

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
December 6, 2005

A public hearing of the Zoning Board of Adjustment was held on Tuesday, December 6, 2005 at 6:30PM in the Auditorium at City Hall.

Sean Duffy conducted the hearing.

Members present were: Sean Duffy, Vice Chair  
Jeff Anderson  
Jack Currier  
Susan Douglas

Also present, Carter Falk, Deputy Manager/Zoning

Mr. Duffy said in hearing tonight's cases the Board would be looking for evidence on the following points of law as established under the City of Nashua Zoning Ordinance and empowered to it under the State of New Hampshire enabling legislation.

For variances in the ordinance the following conditions must be met:

- (1) A zoning restriction as applied to your property interferes with reasonable use of the property, considering the unique setting of the property in its environment; (2) no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; and (3) the variance would not injure the public or private rights of others.
- (2) The spirit and intent of the ordinance must not be broken by granting the variance.
- (3) Granting the variance will not adversely affect other property in the district.
- (4) Granting the variance must be of benefit to the general public and not solely the individual.
- (5) Not to grant the variance would result in an injustice.

For special exceptions designated by the ordinance, the following must be met:

- (1) The use requested must be listed in the Table of Use Regulations as a special exception in the district for which the application is made or is an existing nonconforming use for which a request to expand is being in accordance with Subchapter 13 of the Nashua Revised Ordinances.
- (2) The requested use will not create undue traffic congestion or unduly impair pedestrian safety.
- (3) The requested use will not overload any public water, drainage or sewer system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the City will be unduly subjected to hazards affecting health, safety, or the general welfare.
- (4) Any special regulations for the use set forth in other sections of the zoning ordinance are fulfilled.
- (5) The requested use will not impair the integrity or character of the district or adjoining zones nor be detrimental to the health, morals or welfare of the residents of Nashua.

He said the order of receiving testimony will be in the following manner: Testimony will be heard from the applicant seeking the adjustment. The applicant will have fifteen minutes to address the five points of law just described. The Board will not consider in their decision any information which does not address those points.

The timing light on display will shine green until there is one minute remaining at which time the amber light will come on. When the light turns red, the speaker must stop testifying. The Board may then ask questions of the applicant.

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING & MEETING

December 6, 2005

Page 3

After the presentation the Board will then take testimony from those in favor of the application and then from those in opposition.

He said each speaker will be allowed five minutes to address the Board. The timing light will show a green light until one minute is remaining. The amber light will be on during the last minute and the speaker must stop when the light turns red.

He said speakers are asked to confine their comments only to the new points of information or may simply state that they agree with the previous speaker. Speakers will come forward to the microphone and state their name and address for the record. All testimony given this evening is understood to be given under oath as in a court of law.

At the end of all testimony in opposition, the applicant will have five minutes to address any points raised in opposition. After this testimony one (only one) person from those in opposition will be given five minutes to address the applicant's rebuttal. No new testimony may be given and only someone who spoke in opposition may provide rebuttal testimony.

He said should the applicant or any of the public in opposition feel an unjust or unlawful decision was made may request a rehearing of the Board within 30 days of the decision. Contact the Office of Zoning for further details about the process. If any person or party is not granted a rehearing or still feels that an unjust or unlawful decision has been rendered by the Board they may appeal the case to the New Hampshire Superior Court.

Three affirmative votes are needed for granting a variance or special exception. He said they are expecting four members tonight. If anyone wishes to postpone their case due to lack of a full Board they should advise the Board.

Mr. Duffy said tonight's meeting is scheduled to end by 11:00PM and, if needed, he will take a poll of the Board around 10:15PM to see if they will hear any further cases.

Mr. Falk said this is a continuation of the cases that were originally scheduled to be heard on November 22, 2005.

7. **Celina Avenue Realty, LLC, Boston & Maine Corporation & YMCA of Greater Nashua (Owners) Celina Avenue Realty LLC (Applicant) 40 East Otterson Street, 17 Prospect Street and "L" Harbor Avenue (Sheet 18 Lots 11, 78 & 6) requesting variance to create a nonconforming strip of land without lot frontage, 0 feet proposed, 50 feet required. GB/MU & RC Zones.**

Voting on This Case:

Sean Duffy

Jack Anderson

Susan Douglas

Atty. Gerald Prunier, 20 Trafalgar Square. Atty. Prunier said this piece of property is almost a triangular piece of property located at the corner of East Otterson Street & Harbor Avenue. He said the property is being developed into multi-family housing. A site plan has already been approved by the Planning Board subject to the Zoning Board's approval.

He said the property has a railroad track going through the northerly side of the property. On the approved site plan, the railroad track is removed and consolidated with the property that's being developed. Part of the property is being conveyed to the YMCA so they don't lose any of their parking. The end result is that the railroad track that continues in back of the building on East Otterson Street and this location does not have any frontage.

He said the use of part of this has been dedicated to the City to keep their bicycle trail as part of the trail system throughout the City of Nashua.

Mr. Duffy asked if there are any future potential railroad easements or access.

Atty. Prunier said everything's been discontinued. He said the land has been sold to his client.

**SPEAKING IN FAVOR**

No One.

**SPEAKING IN OPPOSITION**

No One.

**MOTION** by Mr. Duffy to grant the variance to create a nonconforming strip of land without lot frontage, 0' proposed, 50' required at 40 East Otterson Street, 17 Prospect Street and "L" Harbor Avenue (Sheet 18 Lots 11, 78 & 6). The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. This is an unusable and discontinued railroad tract access. The applicant has no reasonable feasible method to pursue the development of this property other than the request for a variance. It is within the spirit and intent of the ordinance that the applicant has a creative use that benefits two property owners. It should not adversely affect surrounding property values. It is not contrary to the public interest. The conveying of property to the YMCA and the retention of the rails to trails character of that area ensures that substantial justice is served.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY**

Mr. Duffy said they would now take the requests for rehearing. He said these usually are heard at the end of the hearings, but due to circumstances have been postponed for a couple of meetings.

**Motion for Rehearing**

**Sam Katz (Owner) 7-73 Paige Avenue (Sheet 45 Lot 257) requesting variance for minimum lot area, 14,500 square feet required, 9,484 square feet proposed, to maintain four dwelling units on one lot after proposed subdivision of one lot into two lots. RC Zone.**

Mr. Duffy asked if there were any procedural errors brought out in the request for rehearing, or improper notice denying someone the right to be heard.

The Board did not feel this was the case.

Mr. Duffy asked if there was an illegal decision. He asked if the Board failed to completely address each of the points of law required for the request.

Mr. Currier said that he didn't think so. He said while the piece of property might be unique right there, it's not unique in Nashua. He said the Board completely addressed each point. He said he believes it was a good decision and not illegal.

The rest of the Board agreed.

Mr. Duffy asked if the request for rehearing contained any new information not presented or available at the original rehearing.

The Board did not feel that this was the case.

Mr. Duffy asked if there was anything that might cause or would cause the Board to make a different decision.

The Board did not feel that this was the case.

**MOTION** by Mr. Currier to deny the request the rehearing request on 7-7C Paige Avenue for a variance of minimum lot area, 14,000 square feet required, 9,484 square feet proposed. He said there were no procedural errors, nor was there an illegal decision. There is no new information presented in the request for rehearing. There is nothing in the request that would cause the Board to make a different decision.

**SECONDED** by Mr. Duffy.

**MOTION CARRIED UNANIMOUSLY**

**Motion for Rehearing**

**Andrea J. Harding (Owner) 74 Cox Street LLC (Applicant) 74 Cox Street (Sheet 137 Lot 17) requesting the following variances: 1) minimum lot frontage, 60' required, 36.24' proposed, and 2) minimum lot width, 75' required, 36.24' proposed - both requests to subdivide one lot into two lots.**

Voting on This Case:

Sean Duffy  
Jeff Anderson  
Jack Currier  
(Mrs. Douglas recused)

Mr. Duffy asked if there was an procedural error with this request that might include improper notice denying someone the right to be heard.

The Board did not feel that this was the case.

Mr. Duffy asked if there was an illegal decision, in other words, did the Board fail to completely address each of the points of law required for this request.

