

NASHUA CITY PLANNING BOARD
March 16, 2006

A meeting of the Nashua City Planning Board was held on Thursday, March 16, 2006 at 7:00PM in the auditorium at City Hall.

Bette Lasky, Chair, conducted the Meeting.

Members Present: Bette Lasky, Chair
 Ken Dufour, Vice Chair
 Mike Lowe, Mayor's Representative
 Ald. Mark Cookson
 William Slivinski
 Steve Farkas

Also Present: Roger Houston, Planning Director
 Mike Yeomans, Deputy Planning Manager

Approval of Minutes

January 12, 2006

Mrs. Lasky said there is a memo from Mr. Dookran with reference to the minutes for January 12, 2006 & the minutes of the meeting for January 19, 2006 in the Board's packets for tonight.

Mr. Dufour said in reading Mr. Dookran's E Mail, he asked for a couple of corrections to the minutes. These are: Page 15, Para 4 - Last line should be "He asked the same engineer to do the same for Target down the street". On Page 17, Para 5, 1st line it should be Mr. Dufour, not Mr. Dookran said he assumes.

MOTION by Mr. Dufour to approve the minutes of January 12, 2006 as corrected.

SECONDED by Mr. Farkas.

MOTION CARRIED 3-0-3, Mr. Lowe, Mr. Slivinski, & Ald. Cookson abstaining.

Discussion ensued about the two corrections mentioned in the Email from Mr. Dookran for the January 19, 2006 meeting. He indicated that on Page 6, Para 2, 1st line it should read, "after he listened, not listed". Then on Page 10, Para 3, 2nd line he

wanted the sentence "He said Mr. Farkas sent it" removed. He indicates he did not say that.

MOTION by Mr. Dufour to approve the minutes of January 19, 2006 with the corrections.

SECONDED by Mr. Farkas.

MOTION CARRIED 3-0-3, Mr. Lowe, Mr. Slivinski & Ald. Cookson abstaining.

MOTION by Mr. Dufour to approve the minutes of February 16, 2006, waive the reading and place on file.

SECONDED by Mr. Lowe.

MOTION CARRIED - 5-0-1, Mr. Slivinski abstained.

Communications

Mr. Houston said the following items were in the Board's folder tonight:

Letter from Wilfred L. Fortin, M.D., 17 Chapman Street, Nashua, NH. This is a letter in opposition to the item on the Board's agenda tonight on Ferson Street/Lake Street.

Mr. Farkas said he also has a letter in his packet from Alfano, Baroff, & Kasten, P.A.

Mr. Houston said this was copied for the Zoning Board of Adjustment and it is in the Board's packet for their information. There has been an appeal of an administrative decision on the application of the land use code.

Mrs. Lasky said they have been handed some communications from a Mr. Leo Arsenault, 5 Ferson Street, Nashua. His letter is dated March 13, 2006. He indicates he is direct abutter. The letter states that he has lived in this neighborhood for over fifty years and he didn't want to see it destroyed with this development, which would be out of character. He is opposed to the request.

She said there is a request dated March 15, 2006 from Dianne Urquhart requesting that Mr. Farkas recuse himself from the Planning Board meeting tonight because the applicant, Mr.

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Jenkins, Mr. Sazinski ??, and Mr. Farkas have socialized together on numerous occasions and are personal friends, etc.

She said there is another letter dated March 12, 2006 from Rita Poliquin, 4 Ferson Street stating her opposition to the elderly development. The letter states that the development is not in the character of the neighborhood and would diminish property values.

REPORT OF CHAIR, COMMITTEE & LAISON

Mr. Dufour said at the last meeting they sent the ratings of the Capital Improvements Program to the Board of Alderman and the Mayor. He thanked Roger Houston for all the guidance he gave throughout the process and Angie Vincent, a new planning staff person who worked very hard, the citizen representatives, Charlie Budris, Louise Trottier, & Larry Zatella, and all the others involved in the process.

Mr. Slivinski said there isn't that much happening with the Historic District Commission, other than a typical approval for a new sign or a door or something similar.

He said that for people who frequent the Railroad Square area, you can see that area starting to come back.

Mr. Farkas said the NRPC met last night, but he was unable to attend.

Mr. Lowe said the Planning & Economic Development Committee had a meeting on the new railroad station. It was only an informational meeting. He believes there has to be a public hearing on it as well.

Mrs. Lasky said she and Mr. Dufour attended the Board of Alderman meeting Tuesday evening. She said a group of neighbors from Wellington Street had written some letters two weeks ago that were submitted to the Board of Alderman about practices of the Zoning Board and the Planning Board.

Mr. Dufour said he went to the meeting to offer a different perspective of what had been presented at the previous meeting.

Mrs. Lasky said she spoke briefly at this meeting. She said what she understands is that coming as a result of that, the Planning & Economic Development Committee is meeting with that group of neighbors Tuesday, March 21st at 7:00PM.

Mrs. Lasky said she just found out that the resolution that she had submitted in the State House advocating commuter rail for Nashua and the entire State passed the House with flying colors on the consent calendar and went to the Senate. She said she spoke at the Senate hearing. For some reason it was tabled in the Senate.

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 Board will decide that the application is complete and ready for the Board to take jurisdiction of the application. If so, the applicant or representative will be given time to present an overview and description of their project. The applicant shall speak to whether or not they agree with recommended staff stipulations. The Board will then have an opportunity to ask questions of the applicant and staff.

The Chair will then 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, state their name and address for the record. This would be the time to ask questions they may have regarding the plan. Next testimony will come from anyone wishing to speak in favor of the plan.

The Board asks that both sides keep their remarks to the subject at hand and try not to repeat what has already been said and to be courteous at all times.

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

She asked that everyone turn off his or her cell phones.

OLD BUSINESS - CONDITIONAL/SPECIAL USE PERMITS

None

OLD BUSINESS - SUBDIVISION PLAN

None

OLD BUSINESS - SITE PLAN

None

NEW BUSINESS - CONDITION/SPECIAL USE PERMITS

None

NEW BUSINESS - SUBDIVISION PLAN

1. **Reginald & Tracey Dagesse (Owner) - Application acceptance and proposed lot line relocation and consolidation plan, 42 Tampa Street, Sheet 130 - Lots 124, 125 & 126, Zoned "RB" - Urban Residence. (Withdrawn)**

Taken Together:

NEW BUSINESS - SUBDIVISION PLAN

2. **Ferson-Lake, LLC (Applicant) Thomas L. Jenkins, Jr. & Andrea J. Harding (Owners) - Application acceptance and proposed lot line relocation, 333 Lake Street & 3 Ferson Drive, Sheet 88 - Lots 7 & 27, Zoned "RA" - Urban Residence.**

NEW BUSINESS - SITE PLANS

3. **Ferson-Lake, LLC (Applicant) Thomas L. Jenkins, Jr. & Andrea J. Harding - Application acceptance and proposed site plan for a 4-unit elderly housing development with associated access, parking and site improvements, 333 Lake Street & 3 Ferson Drive, Sheet 88 - Lots 7 & 27, Zoned "RA" - Urban Residence.**

Mrs. Lasky said before they proceed with this case, she wanted everyone to know that it is the procedure of the Board that if an individual feels he or she should recuse, it is generally up to that individual to make that determination.

Mr. Farkas said that he knows Mr. Jenkins, Mr. Swiezynski, and Mr. Streeter. He said he considers himself friends with them all. He said he feels that he can render a fair and impartial decision on the proposal. He said he does not have a pecuniary interest in this case. He said he would yield to the Board's decision.

Mr. Lowe said he knows all the people involved as well. He said he felt that he could render an impartial decision.

None of the Board members spoke up. Mrs. Lasky said both Mr. Farkas and Mr. Lowe would sit for the proposal on Lake & Ferson Streets and vote.

MOTION by Mr. Dufour that the subdivision application is complete and the Planning Board takes jurisdiction of the application.

SECONDED by Mr. Lowe.

MOTION CARRIED UNANIMOUSLY

MOTION by Mr. Dufour that the site plan application is complete and that the Planning Board takes jurisdiction of the application.

SECONDED by Mr. Lowe.

MOTION CARRIED UNANIMOUSLY

Atty. Andrew Prolman. Atty. Prolman said Corey Johnston, the project engineer for Ferson-Lake, LLC is present tonight. Also, Kent Warden, the project architect is present. He said he would turn testimony over to them first. He said that they have supplied the Board with a booklet of information to the Board.

Corey Johnston, Northpoint Engineering, Pembroke, New Hampshire. Mr. Johnston said there are two lots at this time - one at 333 Lake Street and the other at 3 Ferson Street. They adjoin in the rear. He pointed the location out to the Board. He showed the location of the proposed lot line relocation. He said this will give them 7,555 square feet for Lot 27 and 21,485 square feet for Lot 7. The minimum lot size in this area is 7,500 square feet.

He said the open space is 67% on one lot and 89% on the other lot once they do the lot line relocation. He pointed out which lot had the 67% and which had the 89%. He said they will have to remove a shed because it is in the setback area.

He said they are planning an elderly development on Lot 7. The existing house and all the infrastructure related to that house would be removed. Elderly Housing is allowed in the RA Zone. The density is eight units per acre. When one does the math, this comes out to 3.95 units - about 290 square feet shy of a fourth unit.

He said under Section 16-93 in Inclusionary Zoning you are allowed a density bonus to do affordable or moderate-income housing. Fifteen percent on top of the 3.95 gets his client 4.54

units. They have to set aside 10% of the units as moderate income so there would be one unit of moderate income.

He said the lot meets the 50% open space criteria with the proposed arrangement. He said they are also proposing a solid wood fence. He showed the locations for the fence. He said there are a limited number of trees that need to be removed.

Mr. Johnston said each unit will have a two-car garage to satisfy the parking requirements.

He said the lot is basically flat. There's about 4' of difference from the front to the rear. They have taken all the drainage from the paved areas, routed them through catch basins and some area drains and routed to an underground chamber system in the front with an overflow that ties into the City drainage system.

He said they have provided four additional trees and about twenty-one shrubs throughout the property. He said they are kind of limited in the front yard as to what they can do because of the infiltration basins. They don't want the root system growing into the system.

Mr. Johnston said the site distance for the site is more than adequate at over 200' in both directions. They did a traffic threshold worksheet and determined that the amount of cars generated from the site didn't warrant a traffic study.

Mr. Dufour said the testimony is that there is going to be a fence to the right of the front lot and to the right on the back lot. He asked if there is a rationale for not enclosing the rest of it.

