

**ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
December 13, 2005**

A public hearing of the Zoning Board of Adjustment was held on Tuesday, December 13, 2005 at 6:30PM in the Auditorium at City Hall.

Sean Duffy conducted the hearing.

Members present were: Sean Duffy, Vice Chair
 Jack Currier, Acting Clerk
 Jeff Anderson
 Norman Tremblay

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.

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 you may appeal the case to the New Hampshire Superior Court.

He said tonight's meeting is scheduled to end at 11:00PM and if they need to they will poll the Board when it is around 10:15PM to see what further cases are to be heard this evening. Any cases not heard this evening may be heard tomorrow night or at a future date that they will decide as the evening progresses.

MOTION by Mr. Duffy to reconsider the denial of the rehearing request for 74 Cox Street that was heard at the last meeting.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY

MOTION by Mr. Duffy to table this case until January 10, 2006. This will be placed on an amended agenda since rehearing requests are not re-advertised.

SECONDED by Mr. Tremblay.

MOTION CARRIED UNANIMOUSLY

Postponed to 1/10/2006

2. NP Nashua LLC (Owner) Packard Development (Applicant) 143 Daniel Webster Highway (Sheet A Lot 55) requesting the following variances: 1) to exceed maximum number of wall signs, 3 permitted - 5 proposed, 2) to exceed maximum wall sign area, 150 square feet permitted - 462.3 square feet proposed, 3) to exceed maximum number of ground signs per premises, 1 permitted, 1 existing - 1 additional ground sign proposed, and 4) to exceed maximum ground sign area, 150 square feet permitted - 276 square feet proposed. GB Zone.
4. Louis C. Juris (Owner) 54 Haines Street (Sheet 57 Lot 13) requesting the following variances: 1) lot width, 90 feet required - 87.9 feet proposed, and 2) lot area, 10,500 square feet required - 9,296 square feet proposed - to subdivide one lot into two lots. RB Zone.
9. JPM Real Estate LLC (Owner) John Motta (Applicant) 220 Broad Street (Sheet E Lot 38) requesting: 1) use variance and special exception to allow a fast food eating/drinking establishment with drive-thru, and the following variances: 2) minimum parking spaces, 18 required - 16 proposed, 3) to allow parking in the front yard setback, 10 feet required - 1 foot proposed; and 4) to encroach into a buffer between a commercial zone and a residential zone, 25 feet required - 0 feet proposed. GB & R9 Zones.

10. Reginald J. & Tracey L. Dagesse (Owners) 42 Tampa Street (Sheet 130 Lots 124-126) appealing decision of the administrative officer that an existing lot of record in a vested subdivision is subject to wetland buffer encroachments. RB Zone.
11. Reginald J. & Tracey L. Dagesse (Owners) 42 Tampa Street (Sheet 130 Lots 124-126) requesting: 1) special exception to work within the 75 foot prime wetland buffer of an existing tributary cove of the Nashua River, and 2) variance to encroach 5 feet into the 20 foot required front yard setback - both requests to construct a single-family house. RB Zone.
12. AS-VR Realty, LLC (Owner) Citizens Action for Southern New Hampshire (Appellants) 420 Amherst Street (Sheet H Lot 485) appealing decision of the administrative officer that a use variance is not required for the development of a 147,080 sq.ft retail center at this site. AI Zone.

Mr. Duffy said that there are only four members tonight to hear the cases and anyone else who wishes to elect not to have their case heard may postpone until there is a five member Board and that if there was anyone who wished to do so they should advise the Board. He said it is the applicant's decision to postpone, not the Zoning Board's.

1. Church of Good Shepard (Owner) 214 Main Street (Sheet 32 Lot 14) requesting variance to encroach 9 feet into the 10 foot required front yard setback to erect a ground sign. CB/MU Zone.

Terry Wilkins, 85 Old Brookline Road, Milford. Mr. Wilkins said he is representing the Church of the Good Shepard as a standing member of their Board.

He said the hardship that they endure is due to the large trees that currently exist at the site. Placing a sign at the 10' setback will render the sign useless to motorists trying to locate the church or even to see it. Allowing the Church of the Good Shepard a sign that can be seen allows the church to meet the purpose of the ordinance. Allowing a setback that is less than is required by code does not negate the purpose of the sign ordinance as it relates to this site. He said allowing the variance will give the sign visibility and will help direct the public, injuring no one.

He said the spirit and intent of the sign ordinance are met. He said the sign gives direction, creates a positive image, respects the environment and compliments the character of the district's land use and Main Street.

He said the new sign will only enhance the property and will not be detrimental to the surrounding properties.

He said the public benefit of the proposed sign will help motorists locate their destination so that they can safely find parking on this highly traveled roadway.

He said substantial justice would be served as it gives the Church of the Good Shepard identification that they wouldn't have without actually removing the trees that have been there for quite a long time.

Mr. Wilkins said the current use is a church and it has been a church for the last 130 years. He said they are trying to replace an old sign that is not there any more.

