

NASHUA CITY PLANNING BOARD
July 10, 2008

The regularly scheduled meeting of the Nashua City Planning Board was held on Thursday, July 10, 2008 at 7:00 PM in the auditorium at City Hall.

Members Present: Ken Dufour, Chair
William Slivinski, Vice Chair
Bob Canaway, Secretary
Steve Dookran, City Engineer
Mike Lowe
Daniel Latham
Cynthia Overby

Due to the absence of regular Board Members, Mrs. Overby will be voting.

Also Present: Roger Houston, Planning Director
Mike Yeomans, Deputy Planning Manager
Lucy St. John, Deputy Planning Manager
Chris Sullivan, Planner II

Approval of Minutes

June 19, 2008

MOTION by Mr. Lowe to approve the minutes of June 19, 2008, waive the reading and place on file.

SECONDED by Mr. Latham

MOTION CARRIED 6-0-1 (Mr. Dookran abstained)

COMMUNICATIONS

Mr. Houston went over the following items that were received after the mailing went out.

- Memo from Jim Petropulos regarding case #8 on the agenda.
- Case #9, Pheasant Lane Mall has requested that their application be tabled to the August 7th meeting.
- Technical Review Meeting Schedule to determine regional impact is in the packet.

REPORT OF CHAIR, COMMITTEE & LIASON

Chairman Dufour 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. This will also be the time for the applicant to address any issues or concerns raised by prior testimony.

The Board will then ask any relevant follow-up questions of the applicant if need be.

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.

Above all, the Board wants to be fair to everyone and make the best possible decision based on the testimony presented and all applicable approval criteria established in the Nashua Revised Ordinances for site plans or subdivisions. Chairman Dufour noted that the Planning Board does not make zoning decisions. Zoning determinations are made by the Administrative Officer prior to the Board's legal public notice being sent to abutters.

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

Chairman Dufour thanked everyone for their interest and, courteous attention and asked that everyone turn off his or her cell phones and pages.

OLD BUSINESS - CONDITIONAL/SPECIAL USE PERMITS

None

OLD BUSINESS - SUBDIVISION PLANS

None

OLD BUSINESS - SITE PLANS

1. **TUVA, LLC c/o Peter's Auto Sales, Inc (Owner) - Application acceptance and proposed amendment to NR895 to show a change of use from retail shoe store to car sales with drainage and site improvements. 195 Daniel Webster Hwy, Sheet A - Lot 997, Zoned "HB" - Highway Business. (Tabled from the May 15, 2008 Meeting)**

MOTION to remove from the table.

SECONDED BY Mr. Latham

MOTION CARRIED UNANIMOUSLY

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

SECONDED by Mr. Canaway

MOTION CARRIED UNANIMOUSLY

Jim Petropulos, Hayner/Swanson, Inc.

Mr. Petropulos said they are seeking site plan approval for a change of use. This is the former Dexter Shoe site. To the north is the Bluestone Condominium complex, to the west is Louisburg Square, to the south is a Japanese restaurant and to the east is the Daniel Webster Highway. The site is 1.897 acres. Currently there is a 4,400 square foot building and approximately 38 parking spaces. Access is from Daniel Webster Highway, right in and right out only. The driveway also serves as access to Louisburg Square. Half the site is developed; the other half is a buffer. Mr. Petropulos said they are proposing to change the use from retail stores to car sales. There will be sales of used vehicles only, no maintenance or repair. The owners purchased the property about three months ago. The existing building will be used with a few minor site improvements. There will be a small entry addition, approximately 180 square feet. The front

entry will bump out and it will get a new façade. There will be a 10-foot gravel access drive around the back of the facility for internal use only. There will be 9 customer parking spaces. The remainder of the paved parking area will be seal coated and serve as a storage area for the vehicles. There will be new landscaping across the front of the building. They performed a TIR Traffic Impact Report worksheet. There would be less traffic for automotive sales than a retail store. There is little opportunity to create stormwater on site with regard to recharge so they are seeking a waiver. This is relatively a minor change of use site plan. They are in opposition to constructing a sidewalk along the site frontage. The applicant has tried to work with DPW to resolve this issue, but they have been unable to do so. Due to the nature of the proposed use and the fact they are reusing an existing facility, they do not believe construction of a sidewalk will be of benefit to the applicant. People who come to used car dealership will drive. There are some difficult land features along the edge of Daniel Webster Highway. There is a five foot paved shoulder. Right after the edge of the pavement with no curbing there is a slope. There are utility poles and a high pressure gas main off the edge of the pavement. In order to construct a sidewalk they would be excavating into the bank significantly. It would require blasting work, possibly a retaining wall. They are concerned about the work in proximity to the high pressure gas main. They have had some discussions with the gas company in regards to that. DPW has asked them to look as some alternatives. One of the alternatives is shifting the sidewalk out into the street to utilize some of the flat area that is occupied by the shoulder. Their traffic consultant felt it would be dangerous to bring that sidewalk out because there is no other sidewalk on either side of this site. They were also asked to consider the proposed roadway improvements that Nashua Landing will do and see if they had any ideas about lane shifting to provide a flat area for a sidewalk. They did consult with the traffic consultant for Nashua Landing and they came up with the possibility if those road improvements could be moved 3 feet to the east. Then the applicant could have the sidewalk in the flattest area. Instead of building a retaining wall in the back they would back it with a piece of vertical curb. Nashua Landing told them because they have started so much in the design of the roadway improvement they are unwilling to make the changes to the design. DPW told the applicant they would like them to pursue a sidewalk along the pavement. They got a quote of \$150,000 to do that sidewalk work. That amount did not include any possible relocation of the gas main or the power poles. Finally, what would the applicant gain by putting in a sidewalk? The reuse of this facility does