Mr. Johnston pointed out some fencing that already exists as well as a tree line. He said their rationale is that they would put the fence where there isn't very much screening or where there would be the possibility of lights on the neighborhood.

Mr. Dufour asked about the far right corner.

Mr. Johnston said they could extend the fence into that area.

Mrs. Lasky asked Mr. Johnston to address lighting on the site.

Mr. Johnston said there are no planned light poles. There would be porch lights associated with the garages.

Kent Warden, Architect - Arenco, 31 Old Nashua Road, Amherst, NH. Mr. Warden said they are proposing four units. Each of the units is a three-bedroom unit, designed specifically for the elderly. The first floor has the Master Bedroom. The site is flat so the access to the building is easy and the access from the garage to the first floor is easy.

He said this zone permits a 2-½-story building. In reality these buildings are 1 ½ story tall. There are about 840 square feet of first floor living space and about 400 square feet of second story living space. With the addition of the garage on the first floor, there's only a small portion of these buildings that are two stories high. He referred the Board to a rendering of the building. Each of the units will have a full basement. There will be clapboard siding and asphalt shingles and standard windows.

Mr. Lowe asked if there is one bedroom or two bedrooms on the second floor.

Mr. Warden said there are two. The master suite is on the first floor. He said they probably would be used as a guest room and a sewing room rather than bedrooms.

Mr. Dufour said there are sliders off the dining area. He asked if the plan is to have decks.

Mr. Warden said he doesn't know that yet. This has to be determined.

Mr. Dufour asked what the side setback is.

Somebody said 10' and Mr. Dufour said if it's 10' they can't do it.

Atty. Andrew Prolman. Atty. Prolman said there will not be decks on the back of the units. He said he would make some comments before going into the booklet that they provided to the Board.

He said the stipulations in the staff report are acceptable to the applicant. They are not seeking any waivers. They are not before the Board after receiving any type of approval from the Zoning Board. He said the site has been looked at by his client for a long time and it meets and it meets all the requirements of the new ordinance.

He referred the Board to the booklets that were provided them earlier. He said the first two items are straight out of the ordinance. Elderly housing is allowed in the RA Zone. The Inclusionary Zoning Ordinance is under Tab 2. He said Mr. Johnston explained the square footage issue and the inclusionary zoning request. He said that's a discretionary request to the Board under the new ordinance.

He said under Tab 4 they have the most current information they could obtain with respect to median income. It is HUD data from 2003. In the left hand column under Nashua, NH it shows the median income as \$77,000. The applicant would have to comply with the terms of the inclusionary zoning with selling the fourth owner-occupied unit.

He said this is an elderly housing project. They have included the statute and rules under Tabs 6 & 7. The applicant is going to have to comply with the Human Rights Commission rules and the City's ordinances in order to make this project work.

He said under Tab 8 it shows bus route #5, which loops the inner portion of Nashua. There is access a half block over to Lake Street for this site as well as Kinsley Street.

He said at Tab 9 there's a list of readily accessible services. It gets back to Mr. Warden's comment as to why you would want this type of housing within the City area accessible to all types of services.

He said at Tabs 10, 11 & 12 the information from Arengo (Mr. Warden) showing the layout design. He said a lot of thought has gone into this. It is intended to meet the character of the neighborhood. They are low profile units. There are a lot of duplex units to the immediate west and single-families to the east of the site along Lake Street. He said Mr. Warden has put a lot of thought into this project to transition from the duplex area of Lake Street toward the single-family homes.

Mr. Lowe asked who was going to maintain the landscaping on the site.

Atty. Prolman said this is going to be a small condominium with common ownership of the land. He said he expects that there will be a nominal fee that would go along with that type of ownership. He expects they would bring in a landscaping company to take care of that.

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Mrs. Lasky asked if the stand-alone unit in the back would have a two-car garage as well.

Atty. Prolman said "yes".

Ald. Cookson asked if the Fire Department had been involved in reviewing the plan at all with respect to the stand-alone unit. He said it looked like a very tight turning radius if they ever had to have any emergency vehicles get back to that one particular unit.

Mr. Yeomans said the Fire Department has reviewed this plan. He said the only comments they had from them was to make the driveway as wide as possible.

Ald. Cookson asked if the maximum width of the driveway entering the rear unit is 12'.

Mr. Yeoman said this is adequate. He said if they had 25' they'd be really happy.

Mrs. Lasky said generally if the Fire Department had not reviewed the plan and made their comments its possible it wouldn't get to the Board for a hearing.

Mr. Farkas said under the regulations, affordable housing sales prices are established by the Community Development Department in the City of Nashua. He asked if there is a problem with that.

Atty. Prolman said if you look at Page 114 in the ordinance, the Community Development Department has some guidance from NRPC and they've looked at those numbers. He said he has those numbers, but the reason he hasn't provided them is because they go back to 2000.

Mr. Farkas said the control period is thirty years. He asked if this is going to appear on the deed.

Atty. Prolman said it will be on the deed.

Mrs. Lasky asked if this is true of all four units.

Atty. Prolman said it is only for the one affordable housing unit.

Mr. Dufour asked if he understood that the list price for the affordable unit was determined by the Community Development

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Department and that it would carry on for thirty years. If he owned the unit and he was selling it six years from now he would have to come to the Community Development Department how much he could sell the unit for.

Atty. Prolman said this is correct. It is limited going forward for thirty years.

Mrs. Lasky asked if they would have to designate which of the units would be the affordable housing unit.

Atty. Prolman said they do have to designate which one it is. He said he suspects that it is going to be the middle unit because the end units would have more windows and therefore have more value.

Mrs. Lasky asked if the ordinance speaks to who designates the unit.

Mr. Yeomans said not that he is aware of.

Ald. Cookson asked if the other units would be characterized as elderly housing, and not necessarily as affordable housing.

Atty. Prolman said all four units will be elderly housing, one of which will be for moderate income.

Ald. Cookson said under Tab 1, Page 103 the last bullet at the very top states that it is recognized that exclusive zoning for persons 55 or older promotes the general health and welfare. He asked if that is the definition of elderly housing and that those individuals living in these units would be 55 years of age or older.

Mrs. Lasky said her understanding is that one person in the unit has to be age 55 or older.

Atty. Prolman said that is his understanding as well. The owner of record has to be 55 or older.

Ald. Cookson said that there was testimony indicating there was a bus stop ½ mile down the road.

Atty. Prolman said it's closer than that. He referred the Board to the information under Tab #8 and bus route 5 - Lake Street/Northeastern Blvd. He said if you look at the "K" in Lake Street, there's a street running through it. He said that

is Ferson Street. There's a stop on Kinsley Street a half block from their site. There's another stop on Lake Street to the east of the site.

Ald. Cookson asked which side of the street the bus stop is located on. He asked if they would have to cross a major street in order to get to the bus stop.

Atty. Prolman said he did not know which side of the street the bus stops on Kinsley Street. He said there is a stop on the north side on Lake Street, which is the same side of the street.

Mrs. Lasky asked if there is sidewalk on that side of the street.

Atty. Prolman said there is. He said whatever they do, they are putting sidewalk back or installing it.

Ald. Cookson said that it seemed like the unit in the back is set back a ways. He said there was testimony about porch lights available on these units. He said he isn't sure how much light a single porch light or two would put out and wondered about the safety of that unit as far as the lighting was concerned.

Atty. Prolman said if the Board is inclined to add some type of lighting such as low lighting along the drive aisle that would be fine. He said they are trying to balance the lighting for the site and staying within the context of the neighborhood.

Ald. Cookson said there was testimony about putting up a wooden or stockade fence on the east side in the front of the unit. On the north side and west side there are chain link fences. He asked how the residence to the west of the three units are concerned about seeing the back of the units versus seeing a single-family home with green space behind.

Corey Johnston. Mr. Johnston said the chain link fence is on the abutter's property and it belongs to that abutter. If the applicant were to put up another fence, there would be a double row of fence and that doesn't make too much sense. If the chain link fence were to go away it might be something worthwhile.

Ald. Cookson asked if a conversation has been had with the abutter.

Mr. Johnston said not that he is aware of.

Atty. Prolman said his client had told him that the right hand lane of Kinsley Street - inbound - presumably is the slower of the two lanes. The City buses are designed with doors on the passenger side so presumably the south side is where the bus would stop.

He said with respect to the question about fencing, if the Board felt that there should be some additional vegetation that would be a routine stipulation.

Mr. Slivinski asked if the applicant had any meetings with the neighborhood to discuss the project.

Atty. Prolman said not that he is aware of.

SPEAKING IN OPPOSITION OR WITH CONCERN

Diane Urquhart, 2 Ferson Street. Mrs. Urquhart said she asked that Mr. Farkas recuse himself from hearing this case because RSA 673:14 prohibits a Planning Board member from hearing a case on which he or she is related to the applicant. Being related to someone means you have a close personal relationship with that person. She said being friends with someone is no different. She said Mr. Farkas is friends with the individuals she named in the letter. They attend the Lafayette Club together and she knows Mr. Farkas attends parties at Mr. Jenkins' home as well.

Mrs. Lasky said that the Board has had many discussions with Atty. Connell (Corporation Counsel) as far as the recusal policy is concerned. It has been his advice that each individual decides. He has indicated that the primary focus has been on whether someone would gain financially from the project.

Mrs. Urquhart said Tom Jenkins was the deciding vote to grant a variance to build a house behind a house on 74 Cox Street. She said Mr. Jenkins and Ms. Harding signed an affidavit on 11/4/05 that they didn't know each other and yet on March 21, Ms. Harding purchased 3 Ferson Street and on April 12 Mr. Jenkins purchased 333 Lake Street. She said because of this affidavit she's not sure they should rely on Mr. Jenkins' integrity. The Cox Street issue is in the court system and is the same as this development - a house behind a house. She asked the Board to suspend the whole site plan until the other case is resolved. She said it appears that Mr. Jenkins took advantage of his position on the Zoning Board of Adjustment and knew when the codes were changing so it would seemingly fit into his plans. He

immediately steps in and decides on a four unit elderly development in a RA Zone. This is manipulating for profit and not fair or just because of his inside knowledge.

She said when they came to the Planning Board for 192 Kinsley Street, a member of the Planning Board admitted that it should never have come to the Planning Board. This is the Board's opportunity to help. She said she is strongly opposed to granting the plan as it is currently proposed, particularly putting two principal structures on one lot. She said presently there is a single-family home on each lot. She said they are opposed to allowing any expansion that considerably changes the existing character of their neighborhood. She said if any of the members have not visited the site, she suggested that they consider a field site review to confirm the development is out of character with the existing neighborhood and will certainly affect their property values.