Mr. Tremblay said he noticed the sign is not illuminated. He asked if there will be fixtures on it to illuminate it.

Mr. Wilkins said that would not be the case at all. He said it's a non illuminated sign between two granite posts. The granite posts were designed to compliment the architecture of the church.

Mr. Currier said it's an attractive sign, but he was surprised that it is 96" tall. He said he didn't think it would need to be that high to be seen from the street.

Mr. Wilkins said there is roadside parking along the street. The average height of a vehicle is about 5' or 6' tall, especially SUVs or pick up trucks. If there are vehicles parked on the street the motorists driving up and down the street will be able to see the sign above the parked vehicles. He said it's 96", which is 8' overall height and about 4 ½' from grade to the bottom of the sign.

Mr. Currier asked if this is going to prohibit seeing "Michael Timothy's" to the left of the church.

Mr. Wilkins said it would not. He said the sidewalk is the same elevation as "Michael Timothy's" is, except the church has a yard where "Michael Timothy's" actually has a building.

He presented a letter dated December 13th from the Pastor of the Church to the Board. The letter indicated that the existing sign immediately next to the sidewalk had been there for decades, if not close to the 130 years of the Church's existence. It also spoke of the two trees that Mr. Wilkins mentioned in his testimony. It also stated that the new sign would be more aesthetically pleasing for the downtown and that it would have granite pillars to match the granite stone of the church building.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Tremblay to to grant the variance to encroach 9 feet into the 10 foot required front yard setback to erect a ground sign at 214 Main Street, Church of the Good Shepard. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. The standard setback would render the sign ineffective. It would be blocked by two trees, which should remain in place. 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. In fact, it helps to locate the destination more safety for motorists. Substantial justice will be served.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY

3. Paul E. & Karen Kerouac (Owners) Executive Carwash Technologies, LLC (Applicant) 607 Amherst Street (Sheet H Lot 105) requesting special exception to allow a 4-bay automatic carwash facility. GB Zone.

Jeff Lewis, Northpoint Engineering. Mr. Lewis said he is representing the property owners as well as Executive Carwash

Technologies. He referred to the plan that was on display and indicated it is the same as what was submitted as part of the application for the special exception. He said this is the old site of PKs Nursery. Just southeast of the site is Town Fair Tire. Right next to that is Pizzeria Uno.

He said this site was recently subdivided into several parcels, the subject parcel being one of them. There is somewhat of a Master Plan being developed for the three parcels. He said they have showed Town Fair Tire, which is the first parcel to be developed. The subject parcel is the middle parcel. The parcel to the northwest is also shown and there has been some conceptual planning done for a future retail center.

Mr. Lewis said a driveway will be constructed in the northwest corner opposite Celina Drive. He indicated it's location on the plan. He said there will be a common drive that will run through the three properties.

He said the carwash falls into a category of an automotive service station, which requires a special exception in this zoning district. He believes the carwash is an appropriate and acceptable use and is consistent with other uses out here in the district and along Amherst Street.

He said this site is directly adjacent to the Pennichuck Brook. It's within the Watershed. The brook runs through the northerly part of the parcel. Part of the requirements for site development are that all proposed buildings be set back 150' from the edge of the limit of the brook. This has been accommodated. Runoff from the site is also a sensitive issue. There is a conceptual drainage design right now where they are proposing to collect all of the runoff on site and retain it in an underground system so there's no runoff directed to the brook.

Mr. Lewis said the carwash itself is a four-bay, automatic carwash with doors on both ends. The doors will close, the car will be washed with the touchless carwash system. The water will be collected inside the building, discharged through a series of oil/water separators, and then into the sewer on Amherst Street.

He submitted photographs to the Board. He said they are of a recent carwash that was constructed in Londonderry and just opened this fall. He said the proposed car wash will not have

the same look, but it gives a good idea of what will be constructed. He said the picture is of a three-bay wash and was constructed by the applicant.

Mr. Duffy asked if this is a one-story building.

Mr. Lewis said it's a two-story building. There will be a room on the second floor. It will not be above the actual bays.

Mr. Duffy asked where the dumpster enclosure area is located.

Mr. Lewis said they will have to add a dumpster. He said it has to be outside of the 150' setback so they will probably end up putting it in one of the parking spaces that's on the side of the building. He said they have plenty of room for it.

Mr. Duffy asked Mr. Lewis if they would be amenable to a special condition that this be worked out.

Mr. Lewis agreed.

Mr. Tremblay asked if there is enough room so that traffic won't spill out onto Amherst Street.

Mr. Lewis said they believe there is plenty of stacking capacity on the site. There would be room for five cars to stack at each bay. He said the carwash itself is a relatively low intensity use compared to the other retail that's around there. He said the driveways on the site would be "right in" and "right out" only because Amherst Street is divided right there. There would also be access from the common drive.

Mr. Currier said the application addresses a cross access with an abutter. He asked if this was with Town Fair Tire.