not have an impact to addressing any sidewalk improvements. The applicant has offered his contribution to the sidewalk fund in the amount of \$33,000.

Morgan Hollis, Esq., Gottesman & Hollis

Atty Hollis asked Mike Yeomans to hand out correspondence dated July 3, 2008 that was addressed to Mike Yeomans. Atty Hollis said in doing an analysis of the Land Use Code ordinances, he found no authority for the Board to ask for a sidewalk contribution on a change of use plan. A change of use is different from a new use. Sidewalks are covered by Article II Street Design and Transportation, Subsection 190-212. However, 190-206, which deals with that section, applies to applications for site plans involving the construction of public or private streets. There are no public or private streets being proposed here. Therefore it would be excluded from the Board's consideration. If the Planning Board takes the position that they do have authority and are going to proceed forward, Atty Hollis outlined in Section 192-212 there are two options. One is a sidewalk waiver. Section 192-112 provides that the Planning Board can accept a contribution in lieu of the construction of the sidewalk.

Mr. Dookran asked Atty Hollis if every time he represents someone before the Planning Board does he look for the authority that a City has for requesting the sidewalk.

Atty Hollis said he is rarely asked for the issue of authority. This is a change of use. He weighs in and gives his client his opinion to any impact fee or mitigation requirement. There has to be some connection to the use and what you are asking for. The burden that is being imposed on this applicant is highly unusual.

Mr. Dookran asked how they came up with the contribution in the amount of \$33,000.

Atty Hollis said that Mr. Petropulos would be better to answer that question but if he recalled correctly he looked at the possibility of relocating the roadway and if it could be relocated as part of the Nashua Landing Plan then the sidewalk could be constructed outside of where the gas easement is and off the slope of the hill. As a result you wouldn't have a lot of the additional construction costs. An estimate would be \$33,000.

Chair Dufour said the master plan calls for sidewalks on both sides. They have been able to establish miles of sidewalks in the City.

Atty. Hollis said if they construct that sidewalk there is a dangerous situation created by people having to end at the sidewalk and go down into the right-of-way. That is why a contribution in lieu of the sidewalk is one of the better opportunities. There is no change in the building footprint, barely any change in the parking lot. You are changing the use inside of the building. It isn't a fast food restaurant where you have to look at the traffic flow or a new building. The precedent you could be setting is every time you change from one retail use to another does that require this kind of investment. In this particular instance this may be the exception to the Board's policy and they have tried to lay out why they should give a sidewalk contribution in lieu of constructing a sidewalk.

Mr. Yeomans said when Pizza Hut two doors down came in the Board did require a sidewalk and it did get built.

Mr. Petropulos submitted the cost estimate from Hudson Paving. Mr. Petropulos said that he wanted to make it clear that it wasn't their idea for Nashua Landing do something different. They were asked by DPW to evaluate the shifting of the road to allow for a sidewalk.

Mr. Canaway asked how much you would increase the amount of pavement by.

Mr. Petropulos said 3,500 square feet.

Mr. Canaway asked about predevelopment flow versus post development flow. It appears to be an increase of 15%.

Mr. Petropulos said when you are talking flows of 10 year storms in the order magnitude of 3cf to 4cf a 15% increase is not significant. There is ample capacity in the system. No historical record of a stormwater problem in the area.

Mr. Dookran agreed with Mr. Petropulos. If you don't have any chronicle drainage problems, then an increase like this is negligible.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No one.

SPEAKING IN FAVOR OF THE PLAN

No one.

Chair Dufour said this concludes the public hearing on this application. They will now carry the deliberations into the public meeting. The Board reserves the right to recall any party to this case for clarification.

Chair Dufour said what the Board has to do here is to look at what they have done in the past. Pizza Hut built a sidewalk. We have other applications this evening that the Board is asking for significant contributions. The Board has to look at each case individually.

Mr. Lowe said if this were anywhere else would we approve it if they didn't build a sidewalk.

Chair Dufour said the master plan calls for sidewalks on both sides. The applicant is arguing that a change of use is insignificant. He felt that the change of use being insignificant was not accurate.

Mr. Slivinski said from what he heard he would be more inclined to allow the contribution rather than forcing the applicant to build the sidewalk. It is just a change of use. It is a change from shoes to cars, but not a significant change in use of the site. This will not cause any foot traffic. Applicants have been given the choice between the contribution and building a sidewalk. To build this sidewalk is going to cost more than what a reasonable contribution should be.