She said the expansion, as proposed, will have a negative impact on their property values, traffic conditions, safety, the aesthetics and the environmental and quality of life in their neighborhood. She said it would be impossible for a fire trucks to get in the back.

She presented some pictures to the Board. One was a picture of all the homes in the surrounding area. She said the "pink" shows the single-family homes, of which there are thirty-five. The "yellow" represents duplexes. She said there are seven duplexes in that area. There is a commercial site on the corner of Dunstable and Lake Street that now houses a real estate office.

She referred the Board to an aerial view. She said there was some talk about trees. She showed the area where the trees will be coming down and the homes that will have a direct sight to the proposed elderly housing. She said some of them are only within 10'. She presented pictures of the 190-192 Kinsley Street project. She said this is what they don't want in their neighborhood. She said the fence at 190-192 Kinsley Street is about 6" from the neighbor's bedroom.

Mrs. Urquhart said the proposed use of this property will not co-exist with the surrounding uses and will have significant negative impact on the surrounding uses. The neighborhood is zoned "RA" and there are predominantly single-family residences. There have been no changes in the neighborhood for about thirty years. There are no multi-family elderly dwellings in the area.

Two principal structures on one lot will visibly be out of character with the surrounding properties.

She said the current owners have substantial use of their property and to deny the plan as proposed does not cause them any undue hardship. The approval of the plan, however, poses a significant threat to the neighbor's property values. She said it would seem that by allowing two structures on one lot, the Planning Board is setting a precedent that is not compatible with either their neighborhood or what is in the best future interest of the community.

She said the Nashua Revised Ordinances, Section 16-123 talks about factors in determining approval. These state that the proposed use can co-exist with the surrounding uses, that the proposed use shall not have significant impact on the surrounding use, the proposed use shall not have significant safety impacts on surrounding properties, the proposed use shall not generate excessive traffic or demands on parking, and the plan must respect the integrity of the adjacent single-family neighborhoods and to the extent feasible minimize any conflicts of the character of the existing neighborhood.

She said the people who have bought and built single-family homes in a "RA" Zone should be able to rely on the fact that they will be in a neighborhood of other single-family homes and all that the benefit brings. The neighbors who own single-family homes, many with well-maintained large lots, have made the largest investment of their lives. While they do not have the experience of the zoning and planning laws like the attorneys, they do know and understand the Board has the ability to help facilitate a plan that will not only fit in the current neighborhood, but allow the applicant to make use of his or her land as well.

She said under Section 16-28, Residential Districts, it states "protect the character of existing neighborhoods through zoning regulation and enforcement". It also states that only one principal structure shall be permitted on a lot, except where otherwise provided by the Chapter. She said on this basis they know the Board has the responsibility to follow the law regarding density, frontage, etc. They also have the responsibility to follow the law to protect the character of the existing neighborhoods. She said four units are excessive and not reasonable. She said currently their neighborhood accommodates a maximum of two-family units. She said they believe this would be in keeping with the character of the

neighborhood and would respect their rights and privacy as neighbors. She said the neighbors believe they have a legal right to ask the Board to limit the number of units to be more in line with what is currently in their neighborhood.

Ms. Urquhart said according to the handbook of local officials for the Board of Adjustment "the affect a proposal may have on surrounding property is one factor and abutter's opinions do have a bearing on this aspect". She said if this project is allowed to be constructed as presented, their quality of life as they know it, would end. She asked the Board to deny the request.

Kerry Roy, 330 Lake Street, Nashua. Mr. Roy said he had a few concerns and questions. He said the applicant has stated that a traffic study was done. He said he'd like to know when it was done because Lake Street is a major speedway these days. He said they are talking about the safety of elderly people who will be coming out of the proposed development. He said it's more than a block to the nearest bus stop. It's about four blocks. He said if he's not mistaken it's at Fairview Avenue on Lake. He walks it every night. He said he wouldn't let his sixteen-year-old walk Kinsley Street. There was a fatality there less than two months ago, a little bit north of where the bus stops.

He asked if the owner, who has to be a minimum age of 55, would have to live in the unit or would they be able to lease it out to anyone. He said he felt this would be wrong, especially if its supposed to be an over 55 development.

He said he assumes that if the Board allows the lot line change, it's just a matter of time before he would be allowed to build an elderly housing unit in his back yard. He said it's totally unfair to change the characteristics of a nice neighborhood that he moved to twenty-two years ago and now they are proposing elderly housing units in the back when there's so much vacant property left in the City of Nashua.

Mr. Yeomans said a full traffic study was not done. He said what they do is a traffic impact report where they look at the trip generation for a particular land use. He said that information is in the Board's packet. He said it was very low.

Mr. Roy asked about the fire apparatus for emergency personnel. He said in the winter months there's basically going to be an

access to the back. He asked how they are going to turn around to get out.

He asked where they were going to put the snow in the wintertime. He said he is on the corner and directly across from the site. He asked where visitor parking would be located. He said there's barely enough room to park cars in their own yards.

Mr. Dufour said he is making a list of all questions to be answered down the line after testimony from those speaking.

Charlene Coneys. Ms. Coneys said she was going to read a letter from her mother, Eleanor Coneys, 331 Lake Street. She said her mother's lot is right in the "L" of the new proposed lot. The letter is in opposition to the proposed elderly housing development. It states that both 3 Ferson Street and 333 Lake Street abut her property and the development would have a profound impact on both her personally and the complexion and character of the existing neighborhood.

It states that the perimeter of the existing lot at 3 Ferson Street is approximately 500', exclusive of street frontage. The connection between the existing lot at 3 Ferson Street and 330 Lake Street is approximately 20'. But for that 20', this could never happen. It is barely wide enough for the required driveway. The movement of the lot line to create a new development does not create a square, rectangular or trapezoidal lot. The movement of the lot line creates a lot with what amounts to a flagpole design, with a 20' connection. The connection narrowly meets the requirements for driveway access public safety requirements and in effect creates a lot behind a lot. As the lot behind a lot design is in part the subject of pending litigation, she was requesting that any vote regarding the lot line move between 3 Ferson Street and 333 Lake Street be postponed by the Planning Board until the Cox Street litigation is resolved.

The letter went on to say that in the neighborhood block bordered by Main Dunstable Road, Kinsley Street, Ferson Street, and Lake Street, the approximate building footprint for existing single-family homes and duplexes is 10% - 20% of the available lot. The footprint of the proposed structure covers greater than 30% of the available lot. This is not in keeping with the present character of the neighborhood. When the driveways are taken into consideration, the portion of the proposed development visible from the street does not appear to meet the

density and open space requirements, even taking into consideration elderly and moderate housing set-asides. It said the orientation of the proposed development should the lot line be moved with the side wall of the structure visible from the street and the large scale of the structure in comparison to the existing structures in the neighborhood provide the impression and appearance of shoe horning, cramming, or forcing a development which might meet minimum density and open space requirements, but is not in keeping with the character or complexion of the existing neighborhood.

Continuing on, the proposed single-family structure, should the lot line be moved, would have no street frontage and will have a long driveway to what appears to be a flagpole lot. The affiliation of the structure with the development appears to be to avoid the label of a flagpole lot. One only needs to look at the schematic to observe that it is in the shape of a flagpole. She asked again that the Board postpone the vote regarding this development until the Cox Street litigation is resolved.

Mrs. Coneys' letter states that she has been a resident of Nashua for over forty years and an employee of the City of Nashua for over fifteen years. It states she has witnessed a lot of change and development in the City, some of it positive and some negative. It went on to say that she realized that Nashua needs affordable housing and affordable elderly housing, but that the proposal didn't appear to meet either affordability requirement.

The letter further stated that the Planning Board is charged with ensuring that the requirements in the land use code are met. It is also charged with ensuring that the character and complexion of the neighborhoods in the City of Nashua are maintained. It stated that the proposal is not in keeping with the present character and complexion of the neighborhood.

Kerry O'Donnell, 210 Kinsley Street. Mr. O'Donnell said that there is a chain link fence across the northern section. He said he has a piece of temporary garden fence that he put up along the western section of the flagpole piece. He is requesting that if this is approved that they be required to put up a solid fence. He said he didn't want headlights in his bedroom in the evening coming in from that driveway.

He said he is concerned about snow plowing and where the snow would be placed. He asked if it would be pushed up against the fences.

He said the water pressure in the neighborhood is terrible. The additional units may be a concern for the City.

He asked how the utilities for the site are going to be handled. He asked if they were going to be underground.

He said he understood that there was going to be a storm drain system, but he was concerned about puddling.

Frances Michaud, 70 Cox Street. Mrs. Michaud said the last time she was at the Planning Board she was questioning why Cox Street came before the Planning Board when an appeal was made to the Zoning Board. A comment was made that these things have a way of disappearing into the night. She said they are not disappearing.

She said the residents and the people who are present tonight are saying they've had enough of this - back lots and two houses on one lot. She said it's crazy.

She said the safety issue has been brought up. The Fire Department has stated that they need as much space as they can get. She asked why it was that at Cox Street they needed enough room to turn a fire truck around in the back yard and here they don't.

She asked if the properties are being sold or rented. Are they condos, are they for the elderly. Which of them is going to be for moderate income. If someone who lives in one of the elderly units should die, what happens to it. If it can only be owned by someone who is 55 years or older, who is going to regulate that. Is it the owner who has to be age 55 or older and can turn it over to somebody else. These are questions that aren't answered.

She asked how it will be identified for Fire & Rescue services. How are they going to be see what's going on with a porch light back there. Are the apartments handicapped accessible. Will they be sold for profit. These are things they aren't getting answers to.

She said she believes this is being done so that it can be flipped. She said Atty. Prolman talked about not being able to allow the people who buy the properties to be able to "flip it", but that's exactly what the owners of these properties are doing. They're purchasing property, tearing it down, flipping it and selling it for a profit. They're not even residents of Nashua. The same thing happened on Cox Street. They don't care

about the integrity of the neighborhoods or the loss of property values for the people who surround the site.

She said she is very much opposed the request and she is hoping the Board will be able to look at this with clear eyes and see exactly what this is doing to the neighborhoods.

Peter Bedard, 72 Cox Street. Mr. Bedard said this has all the characteristics of a flag lot - such as what is being put in his back yard. He said he is asking the Board to review why these flag lots keep coming up in such small areas. He said he knows his case is in court, but this whole thing has to stop. It's getting expensive for everybody.