Mr. Lewis said Town Tire is the only parcel that's been developed right now. They have access to Amherst Street from their site. Part of the agreement between the three properties is that they will have access out to Amherst Street at the intersection. He pointed out the access along the back of all three parcels.

Mr. Duffy asked if the lighting and the signage and any other accessory uses would meet the requirements of the ordinance.

Mr. Lewis said they would be met.

Mr. Duffy asked if this is a 24-hour site.

Mr. Lewis said "yes."

Mr. Currier asked if there are a total of three employees - with one to two per shift.

Mr. Lewis said the carwash will be open 24-hours. There will be an attendant on site. There will be a "manager" who will be there from time to time.

Mr. Currier asked what the hours were that there would be an attendant present versus when there would be no attendant.

Ken Marcks, Executive Carwash Technologies, 37 Mall Road, New Boston, NH. Mr. Marcks said there will be an attendant on site every day during normal business hours - 9:00AM - 5:00PM. It will not be attended around the clock. There will be two people on staff during the busier times. The manager will be there to provide oversight as needed.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Tremblay to grant a special exception to allow a 4-bay automatic carwash facility at 607 Amherst Street. It is listed in the Table of Uses, Section 16-227, Retail Services. It will not create undue traffic congestion or unduly impair pedestrian safety. It will not overload public water, drainage, sewer or other municipal systems. The special regulations are fulfilled. 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. Special Condition: Dumpster shall be located on the final site plan as stated.

SECONDED by Mr. Anderson.

MOTION CARRIED UNANIMOUSLY

5. **Harold F. Frost (Owner) 4 2nd Street (Sheet 87 Lot 63) requesting the following variances: 1) to encroach 14 feet into the 20 foot front yard setback, 2) to encroach 10 feet into the 20 foot rear yard setback, and 3) maximum building area, 20% allowed, 31% proposed - to replace a nonconforming structure with a new single-family home on a nonconforming lot. RB Zone.**

Orrin Pollin, 565 Second NH Turnpike, Hillsboro, NH. Mr. Pollin said he is a builder and is representing Mr. Frost. He said the plan is to tear down Mr. Frost's old house and build a new one on the lot. He said the new home will meet all the building codes.

He said granting the variance will promote the zoning ordinance by lessening the congestion on 2nd Street. The house is presently in the right-of-way.

He said property values will undoubtedly increase because it will be a new home in the neighborhood.

He said the public benefit is removing the old house and putting a new one in its place.

Mr. Duffy asked if the house would be built on the same foundation as the existing house.

Mr. Pollin said they are not. He said the house is going to be 26'X26' and the existing house is 19'X30'. The house will be shifted over by 7' to the left hand side of the lot and bringing it back 6' off from the road.

Mr. Duffy asked if there are any planned accessory uses such as a garage.

Mr. Pollin said there would be none.

Mr. Duffy asked if there are similar homes of this size and shape in the neighborhood.

Mr. Pollin said there are others right on the same street.

Mr. Tremblay said this is the smallest lot he has ever seen. He asked if there is a sidewalk here.

Mr. Pollin said the road is there.

Mr. Tremblay asked is a sidewalk will be built.

Mr. Pollin said he is going to loam and seed up to where the road is. Parking is going to be on the left hand side of the house.

Mr. Currier asked if there is going to be a foundation and a basement.

Mr. Pollis said there is a full poured concrete foundation and a basement. He said the stone foundation that is there now will be removed.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Duffy to grant the request for the following variances: 1) to encroach 14 feet into the 20 foot front yard setback, 2) to encroach 10 feet into the 20 foot rear yard setback, and 3) maximum building area, 20% allowed, 31% proposed - to replace a nonconforming structure with a new single-family home on a nonconforming lot at 4 2nd Street. The variance is needed to enable the applicant's reasonable redevelopment use of the property given the special conditions of the property to it's size and shape in a neighborhood that pre-dates zoning and is pretty much non-conforming. The benefit to the applicant cannot be sought or achieved by some alternative method. It is a reasonable area variance request. The property is in need of significant maintenance. It is within the spirit and intent of the ordinance that a single family home, which is an allowed use in the RB Zone be allowed. There are differing sizes and shapes, single story and two story, single family and multi-family in this neighborhood. Even though there was no expert testimony, it should not adversely affect property values of surrounding parcels. It is not contrary to the public interest. Substantial justice will be served.

SECONDED by Mr. Tremblay.

MOTION CARRIED UNANIMOUSLY

6. **Security Homes Inc. & Q. Peter Nash (Owners) Bennett-Prescott LLC (Applicant) L Bennett Street and 58 Prescott Street (Sheet 62 Lots 61, 170 & 232) requesting special exception to construct a 41-unit multi-family development. RB Zone.**

Atty. Brad Westgate, Winer & Bennett, 111 Concord Street, Nashua. Atty. Westgate said he is representing the applicant, Bennett-Prescott LLC. He said that Richard Maynard from Maynard & Paquette Engineering Associates is also present for this case. Steve Goldie from Steve Parnow & Associates, a traffic engineering firm is also present. Also, Greg Kent of Gannett/Fleming, an environmental engineering firm is present as well. He said the two principals and owners of Bennett-Prescott LLC (Kevin Slattery & Bernie Plante) are also present. He handed out some material to the Board and some plans were put up on display.