Mrs. Overby read from the Land Use Code and agreed that sidewalks should be on both sides of the street.

Mr. Canaway said he would like to see that portion of the master plan that references sidewalks on Daniel Webster Highway before he makes a decision.

Mr. Slivinski asked Mr. Dookran if \$200,000 sounds unreasonable to do this work.

Mr. Dookran said they would pay on average for sidewalks without any complications a \$100 per foot. For a retaining wall you are probably looking at an additional \$50 per square foot. For the sidewalk and retaining wall it would be about \$150 per foot, and that is without dealing with the gas main or any poles or ledge.

MOTION by Mr. Lowe to approve Old Business - Site Plans automotive sales, TUVA, LLC (applicant) change of use from retail store to automotive sales. 195 Daniel Webster Highway. It conforms to NRO 16-450(d) with the following stipulations and waivers:

1. Prior to the issuance of a building permit documents pertaining to the stormwater operation and maintenance plan shall be recorded.
2. The waiver request for stormwater standards, Sec. 16-621(b) and (c) is granted.
3. The applicant is required to construct sidewalk along the site frontage of Daniel Webster Highway per the plan review comments of the Division of Public Works.
4. With approval of this site plan the Planning Board approves the building materials used on this building.

SECONDED by Cynthia Overby

MOTION CARRIED 5 to 2

OLD BUSINESS - SITE PLANS

2. **Red Fall, LLC & Hera Development Corporation (Applicants) Nicholas Heras, Jr. (Owner) - Application acceptance and proposed amendment to NR1699 for the construction of a 1 story, 6,480 square foot building for retail/restaurant use with associated access, parking and site improvements. 341 & 345 Amherst Street, Sheet G - Lots 28 & 30, Zoned "GB" - General Business. (Tabled from the May 15, 2008 Meeting)**

MOTION by Mr. Slivinski to remove from the table.

SECONDED BY Mr. Lowe

MOTION CARRIED UNANIMOUSLY

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

SECONDED by Mr. Lowe

MOTION CARRIED UNANIMOUSLY

Tom Pozerski, Merrill Associates

With Mr. Pozerski tonight are Atty Prunier, Christian Farland, Project Engineer, Ari DeAngelis, Architect, and Bob Bollinger, traffic consultant. This lots contain 2.68 acres. This site plan was before the Board and approved on July 20, 2005. There is a 22,000 square foot building in the rear and 6,485 square foot restaurant. Tonight they are here for the 6,485 square foot building. The change would be to have a 3,000 square foot restaurant and the remaining 3,480 square feet is going to be a retail use. There is less of a traffic impact with the change. Improvements that are proposed are a wider entrance drive. It will be an entrance only, 20 feet wide. They will take one entrance drive and move it 35 feet in away from the intersection. All the drainage is being controlled on site and they will be mitigating any runoff. They are required to have 140 parking spaces, they are proposing 149 for the entire site. They are required to have 5 handicapped spaces and they will provide 5 spaces. They are requesting 3 waivers. They are required to have 10% open space and they will have 13.6% open space. There will be a sidewalk along Amherst Street and if there is any disturbance they will rebuild it and put in a crosswalk.

Gerald Prunier, Esq.

The applicant has no problem with the stipulations made by the plan. They will contribute \$10,000 to the traffic improvement.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No one.

SPEAKING IN FAVOR OF THE PLAN

No one.

Chair Dufour said this concludes the public hearing on this application. They will now carry the deliberations into the public meeting. The Board reserves the right to recall any party to this case for clarification.

Chair Dufour said after reading the letter from Wayne Husband to Mike Yeomans dated June 17, 2008 regarding traffic, he would like to hear from Mr. Husband as to whether the traffic is adequate or not.

Mrs. Overby said there was more then one exit for this site besides the jug-handle.

Mr. Slivinski asked about the entrance on Amherst Street. Is it one-way traffic. Could there be back-ups?

Mr. Dookran thought it would work fine as proposed. He wishes the traffic issue was resolved before the meeting. Mr. Dookran asked Mr. Yeomans why this case has been postponed for several meetings.

Mr. Yeomans said the request for a full traffic study came in late in the process and it has taken that long to get the study done and reviewed.

MOTION by Mr. Dookran to return to the public hearing for the purpose of obtaining additional information from the applicant.

SECONDED by Mr. Lowe

MOTION CARRIED UNANIMOUSLY

Atty Prunier read into the record the letter from Wayne Husband to Mike Yeomans dated June 17, 2008. The applicant feels they are making a fair contribution to what it will cost to make the improvements that are wanted.

Mr. Canaway asked how did the applicant base the figure for the contribution.

Atty Prunier said 4% of the traffic in that area is the applicant's according to what the traffic consultant said, which would be a contribution of \$2,800. They weren't coming here and telling the Board they were going contribute \$2,800 and \$5,000 wasn't enough and \$10,000 seemed better to help get his on the path to get improvements.

Mr. Dookran said that Mr. Husband asked for video detection. That is better then what is out there.

