED UNANIMOUSLY**

Richard Maynard, Professional Engineer, Maynard & Paquette. Mr. Maynard said this plan is for a lot line relocation between three neighbors on Broad Street, Dedham Street, and Randolph Street.

He said the Forbes at 492 Broad Street are selling off 7,140 square feet of their lot to their two neighbors. The Cox's at 3 Randolph Street will be acquiring 5,304 square feet and the Simoneau's on Dedham Street be acquiring 1,836 square feet.

He said it recently came to the staff's attention and to his attention that Lot 94, which has probably been in existence since the 40s is still on septic system. There is a stub from the City sewer to the property line, but apparently it was never connected. The letter that was accepted and placed on file from the "Forbes" includes an agreement to connect to the City sewer system before the plan is recorded. Otherwise, the lot is considered non-conforming and when you take land away from a non-conforming lot it

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will make it more non-conforming. There are no stipulations listed on the staff report, but this should be one.

**SPEAKING IN OPPOSITION OR WITH CONCERN**

No One.

Ald. Larose said he was wondering why they are doing this.

Mr. Maynard said the "Forbes" have a long narrow lot with a steep slope to the back which is not particularly useful. There is a retaining wall (he pointed out the general location). He said the two parties acquiring the land are only looking for the land so they will have larger lots.

**SPEAKING IN FAVOR**

Dawne Cox, 3 Randolph Street. Mrs. Cox said when they noticed that Mr. Forbes had put his house on the market they thought it was a good opportunity for them to acquire some of the rear land because their back yard is very small. Adding it to their yard would make it more appealing. She said her husband is big into gardening and landscaping so they thought it would be a good opportunity to beautify their property.

She said their neighbors, the "Simoneaus" have an odd shaped lot so they took the opportunity to square off their lot. Considering that the "Forbes" have the largest lot in the entire area, it evens off some of the properties.

John Cox, 3 Randolph Street. Mr. Cox referred the Board to the map. He pointed out that their house is close to the back of the lot, close to the lot line. This is the primary reason for them acquiring the land.

**MOTION** by Mr. Lowe to approve lot line relocations, 3 Randolph Street, 492 Broad Street and 5 Dedham Street with the finding that it meets Section 16-108 and with the following stipulation:

1. 492 Broad Street will be connected to public sewer prior to recording of the plan.

**SECONDED** by Ald. Larose.

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**MOTION CARRIED UNANIMOUSLY**

**NEW BUSINESS - SITE PLANS**

6. **Triangle Pacific Corp. - Armstrong World Ind (Owner) - Proposed amendment to NR283 to demolish 27,420 square feet of an existing 116,946 square foot industrial warehouse, 25 Crown Street, Sheet 23 & 25 - Lot I, Zoned "GI" - General Industrial and "RB" - Urban Residence.**

Robert Parsons, Cuoco & Cormier. Mr. Parsons said the property comprises some 8 acres. The purpose of this application is for the demolishing of a portion of the existing warehouse. He said this portion of the warehouse is no longer used.

He said some discussions have occurred with the Fire Department over the past several months and recognition has been taken by the owners .. **Unintelligible .. Something about safety.**

He said at this time there are no plans to rebuild. The space where the portion of the building will be demolished will become open space.

He said since the 1972 plan there have been some changes, including demolition of the ..**unintelligible..** There are about thirty people who run the operation now and there are many parking spaces available.

He said there is a showroom towards the front. He said he has been there a couple of times recently and there have been three or four builders there. He said the owners have indicated at peak events, summertime and weekends ..**becomes unintelligible..**

Mr. Lowe asked if the other part of the warehouse is being used.

Mr. Parsons said it is. He indicated the office building will be disconnected from the warehouse.

Ald. Larose said when you go into the driveway there is a shed on the right hand side. He asked if this is being removed.

Mr. Parsons said it isn't a part of the plan at the present time.

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Ald. Larose suggested that they get rid of the shed unless they are going to rehab it. He said while they are demolishing a portion of the warehouse they could also do the shed.

He said when you are going easterly when you pass the entrance of the office, in front of the old warehouse the sidewalks are in disrepair. He asked if there are any plans to fix the sidewalk.

Mr. Yeomans said this was not brought up with the applicant. Normally when they are re-doing a site development project they would, but not when it is a demolition.

Mr. Parsons said that if there is any damage to the sidewalk because of the demolition they will repair or replace the sidewalk.

Mr. Dookran asked what kind of foundation is the portion of the building they are taking down have and how much of it would they be removing.

Mr. Parsons said he hasn't really looked at the structural capabilities or otherwise of the foundation. The building is about 100 years old. He said the intention is that it will be leveled and then it will be loamed and seeded.