He said the application is for a special exception for 41-units of multi-family housing for land on Bennett Street &

Prescott Street. He said the land is located in a RB zoning district, which allows the use with a special exception.

Atty. Westgate said there are three properties involved. He referred the Board to the plan on display and the printout from the City's GIS system. The properties are Sheet 62 Lots 61, 170 & 232. He pointed out they have depicted the proposed building layout on the large GIS map. He said Lot 61 is going to be the westerly most portion. Lot 170 is a central portion and Lot 232 is the balance.

He said the zoning map shows the RB zoning district extends from further east on Amherst Street and meets at a little corner. He showed the Board where. He said immediately above it is an LB zoning district where Milano's Pizza and other businesses are located. He said further to the west is a GI zoning district area which is where the former Whitney Screw Building was located and renovated into retail space over the last few years. South westerly are the B&M railroad tracks. Immediately below that is land that's zoned RC, which permits multi-family use. Northeast on Amherst Street are some commercial buildings, Amherst Street School and Holman Stadium. He said the plan shows the commercial properties in the color pink. He said the

plan also depicts properties that are two units or greater in the color green.

Atty. Westgate said the total area of land on the three parcels contain 3.35 acres. They've been consolidated into one for this development. There is frontage of about 114' of frontage on Bennett Street and about 104' of frontage on Prescott Street.

He said presently there are three structures on the property. There's a small house on the Prescott Street side and two dilapidated commercial buildings on the Bennett Street side.

He said historically this property had been used for almost forty years for fuel oil distribution, gas station repair garage, construction materials, and things were dumped there as well. He said the packet that was distributed to the Board outlines more of a history of the property. Various oil companies, both local and national (Atlantic Richfield, BP, Lafayette Oil) owned Lot 61 and Lot 170 for decades operating the fuel oil business repair garages, etc.

He said Security Homes leased these properties in the early 80s and then bought it in the mid to late 80s, kept the same businesses going as well as their construction/repair business. They ran into difficulties in October 1989 and filed bankruptcy and abandoned the properties. He said the trustee in bankruptcy also abandoned the properties and the mortgage holder, who held two mortgages on the properties, also abandoned the properties because of environmental contamination. There was no equity in the property because of the condition it was left in. He thinks the taxes on the properties haven't been paid for about fifteen years now. In effect, nobody wants these properties because of the environmental situation. He said Mr. Kemp, the environmental consultant, will provide more information in this regard.

Atty. Westgate said some environmental work was done in the late 1990s and 2000. There were a number of fuel oil tanks on these properties that were effectively abandoned. He believes they were finally removed under the City's auspices in 2000 - both the above ground and below ground tanks.

He said Bennett-Prescott LLC, the applicant, has had Mr. Kemp's firm do more environmental analysis. He said they have determined there is still on-site asbestos-containing materials. There is soil contaminated with organic compounds from the

petroleum business. A remediation and action plan has to be developed.

He said this is a site in which a responsible developer has come forward and wants to try to make something happen at this property - remediate it environmentally and have a productive use finally put to it - get it back on the tax rolls and have it make sense for both the community at large as well as the neighborhood in particular.

Atty. Westgate said that until and unless approvals to allow for some real economic use and value are given to this property, it will probably remain in this state that it's remained in for nearly twenty years. Without the approvals allowing for this type of use, it's not realistic to think that anyone will come forward and undertake this fairly substantial obligation to get the property in order and make some use of it. Under the present zoning duplex dwellings are allowed. They have estimated that somewhere on the order of twelve duplex lots could be created in theory on these lots, generating 24 dwelling units. When you compare the number of bedrooms that could comprise versus what they are proposing, you could conceivably produce more bedrooms.. He said they think what they are proposing - a multi-family condominium form of ownership makes more sense because it puts the property under one hat. He said it enables for them to have a single arrangement with DES to control use to notify buyers as to what the circumstances are in which they are purchasing into.

He said the proposal is for 41 units, 30 would be townhouse style and 11 would be flats (one-story). Each unit would have a garage. He referred the Board to the architectural rendering. He said the visual effect looks more like thirty units in a way because the eleven flats are somewhat tucked behind the townhouse buildings.

He said one of the handouts he gave to the Board is a listing of the residential parcels that are shown on the GIS map south of Broad Street and Amherst Street. He said there are sixty-seven parcels in this area that he highlighted in green that are either two-families or more. When you average out the density of these sixty-seven parcels, the land density is approximately 3,506 square feet of land area per unit. The applicant's proposal is about 3,580 square feet of land area per unit so what they are proposing is consistent with what is found in this area with respect to the duplex and multi-family parcels. He

said the property is a tucked in section of this neighborhood and also the RB district because there are three other zoning districts within stone's throw from the subject property.