Bob Bollinger, Robert Bollinger Engineering

Mr. Bollinger said it was his understanding that the video detection would replace the existing electro-magnetic loops and would be tied into the signal control system that the City maintains.

Mr. Dookran asked how is it priced out.

Mr. Bollinger said they consulted with 3 different electrical companies. It is also based on location, number of legs, cameras and whether there is infrastructure to tie into. They are in the \$30,000 to \$35,000 per intersection range. They were asked to look at the intersection with Trafalgar Square and Airport Road as well as go down to Charron Avenue. They come up with the figure of \$60,000 to \$70,000. They have struggled with what is a fair share contribution in this case.

Mr. Dookran asked if installing video detection at this intersection would it improve the level of service at this intersection.

Mr. Bollinger said it was his understanding that the video detection does the same thing as the electro-magnetic loop, just a little more sophisticated. Mr. Bollinger said for this project he didn't think it would make a difference based on the volumes and the impacts.

Mr. Dookran asked if they were hoping to settle the traffic contribution with the Board rather than Mr. Husband.

Atty. Prunier said his preference was to settle this with Mr. Husband and come to the Board with an agreement. He told Mr. Husband his feelings on this matter and he said he had to think about it and get back to him and he hasn't. He didn't know why. Atty. Prunier explained to Mr. Husband that he felt that if the total cost for traffic was \$70,000, then 4% of that would be \$2,800 but the applicant was willing to pay \$10,000. They want to make a contribution to get this project started.

Chair Dufour said this concludes the public hearing on this application. They will resume the public meeting. The Board reserves the right to recall any party to this case for clarification.

Mr. Canaway said after reading Mr. Husband's letter is Mr. Husband indicating that this site is putting Amherst Street past capacity and these improvements are necessary to mitigate this?

MOTION by Mr. Canaway to table Old Business #2 to get input from traffic engineer regarding the proposed contribution.

SECONDED by Mr. Slivinski

Mr. Slivinski said that if there is an outstanding issue that isn't resolved by the time it comes to the Board, then it seems both parties should be here to make a decision.

MOTION by Mr. Lowe to return to the public hearing for the purpose of obtaining additional information from the applicant.

SECONDED by Mr. Canaway

MOTION CARRIED UNANIMOUSLY

Atty Prunier suggested that the Board approve the plan, but not the contribution for traffic. That is tabled to the August 7th meeting so that would allow the construction to keep going at the risk of the applicant.

The motion before the Board is to table Old Business #3. It was seconded by Mr. Slivinski

MOTION FAILED 0 to 7

MOTION by Mr. Canaway to conditionally approve Old Business #2 site plan Red Fall, LLC & Hera Development Corporation (Applicants) to construct retail building at 341 & 345 Amherst Street, Zoned "GB" - General Business. It meets NRO 190-146(d) with the following stipulations and waivers:

1. Prior to this plan being signed any final drafting corrections shall made and revised plans submitted. Drafting corrections requiring approval by the Division of Public Works, including pavement markings and signage, shall be obtained prior to submittal.
2. Prior to any work being started, the applicant and their contractors shall hold a pre-construction conference with Planning staff to review erosion control, and construction related activity.
3. Prior to the issuance of a building permit a revised stormwater operation and maintenance plan shall be recorded, if required.
4. Prior to a final certificate of occupancy being issued all site work including final paving and landscaping shall be completed.
5. The waiver request for landscape island size, Sec. 190-184 E.(2) [fmr Sec. 16-574(e)(2)] is not granted.

6. The waiver request for landscape medians or islands, Sec. 190-184 D.(1) [fmr Sec. 16-574(d)(1)] is not granted.
7. The waiver request for lighting, luminaire design, Sec. 190-89 B. [fmr Sec. 16-236(b)] is granted.
8. With approval of this site plan the Planning Board approves the building materials used on this building.
9. Hours of deliveries 6:00AM to 11:00PM and dumpster pick-up not earlier than 6:00AM.
10. Sidewalk easement around the mast arm will be granted to the City.
11. The applicant will return to the August 7th Planning Board meeting for the purpose of clarifying the traffic light improvement after consultation with Mr. Husband. The applicant has waived the 60-day appeal period. Work done by the applicant is at their own risk.

SECONDED by Mr. Lowe

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS - CONDITIONAL USE PERMIT

3. Charles Farwell Jr. c/o Farwell Funeral Home (Owner) - Application acceptance and proposed reapproval of conditional use permit to show the relocation of 4 existing parking spaces and the construction of 5 new parking spaces for a total of 17 spaces with site and drainage improvements. 18 Lock Street, Sheet 44 - Lot 14, Zoned "RC" - Urban Residence. (Approved on June 7, 2007)

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

SECONDED by Mr. Canaway

MOTION CARRIED UNANIMOUSLY

Together with:

NEW BUSINESS - SITE PLANS

7. Charles H. Farwell Jr. c/o Farwell Funeral Home (Owner) - Application acceptance and proposed reapproval of site plan NR2119 to show the relocation of 4 existing parking spaces

and the construction of 6 new parking spaces for a total of 17 spaces with site and drainage improvements. 18 Lock Street, Sheet 44 - Lot 14, Zoned "RC" - Urban Residence (Approved on June 7, 2007).