Ald. Dan Richardson, 70 Berkeley Street. Ald. Richardson said the rear lot setback appears to be 10', but the land use code says it should be 25' - this is opposite the parking for the driveway - to the left.

He said this is a subdivision. They are subdividing the lot. The rules for a subdivision plan include insuring that the subdivision is compatible with the existing character of the neighborhood and to ensure that it preserves natural character features of the area or neighborhood.

He said he understands that this hasn't been to the Zoning Board at all and he asked if this is correct.

Mr. Dufour said they are not doing a subdivision. They are doing a lot line relocation and a site plan.

Ald. Richardson asked If they weren't subdividing the topmost lot.

Mr. Dufour said it is a lot line relocation.

Ald. Richardson said the lot is being divided and sold to another owner.

Mr. Dufour said it's going to be one parcel.

Mrs. Lasky said the applicant is asking the Board to relocate the lot line to create one big parcel.

Ald. Richardson asked if there is one owner at this point.

Mrs. Lasky said there are two owners now. The applicant is asking to relocate the lot line to make it one parcel with one owner.

Mr. Yeomans said there are two lots in existing conditions today. Tomorrow if the action is approved there will be two lots. All that they've done is exchanged land areas by relocating boundaries. There is no new lot being created.

Ald. Richardson asked if, in fact, the character of the neighborhood is going to be considered.

Mrs. Lasky said they would be looking at that. She said it is one of many criteria. She said the Board's job is to balance all of that with what they hear tonight and with the rights of the applicant.

Ald. Richardson said when Mr. Jenkins was on the Zoning Board he asked him about precedents in reference to a case on Shattuck Street. He said when you are considering putting in multi-unit housing in a residential area zoned "RA", does it create a precedent. He said Mr. Jenkin's answer was "no".

He said he heard the applicant get up and talk about the existence of multi-unit dwellings in the neighborhood, therefore implying that it sets a precedent.

Mrs. Lasky said none of them can speak to what went on between Mr. Jenkins and himself at the Zoning Board meeting. She said she wasn't there and she was not given the minutes to read and if it's in the courts there's no way that any of them are going to comment on it.

She said at that time they may have been under the old land use code. They have a new land use code as of January 2006.

Mr. Farkas said Ald. Richardson's concern about the character of the neighborhood is addressed by that. He said what he thinks the applicant was saying when referencing other properties in the area was describing the character of the neighborhood.

Louis Miccolo, 66 Cox Street. Mr. Miccolo said he is against the shoehorn/flagpole lot. He said he supports all the abutters and all the other people in the neighborhoods of Nashua to say that not only is this out of character, but it's something that was organized incorrectly and inappropriately and will be proven down the road.

He said if this continues they will continue to show up in front of the Board of Alderman as they have already and they will keep continuing to show up in the Supreme Court and Superior Courts and will continue to voice their concerns. He said it is important for the Board to know that when they make their decision.

He said if you drive to 76 - 80 Cox Street today you will see clear-cut land that had over forty trees. Within the last four days Hillsborough County has been cited because their carbon dioxide levels are too high and that they don't have enough trees and they aren't planning well enough to replace those trees.

He said when he looks at the site under discussion, there are twenty trees on the lot, not a few as proposed. There will be no room for the number of trees currently on the lot.

Ald. Dion. Ald. Dion said it seems as though Ward 6 has been having problems for quite a while now with people trying to destroy the character of the neighborhood, for example 192 Kinsley Street, which was mentioned tonight. He said they have Oakland Avenue - the "flamingo people". Some of these people are present tonight. Another one is 60 Lake Street in front of the old Lake Street shoe factory. He said there is a pizza place across the street from 192 Kinsley Street where approval was granted for some additional dwelling units.

He asked the Board if they were listening to the people who have been speaking against the project. He said these projects keep getting passed. He said he is here to back the people in his ward up who are correct in opposing this request. He is hopeful that the Board is going to turn this request down.

Ald. Dion said last Tuesday night at the Board of Alderman meeting they gave the courtesy to Mr. Dufour and her to speak. He asked if he would be able to speak as well.

Mrs. Lasky assured Ald. Dion that he could.

Ald. Dion then said that Mr. Lowe, during the Wal-Mart vote, voted against the proposal on the first vote. On the second vote, two weeks later or so, he abstained. He abstained for the reason that he was friendly with Alan Fuller, who was one of the people who spoke on the project. He said he used his friendship with Mr. Fuller as an excuse to excuse himself. He said if he had been chairing the committee, he would not have allowed him

to recuse himself because he had already voted on the issue. On the third vote a couple of weeks later he abstained again. He said he should have voted on the second and third time.

He said tonight Mr. Farkas chose not to excuse himself. He said he isn't surprised by that and he isn't surprised that none of the Board asked him to recuse himself.

He asked the Board to vote this down. He said this is going to be a continuous infection unless they put a stop to it and the Planning Board is the one that can put a stop to it.

Michael Siciliano, 95 Taylor Street, Nashua. Mr. Siciliano said Mr. O'Donnell mentioned that they have very low water pressure in the neighborhood. He asked if these proposed units are mandated for fire sprinkling systems. If they are, he asked how would the low water pressure affect the development. Would the water pressure have to be improved by Pennichuck Water Works to achieve the safety goal.

He said the facts surrounding the application are a little peculiar. The applicant is allegedly a very good friend of Mayor Bernie Streeter. The owners of both properties are in business on other properties in the City. The lots were all purchased prior to Mr. Jenkins resignation from the Zoning Board last fall. Mr. Jenkins voted for the Cox Street flagpole subdivision for Mrs. Andrea Harding, who happens to be an owner of one of these lots tonight (Lot #27). He said it seems like this was planned or thought out very well for profit. He felt like the former Chairman of the Zoning Board abused his power - a power for personal profit and gain and also abused his power to destroy Nashua neighborhoods, especially the smaller neighborhoods as has been mentioned.

He said he is not against development as long as the developments apply to all laws, as long as they're tasteful and done in character with the surrounding neighborhoods.

Richard Drouin, 6 Cote Avenue. Mr. Drouin said his home is right across Lake Street. He said he is in opposition to this request. He said he thinks it's absurd.

He said about two years ago he had a garage built on his property. He came in front of the Board to ask for a family room above it and he was refused. To see something like the proposal makes him boil.

Mrs. Lasky said that was not the Planning Board. It was the Zoning Board.

Ruth Lyons, 6 Catherine Street. Mrs. Lyons said she is opposed to this application. She said she agreed with all the proceeding speakers in asking the Board to say "no" and help the community preserve the character of the neighborhood. She asked the Board to give the neighbors the same consideration as they give the applicant.

Brian Fox, 7 Delta Drive. Mr. Fox said he is not an abutter and does not live in the neighborhood, but he has friends who live in this neighborhood who severely oppose the request.

He said he has looked at the plan and happened to notice that there's a drainage study. He said he doesn't know what all the results are, but it seems as though between the driveway and the four buildings there's at least 40% that's impervious. He said it seems like there's a lot of building and a lot of paving. He asked what happens to all that water, especially when there's snow and there's runoff in the springtime. He said there are no trees to absorb the water because all the large trees on the site now are going to be gone.

He said it doesn't seem like its in character and it doesn't seem as though it's an appropriate thing to have all that impervious area on such a small space.

John Koutsos, 3 East Dunstable Road. Mr. Koutsos said he does not live in the neighborhood. He said over the course of the last year he's become friendly with Dianne Urquhart. He said they share a lot of the same beliefs about development. He said they've both lived in Nashua for a long time and they both care greatly about the City.

He said for the Board to approve this they really have to interpret the Zoning code very loosely. He said he thinks that is part of the appeal that's going forward to the Zoning Board. If the Planning Board grants this request, it gives it the presumption that it's okay when it goes to the Zoning Board.

He said when you look at the "RA" district, it states it's appropriate for older residential sections of Nashua surrounding the urban core. RA is predominantly single-family, although duplexes are allowed subject to special standards. If you go to the "RB", the "RC", and the "D" sections, they are a little looser with what they allow for multi-family buildings. Duplexes

are permitted by right in the "RB" Zone and multi-family dwellings with three or more units subject to special standards.

He said the use matrix seems to be conflicting to him. It says that in the "RA" Zone elderly housing is permitted. If you go down to Item 15 on Page 22 a multi-family dwelling with three or more units, including but not limited to garden apartments, quad duplexes, triplexes, row houses or town houses are not permitted in the district. He said he thinks that basically that is what the appeal is based on.

He said in Section 16-81 it states elderly housing that contains duplex or multi-family dwellings is permitted in the "D", "RA", "RB" and "RC" Zones. He said he thinks that a mistake was made when they put in that it was allowed in this zone. He said the State RSAs, Chapter 676:14 - Determination of which local ordinance takes precedence - says that whenever a land use ordinance is enacted or a regulation is adopted which differs from the authority of an existing ordinance or regulation, the provision which imposes the greater restriction or higher standard shall be controlling. The higher standard in this case would be that it's not allowed.

He said this is a new book and there are a lot of mistakes in it. He said he asserts that it's not allowed. He said it was never meant to be allowed.

He said the "over 55 thing" is something that can easily be taken advantage of and manipulated. He said when he is 55 years old he is going to have a 15 year old and a 17 year old. If he heard correctly there are four units and they all have three bedrooms. He said there could be a couple of children living in these units. He said there's way too much density on this site.

He asked if people wouldn't want to have a deck. He asked where people were going to barbecue. Where are people going to park when there are visitors. The street is going to be burdened with the overflow.

He said when he looks at this, the rear of those houses only have 10'. They are applying a side setback requirement. They are turned sideways, so this is clearly the rear of the house and it should be called the rear and there should be 25' there. He said these people are going to want to build decks and want to have kids that go out and play. The "over 55 thing" is just a cover to pass this in and cram it into the neighborhood.

He said there has to be a concern for the neighbors a little bit more. There are going to be a lot of people crammed in here with people with kids. He said age 55 today is not old. It's young.

He said people are getting upset because a lot of things that are in black and white are ignored. When you are out in the public and you're at City Hall night after night, you can't help but think things are a little too cozy. He said they should try to do the right thing for the neighborhood because this doesn't fit.

Deborah Drouin, 6 Cote Avenue. Mrs. Drouin said she is opposed to this request. She said they are at the end of Chapman and Cote and it ends at a dead end. They have a four year old. A lot of time people do a cut through from Lake Street to get to Lund Road. She said she thinks there is going to be more traffic with the proposed condominium.