Mr. Currier said when the Board heard this case there was a lengthy appraisal provided the Board. The appraisal used the language "neighborhood." He said the Board's criteria are "parcel" and those two definitions are very different. He said he felt that the difference in the definitions is worthy of further debate and clarification. He said this is pointed out in #4 of the request.

Mr. Duffy asked if the request for rehearing contained any new information that was not presented or available at the original hearing.

Mr. Currier said he believes there is new information for the Board to consider - appraisal information by other than the applicant.

Mr. Duffy said his recollection is that this isn't new information. He said the people who heard the case that evening heard all the information and the vote was 3-1.

Mr. Anderson said he didn't see any new information.

Mr. Currier said the newspaper had an article about conflict of interest. He said he was shocked. He said there is a letter from Tom Jenkins stating that there is no conflict of interest. It is notarized by the law firm that's representing the applicant.

Mr. Duffy said the applicant is asking for a rehearing. He said the Board is supposed to decide if there's evidence.

Mr. Currier said they have evidence from the former Chair of the Zoning Board in the form on a notarized statement which was done before the applicant's attorney. He asked if Mr. Duffy agreed.

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING & MEETING

December 6, 2005

Page 8

Mr. Duffy said he is trying to understand the point Mr. Currier is trying to make. He said he's trying to talk to the points of law.

Mr. Currier said he believes that there's information that could or would cause the Board to make a different decision.

Mr. Anderson said it wouldn't affect his decision on the case no matter who notarized the statement made by Mr. Jenkins.

Mr. Duffy asked if there is anything in the request that would cause the Board to make a different decision.

Mr. Anderson said he doesn't see any new information in the request. There are assertions that claim that other things can occur or would occur.

Mr. Duffy said he looks at it as how the information they are presenting affects the case. He said this doesn't even try to convince him of anything. He said he doesn't see any substantive information in the request.

Mr. Currier said the data isn't there, but the assertions are there. Those assertions are addressed by a letter that's notarized.

Mr. Duffy asked Mr. Currier if he felt that the Board made a decision based on something like that instead of the information presented based on the ordinances.

Mr. Currier said he's concerned about the definition of "neighborhood" versus "parcel." He said a neighborhood is a broad area and parcel is the surrounding properties.

Mr. Duffy said he felt this was a substandard request for rehearing.

**MOTION** by Currier to grant a request for rehearing for two variances to subdivide one lot into two lots at 74 Cox Street. He said the Board did not completely address each point of law as required. He said the request contains new information not presented to the Board at the original hearing and that it would or could cause the Board to make a different decision.

**No Second - Fails**

**MOTION** by Mr. Duffy to deny the request for rehearing for two variances to subdivide one lot into two lots at 74 Cox Street. The request for rehearing does not indicate that there was any procedural error such as improper notice denying someone the right to be heard. There is no information presented in the rehearing request that an illegal decision was made. There are inferences in a summary outline which fashion no evidence to lead this Board to grant a rehearing. It does not contain any new information that was not presented or available to the Board at the original hearing. The Board heard the case fully and completely. There's nothing in the request that would cause the Board to make a different decision.

**SECONDED** by Mr. Anderson.

**MOTION FAILS 2 - 1, Mr. Currier opposed.**

1. **Vincent J. & Lois J. Madden (Owners) 19 Durham Street (Sheet F Lot 758) requesting variance to encroach a maximum of 4 feet into the 25 foot front yard setback to construct a 10'x10' covered front porch. R9 Zone.**

Lois Madden, 19 Durham Street, Nashua, NH. Mrs. Madden said her house was built at an angle. She presented pictures to the Board. She said she measured from the front sidewalk to the house where the garage is. She said it's 24' to the walkway. Where they want the porch, it's 27' from the sidewalk to the walkway.

She said they want the porch to compliment the house. She said it will add to the neighborhood, not take away from it.

She said this will add curb appeal and should enhance the property values in the neighborhood. She said they put stone on the house and eventually they'll get a watering system and other things to enhance the neighborhood.

Mrs. Madden said the public will benefit because it will look better and it will give people a shelter from inclement weather when they come to the door.

She said if the house had been built straight on the lot they probably wouldn't have this problem.

Mr. Duffy said there was other property in the area that had similar accessory attachments.

Mr. Anderson asked if they had talked with the next-door neighbors about this request.

Mrs. Madden said they had. She said that the "Cattrell's" wrote a letter to the City stating that they approved of the request. She said a couple of the neighbors stated that they didn't have any problems with it.

Mr. Duffy said they have a letter dated November 11<sup>th</sup> from Kit Cattrell, 30 Durham Street stating that they had no objections.

Mr. Anderson said he was more specifically asking about the houses on either side of Mrs. Madden.

Mrs. Madden said she talked with both of these abutters and they stated that they had no problems with it.

Mr. Currier said the drawing shows something that looks like a roof with two pillars holding it up. He asked if this is what it's going to be or if it's going to be like a screened in porch.

Mrs. Madden said it's not going to be screened in. It's going to be open.

**SPEAKING IN FAVOR**

No One.

**SPEAKING IN OPPOSITION**

No One.

**MOTION** by Mr. Anderson to grant the request for variance to encroach a maximum of 4 feet into the 25 foot front yard setback to construct a 10'x10' covered front porch at 19 Durham Street. The variance is needed in order to enable the applicant's proposed use of the property given the special conditions of the house. It is set at an angle on the lot. It is within the spirit and intent of the ordinance. It will not adversely affect property values of surrounding parcels. It is not contrary to the public interest. Substantial justice is served.

**SECONDED** by Mr. Currier.

**MOTION CARRIED UNANIMOUSLY**

2. **Mobil Oil Property Tax Division (Owner) 102 Broad Street (Sheet E Lot 245) requesting the following variances: 1) to exceed maximum wall sign area, 48 square feet allowed - 118 square feet proposed, and 2) to exceed maximum number of wall signs, 3 allowed - 4 proposed. HB Zone.**

Anthony Guba, Professional Engineer, Ayoub Engineering. Mr. Guba said he is representing Exxon/Mobil Corporation. He said this location is recently being renovated by Mobil. It has been approved by the Planning Board. He showed the Board a picture of the site. The front of the building has been moved out ten feet. He said they would like to spruce the location up and change some of the signage around.

He said they have a "high rise" sign in the back. They are not proposing any change to this sign. He pointed out a sign on the canopy and said they are not proposing any change to this sign either.

They are proposing to change the freestanding sign by re-facing it and putting it back on the same foundation. It presently has a variance for the setback from the street. He said they aren't proposing to change that. In fact, it's going to be slightly smaller and slightly set back from the street because the sign will be narrower than the sign that is there now.

He said the major difference will be the sign on the front of the building. They will take down the Mobil "mark" and put up a sign that states "On The Run", similar to other Mobil stations in the City.

He said on the sides of the building there will be signs. They are changeable message signs, mostly aimed at the customers at the dispensing areas. On the other side there is a big round Pegasus. That will be taken down and instead put up a small 1 ½' X 20' sign that will be displaying a message such as "coffee \$1.00." It is not going to be illuminated.

He said it's these signs that put them over the allowable wall signage area and also the number of allowable signs.

He said if they take a look at the signage they are proposing he believes it's a fairly clean site. He said they aren't

proposing signage that's out of line with the typical signs found at other locations.

He said in this case Mobil has taken the shortest wall of the building facing the street, unlike most businesses where the width of the building faces the street. He said the sign ordinance requires that the allowable signage is calculated on the face of the building. If they used the canopy they could probably have twice as much signage as they are asking for. The length of the building is really into the property and the signage they are looking to put on it isn't going to be facing the street. It won't be providing any kind of distraction to the street.

Mr. Guba said they hope that this will be a service to the customers and to the general public in being able to promote specials that are going on in the store, particularly in today's environment where a lot of people pay at the pump and don't go into the store to see what kinds of things that might be going on inside.

He said as far as the surrounding neighborhood, there is a station across the street and next-door and both of those have more signage than Mobil is requesting for this site. He said they don't feel there will be any impact to those locations.

Mr. Duffy asked the current square footage of the signage and what it would be as proposed.