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

SECONDED by Mr. Latham

MOTION CARRIED UNANIMOUSLY

Jeff Rider, Cuoco & Cormier Engineering

With Mr. Rider tonight is Mr. Farwell and his son, Dana. Both the site plan and special use permit have been previously approved. The colored drawing is exactly the same drawing that was presented to the Board a year ago. They are adding some additional parking in order to get parking off the street. The applicant would also put in an underground storm drain system to mitigate the runoff from the additional pavement. One change they are asking for is that one parking space dedicated as an employee space was originally shown as being 90 degrees to the driveway. They are asking it be angled so it will be easier to access.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No one.

SPEAKING IN FAVOR OF THE PLAN

No one.

Chair Dufour said this concludes the public hearing on this application. They will resume the public meeting. The Board reserves the right to recall any party to this case for clarification.

MOTION by Mr. Slivinski to approve New Business #3 - Conditional/Special Use Permits, parking permit reapproval, Charles H. Farwell Jr., c/o Farwell Funeral Home (owner), relocating 4 existing parking spaces and the construction of 6 new spaces, 18 Lock Street, Zoned "RC" - Urban Residence. It conforms to NRO 190-133 with no stipulations or waivers:

SECONDED by Mr. Lowe

MOTION CARRIED UNANIMOUSLY

MOTION by Mr. Slivinski to approve New Business #7 - Site Plans, parking improvement reapproval, Charles H. Farwell Jr., c/o Farwell Funeral Home (owner), relocate 4 existing parking spaces and construct 6 new spaces. 18 Lock Street, Zoned "RC" - Urban Residence. It conforms to NRO 190-146(d) with the following stipulations and waivers:

1. Prior to any work being started, the applicant and their contractors shall hold a pre-construction conference with Planning Staff.
2. Prior to the issuance of a building permit documents pertaining to the stormwater operation and maintenance plan shall be recorded.
3. The waiver request for lighting plan, Sec. 16-1100 B34(n) is granted.

SECONDED by Mr. Lowe

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS - SUBDIVISION PLAN

4. Barrett J. Warhola (Owner) - Application acceptance and proposed subdivision of one lot into 2. 573 South Main Street, Sheet A - Lot 71, Zoned "RA" - Urban Residence.

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

SECONDED by Mr. Latham

MOTION CARRIED UNANIMOUSLY

Greg Jeffrey, Jeffrey Land Survey

With Mr. Jeffrey tonight are Mr. Warhola and Gerald Prunier, Esq. The purpose of the plan is to subdivide one lot into 2. One lot will be approximately 25,000 square feet and the second being approximately 10,000 square feet. Both lots will satisfy all dimensional requirements of current zoning. There will be an easement area in the driveway to aid in access of both lots. On the larger lot they are proposing the potential for a 20' x 20' square foot garage. Adequate drainage has been provided.

Chair Dufour asked if the existing garage is in the footprint of where the new dwelling would be.

Mr. Jeffrey said it would somewhat overlap.

Mr. Canaway asked how the driveway easement will work for the new proposed dwelling for the driveway.

Mr. Jeffrey said they will utilize the existing pavement. The purpose of the easement is to aid in the egress and access of both lots.

Mr. Canaway asked if there is going to be a garage for the smaller lot and if not where would they park.

Mr. Jeffrey said there won't be a garage. There will be room for 2 cars, one utilizing the existing pavement and one parallel to the vertical lot line.

Mr. Lowe asked if drainage was an issue out there.

Mr. Jeffrey said they have submitted a drainage report and have modified it. They have created 2 new leaching catch basins for the existing home where before there was none. They have created a trench drain across the existing driveway where there was none and a leaching catch basin on the proposed where there was none.

Mr. Lowe asked if it went to the Conservation Commission.

Mr. Yeomans said they were not required to go to Conservation Commission.

SPEAKING IN OPPOSITION OR WITH CONCERNS

Heather Klein, 8 West Glenwood Street

Ms. Klein is an abutter on the back of the property. She is concerned about how high of a dwelling they will build and the use. Will it be a rental? Every spring her basement floods. She is concerned about her property values. There is a fence on the property and she is requesting that the fence stays and is replaced.

Ansel Grandmaison, 571 S. Main Street

Mr. Grandmason is not in opposition but is concerned about the tree line on the north side of the property. He would like not to see any tree cutting at this time.

SPEAKING IN FAVOR OF THE PLAN

No one.

Gerald Prunier, Esq.

Atty Prunier said they will not be cutting down any trees. They will stay. In regards to the size of the house that will be build, you can't go more then 2 stories in that area due to Zoning. It will be a single-family residential house, but it could be rented. They will take care of the damaged fence and fix it along the whole property line.

Mrs. Overby asked if the current owner has any problems with flooding in the basement.

Barrett Warhola, 189 East Dunstable Road

Mr. Warhola has a tenant in the current house and there is no water in the basement. The previous owner told him of no water in the basement.