Atty. Westgate said the use is listed in the Table of Uses. Multi-family dwellings are permitted with a special exception in the RB zoning district.

He said Mr. Goldie from Steve Parnow's office will talk about the traffic and pedestrian safety. He said this property will be accessed from both Bennett Street and Prescott Street with an electronic key gate arrangement.

The residents can go out either way, but through traffic would be precluded because of the keyed arrangement. There are sidewalks on Bennett Street and Amherst Street as well. He said as Mr. Goldie will indicate, this is not a significant traffic generator in the morning or afternoon peak hours.

He said their proposal will not overload any public water, drainage, sewer or other municipal system. He indicated Richard Maynard would address these points. He referred the Board to their packets. There are letters from Richard Philbrook of Pennichuck Water Works that water capacity exists for this proposal and from Mr. Maynard that describes the drainage arrangements.

He indicated that there are no special regulations for this particular proposal.

He said the proposed use will not impair the integrity or be out of character with the district or immediate neighborhood nor be detrimental to the health, morals or welfare of the residents of the City. He said he had tried to point this out by pointing out what they can see physically and what has historically existed on the site. It's been used previously for non-residential use for up to four decades and they think putting it into a residential use and cleaning up the environmental condition that remains puts it more in character with the neighborhood than leaving it "as is" or having it resort to any sort of commercial use. He said right now this site is an eyesore with the existing buildings and it's not an environmentally sound site.

He said the immediate neighborhood contains a variety of uses. They are tucked away against the railroad tracks They are not

looming over an expansive single-family neighborhood. They are segregated from the Chataqua Avenue neighborhood.

Mr. Duffy asked if there are two stories with living units and the third story being a garage.

Atty. Westgate said this is correct for the townhouse units.

Mr. Duffy said from the pictures he has looked at he doesn't see where the eleven flats are.

Atty. Westgate said he would defer to Mr. Slattery on this question.

Mr. Duffy said there is a little more than 200' of driveway and about 80 cars. He said they are talking about queuing up 10-14 cars in the entranceway to exit the site. He asked Atty. Westgate to comment on that.

Atty. Westgate said Mr. Goldie can address this question. He said he'll indicate is that roughly speaking during the peak hour, twenty-five to thirty cars will go out, which averages to less than one every two minutes.

Mr. Duffy asked if there are going to be any setback variance requests or other requests, such as decks or sheds in the future.

Atty. Westgate said no setback variances are required. All other items are controlled by the condominium documents. That "fixes" the development.

Mr. Duffy asked if Atty. Westgate was aware of David Fredette's letter of December 9th from the City concerning property taxes and the letter dated December 13th from Katherine Hersh regarding "Brownfields" as well as the December 8th letter from Jeffrey Therriault regarding five potential conditions.

Atty. Westgate said he is aware of Mrs. Hersh's letter. He never saw a copy of Mr. Fredette's letter, but he knows that it exists. He said he thought the third letter was from Mr. Lebrun to Mr. Therriault and he is familiar with that letter. He said it is the one addressing sewer matters. He said Mr. Maynard will cover this.

Mr. Currier asked if the two driveways are intended to be both in and out rather than one in and one out.

Atty. Westgate said they will both be in both directions.

Mr. Currier asked if there is also going to be parking in front of each unit as well as in the garages.

Atty. Westgate said Mr. Maynard will address this question.

SPEAKING IN FAVOR

Richard Maynard, Professional Engineer, Maynard & Paquette. Mr. Maynard said as far as utilities are concerned the site is somewhat unique. He said the site is generally lower than the surrounding area. Right now there is an existing combined sewer system in the developed portions. Part of their consideration is that they be able to handle all their drainage on site. None will leave the site. They will handle whatever comes to the site.

He referred the Board to the plan. He said their site is shown in orange. He said there is a series of low spots in the back area. He indicated where there is a low spot where the drainage ends up in a depression and ends up infiltrating into the ground. He indicated the location of the other two low spots. None of the spots are wetlands. They have sandy soils and they percolate very well. They will be increasing impervious area on the site so they will also supplement the ability to infiltrate into the ground. There will be a series of leaching catch basins throughout the area, which will provide treatment ground water infiltration and handle their runoff. No stormwater will be going to the City's combined sewer system.

Mr. Maynard said that because they are below street level and the sewer system they will be pumping to the City's system. They will be pumping into the 24" line in Amherst Street because Bennett Street has a history of some surcharge problems in the past. They will not be contributing anything to Bennett Street. They also have an alternative to come up Prescott Street by gravity.

He said the letter from Mr. Lebrun is to one of his engineers, Jeff Therriault. He said that the Chair indicated that there are several conditions listed in the letter. He said he has tried to address each of them quickly. Overall they are pretty

much in agreement, although these are really Planning Board concerns. Everything is subject to Engineering's review and approval anyway.