Mr. Guba said the current total square footage on the property now is almost 309 square feet. He said out of the 309 square feet they will take down 153 square feet.

Mr. Currier asked how much signage is permitted at the site.

Mr. Falk said 48 square feet for a wall sign. He said they have 32' of building frontage so when you multiply that by 1.5 you arrive at 48 square feet of wall signage. He said the existing sign on the canopy is about 11 square feet. The size of the two signs on either side is 30 square feet each. The "On the Run" sign is 48 square feet.

Mr. Currier asked how many square feet of signage the other two stations have.

Mr. Guba said he doesn't know that information, but just looking at them it's more than what Mobil has proposed. He said the buildings may be a different size and it's turned sideways so that the length of the building faces the street.

Mr. Duffy said the proposed ground sign is going to be electronic.

Mr. Guba said this is correct - just the pricing.

**SPEAKING IN FAVOR**

No One.

**SPEAKING IN OPPOSITION**

No One.

Mr. Duffy said he felt that this was a reasonable request compared to a lot of the signage requests that they've seen, especially for a multi-service convenience store.

**MOTION** by Mr. Duffy to grant the request for variances: 1) to exceed maximum wall sign area, 48 square feet allowed - 118 square feet proposed, and 2) to exceed maximum number of wall signs, 3 allowed - 4 proposed at 102 Broad Street. The request is reasonable given the fact that the interchange is a very busy one and surrounded only by commercial property. The applicant is not asking for unreasonable quantities or sizes of signage. It is within the spirit and intent of the ordinance that the applicant has reasonable signage for directional and identification purposes. It should not adversely affect the property values of surrounding parcels, even though there has been no expert testimony. It is not contrary to the public interest. Substantial justice will be served as the applicant has reasonable signage given the character of the neighborhood.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY**

3. Roger P. Picard (Owner) 148 East Dunstable Road (Sheet B Lot 1752) requesting the following variances: 1) minimum lot frontage, 75 feet required, 50.07 feet proposed, and 2) minimum lot width, 90 feet required, 50.07 feet proposed - to subdivide one lot into two lots. R9 Zone.

Atty. Gerald Prunier, 20 Trafalgar Square, Nashua. He showed the location of a house that presently is located on the lot. After subdivision both lots will have 16,000 square feet of lot area. The newly created lot would lack frontage/width.

He said there is an existing right-of-way easement on the lot. He indicated Chief Hatfield will explain why this is on the lot. This has been intended to be two lots all along. He said the new house would be placed in the rear.

He said this parcel is located in a "R9" zone and the lots are 16,000 square feet each. This is a reasonable use of the land. He said it's within the spirit and intent of the ordinance. It's almost double the size of the lots in the area. A new single-family house will be built on the newly created lot.

He indicated he had both an appraisal and a real estate agent's opinion on how property values in the surrounding area would be affected for the construction of a new home on the new lot. He presented them to the Board.

Mr. Currier said he noticed that both letters reference "neighborhood" rather than "parcel". He said that he agrees with the appraisals that the neighborhood itself isn't impacted. He said it doesn't speak to surrounding parcels.

Atty. Prunier said that he hadn't missed the comments Mr. Currier had made in the earlier case. He said he will make sure that when he brings any appraisals in the future that they address not only the property itself, but also the surrounding properties.

Mr. Duffy said there is the potential for a new zoning ordinance being passed shortly. He said it specifically doesn't consider a reduction of frontage requirements. He said there is an existing right-of-way easement on this property. He asked why they don't just use that.

Atty. Prunier said they are going to use the easement. It's part of the lot. He said they could come in with a cul-de-sac, but then they would be looking at more asphalt rather than green space. He said the new zoning ordinance doesn't consider the in-fill lots. It may be that this would have to be addressed individually by the Board of Aldermen.

Mr. Currier said Atty. Prunier addressed the 50' of frontage and how he wouldn't define it as a flag lot. He said East Dunstable Road is a significant collector road in the area. He said the traffic backs up with left turning traffic to get to the properties on the hill.

Atty. Prunier said he wouldn't disagree that there's a lot of traffic on East Dunstable Road at various times during the day. He asked what the difference would be if they do this or they do a cul-de-sac and have asphalt. They are trying to keep as much open space and green space as possible.

### **SPEAKING IN FAVOR**

Chief Roger Hatfield, 2 Denise Street. Chief Hatfield said he is the previous owner of 148 East Dunstable Road. He said turning into the driveway was difficult when there were school buses or at rush time.

He said when he had purchased the property he realized right from the beginning that it had a 25' easement for a future driveway to subdivide the lot. He said it was always his intention when he bought it, but he never did.

He said this is a very large lot. He said if you look at the houses around it, his yard was always a double lot. During his yard sale (when he was moving) he talked to nearly all his neighbors and nobody had any problems with it. He said the only problem they had was whether the fence was going to stay up and if there was still going to be some seclusion from the houses. He said his understanding from the new owner is that they are going to replace the old dilapidated fence and put up a new fence and keep the lines between everybody the same.

He said this is a double lot. It was never developed. It has the easement.

Mr. Duffy asked if Chief Hatfield knows the date that the existing right-of-way easement was created.

Chief Hatfield said maybe the early 70s or late 60s. He said he isn't 100% sure. He said he picked it up when he started to investigate the property. It has a huge yard and it's definitely more than what most people would have, even in two lots.

Mr. Duffy asked if the house and any accessory uses will be within setbacks.

Atty. Prunier said that the large is so large that they can meet all dimensional requirements.

**SPEAKING IN OPPOSITION**

Jean Fitzpatrick, 5 Jensen Street. Mrs. Fitzpatrick said they have lived at 5 Jensen Street for twenty-seven years. She said the rear of their property abuts the property that's being discussed. She presented pictures of where they thought the site of a proposed building would go.

She said she doesn't believe that this is a reasonable request. She said the lot is too small and it's not consistent with the neighborhood. She said the houses on that side of East Dunstable Road were built before her development and has larger lots. She said they believe it will distract from the neighborhood.

She said they received a variance years ago to build a breezeway and garage onto their house to make it consistent with what was in the neighborhood. She said she didn't believe this use will enhance the property. She referred the Board to the pictures to show the view that they would get from their back yard.

She said if another house is permitted to build in the back, it will add two driveways on East Dunstable Road, which is very near Judith Drive. It is hard to get in and out of there all the time, not just during rush hour.

Mr. Currier asked if Mrs. Fitzpatrick's house was already there when they bought their home twenty-seven years ago.

Mrs. Fitzpatrick said the house and fence were there. She said the way you see it now, except for the pool, is the way the house was when they moved into their home twenty-seven years ago.

Mr. Anderson questioned Mrs. Fitzpatrick about two driveways she said would be there.

Mrs. Fitzpatrick said there is an existing driveway for the existing house and if there is another house going in she would imagine there would be a driveway for that house, unless there's

a road going in. She said in looking at the pictures and from their knowledge of the site it seems like the house is going to have to come back closer towards the houses on Jensen Street.

Mr. Duffy said it appears that the lot that Mr. & Mrs. Fitzpatrick own is about 90'X100'. He said they are into the side setback area, but received a variance for that. He asked if they are aware that the proposed lot area where they are planning the building space is within the 9,000/10,000 square feet. He said it is very similar to what they have.

Mrs. Fitzpatrick said their lot faces the street so all their frontage is on the street. She said to her it seems like the proposed house is going to have to go in sideways in order to fit in.

Mr. Duffy said whether it's sideways or not, the distance between the houses to the left and right of their house on Jensen are very close and approximately double or triple the distance they are going to see to the building area.

Mrs. Fitzpatrick said she knows that it's going to be close, which will be different from what it is now. She said she doesn't see this as consistent with the use of the land. It's being used to double the lot as opposed to being used to enhance your home.

Walter Fitzpatrick, 5 Jensen Street. Mr. Fitzpatrick said he doesn't believe that hardship has been proven.

Mr. Duffy said there are a recorded and a pre-existing right-of-way easement on the property for more than thirty years. He said it kind of indicates an intent on the public record that development might go back there.