She said she doesn't understand why there would be three bedrooms. She said they have two bedrooms. Three bedrooms for a development for people 55 and older don't make sense to her.

Mrs. Lasky said the Board has absolutely no control over this. She said they rarely see a floor plan.

Maurice Bruneau, 315 Lake Street. Mr. Bruneau said John Koutsos said what he wanted to say, but he wanted to go on the record as saying that he is strongly opposed to the proposed elderly housing development.

Bruno Bergeron, 190 Kinsley Street. Mr. Bergeron said the big apartment building (referred to in tonight's testimony) is right alongside of his home. He said if anyone wants to buy his house he would sell it to him or her. He said when they put up the fence (referred to in tonight's testimony) he was supposed to have 3' of that owner's property so he could go around, but he did not get that. It is 6" from his house. There were a lot of things that were done on his property that the owner said he would fix, but he never did.

Frances Michaud, 70 Cox Street. Mrs. Michaud said on the application that she picked up at City Hall today there are some things that are not answered. She wanted to know if there is an updated copy of that application.

Mrs. Lasky said the case would not be in front of them if the application were not complete.

Mr. Yeomans said he didn't know what Mrs. Michaud was referring to, but she could come by the office tomorrow.

Mrs. Michaud said she is questioning this because there's a place that says property taxes current and it says pending. She asked if the property taxes have been paid.

Mrs. Lasky said to the Board's knowledge, everything that needs to be done is done.

Mrs. Michaud asked if this has been checked. She asked if the taxes are not paid, how could they apply for this plan.

Mr. Yeomans said Corporation Counsel has advised them they can't keep people off of the agenda for non-payment of taxes or for any other reason. He said he is not aware of any issues on these properties, but he said the applicant could address the tax issue.

Mrs. Michaud said she understands that if anyone is in violation, for example removing a sidewalk that they may not be able to apply for things.

Mrs. Lasky said if the Board is apprised of something where they can hold up the decision or make a decision tonight, they will do so. If they make a decision and something comes up afterwards or during the period of appeal (a month) that is something that would be taken into consideration.

Suzanne Vail, 2 Rockland Street. Mrs. Vail said she is in opposition to the request under discussion and is asking the Board to not make a decision on the request tonight. She said the ordinance is very unclear and there needs to be a little more research. She said if there are alterations to the proposed plan tonight they should make new plans and bring them back to the Board. She said she's attended meetings where the plans are changed verbally and they don't know who oversees that.

Mrs. Lasky said any changes that are made to the plan are made at the public hearing and are made as stipulations. Before the plan is recorded they are shown on the plan. She said that's open for anyone to see at City Hall where the plans are kept. Anything that might be changed from what they are seeing here tonight would be discussed here tonight.

SPEAKING IN FAVOR

Atty. Andrew Prolman. Atty. Prolman said today he received a copy of the appeal that was made to the Zoning Board. He said there was some discussion in opposition with respect to whether or not this is an allowed use.

He suggested that the Board proceed and do what they normally do, that is, address the application that is before them. He said this is clear as a bell to him. The use matrix shows that elderly housing is allowed. He said he's not sure that he sees the merits of the Zoning Board appeal, but this is for the Zoning Board.

He said this is not the Cox Street application, the Wal-Mart application or 192 Kinsley Street. He said they have an application before them for a lot line relocation and a site plan at this time.

He said there was a concern or question about two structures on one lot. He said they worked closely with Mr. Yeomans on this. Under Section 16-81(b) and the definitions of principal structures, they are allowed to have two structures on one lot where they have an elderly housing project in the "RA" Zone.

He said this is an elderly housing project. It is not unlike any other elderly housing project that has been approved in Nashua and other communities with respect to policing the age limitations. He said in large part they are self policing. He said if a person buys one of the units he or she wants to make sure there's harmony within the units and that the people are complying with the condominium documents with respect to the age provisions. He said these will be condominiums and the units will be for sale. The owners of record must be age 55 or older. In addition, one of the persons living in the unit has to be over age 55.

Mr. Dufour asked if the person who is over 55 and owns the unit has to occupy the unit or if the owner could rent it out to someone who is over age 55.

Atty. Prolman said the criteria is that the person living on site has to be age 55 or older.

Mrs. Lasky said this does not preclude someone who is age 55 from buying the unit and then leasing to someone who is age 55 or older and living there.

Atty. Prolman said he didn't think so. He said that the criteria is that someone age 55 or older has to live in the unit. The Human Rights Commission polices elderly housing.

He said there was a lot of discussion about the owners of the property. He said the ownership of the property has no bearing on the application that people may or may not like.

Mrs. Lasky said the Board is aware of that. She also stated that the Board can rule on this tonight. If the court decides otherwise, it all becomes moot.

Atty. Prolman said there was testimony about the character of the neighborhood. He said a lot of thought has gone into the design and layout of these units. They are intentionally low profile units. They are intentionally trying to meet the character of the neighborhood. He said it is unfair to define neighborhood by immediate abutters and the immediate neighbors right next to the project. He said the neighborhood is a broader area. He suggested that the neighborhood includes Ledge Street, Kinsley Street, and other streets. He said if they look to the genuine neighborhood, this fits right in.

Mr. Dufour asked if they are required to have handicapped accessibility for the building.

Atty. Prolman said he doesn't believe so.

Corey Johnston, Northpoint Engineering. Mr. Johnston said there is sidewalk and curbing along the street. Where the existing driveway once was they will replace the sidewalk and curbing.

He said the snow storage is shown on the erosion control sheet. He pointed out the areas where snow could be stored.

Mrs. Lasky asked about fire apparatus.

Mr. Johnston said basically if your driveway is more than 100' long the Fire Department wants adequate turn around for an ambulance. He said the area he has shown on the plan is typical to what he's shown for other developments. He said 10' - 12' is the standard width of a driveway.

Mr. Dufour said that the condo association is going to have to make provisions to haul the snow if they can't stack it on site.

Mr. Johnston said this is correct. He said it's been designated on the plan where they can pile it, but if it can't fit they will have to truck it off site.

He said the utilities will be underground and will come in through the rear of the units.

He said referred the Board to the location of two area drains and a catch basin on the site. He said an area drain is a smaller catch basin for lawn areas. He said the whole site is being re-graded to those structures. It then routes it into underground chambers. There are fifteen chambers that will hold the water and allow it to infiltrate into the ground. There's an overflow pipe with a structure so that if it builds up and can't keep up with a 100-year storm, it will allow the overflow water to by-pass and go into the drainage system. He said the whole development increases the impervious area by about 8400 square feet, which is a relatively small amount. He said he has ample underground storage to handle the increased impervious area.

Mr. Johnston said the plans were forwarded to Pennichuck Water. He said they didn't have any comments from Pennichuck.

Mr. Dufour said there was a question concerning adequate parking. He said that the way he is looking at this every unit has parking for four cars - two in the garage and two outside.

Mr. Johnston said the zoning ordinance states that the maximum parking is 1.9 spaces per unit. With a two-car garage they have two spaces per unit and some parking in front of the garage.

Mr. Dufour said the Fire Department reviewed this plan. He asked if they had requested fire sprinklers.

Mr. Johnston said he called the Fire Department to ask for comments and he didn't get them back so he doesn't know.

Mr. Yeomans said he spoke to Deputy Morrisey about this just last week. He said he expressed no concerns about this. His issue was the turn around for an ambulance and that has been provided. He said they would rather have a wider driveway because it makes it easier, but what they have here meets the Fire Department's criteria.

Mr. Dufour asked if the zoning ordinance addresses a requirement for sprinklers.

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Mr. Yeomans said not that he is aware of. The only time the Fire Department has mandated a sprinkler system are for homes that aren't on public water.

Mr. Dufour asked how they define the rear of the lot. He said to him the front is where the street frontage is and the back is the farthest point to the north. He asked if that is not where the 25' setback is.

Mr. Yeomans said it is shown on the plan. He said as defined by the code, the frontage is along the street and the rear is opposite the front so the setback shown on the plan is correct.

Ald. Cookson said it's an irregular decagon. It's a ten-sided lot and they are able to decide what's a side setback and what's a rear setback. He asked if there weren't potentially two rear setbacks - the one at the west lot housing the three and one for the back unit.

Mr. Yeomans said the code defines the front lot line as the line dividing it from the street right-of-way. As defined, a rear lot line is opposite the front lot line.

Ald. Cookson asked if they typically have ten sided lots.

Mr. Yeomans said they have seen many-sided lots. He said in the inner City area the traditional square or rectangular or trapezoidal lot are more common as that is how the land was platted. The streets are basically straight and there isn't a lot of curvature to them. When the codes changed then you got the odd-shaped lots. You see those more on the outside of the City.

Ald. Cookson asked if this is considered inner City.

Mr. Yeomans said these lots are in the inner City.

Ald. Cookson said he recalls hearing something about environmental carbon dioxide levels. He asked if someone would be able to speak to this. He asked how many trees are being removed. He said he thinks tree line is also a character of that surrounding as well.

Mr. Johnston said he doesn't know the actual number of trees that they will be removing. There would be many more trees removed in a typical development. In this instance there is a small area of trees being cut in comparison to what is being

developed. He said he didn't know the number of trees in that area. There are a lot of tall pine trees.

Ald. Cookson said Mr. Dufour asked a question about being able to park multiple cars. There's a two-car garage and there would be the ability to park in front of the garage. He said Mr. Johnston indicated for the unit further south they probably would be able to park a car facing in toward the garage, but outside of the garage. He asked if that would be a typical full-length car.

Mr. Johnston said you would be able to fit three there parallel. You definitely could park a compact car facing in.

Ald. Cookson asked the actual length of the drive from the entrance on Lake to the furthest point back.

Mr. Johnston pointed to the plan and pointed out the length of the lot line as 160' in one place and another lot line as 67' so it's about 200'.

Ald. Cookson said an ambulance would be able to turn around, but if there was a need to get a fire engine or fire truck back there they wouldn't be able to make the turn radius.

Mr. Johnston said they wouldn't be able to make the turn radius. He said he isn't a fire fighter, but he supposes a fire could be fought in several different ways. He showed where the fire truck could be pulled up to fight it and then back out. He said the truck could be parked and a hose could be brought in. You can get to all sides of the building.

Ald. Cookson asked how the house at Lot #27 is being used.

Mr. Johnston said it's a single-family house.