He said he hasn't had a chance to talk to Mr. Lebrun about this letter. It indicates that the City should have the right to have unlimited stormwater drainage onto their site. He doesn't really mean that. He said they will maintain the current overland drainage patterns and they will handle them on their site. They will not be sending any drainage to the City's system. Since all the units are going to be serviced by pumps there will not be any fixtures below the gravity sewer. Mr. Lebrun was concerned about backups in basements.

Mr. Duffy asked about Item #7.

Mr. Maynard said the current stormwater flow patterns will be maintained and accommodated within their project at the current runoff quantities. He said this is also discussed in his December 6th letter to Bernie Plante, which talks about drainage too.

Mr. Maynard referred to the colored rendering of the project. He said it gives an idea of the way it might look with landscaping, etc. Every garage has at least 20' to the private roadway and in front of each garage there is a parking space. There is also some supplemental parking. There are 48 parking spaces.

He said using the condo site plan self ownership form of development they can handle the private sewer issues. They won't be a public burden. They can handle their own storm drainage without impacting the City's system. That again is better handled in a condominium type arrangement.

Mr. Currier asked if the pumps that Mr. Maynard talked about are electric.

Mr. Maynard said they are.

Mr. Currier said when power is lost what happens.

Mr. Maynard said they typically like to have 6-8 hours of shut down time. There are six buildings here and each building will have an individual pump station. They will be able to have sufficient capacity to allow 6-8 hours of down time. There will be audible alarms as well as a blinking light and this is more

than adequate time for the "on call" service person to come and rectify the situation. He said the systems they use today are much better than they were years ago. They don't have the clogging problems that they used to have.

Mr. Currier asked about the sewer line that Mr. Maynard talked about at Bennett Street.

Mr. Maynard said right now there's a sewer in West Prescott that goes to the intersection. It's an 8" line and there is a very flat pitch - he thought it was less than what is recommended. He said their force main will bypass that and they will connect directly to the 24" sewer in Amherst Street itself.

Mr. Anderson asked if the plan is to trench and repave Bennett Street to lay their own sewer lines.

Mr. Maynard said their plan is to lay their own sewer line up Bennett Street to Amherst Street and not to touch the existing sewer line in Bennett Street. He said they'll probably have a trench and may overlay it. If you beat up a street, you have to rebuild it. If you do a good job then you just overlay it. These are things that come up in the engineering review of the site plan.

Mr. Currier asked what the grade on the driveway is going to be like.

Mr. Maynard said the existing street from Putnum down is a 9 or 10 grade. It's a built up area so he can't do much with it. The City allows up to 10% grades on City streets.

Mr. Currier said he imagines the driveway system is privately owned.

Mr. Maynard said this is correct.

Mr. Currier said are the plows that come down Bennett Street going to plow up to the gate and then turn around.

Mr. Maynard said this is a good question. He said that they didn't anticipate it. He said he's sure they can work out a system where the City is allowed to turn around on the site so they don't get a pile of snow at the gate.

Mr. Currier said the plan talks about a gated system. He asked if this is going to be gated at both entrances.

Mr. Maynard said it is. He referred to the plan and indicated where the gate systems were going to be located. It is a key card that will be swiped and let the resident in. He said they are concerned that people will use their project to bypass the intersection of Broad Street/Amherst Street. Some of the neighbors don't want people doing that either.

Mr. Duffy asked if they anticipate any blasting in this area.

Mr. Maynard said "no". He said they've done borings down to 40' or 60'. It's all great soils in this area.

Mr. Currier asked how the gated system would work for visitors to the site, for example a UPS truck.

Mr. Maynard said he doesn't know. He said one of the proponents may be able to explain how it works.

Mr. Currier said he hadn't seen Mr. Lebrun's letter until now and he agrees that he didn't mean unlimited runoff. He asked if the system they are proposing is going to be able to handle a pretty good rain event.

Mr. Maynard pointed out his drainage area map that had red arrows on it. He said they know where the drainage areas are and where they go. When they make a drainage analysis on a project such as this where they have to contain all their water and it can't go anywhere else, they have to look at the 10 year, the 50 year, and the 100 year storm. They have to know what's happening because it's all theirs. If they don't handle it they are going to get flooding.

Mr. Trembley said this is a Brownfields site. He asked if all the sand has to be replaced.

Mr. Maynard said there are various methods to do this. Some stays in place. Some gets buried. Some gets trucked off.

Tim Goldie, Professional Engineer, Steven G. Parnoff & Company.
Mr. Goldie said the eleven single-story and thirty, two-story residential units do not constitute a major traffic generator in their opinion. Based on standardized trip generation rates that they get from the

Institute of Transportation Engineers, they anticipate that this development will generate twenty-five trips in the morning rush hour and twenty-nine trips in the afternoon rush hour. In the morning that's four trips entering and twenty-one are exiting. In the evening nineteen are entering and ten are exiting.

He said there is access from Bennett Street and Prescott Street. He said off of Prescott Street there are numerous points of access as well. What they will likely see is the distribution will be more controlled by what type of movement it is. Given the split, when compared to the volumes that exist on Amherst Street now they are talking numbers that are less than one half of one percent of the existing traffic on Amherst Street.