Pat Nelligan, 5 Judith Drive. Mrs. Nelligan pointed out the location of her house. She said the easement goes right up to the end of her property. She said when they first bought their property twenty years ago they had water problems. The house is at the start of the hill and it drains down to that particular area. She said if they are planning on paving this, she is concerned about water backing up into her yard.

She said she is also in agreement with what the "Fitzpatrick's" have addressed.

Mr. Duffy asked when Mrs. Nelligan bought her home.

Mrs. Nelligan said 1985.

Mr. Duffy asked if Mrs. Nelligan has water problems now.

Mrs. Nelligan said she does not. She said her property has been brought up so that it doesn't drain down into a puddle.

Mr. Duffy asked if the water came from Judith Drive, Jensen Street, or the back of their property.

Mrs. Nelligan said they live on a corner. She said it comes from Jensen and down into her property.

She said the other problem that she would have is that she would be looking right into the easement and the driveway from her deck.

Mr. Currier asked Mrs. Nelligan if it goes uphill when you turn into Judith from East Dunstable.

Mrs. Nelligan said it does. She said her house is at the start of the hill. It's fairly flat up to that point.

Mr. Currier said he doesn't see how there would be any water problems that would impact Mrs. Nelligan because they are higher than East Dunstable Road.

He asked if the easement in her back yard is a continuation of the easement that is shown on the plan.

Mrs. Nelligan said she wasn't sure, but she thinks it's a sewer easement.

**SPEAKING IN FAVOR - REBUTTAL**

Atty. Gerald Prunier. Atty. Prunier said they are not going to put in asphalt where the easement is. They should not create any problems with the water collecting.

He said as far as the "Fitzpatrick's" are concerned, the proposed lot is almost twice the size of their lot. They will meet the same dimensional requirements for a lot in the R9 Zone as far as the side yard and rear yard setbacks are concerned. He

said they are no closer than any of the other houses in that area.

He said this is a reasonable use of a very large lot. They are trying to build a single-family house. They are meeting the dimensional requirements of the R9 Zoning District with the lot size being twice the size than most of the neighbors have.

Mrs. Douglas asked the proposed orientation of the house.

Atty. Prunier said it will face East Dunstable Road.

Mr. Duffy asked Atty. Prunier if he had any knowledge of a sewer utility or water easements.

Atty. Prunier said he believes there is a drainage easement in the back. He said they are at the bottom of a hill and the drainage comes onto the property they are requesting the variance for.

Mr. Duffy said he looked at the curb cuts on Dunstable Road for the distances between the driveways. Across the street there are several places where the driveways are close together. He showed a plan to Atty. Prunier and asked if they were proposing something with that type of entranceway.

Atty. Prunier said "no." He said you get look both ways and see for a long way.

Mr. Anderson asked if the owner of the property would be open to the Board placing a stipulation that the fence be replaced and maintained.

Atty. Prunier said that he would be.

**SPEAKING IN OPPOSITION - REBUTTAL**

No One.

Mr. Anderson said he really has trouble objecting to a lot of this size, especially when you see the properties surrounding it to the east and north. Those lots are much smaller than the proposed lot. He said this is a reasonable use.

Mr. Currier said if you look at the plan that they were given and you see that on the edge of #148 it tells him that this was

originally a right-of-way to get back to the property behind it, but then it got developed in another way. He said as he sees it he doesn't think the right-of-way was an intent to put in a "flag lot", but it is a right-of-way. He would like to hear what the others have to say as he is on the fence right now.

Mr. Duffy said even if this was a 20' wide driveway, he believes it's a minimal area. They have placement options. He said when he looked at the corner lot on Judith he saw that as a bigger safety issue when he was driving. He said he sees this as significantly sized lot areas. There are both small and large houses in the area. There are a lot of accessory uses in the setback area. Some of them look like they pre-date zoning. He said this lot looks like one of the biggest pieces of property in the area.

Mrs. Douglas said there is more frontage on this lot than many of the flag lots that the Board has seen.

Mr. Duffy said that this is over an existing right-of-way easement that did not get discontinued.

Mr. Falk said there are probably thousands of older lots in the City that are platted with 50' of frontage.

**MOTION** by Mr. Duffy to grant the following variances: 1) minimum lot frontage, 75 feet required, 50.07 feet proposed, and 2) minimum lot width, 90 feet required, 50.07 feet proposed - to subdivide one lot into two lots at 148 East Dunstable Road. The variance is needed in order to enable the applicant's proposed use of the property given the special conditions of the property. The benefit to the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue other than the area variance. A single-family home is an approved use in the R9 Zone. It is a significantly sized lot compared to other lots in the area. It includes an existing and non-discontinued right-of-way easement on the property. It has been on the public record for more than thirty years. It is within the spirit and intent of the ordinance that the applicant has reasonable use of their property. The lot building area in some cases exceeds the local abutting properties as well as the minimum requirements for a R9 Zone. The lot in total significantly exceeds that requirement. The building will be placed inside the dimensional lot requirements. It should, therefore, not adversely affect property values of surrounding parcels. There is some information that has been provided about

this, but was not rebutted by those in opposition. It is not contrary to the public interest. Substantial justice is served as the applicant has reasonable development use rights of the property given the essential character of the neighborhood. Special Condition: Fencing along the rear property line of both lots be established and maintained.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY**

4. **Catherine W. Gregg Rev. Trust (Owner) The Nature of Things, LLC (Applicant) 17 Gregg Road (Sheet D Lots 3, 4 & 65) requesting the following: 1) special exception to allow a proprietary school, and 2) variance to allow three principal structures on one lot, one permitted. R40 Zone.**

Atty. Gerald Prunier, 20 Trafalgar Square, Nashua. Atty. Prunier said Mr. & Mrs. Gleeson as well as Atty. Shepard are present to answer any questions the Board may have.

He said sometimes in the practice of land use law you are lucky to get a unique situation on how to use some property in what you feel is a great and proper fashion. He said that is what this case is.

He presented pictures of the neighborhood to the Board. He said they were taken in the fall so some of the leaves have fallen, but not all of them. He said it gives the Board an idea of what this area of Nashua, which borders on Dunstable, Massachusetts is like. He also handed out a copy of the traffic study to the Board.

He said the property has twenty-two acres of land. The land is owned by Mrs. Gregg. They have lived in this area of Nashua for many years. There is a house and a barn on the lot. The proposal is to keep the house and barn and that a new proposed residential building be permitted for the "Gleeson's" and for a school to be built. The existing house will be used by the Audubon Society for their offices and for classrooms. The barn will be used for storage and for material that will be used with the school and the property.

He said the "Gleeson's" have been involved in education. They presently have a school in the Maplewood section. They now want to increase the size of the school for children in K - 6.

He referred to a thumbnail sketch of what's proposed as far as the number of children coming to the school with the starting times, etc. He said the information comes from their own experience because of the school they are presenting operating. They can control the number of automobiles that come into the area at the same time.

Atty. Prunier said a new driveway will be created. He showed the proposed location. He said the Planning Board will be looking at the site plan to see if this is acceptable.

He said this is a proprietary school and this is listed in the Table of Uses, Section 16-227. Traffic will not be greatly increased or pedestrian safety impaired. They are taking the traffic off of Gregg Road and bringing it in and out at various different times. He said this is spelled out in the schematic that he handed out.

He said there will be septic and well water provided. There is sufficient land and sufficient water to supply the school as well as the houses.

He said there are no special conditions.

He said this is not going to be out of character with the neighbors. He said the abutters will tell the Board what they feel since they would be surrounding the school.

Atty. Prunier said they are proposing a school. They want to have a campus-type atmosphere. He said Mrs. Gleeson will tell the Board how the school is going to be used. He said it's important that there be as much green area as possible protected and this is a reasonable use of the twenty-two acres.

He said this is in the public interest because it is offering a different type of school. He said Mrs. Gleeson will explain this to the Board.

He said it is within the spirit of the ordinance. This has been a farming area for a long time and they are trying to keep it as close as possible in its natural state.

He said he did not think it was out of character in view of the tremendous amount of acres that are going to remain open and used by the students.

Mr. Duffy asked if the barn is going to be a continuing accessory use.