Ald. Cookson asked if an environmental study was done so they would know how cutting down twenty trees might the carbon dioxide levels.

Mrs. Lasky said this is not required. She said green space is what they look at. They meet the 50% requirement.

Mr. Dufour said he is looking at the parking requirements and it seems that they more than exceed the parking requirements. He said the minimum requirements for elderly housing is one space per unit.

Mr. Johnston said this is correct.

Mr. Dufour said he is not a fire fighter either. He said he has discussed different fire concerns with the Fire Department on many occasions. He thinks what they would say is that if they are going to fight a fire in a dwelling they don't pull up to the front door. The issue is whether they can squeeze into the parking area and that's probably why they approved this.

Mrs. Lasky asked what would be screening the gentleman on Kinsley Street in the back. She asked if there would be screening so that lights will not disturb that resident.

Mr. Johnston said his client doesn't have a problem with adding a fence along this area, although it might impact some trees or they may be able to do it with more trees.

Mr. Dufour said if the abutter is looking for privacy he's an advocate of a fence.

Mrs. Lasky said as she was thinking about it a tree would have a trunk and it wouldn't do anything on the lower end so she was thinking of a fence as well.

There was more discussion about the existing chain link fences.

Mr. Farkas asked about the proposed Cape Code berm.

Mr. Johnston pointed out the area of asphalt curbing. He said the pavement is directed towards the curbing and it will direct runoff to the catch basins. It's a 6" high curb to help direct runoff.

Mrs. Lasky asked Mr. Yeomans if the reason that this use is permitted is because it is elderly housing.

Mr. Yeomans said that this is correct.

Charlene Coneys. Ms. Coneys said she is speaking for her mother, Eleanor Coneys, a direct abutter to both lots. She said that Mr. Yeomans indicated that there are many multi-sided lots within the City of Nashua. Her question is if there are many multi-sided lots with only 20' of connection between the multi sides. There is only 20' of connection between these two lots.

Mrs. Lasky said it meets the dimensional requirements.

Ms. Coneys said she understands that, but she asked if it met the spirit of the ordinance.

She said if this is approved she would like to see a stipulation that a fence be erected at the rear of her mother's property. She asked that any fences be erected prior to construction so that she is minimally disturbed by the construction.

She said the trees on the site are very large pine trees. She said the way pine trees work they all move together; that's why they grow in clumps. If there are trees cut down there's a much higher likelihood that they will lose trees. Trees will topple in the wind. There are other environmental concerns. She said her mother's house has a large grove of trees in back of it and she could very easily lose trees and she could have trees fall on her house because they lose their integrity.

She asked the Board to consider this in making their decision and also to consider tabling this until the Cox Street litigation is decided.

Mrs. Lasky said she didn't know the integrity of the trees or whether there's a way to go in without disturbing the trees.

Ms. Johnston referred to a picture that he presented. He showed which direction the picture was taken from. He said you can see the house very clearly. He said it looks like there are a couple of large pine trees that show in the picture. He indicated where the surveyor had located the edge of the tree line. He said it would appear the tree line is a distance away from the house. He said there's quite a large area that he didn't believe cutting trees in the area they plan to cut will affect the trees closest to her house.

Dianne Urquhart, 2 Ferson Street. Mrs. Urquhart said Atty. Prolman said they were not talking about Cox Street, Kinsley Street, etc. She said what they are trying to point out to the Board the seriousness of this. That is the reason these were brought up.

Mrs. Lasky said the Board is fully aware of what they need to look at and what the neighbor's concerns are. She said many of their concerns have to do with the land use code; the code by which the Board has to determine whether this case will be approved or not. She said the process can be changed through the Board of Alderman.

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Mrs. Urquhart said this is elderly housing, but it's three units. Three units is multi-family and multi-families are not allowed under the code.

Mrs. Lasky said they are allowed; as is elderly housing.

Mrs. Urquhart said multi-family homes have to go for a variance. She referred to Page 22.

Mr. Dufour said Section 16-81(b) states elderly housing that contains duplex or multi-family dwellings is permitted as a right in the "D", "RA", "RB", or "RC" districts subject to the requirements of this section. He said this is on Page 105.

Mrs. Urquhart argued that Page 22, #13 states elderly housing with residence in single-family detached housing. She said this isn't detached.

Mrs. Lasky said it also refers to Section 16-81(b), which is what Mr. Dufour just read from.

She said she knows they talked about the parking. She said if someone had two children and two adults, that's four cars.

Mrs. Lasky said the Board's hands are tied as far as this is concerned. It meets the requirements for parking per the ordinance. She said the same thing can happen in a single-family home. She said in her neighborhood there are cars parked all over the street because there are teenagers that drive. She said that's an enforcement issue with the City. She said that some of the residents may not even have a car. It comes as an aggregate when these things are determined.

Mrs. Urquhart asked who would oversee this when it talks about someone being age 55.

Mrs. Lasky said its Federally mandated.

Mr. Slivinski said initially it may be, but five years from now, who knows?

Mrs. Urquhart said this is what they are getting at. The Board may approve something and then it changes afterwards.

Mrs. Lasky said the Board is frustrated many times on many different issues. This is out of the Board's purview.

Mr. Dufour said the 55+ will be mandated by the deed and by the condominium documents as they're formed. He said he'd be very surprised if a lender would allow someone to move in who doesn't comply with the provisions of the deed and the condominium association. He said if someone moving in is 55 years old and then sells it five years later to someone who's 33, they're not going to sneak right in.

Mr. Slivinski said what could happen is parents buy the particular unit and then somebody else moves into it. They don't know what's going to happen down the road.

Mrs. Lasky said sometimes it's up to neighbors and people who may live there to police this type of issue and draw it to somebody's attention.

Mrs. Urquhart said these are just the reasons why something like this shouldn't pass.

Mrs. Lasky said the Board has no legal authority to deny something on that basis - that maybe somebody will abuse it.

Mrs. Urquhart said those speaking in opposition have given the Board a whole lot of other things to deny the request for. She said if it doesn't belong there, why would it be passed? She said the Board should be listening to abutters, but every time they come up and say something it passes. She said she doesn't get it.

Mrs. Lasky said there are laws within which the Board has to abide per the land use code.

Mrs. Urquhart said there are laws for the citizens as well, which is also in there.

Mrs. Lasky said there are some things that are subjective. She said the Board understands that's why they are there trying to point these things out. She said everybody has had a chance to speak and state these things. She said the Board has to balance the rights of the landowner and the rights of the abutters in conjunction with what the law says. That's what they always try to do to the best of their ability. She said someone wins and someone loses. She said she believes everyone on the Board takes this seriously.

Mrs. Urquhart asked how it is the neighbors always lose. She named some of the cases that have been issues with the neighbors

and have landed up being approved by the Board(s). She said if the Board cared about the neighbors they would vote on their side.

Mr. Slivinski said to ask the people that make the laws.

Mrs. Lasky said the Board has not made any decision on this case. They have tried to explain the manner in which the Board is allowed to work and allowed to judge an application. Someone goes away unhappy.

John Koutsos, 3 East Dunstable Road. Mr. Koutsos said what everyone who comes to these meetings is astounded by is the interpretation of the law. He said it seems as though they use it as a convenient excuse to pass things. He said when Mr. Dufour looked at the section in the use matrix referring to multi-family he was confused and that he might not be right.

Mr. Dufour said he didn't say that.

Mr. Koutsos asked if there wasn't a little confusion when the matrix table was brought up and whether it was allowed.

Mrs. Lasky said she would not disagree with Mr. Koutsos. She said this is a new set of codes and they are feeling their way through it.

Mr. Koutsos asked why when it's in black and white do they come up with different interpretations of something that's fairly simple. If it is in conflict, the law states that the higher standard with the greater restriction shall be prevailing.

He said it's not good enough for the Board to sit and tell them that it's the law. He said the Board is not the judge and jury. They have to take into account the wishes of the democracy of the City and the character of neighborhoods. He said whenever they pass something they say it's the law. He asked why - because they say it is. He didn't think so. He said he thought that on many occasions the Board has misinterpreted the law.

Mrs. Lasky said that is why there is an appeal period.

Mr. Koutsos said that isn't fair. The people that you're putting it on every time can't afford lawyers and can't afford to do it.

At this point Mr. Koutsos and Mrs. Lasky were talking over one another so it was not possible to understand what either was trying to say.

Mrs. Lasky said that over the years that she has been on the Board she does not believe that anyone has prejudged an application before it gets to the Board.

Mr. Koutsos said it shouldn't always be on the abutters. They should be fair. If it's a gray area, the applicant shouldn't win every time.

Mr. Duffy said as he looks at the matrix on Page 22 he doesn't see anything about elderly housing in multi-family in the RA Zone. He asked if this is an oversight. He doesn't know. He said he does know that when he turns to Section 16-81 there are multiple pages and when he goes to Section 16-93 there are multiple pages of inclusionary housing. He said it's clear to him what the intent was. He said they may have forgotten the "P" on the matrix table. Maybe the person who laid this out didn't feel that a "P" belonged there, but if they are talking intent, Section 16-81 and Section 16-93 clearly speak to that.

Mr. Houston said if the Board looks at #12 & #13, elderly housing is a use class in its own right. It's not multi-family.

Mr. Dufour said it's very frustrating. They hear the neighborhoods that come in and feel they are under attack and they probably are in some instances. He said Ald. Dion said the Planning Board can put a stop to it. He said the bottom line is that they are not the ones that can put a stop to it. He said they are the messengers. The Alderman write the message. He said if they have pages and pages of inclusionary housing and elderly housing that was written and allowed in the RA Zone, that's what they have to consider.

He said four or five years ago when they started the process of re-writing the zoning ordinances, there were multiple focus groups, neighborhood meetings, and public hearings. He said people were asking what they needed the most and were saying that there wasn't enough elderly housing. He said provisions were made for that in the new code. He said the Alderman approved the new land use code after many hours of hearings. If it's wrong the Planning Board can't change it. It will take the action by the Board of Alderman.

Mr. Houston said Ald. Rootovich held numerous public hearings. He said they asked the newspaper to write as many articles as possible to try to get the public out. He said there wasn't much response to that. Very few people attended the Master Plan public hearings, or the public hearings held as part of the land use code. He said it's only when there's a crisis or it happens next door to them that people seem to come out and complain.

He said if there are things in the code that need to be corrected the neighbors need to work with their Alderman to do so. He said it's sad that the community didn't come out and participate in the process as much as they could have.