Mr. Goldie said there is a signal at Baldwin Street so access to the site from the south will allow left turns into Baldwin and then down Prescott Street. To leave the site and go south you would likely do the same and could either go out Putnam Street, Baldwin, Mitchell, or Bruce and make a right onto Amherst Street. Coming from the north you could turn right into either Bennett through the signal at that location or right into Putnam or Baldwin. Leaving the site to head north you could go either way and exit Bennett Street through the signal at Bennett, which does have a phase for that.

He said they know from discussions that Mr. Slattery and Mr. Plante have had with some of the neighbors that there is an issue at Broad Street/Amherst Street and that signal where apparently there are times during the peak rush hours where traffic coming down Broad Street will actually stop across Bennett Street because of the traffic stopped in front of them stopped in a queue. He said they can look at the timing of the signal as well as some signage. Right now you really don't know that Bennett Street is there because there is no sign.

He said the numbers that he quoted do not meet the threshold for a full traffic impact report. Based on those numbers and their analysis it's their professional opinion that the project will not cause undue congestion or impair pedestrian safety.

Mr. Duffy asked if the traffic study is based on a model system or if they went to the area and did an actual sampling.

Mr. Goldie said they did do intersection turning movement count at the intersection so they know how many turn left, right, go

through, etc. They did a trip generation of what they would expect the project generate.

Mr. Anderson asked Mr. Goldie if he thought there would be queuing at the gates based on the volumes he spoke about.

Mr. Goldie said he did not. He said with these kind of numbers you are talking about one every two minutes leaving in the morning. He said it doesn't take two minutes to slide the card through the reader and have the gate open.

Mr. Tremblay referred to the two entrances - Bennett Street & Prescott Street. He asked if they have any idea of the distribution of how traffic would flow in and out.

Mr. Goldie said it's not necessarily 50% either way. He said they think traffic from the south will enter the project through Prescott Street because they are going to use the signal at Baldwin to make that left hand turn. People that are headed north or coming back from the north if they are on the side of the project would probably use Bennett Street. The distribution is going to be more about the movement that's being made as opposed to what their destination is.

Mr. Tremblay said it seems that the intersection at Amherst Street/Broad Street/Bennett Street is problematic.

Mr. Goldie said it's not problematic for someone turning right into Bennett Street. If you look at the turning movement volumes in the memorandum they counted three vehicles turning right from Broad Street into Bennett in the morning. Six did that in the afternoon. They counted four vehicles turning right from Amherst into Bennett in the morning and six did that in the afternoon. He said they counted none northbound lefts into Bennett because that is a problem movement. What would happen with this project is those people would use the signal at Baldwin.

Mr. Duffy said looking at the plan there is an entry into Bennett Street. He said it looks like someone has to make a hard left hand turn or it looks like they are fronting right out onto Bennett Street. He said it looks like there are three garages or curb cuts are going right out to Bennett.

Richard Maynard. Mr. Maynard said that although they are close, that's a normal turn. This is all inside their property.

Mr. Currier asked if Bennett Street is a standard width.

Mr. Maynard said it is 24' wide, which is a standard width.

Mr. Currier asked if parking is permitted on Bennett Street.

Mr. Goldie said there is no prohibition at this time that they are aware of.

Mr. Currier said he's always seen cars parked there. It might be convenient to park on Bennett Street if you want to stop and get a pizza or car parts or whatever. However, it does seem narrow when cars are parked and two cars can't pass each other. He asked if this was just his impression or if it really is like this.

Mr. Goldie said it's a standard width for a City street.

Mr. Currier said if you're coming east on Broad its easy to make a right on Bennett. He asked if you are coming east on Amherst Street can you make a right onto Bennett also.

Mr. Goldie said you can. Because of the signal phasing there's no one you're conflicted with.

Mr. Currier said the times that he is here at rush hour both east bound Amherst Street and east bound Broad Street are significantly backed up. In general the project is well-planned, but this is a tight spot to get in and out of.

Mr. Goldie said as you go through that intersection through that area on Broad Street to Amherst or Amherst to Amherst, Bennett doesn't show up. You're staying on the tail of the vehicle in front of you and regardless of what the traffic signal is doing you're staying right there. If there were some additional signage to make drivers aware that there's another street - don't block the intersection, that's one way to help the situation. He said there are some things they can look at with City staff during the Planning Board process to address this.

Mr. Currier said they see a lot of traffic reports and the classic words are that the analysis demonstrates that a traffic impact report is not required. He asked for an explanation of when the threshold comes into play.

Mr. Goldie said the threshold worksheet is something that the City of Nashua has prepared. Rather than having to evaluate it project by project the City staff has said that when a project meets this threshold the applicant knows coming in that a full report will be required. If it's below the numbers it's not going to require a full report. In this case it falls below the threshold numbers.