Atty. Prunier said this is correct.

Mr. Duffy asked if the new proposed house will be sold as a new residence.

Atty. Prunier said this is correct. He said it's going to be used by the "Gleeson's." They will be staying on the campus.

Mr. Duffy asked if the school itself is 50'X100' and one story.

Atty. Prunier said this is correct.

Mr. Duffy asked Atty. Prunier to address the hours of operation and days of the week the school will be used.

Atty. Prunier said as for the operation of the school he would defer the questions to Mrs. Gleeson as she is the one who will be operating it. He said it will generally be from early in the morning till late at night.

Mr. Currier said there are twenty-two acres. He asked if Atty. Prunier would circle the outline on the map so that the Board could see what this encompasses. He asked if this would be subdivided.

Atty. Prunier said it would not be subdivided. It is one lot of record. He said the "Gregg's" kept buying land in the area as they could. He said there might be different deeds, but for all practical purposes it's all consolidated into one.

#### **SPEAKING IN FAVOR**

Debbie Gleeson, 15 Tanglewood Drive, Nashua. Mrs. Gleeson said she owns and operates "The Nature of Things Creative Learning Center", which is a State licensed childcare center and pre-school. She said they provide care and education for children from infancy right up through kindergarten. They have after school programs for children in elementary school and summer camp and vacation week camps. She said they also are approved by the State of New Hampshire to operate an elementary school approved through Grade 5. That elementary school is called "Second Nature Academy." She said they have exceeded their

current space in the building they are in now so they need space to operate their elementary school.

She said their goal is to continue their tradition of fostering an appreciation for our natural world and to build a sustainable community through innovative approaches to learning. She said they want to build and operate what's called a "green school" at 17 Gregg Road. A green school integrates the core subject areas with environmental education using an inter-disciplinary approach to learning. The children follow a curriculum that follows the New Hampshire State guidelines, but they use environmental education as their basis of the curriculum. She said they feel that they can do this without affecting the rural character of the neighborhood.

Mrs. Gleeson said Second Nature Academy would benefit the community. She said its very unique in the way it approaches education, keeping in mind that it's still an academic curriculum. She said their approach to learning includes inquiry, observation, reflection, real-life problem-solving strategies, and direct sensory experiences. The curriculum is taught through environmental themes.

She went into a further explanation of some of the themes the teachers cover with their children such as wildlife observation and nature hikes, organic gardening, recycling, and many others. She said in order to operate a school like this she needs substantial green space, woodland trails, bodies of water, a solarium or a greenhouse, a barn for raising livestock and a place for an organic garden. The piece of property at 17 Gregg Road happens to have all that. She said it makes it ideal for the type of education they are proposing.

She said this is located adjacent to several hundred acres of land on the Massachusetts side that is owned and maintained by the Dunstable Rural Land Trust. She said they have met with the land trust and they have agreed that the school can use their piece of property for field studies and nature walks and wildlife observations and recreational use.

She said in addition to this, they have been speaking with New Hampshire Audubon. She said they've been looking to locate a chapter in Nashua and they have agreed to provide Audubon with some space within one of the buildings for them to operate some of their adult education programs.

Mrs. Gleeson said their mission is to have a campus environment, very much like there is in small colleges. Most private day schools have a campus environment. As part of the campus they need various buildings to support the type of education they are proposing. She said the barn is an accessory building and they intend to have some small animals here and also use it for storage.

She said the current house on the lot is a small contemporary ranch. She said it isn't big enough for her family, but it would enable them to use it for administrative offices. She said they would like to build a house on the lot where they could live because in order to have a working farm you need somebody there to watch over the animals. They are also asking to build a new school for their classrooms. She said the dimensions shown for the school is a proposed start size. She said they will probably need to add on as time went on.

She said they'd like to maintain the land green and keep as many trees there as possible and cut down only what's necessary. She said they would like to build a "green" building. There are certain criteria that have to be met in order to be certified as a "green" building. It has to use local materials, has to be energy efficient, minimizes waste, reduces the use of harmful chemicals and materials in the building, reduces reliance on fossil fuels, and reduces water consumption and water waste.

Mrs. Gleeson said the school itself would operate from 8:15AM - 3:30PM. They are proposing staggered openings as they do now at the pre-school. They would be open weekdays only. The after-school program would be over at 6:00PM. She said the Audubon Society wanted to come in and wanted to do programs on weekends, but that's for the general public.

Mrs. Douglas asked if the summer camp would be weekdays only with no overnight camping.

Mrs. Gleeson said this would be weekdays and there would be no overnight camping.

Mr. Duffy asked if there are any other accessory uses planned or intended.

Mrs. Gleeson said they probably will have greenhouses.

Mr. Duffy asked if they would be talking about doubling or tripling the size of the school building for future growth.

Mrs. Gleeson said she thinks the application states it would go up to 18,000 square feet total over several years. She said part of it is the cost of building a "green" building is extensive so they would have to do it in smaller increments.

Mr. Duffy said if they are looking at a building of 50'X100' right now they are talking about adding to this building and not another building.

Mrs. Gleeson said that it would be added to the 50'X100' building. She said that's the reason it is shown away from the setback line is so that they have room for adding to it.

Mr. Currier asked where the current students come from.

Mrs. Gleeson said this is in the traffic pattern. She said the majority are from Nashua. There are some from Dunstable, Pepperell, Brookline, Hudson, and Hollis.

Mr. Duffy said there is a 40' driveway. He asked if it is one lane.

Mrs. Gleeson said it's two lanes - one entering and one exiting.

Mr. Duffy asked if they understand the signage requirements.

Mrs. Gleeson said they understand that signage is not allowed here.

Mr. Duffy asked if they would be coming back at a later date asking for a variance for signage.

Mrs. Gleeson said she hadn't given this a lot of thought. She doesn't know if it's going to be necessary.

Mr. Currier said it seems like a pretty good use of the land. He said the only concern he would have would be that sometime in the future there would be other owners who would be looking at three principal structures on the lot and then be looking at subdividing the acreage and building several houses.

Mrs. Gleeson said there are restrictions being written into the purchase and sales agreement that this lot cannot be subdivided

into a development. The maximum ever allowed would be three house lots.

Amy Better, 23 Lutheran Drive. Mrs. Better said she is an employee of the Gleeson's. She said she thinks this is a perfect use of Mrs. Gregg's land. The educational, social, and environmental goals of "The Nature of Things" are of benefit to the neighborhood and to the City. She said her son was a student at the school. Had there been further grades he would have gone beyond first grade. She said they are hoping to be able to influence the generation of children that are going into school now into being more environmentally conscious and socially responsible.

She said the Gleeson's have a dedicated exceptional staff who are dedicated to the goals of "The Nature of Things." She said they have established their gardening program and have a burgeoning composting program. She said they will have a greater ability to meet the environmental goals of "The Nature of Things" if they are on this piece of property.

Mr. Duffy asked how long Mrs. Better has been an employee and how long she has been at Lutheran Drive.

Mrs. Better said she grew up in the neighborhood. Her parents were the second family to move in. She said this is her fourth school year with "The Nature of Things."

David Tully, Member - Dunstable Rural Land Trust. Mr. Tully said he believes the Board has a letter that they sent in support of this request.

He said the Dunstable Land Trust owns about 340 acres in Dunstable. He said it is strictly conservation land. All but 100 acres is permanently protected. He said the trust owns all the land right up to the New Hampshire line, except for about 16 - 20 acres that the "Gregg's" own in Dunstable.

He said the Boy Scouts use their land and a tremendous amount of people walk the property with their dogs. The schools at Dunstable use the property. He said this would be an excellent addition as far as they are concerned.

Mr. Duffy confirmed that Mr. Tully's letter is on file and is dated 11/1/2005.

Mr. Tully said this was correct. He said the letter is signed by his father, who is the Treasurer of the Trust. He said Mr. Kennedy is the President.

Robert Lolley, 7 Gregg Road. Mr. Lolley said he is in support of the plan. He said his property is surrounded by the "Gleeson's" proposal. He said he's met with them a couple of times and is impressed by what they plan.