Mrs. Lasky said she would have to agree with that. She said these ordinances were held back for more than a year so that there could be additional input from the neighborhoods, the business community, etc. while they worked through the ordinance page by page with the Planning & Economic Development Committee. She said it was on the web site and in the newspapers. She said its human nature that until something truly affects you in an immediate way, most people don't look into things that will ultimately affect them. She said the Board is not out to ruin the neighborhoods. She said everyone who worked on this has the good of the City at heart. She said they do this for nothing. They do it because they are trying to make Nashua a good and decent place to live.

She said elderly housing is being allowed in many neighborhoods because it is truly a necessity. The character, the look and appeal of this is not to ruin anyone's neighborhood. It's to give people a chance to live in good and decent housing among good and decent people and to those that might otherwise not be able to afford a home.

Someone from the audience said that from what he's heard tonight nobody from the Board has been out to look at these properties.

Mrs. Lasky said she had been out to the site twice and every other member of the Board has told her that they have been out there. She said it is his or her duty to go out and look at each site and as far as she knows everybody takes that seriously. She said they are asking all the questions they have so they can be fair to everyone.

Mr. Slivinski said if this were happening next door to him he would chain himself to a tree to stop it. He's sure what they are proposing and everything that they've learned that they're

legal in what they are doing. He said they are talking about elderly housing, but when he looks out over the audience tonight, including the Board members, it's about 70% of the people in the room. A good intent of saying they need good affordable elderly housing ends up into situations like this. The people that are doing this are not neighbors. The Board is constantly caught between what's legal and what they know is right. They have to constantly weigh against the City being sued on these types of issues, which add a great deal of additional expense. He believes the laws need to be changed, but in his opinion what they are looking at right now is legal.

Mrs. Lasky said that in their discussions it sounded like the Board would be able to determine which one of the units would be designated the affordable housing unit. She asked if this is something the Board would want to do.

Mr. Dufour said if he had to pick one he would pick the third one - as long as one of them is classified that way.

Mr. Farkas said he didn't think the Board could stipulate which one it has to be. He said he thought they could stipulate that one of them has to be designated before they get a certificate of occupancy.

Mrs. Lasky said for purposes of marketing they would have to designate one of them at any rate.

Ald. Cookson asked if Mr. Yeomans would explain the density bonus and how it gets applied in order to allow a fourth unit.

Mr. Yeomans said the density bonus is a straightforward mathematical formula that allows you to increase this type of housing. Inclusionary zoning is for affordable housing for low and moderate-income housing. This is a request by the applicant that can be approved or not approved based on the circumstances. He said the clearest calculation is at the top in the gray bar in the book. In this particular case, as the numbers work out, they come in short about 290 square feet if they were allowed to do this. He said basically if they grant the request, they are essentially granting an area variance for 290 square feet. He said if the Board does not allow the density bonus they would only be permitted to build three units.

Ald. Cookson asked if they need to have a fourth unit on this property. He said obviously there would be a profit when selling the property with a fourth unit there. He asked if the

abutters would have as much conflict if there wasn't a fourth unit in the back and maybe there would be a small sitting area there that preserved the trees. The residents of the three units could use it for some other purpose - such as a picnic.

Mr. Yeomans said that from what he's heard tonight he doesn't believe they want anything there at all for any reason. He said the real issue is the purpose of the inclusionary zoning section of the code. He said that's to provide housing opportunities for people who can't afford \$350,000 - \$400,000.

Ald. Cookson asked if they weren't able to offer them that same opportunity with three units.

Mr. Yeomans said that's what the bonus is for.

Mrs. Lasky said if the Board does not approve the lot line relocation there would be no way to ask for the affordable housing aspect.

Mr. Yeomans said it would curtail the fourth unit for sure. He said he hasn't run the numbers on the remaining number of units.

Mrs. Lasky asked what this would do to the other lot - would they still be able to have three units.

Mr. Yeomans said his guess there would only be room for two based on the square footage of the lot. He would have to do the math.

Mrs. Lasky said the bottom line is that the lot line relation is needed not only for the inclusionary housing, but also to get three units on the lot. She said whether there are two or three there is no incentive to make one of them affordable housing without the fourth unit. They can be market value.

Mr. Yeomans said this is correct.

Mrs. Lasky asked if it would be possible to deny the lot line relocation, but allow three units on the one lot and make one of those units affordable.

Mr. Dufour said there are two issues that come into play - elderly housing and affordable housing. If they were to sever the rear lot, what is left is a dwelling that could be 55+ housing. They lose the affordable housing component.

Mrs. Lasky said for argument's sake, ordinary dimensions would allow a duplex on the lot. Her question is if they could then apply inclusionary housing to allow a third unit on that lot and have one of the three be affordable.

Mr. Yeomans said that's not what is in front of the Board. They have to act on it as presented.

Mr. Slivinski asked if the fact that this is elderly housing has any bearing on the character of the neighborhood.

Mr. Yeomans said he has many definitions on the character of a neighborhood. It's basically defined on a community basis.

Mr. Slivinski said that he thinks the character of the neighborhood is generally single-family type homes versus multi-family homes, how much open space is generally with the lots, etc. He asked if that is up to the Board's discretion.

Mr. Yeomans said the character of the neighborhood is what you see. It's the width of the streets, the sidewalks, the lighting, the shrubbery, the age of the homes, the setbacks, etc.

Mr. Slivinski asked if something is elderly housing it doesn't mean there's a price break; that there are no real advantages other than they can pack more on the parcel.

Mrs. Lasky said the only way they can get the inclusionary is if it's affordable.

Mr. Yeomans said under the code the "RA" Zone the density requirement is 6 units per acre and the elderly housing density is 8 units per acre. He said the code clearly contemplates a higher number of units per acre to satisfy this housing need.

Mr. Dufour said market value will determine what the units sell for, except for the one that would be affordable. What the market value for the those three units as opposed to something in the southwest quadrant is going to be different.

Mrs. Lasky said for the record, the one unit is "moderate" housing.

Ald. Cookson said Mr. Slivinski talked about the character of neighborhoods and Mr. Yeomans has indicated he has a stack of definitions for character and that many things go into establishing character of a neighborhood. He asked if they are

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able to define what is not character within a neighborhood - does something stick out that is out of the character of the neighborhood.

There was some discussion on this with Mrs. Lasky saying that it's in the eye of the beholder. It's like "I know it when I see it sort of thing".

MOTION by Mr. Lowe to approve the lot line relocation for 333 Lake Street & 3 Ferson Drive with the finding that it meets NRO Section 16-440(g).

SECONDED by Mr. Dufour.

Ald. Cookson asked what the consequences are for approving versus denying the lot line relocation and how it impacts New Business #3.

Mr. Yeomans said he can't answer this question. This isn't what's before the Board. He said if they want to know the answer to the question he thinks they would have to open the public hearing back up and ask the applicant.

Mr. Dufour said his opinion is that they have to vote on what's before the Board. If New Business #2 were to be defeated there's no way that #3 could move forward.

Ald. Cookson said if #2 is approved and #3 was denied, what would the consequence be. He said he is having a difficult time separating the two of them. He is seeing them as a whole.

Mr. Dufour said if the lot line relocation is approved and the site plan was denied, providing the applicant records the plan for the lot line relocation then they have created a lot that looks like what has been presented (he referred to a green outline) and that's what they would have.

Ald. Cookson said then that may be of little or no value at all.

Mr. Dufour agreed.

MOTION FAILS - 3-3, Mrs. Lasky, Ald. Cookson, Mr. Slivinski opposed.

Mrs. Lasky said a motion to table may be in order.

Mr. Lowe asked if they could table this until the Cox Street litigation has been settled.

Mrs. Lasky said that case doesn't have any bearing on this case.

Mr. Slivinski said he voted "no". He said to take a look at what they would be creating if this is approved. He said it's a nice open neighborhood. There will be stockade fences because of this proposal and it's going to stick out like a sore thumb. He said in his opinion this greatly affects the character of the neighborhood.

Mrs. Lasky said she is having difficulty with the back lot and she is fully in favor of affordable housing. She said she doesn't believe even a tri-plex is out of character in the front lot and that's why she voted against the lot line relocation.

She said she believes the Board can table the request and if the applicant wants to bring something different to the Board that is within their rights.

Mr. Dufour said the opportunity the applicant has is to come in with another plan after this plan is denied rather than table it. The applicant is not going to come back at the next meeting and say they are going to put in three units and forget the back lot. He said they can't just re-do the plan. They have to start all over again.

Mrs. Lasky said Mr. Dufour is correct.

MOTION by Mr. Slivinski to deny the request for lot line relocation at 333 Lake Street & 3 Ferson Drive. This will have a detrimental affect on the character of the neighborhood and will affect the property values.

POINT OF ORDER by Atty. Prolman

Atty. Prolman said if the Board is inclined to do so, the applicant would just assume that both the lot line relocation and the site plan be tabled.

Mr. Slivinski said he had not completed his motion.

MOTION by Mr. Lowe to table the lot line relocation for 333 Lake Street & 3 Ferson Drive.

SECONDED by Mr. Slivinski.

MOTION CARRIED - 5-1, Mr. Farkas opposed.

AMENDED MOTION by Mr. Lowe to table the lot line relocation until May 4, 2006.

SECONDED by Mr. Slivinski.

MOTION CARRIED UNANIMOUSLY

MOTION by Mr. Lowe to table the site plan for site plan for a 4-unit elderly housing development with associated access, parking and site improvements, 333 Lake Street & 3 Ferson Drive until May 4, 2006.

SECONDED by Mr. Farkas.

MOTION CARRIED UNANIMOUSLY

Mrs. Lasky said at issue is the back lot and what would happen without it and what could go on the front lot without the back lot,

OTHER BUSINESS

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

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

SECONDED by Mr. Farkas.

MOTION CARRIED UNANIMOUSLY

- 2. Referral from the Board of Alderman on proposed Petition for Waiver of Impact Fee for 2 Henry David Drive.**

Mr. Houston said the applicant is requesting that 80% of the impact fee be waived. He said under provisions of State Law, 80% of the units have to have an individual living in them who is at least age 55. They are willing to pay for the remaining 20% of units, but not the 80% that meet the definition of elderly housing.

There was some discussion about other elderly housing projects that had asked for waivers of the impact fee.

Mr. Lowe said they have the same problem that they had before. He said that tonight there was testimony by an individual that when he was age 55 he would have two teenage children and could be in elderly housing. He said unless they stipulate that there can be no children, which they can't do, or they ask for the money. The answer is they ask everybody to pay.