Mr. Dookran asked if there is a separate drainage system or a combined sewer system in the public right of way.

Mr. Jeffrey has the town supplied plans. He found separate sewer and drainage.

Mr. Dookran said when it rains he receives a number of reports of combined sewage in that area. If there isn't a separate system you will be connected to the combined sewer. In the past the Board has stipulated that they would like to see no basement plumbing. If this is a combined sewer area you install back flow protection in your discharge line.

Mr. Jeffrey said he would agree to that stipulation if it is a combined sewer line.

Chair Dufour asked if there is a finished basement in the existing dwelling.

Mr. Warhola said there isn't a finished area in the basement.

Chair Dufour said this concludes the public hearing on this application. They will resume the public meeting. The Board reserves the right to recall any party to this case for clarification.

MOTION by Mr. Canaway to approve New Business #4 - Subdivision Plan, 2-lot subdivision, Barrett Warhola (Owner). 573 South Main Street, Zoned "RA" - Urban Residence. It conforms to NRO 190-138(g) with the following stipulations and waivers:

1. Prior to the plan being recorded bonding for work in the public right-of-way shall be approved by the Division of Public Works and Corporation Counsel, if required.
2. Prior to the plan being recorded the stormwater operation and maintenance plan shall be reviewed and recorded with the plan.
3. Prior to the plan being recorded final drafting corrections shall be made and shown on the plan.
4. Prior to the issuance of the certificate of occupancy all work within the public right-of-way shall be completed to the satisfaction of the Division of Public Works.
5. The request for waiver of sidewalk construction and acceptance of a contribution of \$11,442.50 is granted.
6. The applicant will not cut trees on north side of property.
7. The applicant will repair the fence along the perimeter of the property.
8. If there is a combined sewer, the applicant will install a check valve on the sewer service.

SECONDED by Mr. Lowe

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS - SUBDIVISION PLANS

5. **Estate of Margaret R. Mercier c/o Robert Walsh and Charles Kolocotronis (Owners) - Application acceptance and proposed lot line relocation. 12 and 14 Brook Street, Sheet 100 - Lot 70 and 27, Zoned "RC" - Urban Residence**

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

SECONDED by Mr. Latham

MOTION CARRIED UNANIMOUSLY

Vernon Dingman, V.W. Dingman & Sons

With Mr. Dingman is Mr. Walsh. What is being proposed is a lot line relocation to correct a 40 plus year old condition. Per the research for the ZBA it seems somewhere in early 1960's there was a "handshake" deed that was never recorded for 14 Brook Street where 12 Brook Street built their garage and driveway on an approximately 25' wide portion of 14 Brook Street. 12 Brook Street was built around 1932. 14 Brook Street was built in 1960. Somewhere in the early 1960's there was an application for 14 Brook Street to the ZBA to put on the existing garage. At sometime in the 1960's it was never legally transferred by deed. Upon the passing of Margaret Mercier and trying to sell the estate, a mortgage inspection was done which showed the garage on the other parcel. What they want to do tonight is transfer a portion of 14 Brook Street to 12 Brook Street and clean up the title. They are requesting 4 waivers.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No one.

SPEAKING IN FAVOR OF THE PLAN

No one.

Chair Dufour said this concludes the public hearing on this application. They will resume the public meeting. The Board reserves the right to recall any party to this case for clarification.

MOTION by Mr. Lowe to approve New Business #5 - Subdivision Plans, lot line relocation, Estate of Margaret R. Mercier, c/o Robert Walsh and Charles Kolocotronis (Owners) 12 and 14 Brook Street. It conforms to NRO 190-138(g) with the following stipulations and waivers:

1. Prior to recording the plans the applicant shall add a note to the plans stating the date the iron bounds were set and date set.
2. Prior to recording the plans the applicant shall add a note - Error of closure Statement on the plan.

3. The request for the waiver of contouring and grading, Section 190-281 D - (10) subdivision plans, Design review is granted.
4. The request for the waiver of physical features within 1000 feet of the site, Section 190-281 D - (10) subdivision plans, Design review is granted.
5. The request for the waiver of existing utilities with in the site, Section 190-281 D - (17) subdivision plans, Design review is granted.
6. The request for the waiver of contouring and grading, section 190-281 D - (57) subdivision plans, Design review is granted.

SECONDED by Mr. Latham

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS - SUBDIVISION PLANS

6. **Boston & Maine Corporation and David & Charlotte Dion Trust (Owners) - Application acceptance and proposed lot line relocation. 38 Broad Street and Baldwin Street, Sheets 61-Sheet 172 and Sheet 62-Lots 235, "GI" General Industrial.**

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

SECONDED by Mr. Canaway

MOTION CARRIED UNANIMOUSLY

Michael Todd, Joseph Wichert, LLS, Inc.

Mr. Todd represents David and Charlotte Dion. They are here tonight for a lot line relocation with Boston & Maine Corporation. Boston & Maine will selling a 10 foot strip of land to the Dions. Boston & Maine is requesting that the Dions build a fence along the property line.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No one.