He said he's lived in his house since 1987 and he sees Hugh Gregg walking down the side of the property daily. He said he thinks that this is a great memorial to Mr. Gregg as well.

Pat Terrell-Holt, 18 Groton Road. Mrs. Terrell-Holt said she abuts the "Gregg" property. She is the ninth generation on her property. They have been here for many years as a farming community. She said she is in favor of this request. She said her son goes to their school located in the Maplewood area. She said she sees how the teachers react to certain things like when they see chicks hatch or when seeds sprout. She said they keep the kids involved.

She said this would be an enhancement that she approves of. She said the request is very reasonable. Her son will be walking through the woods to go to school here if this is approved.

Marti Levesque, 5 White Plains Drive, Nashua. Mrs. Levesque said she is employed by "The Nature of Things." She said she's worked for them for five years.

She said she wholeheartedly believe that everything that the "Gleeson's" stands for is education for the children, but also for their employees. She said she is the mother of two teenagers. She said her employer encouraged her to go to school.

**SPEAKING IN OPPOSITION**

No One.

**MOTION** by Mr. Duffy to grant the special exception to allow a proprietary school at 17 Gregg Road. It is listed in the Table of Uses, Section 16-227. A school of up to eventually 18,000 square feet on this lot should not create any undue traffic congestion or unduly impair pedestrian safety. There was a full presentation about traffic which seems reasonable and comparable

to what the site offers and the intended use and other operations of the business. He said it should not overload public water, drainage, sewer or other municipal systems. The 22-acre lot far exceeds the probably capacity for this use. There are no special regulations. It will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of the residents. In fact, it abuts conservation land.

**SECONDED** by Mr. Currier.

**MOTION CARRIED UNANIMOUSLY**

**MOTION** by Mr. Duffy to grant the variance to allow three principal structures on one lot, one permitted at 17 Gregg Road. The variance is needed in order to enable the applicant's proposed use of the property given the special conditions of the property. This is a lot of 22-acres in size, which significantly exceeds the R40 requirements. He said putting three principal buildings and one accessory use of a barn, two of which are already existing on the lot is a minimal and reasonable use of the property given the intent of the conservation uses of the property. Other accessory uses, as stated by the applicant, will follow the Nashua ordinances. It is, therefore, within the spirit and intent of the ordinance that the use of a proprietary school on the site is very reasonable and minimal use. It should not adversely affect property values of surrounding parcels, even though there was no expert testimony. It is not contrary to the public interest. The hours of operation and the days of the week, as stated by the applicant, will be maintained in respect to the neighborhood and the other uses. Substantial justice is served.

**SECONDED** by Mr. Currier.

**MOTION CARRIED UNANIMOUSLY**

5. **SBKA Properties, LLC (Owner) 6 Haines Street (Sheet 14 Lots 95 & 98) requesting the following variances: Lot 95: 1) minimum lot area, 6,000 square feet required - 5,300 square feet proposed, 2) minimum lot width, 60 feet required - 50 feet proposed, 3) maximum building area, 20% allowed - 32% proposed, and 4) to encroach 2 feet into the 7 foot right side yard setback; Lot 98: 5) minimum lot area, 6,000 square feet required - 5,300 square feet proposed, and 6) minimum lot width, 60 feet required - 50**

**feet proposed - all requests to transfer common ownership between two contiguous nonconforming lots and construct a single family house on Lot 98. RB Zone.**

There was a discussion about the possibility of deferring the hearing on this case because of the lack of a full Board. There was the possibility that there may only be two members for the meeting on the 13<sup>th</sup> and the next meeting would be in January. Atty. Hollis conferred with his client and decided to go ahead with hearing the case.

Atty. Morgan Hollis, Gottesman & Hollis, 39 E. Pearl Street, Nashua. Atty. Hollis said Lot 95 has a house located on the land. Lot 98 is immediately adjacent to Lot 95. This property is located three house lots in from Allds Street.

He said the Board should have a plan that was prepared by Maynard & Paquette Engineering Associates showing the existing house and proposed house. The proposed driveway is shown on the plan. He said the variance for the side yard setback is between the existing house and Lot 98. They are asking for 5' where 7' is required.

He said these two lots were laid out in 1892. He referred the Board to the plan from the Registry of Deeds. He said the Board may have seen this before because he knows they have had other variance requests in the area.

He passed out a copy of a portion of the area from the Assessor's maps, which show the homes in the area and the lots as well. He said 6 Haines Street is identified. There is a separate scale map which brings it in a little bit tighter and shows the buildings that are immediately adjacent to the property on Haines Street.

Atty. Hollis said the deed was part of the application. He said the deed hasn't changed over the years. The two lots were conveyed as two lots. It was never separated. The house was on one lot. It never straddled the lot line. The shed is going to be removed.

He said under the current zoning ordinance this property is allowed to have either a single-family or a two-family dwelling. It could be a two-family if the lots were consolidated into one lot. A single-family exists.

He said his client prefers to have two single-family house lots because that would be more in keeping with the neighborhood than having a duplex.

He said his client has met with all of the neighbors and discussed this proposal. He said there is a statement that was presented to the neighbors which says that they are trying to build a single-family home on the lot. It is signed by the people at 16 King Street, 7B Haines St, 3 Haines St., 65 Arlington St., 19 Williams St., 14 King St., 37 Haines St., 8 Haines St., 54 Haines St. and 4 Haines St. These people have signed this statement in support of the request.

Atty. Hollis said the area variances are needed to enable the applicant to have a reasonable use of the property - rather than a duplex, subdivided properties to create lawful lots. There is no other way that this reasonable use of this pre-existing lot can be obtained. There is no land to be acquired on either side. They are looking for a fairly small amount in terms of the variances. The benefit sought by the applicant cannot be achieved by any other reasonable foreseeable method.

He said the proposed variance is not contrary to the public interest. They are able to maintain setbacks on the new lot to the immediate abutter. There is no change to the abutter on the other side. They are going to be able maintain single-family homes in a single-family neighborhood. It will prevent duplexes. It provides reasonable housing opportunity.

He said the value of the abutting and adjoining properties will not be adversely affected. He presented an opinion to the Board on values. He said he expressly asked the realtor if he would provide the fact that he's being paid for this up front and that he has no interest. He is neither a broker on this deal nor has he represented him (Atty. Hollis) nor has he represented the applicant or the owner in this matter. He said he contacted this broker because he happened to know that he grew up in this neighborhood and knows that he has experience selling homes in this neighborhood. He said the opinion of this broker is that allowing the variances to create two separate lots and allowing the construction of a single-family house in the currently vacant 50'X100' area will not adversely affect the value of surrounding properties. He said the broker explains why it is his opinion that it will not affect the values in the first two paragraphs of his letter. He added in that there are eighteen homes on Haines Street between Allds & Newbury that are on 5,000

square foot lots and that would appear to be the character of the neighborhood.

He said the variance will not be inconsistent with the spirit and intent of the area. He said there will be sufficient space on each of the two lots. Each of the lots is the same. They are not asking to create an unusually shaped or squeeze the lot in any fashion from the original plan as laid out. He said it's interesting to note that the minimum lot area of 6,000 square feet in the ordinance that was passed in 1976 was arbitrarily picked. It wasn't determined on the basis of what existed out here in these neighborhoods. He said there is case law out there that says you can't do this in ordinances, that ordinances have to take into consideration the existing plan of record. By imposing that ordinance on a pre-existing plan of record and pre-existing lot ownerships of record, they essentially made everyone in there non-conforming.

He said the request is not inconsistent with the spirit and intent of the ordinance, which is to allow adequate space for health, safety and welfare of these properties. He said he has shown evidence to the Board that houses do exist side by side on 50'X100' lots.

Atty. Hollis said substantial justice will be done if the variance is granted. There are two lots. It's a historic conveyance. It will preclude a duplex. It will keep the character and it will maintain the values of the immediately adjacent and surrounding properties. He said the Board granted variances in the immediately adjacent area on properties located at 58 King Street, 39 King Street, and 15-17 Williams Street for the identical situation. These were granted in April and June of this year.

Mr. Duffy asked if the variance for the buildable area for the old house or the new house.

Atty. Hollis said it's for the old existing house. He said the new house will be 25'X40' and there will not exceed the permitted percentage.