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

No One.

#### **SPEAKING IN FAVOR**

Larry Brannigan, Representative for Armstrong World Industries. Mr. Brannigan said there was a question about the shed on the west side of the property as you come into the facility. He said this will be demolished at the same time as the main structure they are talking about is demolished.

He said as far as the foundation of the structure is concerned, the supporting walls of the foundation that parallel the rail siding is constructed of what he calls fieldstone. They are large granite stones. He said it must be a couple of feet thick. It is the intention that it be left in place because it would be a shortened wall for the rail siding. He said the floor of the basement area will be broken up and taken out.

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Ald. Larose asked if there is any toxic waste in the building to their knowledge.

Mr. Barrington said there is none. He said they had an environmental survey firm come through and do testing throughout the building for asbestos related materials. They tested for asbestos containing building materials within all the electronic switch gear. They tested for mercury. With fluorescent lighting prior to a certain year of manufacture, there can be PCBs in the ballast. Those were all tested and when applicable they were removed for proper waste handling methodology.

Mr. Yeomans referred the Board to the aerial photograph in their packets. He said it comes from a new system they are using - Pictometry. He said that since there is a copyright on it they are not able to give it out to the public, but it is a wonderful tool since the staff is able to get a view of the site from all angles (as well as what is around the subject site).

**MOTION** by Ald. Larose to grant the request for an amendment to NR283 to demolish 27,420 square feet of an existing 116,946 square foot industrial warehouse at 25 Crown Street with the finding that it meets Section 16-123 and with the following stipulation:

1. Prior to May 1, 2005 the demolition site shall be loamed and seeded and the storm water operation and maintenance plan recorded.

**SECONDED** by Mr. Lowe.

**MOTION CARRIED UNANIMOUSLY**

**OTHER BUSINESS**

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

**MOTION** by Mr. Dufour finding that there are no proposals of regional impact on the technical review agenda.

**SECONDED** by Ald. Larose.

**MOTION CARRIED UNANIMOUSLY**

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Mr. Lowe said he thought he saw something on the technical review agenda that might have regional impact - Pennichuck Water Works, Inc.

Mr. Dufour said it's Concord & Manchester Street.

Mr. Lowe said what they are going to do affects everybody in the water district. They are taking water out of the Merrimack.

Mr. Yeomans said he believes they have to look at these in terms of traffic issues. There are none with this. He said Mr. Lowe is correct about this benefiting a lot of people.

**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)**

No motion to remove from the table.

**3. Referral from the Board of Alderman for Petition of Waiver of School Impact Fees for Fields Grove Flats.**

Mr. Yeomans referred the Board to the staff report.

Mrs. Lasky said that the conclusion has been reached that this will be for people age 55 and older.

Mr. Dufour said that being in real estate, he has to say that 55+ has come a long way. It varies from community to community. Some communities the people are 55 and in others it is 62. It is his understanding that HUD now has new criteria and in a 55+ subdivision they allow for "X" amount of non 55+. As these come through the applicant should be asked what the intent is.

Mrs. Lasky asked Mr. Dufour if he knew how many non 55+ were allowed.

Mr. Dufour said he didn't. He said he was doing a 55+ appraisal in Raymond. When he was speaking to someone in that department to confirm that it was approved as a 55+ community he also learned that due to a recent HUD ruling that now applies to non 55+ within a subdivision they were trying to come back before the City to get it changed to current standards. In the future, the Board should not assume that if 55+ is mentioned, it may not be 100% 55+.

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Ald. Larose asked if this particular project is a HUD project.

Mr. Dufour said HUD controls most projects because they control most of the financing.

Ald. Larose said these are condominiums that are to be sold.

Some discussion ensued.

Mr. Lowe said at the Planning & Economic Development Committee Meeting he asked the question and the answer was that everybody was going to be over age 55.

Further discussion ensued.

**MOTION** by Ald. Larose for favorable recommendation on the waiver of School Impact Fee for Fields Grove Flats.

**SECONDED** by Mr. Dufour.

Ald. Larose said he suspects that this project is grandfathered and it is for ages 55 and up and that if they want to change it to comply with new HUD regulations that they would have to come back to the Board.

**MOTION CARRIED UNANIMOUSLY**

Mr. Lowe asked if the Board of Alderman should be sent a note that there appears to be a change in the HUD regulations that they should be aware of.

Mrs. Lasky said Ald. Larose is the Board's representative and he can relay this to the Board of Alderman.

Further discussion.

### **Other**

There was some discussion about the annual elections. Mrs. Lasky indicated she wanted to check the Board's by-laws before they went ahead and did this.

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**ADJOURN**

Mrs. Lasky declared the meeting closed at 10:30PM.

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

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