Mr. Dufour said they have voted on this before and all they can do is send a positive or negative recommendation to the Board of Alderman. The Board did send a negative recommendation on another of these elderly housing units and when it got to the Board of Alderman they went ahead with the waiver request.

Mr. Slivinski said he even went to the Board of Alderman and told them it was the Board's feeling that everything that was built in the City had an impact on the school system.

Mr. Houston said they haven't seen any evidence of kids in any of these projects. Generally speaking, it's not the people who are 55 years old who are moving into these units. It's those that are much older - probably age 65 or 70. He said if the Board feels strongly enough about this they should get a sponsor and initiate legislation to remove the waiver.

Mr. Slivinski asked if he was correct in saying that the impact fees don't go into the general fund; that it goes into a special account and if it's not used in twenty years it's returned.

Mr. Houston said it's actually six years under State law. It goes into a fund that's expended for Capital Improvements for schools.

MOTION by Mr. Slivinski sending an unfavorable recommendation to the Board of Alderman on proposed petition for waiver of impact fee for 2 Henry David Drive.

SECONDED by Mr. Lowe.

Mr. Dufour said the rationale for this is that the Board feels that 55+ could still have significant impact on the schools.

Mr. Lowe said there was some statistical data that in one of these types of housing in Hudson there were four or five children.

Mr. Houston said generally these developments are covenant regulated and controlled and managed and they discourage kids. He said it doesn't mean that some smaller scale residential

projects might be more inclined to have children, but generally the larger projects won't.

Mr. Farkas bought up the project off of Northeastern Blvd. and a sign that's between the hardware store and the corner of Harvey Windows & Doors.

Mr. Dufour said that he thinks whoever is in charge of that project should ask them what's with the entrance on Northeastern Blvd. He said it doesn't look like a major entrance.

Mr. Farkas said he's seen the sign and seeing the trucks.

Mr. Lowe said the access way was approved.

Mr. Farkas said it was just for construction.

Mr. Lowe said it was approved as an access because there have to be two accesses to a site.

Mr. Dufour said it's probably gated, but it's un-gated at the moment because he thought he had seen a gate there.

MOTION CARRIED UNANIMOUSLY

Discussion Items

None

Other

Mr. Farkas said he is getting increasingly frustrated with this recurring theme that because they apply the law to the facts as they are supposed to under a quasi-judicial body and utilizing the juror standard that they are the ones criticized. He said they are duty bound to follow the law. He said the Board isn't there to protect the citizens' feelings. They do the best they can when they hear the concerns of the neighborhood within the constraints they have. The Board of Alderman is the body that has to make any changes in the laws and the Planning Board will then apply those laws. The Planning Board can't create things that don't exist.

Mr. Houston said many Cities complete citizen surveys. He said they have asked for funding for citizen surveys for years in Nashua and the response from the Board of Alderman has been that they know what the citizens from their particular ward wants. He

said that may be true to a certain extent, but citizens have certain viewpoints about their neighborhoods or what is important to them that collectively should be known by the Board of Alderman and Planning Board.

He said the Planning Board held nine public meetings on the Master Plan and he can't recall the number of public meetings that were held on the land use code. He said you just can't get people out to those, unless it affects them directly for a development request. They can't get them to speak to the bigger issue. He said they get the Chamber of Commerce, the business interests, but not the citizens at these meetings to say they want more protection for the neighborhoods. A citizen survey is a way of doing that as well as neighborhood plans.

He said Nashua is building out and they are running into these issues.

Mrs. Lasky said they are getting fill-in, renovations, teardowns and it's going to be different. They have known this, but what she is finding extremely disheartening is the lack of support from people who should know better - who should know that that Board is trying to do the best they can and the Board is being used as the scapegoats for the fact that they have fallen down on their jobs and did not pay as much attention to the ordinances as they should have before they were approved by them. She said they are accused of not hearing and not listening to the neighbors. She can understand the neighbors because they don't understand the process. She said it is increasingly hard to take from elected officials and non-elected - people that should know better.

Ald. Cookson said he hears the frustration. He said he's been in meetings since December where he's come in and just sat in the back of the room and observed and tried to get up to speed as quickly as he could to understand what this position takes. He said he felt fortunate to be sitting with the Board, indicating that they are all doing a wonderful job - a duty that is not rewarded. They come on their own and try to do the best that they can do within the boundaries that are set for them.

He said while there is pointing of blame, it seems to be going in both directions. Some of the Alderman are pointing to the Planning Board and this room is pointing back downstairs. He said he didn't know if anything was going to come of the continued pointing, but there's an opportunity here with a new Board of Alderman in place. He said he would be happy to sit

down and collaborate with them and take their messages back to the Board of Alderman. He said they should also understand that he has an Aldermanic perspective that he has to look out for as well so he has to balance the two.

Mrs. Lasky said the Planning Board is always willing to work with the Board of Alderman, although she is not sure that she wants to go to the meeting on Tuesday and once again listen and be vilified by both a neighborhood group and an Aldermanic group that she listened to the other night.

Mr. Dufour said he was there at the past Aldermanic meeting and he was there on March 1st. He said he was there to speak against the Mayor's conservation easement proposal because he felt that the Planning Board along with many people in the City had worked very hard to create conservation land. After he spoke against this proposal he sat down and he listened to at least a dozen people from one of the Board's prior cases get up and speak ill (for lack of a better word) of the Zoning and Planning Boards in the City. They said the Boards run amuck and have no concern for the character of the neighborhood.

He said one of the Alderman said that it was time to have an investigation of the Zoning and Planning Boards. The insinuation was that the Board members sit here and do something illegal - behind the scenes.

He said he took offense to that statement. He said he got home that night and couldn't go to sleep all night just thinking about that. He spent two weeks coming up with some type of reply and he went to this past Aldermanic meeting and waited till the end because that's when they listen to comments that aren't on the agenda. He said he tried to present a perspective to what had been said at the prior meeting.

He said when the Alderman had their turn to speak again, the very same Alderman, in not quite the same words, said the same thing again. He said he has given up on that Alderman. He is the same Alderman that came to the Planning Board a few meetings ago and said, when they tabled an item so they could get additional information, that if he wasn't at the next meeting when they got their additional information, he wasn't changing his mind. He said that person is pretty closed-minded and he didn't think there was any hope of changing his perspective.

Mr. Dufour said he went to the meeting because there are a lot of new Alderman who are very concerned. He said they are taking

a lot of heat and he wanted them to hear a different perspective because he thinks it's getting out of control.

He said what's going to happen now is that their five years of land use ordinances are going to get chopped up in an unreasonable manner because there's hysteria out there. Ultimately the courts will end up deciding those motions also.

Mr. Slivinski said it sounds like the Alderman are telling the Board that the character of the neighborhood is important.

Mr. Dufour said the Board of Alderman can change the ordinances. He said he told them the other night that they are going to be up against State law. They are going to be up against land use laws in general and they're going to start hearing from the people from whom they are going to take away their property rights. He said there are at least two sides to every story.

Ald. Cookson said he is willing to listen and thinks there are lot of Alderman who are willing to listen. He said they do need to work together and collaborate. He said because he is new to the Board he doesn't necessarily know what all the issues are.

Mr. Lowe said if any change comes from the Board of Alderman, it still has to come to the Planning Board for a recommendation. If they give it an unfavorable recommendation, the Board of Alderman can overrule with a 2/3-majority vote.

Ald. Cookson said there doesn't have to be a "them" and an "us". He said he doesn't think that all of the Board of Alderman sit on a Thursday evening and watch the Planning Board meeting or watch the tape replay. He said they will get involved when one of their constituents calls and then it will come to this setting.

He said the Planning Board is much more aware of what's going on and what's happening. He would say that if the Board wants some of these land use laws changed, then they need to work on it. Rather than pointing fingers and blaming, they should try to figure this out together. He didn't think they would be doing the citizens or property owners any good. The lawyers will take it to court and continue to make money.

Ald. Cookson said he would be as proactive as the Board needs him to be in order to avoid these types of frustrations and conflicts that they are experiencing. Something needs to change.

Mr. Slivinski asked if this didn't all start when the Supreme Court of New Hampshire made a ruling that said people had the right to maximize the use of their land. He said when they made that ruling they started to get the "flag lots", etc.

Mr. Farkas said that's pretty close. He said the hardship standard changed and when that happened the Zoning Board started to grant more and more variances. He said he didn't think it was just that alone, but a confluence of things. He said here in Nashua they are seeing build-out. All the easy lots are gone. He said the land use code specifically provides for flag lots so the developers or the people who own these lots have the right to develop them and the law supports them, but constituents will say they don't want them. They tell their Alderman who then say that the Board should listen to the people and deny it. He said the Board doesn't have a choice. They can't deny it - it's allowed. He said he could deny it just because, but he wouldn't have a legal basis and when challenged would lose in court. This costs money, it will be reversed, and the City gets no concessions. Once that happens a couple of times it's not going to happen any more because that affects taxes too.

Ald. Cookson asked who provides the input.

Mr. Houston said for example, if from a policy point of view they said they didn't want any more flag lots in the City, it would be an issue of how they would modify the code to discourage flag lots. He said there are still variances. Landowners still have the right to ask for variances under state law. The question is if they would want to make it more difficult for flag lots or encourage in-fill like the Master Plan says now. He said the planning staff can supply some guidance along those lines and the Legal Department can also do the same.

He said there are some issues on Catherine Street dealing with pure legal issues on paper streets that no longer exist and there are laws that apply that the Board has no control over. State law controls a lot of what they do and don't do. The Superior Court cases and the Supreme Court cases define some of those issues. He said the only time the Board denied an application because it was out of character of the neighborhood was appealed and the decision was overturned by the court.

Mrs. Lasky said they are working their way through these new ordinances and the issues like they had tonight. She asked if

they had discussion items on some of these things that possibly are newer or maybe have workshops.

Mr. Dufour said the Board had a problem with the back lot. From the neighborhood's perspective, if that's a rectangular lot and it's got four units there would be as many people here to speak against it because they are going to say it's out of character with the neighborhood.

Mr. Farkas said what they are talking about are policy decisions and the Planning Board does not set policy. They apply it. There are going to be things that aren't black and white and there's a lot of things where they have to use discretion. He said character of the neighborhood is exactly that.

Some further discussion ensued about what transpired at the hearing tonight concerning Lake Street/Ferson Street.

ADJOURNMENT at 11:25PM

APPROVED: _____
Bette Lasky, Chair, Nashua Planning Board

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