SPEAKING IN FAVOR OF THE PLAN

No one.

Chair Dufour said this concludes the public hearing on this application. They will now carry the deliberations into the public meeting. The Board reserves the right to recall any party to this case for clarification.

MOTION by Mr. Lowe to approve New Business #6 - Subdivision - Lot Line Relocation Plan David & Charlotte Dion and Boston & Maine Corporation (Owners) 38 Broad Street and Baldwin Street. It conforms to NRO 190-138(g) with the following stipulations and waivers:

1. The request for the waiver of Topography and Physical features within 1000 feet of the site, NRO Section 190-281 D-(10) subdivision plans, Design review is granted.
2. Prior to recording the plans the applicant shall add a note to the plans stating the date the iron bounds were set and date set.
3. Prior to recording the plans the applicant shall add a note - Error of Closer Statement on the plan.
4. Any change of use shall require an amended subdivision plan.
5. The applicant shall install a fence along the whole area along the rear of the site with Boston & Maine property.

SECONDED by Mrs. Overby

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS - SITE PLANS

8. Nashua Regional Cancer Center c/o Memorial Hospital (Owner) - Application acceptance and proposed site plan amendment to NR1642 to show a 1 story, 3,303 sq. ft. building addition with associated access, parking and site improvements. 11 North Southwood Drive, Sheet G - Lot 597, Zoned "PI" - Park Industrial.

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

SECONDED by Mr. Latham

MOTION CARRIED UNANIMOUSLY

Jim Petropulos, Hayner Swanson, Inc.

With Mr. Petropulos tonight is Barbara Kimball, Director of the National Regional Cancer Center. They are seeking site plan approval for a 1-story addition. This is a 3 acre site. It currently contains a 9,143 square foot building with 33 parking spaces. Back in 2003 they came to the Board with the north addition and this is the final addition as originally conceived back in 1990. They received ZBA approval for a special exception to expand a nonconforming use. This is intended to upgrade the equipment in the building. No new employees are being added. They are completing some site work. There are 11 parking spaces and a rear access driveway around the back of the current building. Architectural elements will compliment the existing design.

Mr. Dookran said that he noticed they were going to add the crosswalk as requested by Jon LeBrun at the entrance to the drive. The sidewalks won't have handicapped ramps. Can they be added?

Mr. Petropulos said they should be included in the crosswalk.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No one.

SPEAKING IN FAVOR OF THE PLAN

No one.

Chair Dufour said this concludes the public hearing on this application. They will now carry the deliberations into the public meeting. The Board reserves the right to recall any party to this case for clarification.

MOTION by Mr. Slivinski to approve New Business #8 - Site Plans Nashua Regional Cancer Center proposed 1-story 3,303 square foot addition with mechanical room, patio, 11 new parking spaces, and associated site improvements. 11 North Southwood Drive. It conforms to NRO 190-146(d) with the following stipulations and waivers:

1. Prior to the issuance of a certificate of occupancy the applicant shall replant any landscaping lost or relocated as a result of construction.
2. That the letter dated June 23, 2008 from Pennichuck Water Work is referenced as a note on the plan and that the

elements discussed in this letter are incorporated into the plan design and so duly noted on the plan. A letter from PWW shall be provided to the Planning Department acknowledging their approval of these elements prior to a building permit being issued, including the submission of drainage calculations, swale and check dam design, and review of the swale from a water quality perspective.

3. Prior to the building permit being issued, documents pertaining to the stormwater operation and maintenance plan shall be recorded and all appropriate recording fees be submitted with the documents.
4. Prior to the issuance of a building permit the applicant shall resolve any outstanding issues with Division of Public Works concerning sidewalks and sidewalk enhancements.
5. All conditions of approval as stipulated by the Zoning Board of Adjustment are incorporated herein and made part of this site plan approval.
6. The building design external features and materials as shown on the plan and conveyed at the meeting are approved by the Planning Board. All rendering and other architectural details submitted and presented to the Planning Board are incorporated as part of this approval.
7. All notes and details included on the plan are incorporated by this reference as specific conditions of approval and compliance with these notes, details and other information is required. Non-compliance of the site plan may result in revoking of the site plan and or other penalties/fees that may apply.
8. That the Fire Department email memo of June 27, 2008 be included as a note on the plan.
9. The outstanding changes previously discussed with the applicant's engineer are incorporated into the plan notes including:
 - Cross section of the retaining wall be shown on the plan, and that a note be added to the plan stating the wall will be designed and constructed per NH engineering/construction standards per a structural engineer and per all building department requirements.
 - Note 12 on sheet 1 of 9 be corrected to say a special exception was granted by the ZBA on June 10, 2008 not a variance.

- Information on the decibel level of the mechanical appurtenances be provided for the file or a note be included on the plan referencing the outcome of the discussion with board.
- That a note be added to the plan that states the site is within the Water Supply Protection District.
- Any other minor notes staff as discussed with the applicant.