Mr. Currier asked if they talk about a duplex, does it have to be two houses that are attached or could the existing structure be expanded to make a duplex.

Atty. Hollis said the way it is now, the existing structure can't be converted into a two-family without a major addition.

Mr. Currier said he didn't like the wording of the survey that went around to the neighbors because the proposition that was put to them was that there would be two that would be connected. He said there's been a lot of debate about this with other recent properties. He said if there was another option it might be that there be a slight modification or no modification and have a duplex, who knows what the response might have been.

Atty. Hollis said he didn't prepare the statement, but he did talk to his client. His client is present and probably could answer this question. He said he could probably also answer the Board's question about the difficulty of converting this structure. He said if the variance is not granted, his client will proceed with a duplex.

#### **SPEAKING IN FAVOR**

Kevin Corriveau, One of the Principal Owners, 61 Arlington Street. Mr. Corriveau said he lives in this neighborhood and it was his intention to build a duplex. He said he went to his neighbors and did what he thought was the neighborly thing and showed them what his plans for the property were, even though he knew he would be able to build a duplex. He met a lot of opposition from the neighbors because they didn't feel it was in character with their homes and that it would drive down their property values. He changed his plans after he received opposition and went ahead and applied for the necessary variances so he could have two single-family homes.

Richard Maynard, Professional Engineer, Maynard & Paquette. Mr. Maynard said he has been the engineer on several of these projects and he can tell the Board that the people on Crown Hill are fully aware of the difference between a duplex and two separate single-family homes regardless of how the statement is written. He said the neighbors prefer single-family homes because that is the character of the neighborhood.

He said Crown Hill is a neighborhood with lots of 5,000 square feet. The zoning map shows they are in a zoning district that requires 6,000 square feet, so they are almost all non-conforming.

Bill Lambert, 19 Williams Street. Mr. Lambert said he is in favor of what Mr. Corriveau wants to do. He said he gave Mr. Corriveau the idea of the petition. He said if the variance is not granted he has the right to build a duplex. It will not conform to the neighborhood. He said it isn't feasible to put another structure on the existing house to convert it into a duplex or two-family. He said it's more beneficial to the neighborhood to have the lots separated and create a whole separate structure.

**SPEAKING IN OPPOSITION**

No One.

Mr. Currier said he really doesn't have an issue with the lot area and the lot width because it's a pre-existing condition. He said the existing house is rather large. He said there are some that are bigger, but there are many that are smaller. He is on the fence with this one.

Mr. Anderson said 50' lots are the character of this neighborhood. It was platted in the 1800s.

**MOTION** by Mr. Anderson to grant the following variances: Lot 95: 1) minimum lot area, 6,000 square feet required - 5,300 square feet proposed, 2) minimum lot width, 60 feet required - 50 feet proposed, 3) maximum building area, 20% allowed - 32% proposed, and 4) to encroach 2 feet into the 7 foot right side yard setback; Lot 98: 5) minimum lot area, 6,000 square feet required - 5,300 square feet proposed, and 6) minimum lot width, 60 feet required - 50 feet proposed - all requests to transfer common ownership between two contiguous nonconforming lots and construct a single family house on Lot 98 at 6 Haines Street. The variance is needed in order to enable the applicant's proposed use of the property, which is two single-family homes. This cannot be achieved by any other method reasonably feasible for the applicant to pursue. They have information that he abutters and neighbors prefer two separate structures as opposed to one duplex structure. It is within the spirit and intent of the ordinance if you look at the history and the character of this neighborhood. He said they some information that it will not adversely affect property values of surrounding parcels, although it does say surrounding properties. It is not contrary to the public interest. He said they have a signed petition indicating that the preference is for two single-family dwelling units. Substantial justice is served.

**SECONDED** by Mrs. Douglas.

**MOTION CARRIED UNANIMOUSLY**

6. **Richard Schwind (Owner) 63 Manchester Street (Sheet 65 Lot 15) requesting special exception to allow a two-family dwelling unit. RA Zone.**

Chris Cahill, 71 Main Street, Hollis, NH. Mr. Cahill said he is a builder. He passed out some information to the Board that included information about addresses of other two-family dwellings on Manchester Street. One of them abuts the property and others are very close to the proposed lot.

He said the lot at 63 Manchester Street meets all the dimensional requirements for a two-family dwelling. It will meet the setback requirements.

He said he had a letter from Maynard & Paquette regarding water and sewer and how this proposal would not adversely affect these services.

He said there is an existing curb cut on the lot that provides access. They will be using it.

He said he did not see that this would create any adverse traffic on the street. He said it is a busy street, but it has recently been widened.

Mr. Anderson asked Mr. Cahill if he had some of the lot sizes for the two-family homes as shown in his presentation.

Mr. Cahill said he didn't have every lot. He said the abutting property, Lot 65, has 29,000 square feet. He said he is familiar with #57-59 Manchester Street because he was looking at it about a year ago to purchase it. He said it has a much smaller lot and that he didn't think it was conforming. He said he thought it was around 8,000 or 9,000 square feet. He said he wouldn't know exactly what some of the other lots are, but he would say that they aren't any larger and most of them are smaller.

Mr. Cahill said across the street from this is the rectory and that lot is large, but he didn't know how large.

Mr. Duffy asked if the pictures are in the neighborhood of Manchester Street or on Stark.

Mr. Cahill said they are all right on Manchester Street. He said they coincide with the list that he provided to the Board.

Mr. Currier said the first picture shows 64 Manchester Street, but it isn't on the list. He said the next one has no address. The next one is 62 Manchester Street, but it's also not on the list.

Mr. Cahill said if an address is not on a picture then there were sets of photos - there's more than one photo of a building. He took a front picture and a back picture and he just has the address on the front picture.

Mr. Duffy asked Mr. Cahill if he talked to the abutters at 61 Manchester Street or 6 Reservoir.

Mr. Cahill said he knocked on the door at 61 Manchester Street and left a note. He said he hasn't heard back from anyone. He said he did hear from the estate lawyer in Florida, but he didn't say much to him except that he approached him to see if he was interested in purchasing the property at 61 Manchester Street. He said he hasn't gotten back to him due to time constraints. He said he has not approached 6 Reservoir. He said he did approach 70 Manchester Street and talked to the person who lives there. He said they didn't have any objections.

**SPEAKING IN FAVOR**

No One.

**SPEAKING IN OPPOSITION**

No One.

Mr. Duffy said there is a letter received by the Planning Department at 4:06PM today from an Atty. Thomas M. Silverman. He said the person represented by the attorney asked that the letter be read in full into the record. He then proceeded to read this letter into the record as follows:

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING & MEETING

December 6, 2005

Page 37

1. 63 Manchester Street was originally a one-family dwelling that was allowed an in-home apartment as a zoning exception due to hardship on a single (1) person owner occupancy.
2. This year, a single-family home subdivision was approved on the front portion of the 63 Manchester St. (Lot 65-15) as proposed for a retirement home for Mr. Richard Schwind, by Maynard & Paquette, Engineers and Surveyors.
3. Mr. Schwind related to Mrs. Nash-Beesley that this would be a cape-style home that he would exclusively occupy. Mr. Schwind was hoping to sell the larger home on Lot 65-15, so that he could remain in the neighborhood where he was at home and not t\be forced into a retirement community lifestyle he did not prefer.
4. Once the subdivision was approved by the Zoning Board of Adjustment without objection by 61 Manchester Street due to the representation by Mr. Schwind of his goodwill and intentions to the Nashes, Mr. Schwind made application to enlarge the newly subdivided lot.
5. The reason for this increased square footage amendment was given to Mrs. Nash-Beesley by Mr. Schwind as an error being made by Maynard & Paquette, Surveyors. For this reason, Mr. Schwind stated he would not be charged additionally by the surveyors for new application and amendment. This change was primarily to include a "maple tree grove" planted by Mr. Schwind. The grove was intended to secure privacy for the new home from the 61 Manchester Street house of the Nashes for three (3) seasons of the year. Again, on Mr. Schwind's representation, no objection was filed by 61 Manchester Street in the interest of neighborhood goodwill and amity, despite diminution of value occurring to the Nash property with an increasingly close situs of the proposed single-family structure.