SECONDED by Mr. Lowe

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS - SITE PLANS

10. Hampshire Chemical Corporation c/o The Dow Chemical Company, Marie A. Nadeau, Bourque Realty Co, Wash Depot 1, Inc. (Owners) PDNED Hampshire Nashua, LLC (Applicant) - Application acceptance and proposed 1 year extension of site plan for the construction of 13 buildings totaling 595,000 square feet including retail, 6 restaurants, cinema, and parking garage with access, drainage and site improvements, and amendment of stipulation(s) of approval. 2 East Spit Brook Road, 2 Poisson Avenue, 204 & 210 Daniel Webster Highway, Sheet A - Lots 37, 103, 108, 167, 218 & 231, Zoned "GB/MU" - General Business/Mixed Use and "HB" - Highway Business. (Approved on July 22, 2007)

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

SECONDED by Mrs. Overby

MOTION CARRIED UNANIMOUSLY

Gerald Prunier, Esq.

Atty Prunier said they are seeking a one year extension of the approvals.

Mr. Slivinski asked he can give an indication as to when this project will begin.

Atty Prunier said probably next spring.

Mr. Slivinski asked if there has been any additional discussion between the applicant and anybody from the City or the rail advisory board.
Atty. Prunier said no.

SPEAKING IN OPPOSITION OR WITH CONCERNS

Dan Kelley, 9 Lilac Court

Mr. Kelly said the Board should seriously consider having the train station.

Chair Dufour said they had talked about the train station before. The Board does not have the right to tell the developer to put it in. When the time comes for the train station to come in then the Board of Alderman will determine to take the land.

Mr. Kelley said the issue of a commuter rail has proceeded significantly since they were asked to take a look at the train station. Putting in the train station is no longer an iffy thing and he strongly suggested they reconsider their position for the betterment of Nashua and the State.

Barbara Pressley, 11 Orchard Avenue

Mrs. Pressley also asked that the train station be reconsidered and hopes the developer will take a look at it. When the Board of Alderman rezoned this land to allow this project to proceed it was with the understanding that there would be a train station there. She hopes the developer is open to taking a look at it and see if this could be brought about.

SPEAKING IN FAVOR OF THE PLAN

No one.

Atty Prunier said the applicant went for the rezoning of this site after the City said they weren't going to proceed with the train station. The train station wasn't part of any rezoning.

Chair Dufour said this concludes the public hearing on this application. They will now carry the deliberations into the public meeting. The Board reserves the right to recall any party to this case for clarification.

MOTION by Mr. Lowe to approve New Business #10 - Site Plans Nashua Landing Hampshire Chemical Corporation c/o The Dow

Chemical Company, Marie A. Nadeau, Bourque Realty Co, Wash Depot 1, Inc. (Owners) PDNED Hampshire Nashua, LLC (Applicant) 1 year extension. It conforms to NRO 190-146D with the following stipulations and waivers:

1. With approval of this site plan all prior conditions of approval, including waivers and findings, except Stipulation #6, are incorporated herein and made a part of this plan, unless otherwise determined by the Planning Board.

New Stipulation #6 reads as follows:

2. 6. The Applicant shall pay, at the time of issuance of the first building permit, the sum of Three Hundred Eighty-Eight Thousand Dollars (\$388,000.00) to the City of Nashua. In addition the Applicant shall pay up to Ten Percent (10%) of the Daniel Webster Highway CMAQ project contract price for contingency and remobilization. The Applicant shall also pay any sum that the Applicant and the City of Nashua may mutually agree upon in regard to changes in the contract for the Daniel Webster Highway CMAQ project. A demolition permit or site work shall not be considered a building permit.

SECONDED by Mr. Slivinski

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS - SITE PLANS

9. Pheasant Lane Mall, Simon Property Group, Inc. (Owners) - Application acceptance and proposed amendment to NR1729 to show the demolition of the former Macy's Department Store and the construction of a 104,026 square foot lifestyle center addition with associated access, parking and site improvements. 310 Daniel Webster Highway, Sheet A - Lot 737, Zoned "GB" - General Business.

MOTION by Mr. Lowe to table until August 7, 2008

SECONDED by Mr. Latham

MOTION CARRIED UNANIMOUSLY

OTHER BUSINESS

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

None

MOTION by Mr. Slivinski that there are no issues of regional impact.

SECONDED by Mr. Canaway

MOTION CARRIED UNANIMOUSLY

2. Referral from the Board of Alderman on proposed R-08-77, authorizing the negotiation and execution of agreements conveying property on Gilson Road from the State of New Hampshire to the City with activity and use restrictions and concurrent agreement for monitoring air quality.

MOTION by Mr. Lowe to give a favorable recommendation to R-08-77

SECONDED by Mr. Canaway

MOTION CARRIED UNANIMOUSLY

DISCUSSION ITEMS

Chair Dufour said he would like to thank Mrs. Trivilino for time on the Board. She is now going to be on the Conservation Commission.

Chair Dufour said he made reference to an address on East Dunstable Road at the last meeting and he had pictures. They will discuss it at another meeting.

MOTION TO ADJOURN by Mr. Lowe at 10:45 p.m.

APPROVED:

Ken Dufour, Chair, Nashua Planning Board

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Taped Meeting