Since the last Zoning approval, Mr. Schwind has completely changed his intention. Mr. Schwind has listed his home with Stoult REMAX Properties and has obtained an agreement with a developer, Mr. Christopher Cahill of Hollis, NH.

It appears at this time that Mr. Cahill intends to build a two-family duplex building on the newly subdivided lot. It is unclear without a site plan how a duplex can be placed on this small lot with parking, including a recreation space for the

families/children to play in and no space for street parking on Manchester Street.

**Traffic Hazard:**

The lot is small and is close to the busy road of Manchester Street. Access and egress to the lot by vehicles and or trailers, recreational vehicles and the like as well as parking for the family of occupants and friends and vendors of same will be very difficult and pose a traffic hazard.

**Character of Neighborhood:**

A duplex building with a large parking lot and the removal of trees will change the character of a quiet and well-established neighborhood of older homes. It also may increase the noise level into the St. Christopher's Church, shrine and worship area as well as the house at 61 Manchester Street.

**Pedestrian Safety:**

A sidewalk encircling 61 Manchester Street from Reservoir Street and continuing around the side of the Nash home was constructed with tax monies to assure the safety of church, school and neighborhood pedestrians. This walk stops shortly before the newly created lot begins. Manchester Street narrows at the newly subdivided lot and provides no place for continuation of this sidewalk in the current plan. This lack of a walkway along with entering and existing traffic from the proposed tow-family poses a safety hazard to the neighborhood - mainly retirees and young schoolchildren. The abrupt ending of the sidewalk invites them into this new hazard.

**Single-Family Neighborhood:**

The house at 61 Manchester Street has been a family home for over 100 years. Mrs. Bobbie Kathryn Nash-Beasley intends to retain and occupy the house with her husband and Mr. David J. Beasley, Jr. once her mother's (Mrs. Bobbie Kathryn Nash) probate proceedings are completed.

Mrs. Nash-Beasley is the sole beneficiary of this home. She honestly feels that the change in the intention of a previously represented small single-family retiree's home to a duplex two-family building with accompanying traffic and occurring hazards with additional density makes inappropriate the further modification of this subdivided parcel of land by the Zoning Board of Adjustment."

**SPEAKING IN FAVOR - REBUTTAL**

Mr. Cahill said he is very surprised to see this letter considering that this attorney was cordial to him and offering him to purchase the property.

He said everything meets the requirements of the ordinance as far as the density is concerned. He said he plans on keeping a buffer of maple trees and cedar trees and some evergreens. He pointed out the driveway. He said there is about 10'-15' of land between the driveway and their property line. He said there is a grove of maples that is addressed in the letter, which he will be keeping.

He said Mr. Schwind did change his mind. He said his intention was not to change the use, but when they were going through the building process, the steps in the process didn't make sense to him. Mr. Schwind is 75 years old and he (Mr. Cahill) said he didn't think Mr. Schwind could deal with the stress of building a new house so he decided not to do that. He said after six months or so he received a call from the real estate agent saying that the property was up for sale. He didn't know about it until he received the phone call.

He said he didn't see that traffic would adversely affect anything. He said there is plenty of room on the lot. It's oversized for a two-family. He said he didn't think there is a need for a fence around the property to shelter the neighbors, especially #61 - there are beautiful trees there and they are going to stay.

Mr. Duffy asked if the plan for the house shows what is being proposed.

Mr. Cahill said he has an updated version. He showed it to the Board. He said it's conceptual.

Mr. Currier asked why not stick with a single-family home. He said he's looking at the new design versus the other design and the way the lot is it looks like a house in front of a house and a duplex in front of a house. He said it doesn't look like it's in character with what's there.

Mr. Cahill said the size of the single-family homes in this area are very large and could be duplexes.

Mr. Currier asked about the driveways.

Mr. Cahill went to the plan and explained the driveways. He was away from the microphone.

Mr. Anderson asked Mr. Cahill if any cars would have to back out onto Manchester Street.

Mr. Cahill said none of the cars would have to back out onto Manchester Street.

Mr. Anderson asked if this would be owner occupied with one unit rented out.

Mr. Cahill said he owned the property right now. He said Mr. Schwind's intention is to move back there.

**SPEAKING IN OPPOSITION - REBUTTAL**

No One.

Mr. Currier said he didn't think that what was being proposed looks in character with the neighborhood. He said he's not seeing the need for a two-family situation.

Mrs. Douglas said this is a special exception and the use is listed in the Table of Uses.

Mr. Currier said "not impair the integrity or be out of character with the neighborhood."

Mrs. Douglas said there are a lot of multi-families in that neighborhood. She said there are some interesting construction styles and lot shapes in that whole neighborhood.

Mr. Anderson said even the lot sizes - some of the two-families are on small lots.

Mr. Currier went back to saying that this is like a house in front of a house.

**MOTION** by Mr. Anderson to grant the special exception to allow a two-family dwelling unit at 63 Manchester Street. This is listed in the Table of Uses, Section 16-227 - Residential #2. It will not create undue traffic congestion or unduly impair pedestrian safety. It's an existing lot. He believes new sidewalk will be required by the Planning Department. It will

not overload public water, drainage, sewer or other municipal systems. There are no special regulations. It will not be out of character with the neighborhood nor be detrimental to the health, morals or welfare of the residents. There are many two-family units in the neighborhood, some on larger lots and some on smaller lots and situated different ways on the lots.

**SECONDED** by Mrs. Douglas.

**MOTION CARRIED - 3-1, Mr. Currier opposed.**

#### **MINUTES**

**October 11, 2005, October 28, 2005**

**MOTION** by Mr. Duffy approve the minutes of the October 11, 2005 meeting and the October 28, 2005 meeting, waive the reading and place on file.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY**

#### **Regional Impact**

The Board did not see any issues of regional impact.

Mr. Duffy said there may only be two members for the meeting on December 13, 2005 and it's his understanding that they won't be able to have more members available during the rest of December.

Mr. Falk said that even if there are three members present he doesn't know how many would not want to proceed with only three.

Mr. Anderson said if they have too many cases deferred from the December 13<sup>th</sup> meeting he suggested that there be a third meeting in January.

Mr. Duffy said he is suggesting that during the first week in January not to take any agenda items and advise people that they might not be heard until the second meeting in January. He said he's pretty booked and he doesn't plan on having any additional meetings during the next three months.

Mr. Falk said the cutoff date for the first meeting in January is next Tuesday and right now there are no cases in.

Mr. Currier said they are scheduled to hear an appeal of an administrative decision on Wal-Mart on December 13<sup>th</sup>. He said they are scheduled for the Planning Board on December 8<sup>th</sup>. He asked if applicants normally would go to the Planning Board when there is an appeal pending with the Zoning Board.

Mr. Falk's response was unintelligible.

Mr. Currier said he put a letter together to present to the Planning Board. He passed it out to the members for them to read. He said he felt it was cleaner for the process to run through the Zoning Board first before anything goes to the Planning Board. He said he would like to submit the letter to the Planning Board and if they still want to hear the case that would be fine.

Mr. Falk said they have received a request for rehearing on the special exception that was granted by the Zoning Board at their last meeting. It will probably go onto the first meeting in January.

Mr. Anderson said he thinks the Planning Board is fully aware of what's going on. They have the ability to table the case if they want this to play out.

Mr. Falk said that might happen anyway without anything from the Zoning Board.

He said the Zoning Board might not even have a quorum next week.

He said the applicant has the understanding that the use is okay, which is the reason they are moving forward with the site plan. He said he would give the letter to the Planning Staff in the morning so they can give it to the Board.

Mr. Duffy said he didn't think that the Zoning Board has any jurisdiction to tell the Planning Board what their agendas should be and vice versa. He doesn't think that this is a luxury that they are allowed to make.

Mr. Currier said his letter is just a suggestion.

**ADJOURNMENT**

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING & MEETING  
December 6, 2005  
Page 43

Mr. Duffy called the meeting closed at 10:00PM.

Susan Douglas  
Clerk

lt  
Taped Meeting