Greg Kemp, Professional Engineer, Gannett/Fleming, Manchester, NH. He said Gannett/Fleming is an environmental engineering firm. He said in September and October Gannett/Fleming conducted additional investigations at this site, supplementing a number of other investigations that had been performed at this site over a period of 15-20 years. The purpose of that is to provide additional information to NHDES in the way of a site investigation report. This documents the environmental condition of the site and will help them determine whether or not any remediation is required at the site. He said they know that remediation will be required at the site based on what they have found and on what prior studies have found. He said the property is listed as an asbestos disposal site with the State of New Hampshire and is also listed as a petroleum contaminated site on their site lists. Any development that's done at this site will have to deal with those problems before the State would allow anything to proceed.

He said during their investigation they installed forty test pits at the site. They put in fourteen soil borings and four new monitoring wells. They sampled the four new monitoring wells for groundwater contamination plus three existing groundwater monitoring wells and they collected soil samples from the test pits and from the boring logs. They were looking for petroleum contamination based on the past use of the site as well as asbestos, which has been reported previously at the site. They found soil contaminated with petroleum in several of the test pits. They found **polyaromatic** ??? hydrocarbons (PAH's). They found other petroleum hydrocarbons and they found a limited amount of volatile contaminants as well. They also found lead and arsenic contamination. He said the concentrations of all those contaminants exceeded the allowable concentrations for residential use of the property. He said they found asbestos contamination in the surface soil at a few locations. Their pits went down to about 10'-12'. They found what he calls **"barstock material"????** down there. These are solid pieces of material that is made with asbestos. They also took samples of the soils in test pits and samples of the

surface soils where they found the asbestos plate waste and some asbestos fibers in the soil that are associated with the more friable degraded kind of plate waste. He said they also found contamination in the ground water related to the past use of the site. He said they found benzene, tyalene, MTBE, naphthalene, and arsenic and lead.

He said these are all issues that anyone developing the site is going to have to deal with. There could be a substantial amount of investment involved in this site to actually bring it up to the standards required by the NHDES to make this a site that would be usable for any sort of development.

He said their next step is complete the investigation report that they are working on right now. It needs to be submitted to the State. It is possible that the State could require additional investigation at the site. Following the approval of the site investigation report from the State that documents the condition of the site, they would move onto the next step to prepare a remedy plan that would spell out what they think would be the appropriate remedy to bring the site to a level where it could be used for the proposed development.

Mr. Duffy asked Mr. Kemp was able to render an opinion on whether he believes most of the contamination in on the site or if it comes from other sites as well.

Mr. Kemp said he thinks the soil contamination is related to the past use of the site. There are some areas of the site that are actually stained. They did find contamination at depth in the soil in an area that had been used previously where the above ground storage tanks were located on the site so it appears that some contamination has migrated through the soil in that area and has impacted the ground water.

He said there is a well up gradient at the Bennett Street end of the site. That well has been sampled in the past and found not to have any contamination in it, which would indicate that what they are finding on the site is not from migration of ground water up gradient; it's from previous use of the site itself.

Mr. Duffy said sometimes the Board has heard that soils will be removed and sometimes they have heard about capping. He said it may be too soon for Mr. Kemp to render an opinion on this site.

Mr. Kemp said they haven't gotten to the point of doing a remedy yet. They have given it a little bit of thought as to what they might do, but what they do depends on the feedback they get back from the State and what they will allow them to do. They do anticipate some removal of material. He said the material that is down 10'-12' they would hope to leave in place. The buildings are basically going to be placed on top of that so that material will no longer be accessible. In the regulations they are allowed to do that if there is imperviable surface over the soil.

Kevin Slattery, Bennett-Prescott LLC. Mr. Slattery said he wanted to answer questions on the architectural aspects of the floor plan. He referred to the question about how the eleven flat units were worked into the plan. He said although the building has eight units, it depicts six units. He referred to the plan and went through an explanation of how the single level unit is integrated into the townhouse units.

He said Mr. Duffy had asked a question relative to basements. He said what they are seeing is basically slab on grade to accommodate the garages. There would be slab behind that which would accommodate the single-level unit, or in the case of the center unit would have a storage area.

He said there are topographic issues out here that are going to influence some of the placements of foundations and the way they'll be laid out, but for the most part they envision the majority of them will be laid out as the plan illustrates.

He said there was another question about how UPS or other delivery people would access the site. He said there would be a waterproof display board where the names of the residents would be displayed. The visitor would press a button and the resident would respond to let you in (or not).

Mr. Duffy asked about mail service.

Mr. Slattery said they will have to speak to the Post Office. He said sometimes they want the site to have kiosk. No other building is planned.

Mr. Currier said he could imagine there might be a stacking issue if someone is at the gate buzzing somebody to get in and nobody is letting them in. He said it was just a thought.

Mr. Slattery acknowledged the comment.

He said there are letters which will be on file. One is from Katherine Hersh dated December 13th. This letter talks about "Brownfields" and that the City welcomed the redevelopment of Bennett Street. The December 9th letter from David Fredette speaks to the special rules the applicant is aware of with regard to delinquent property taxes and that the applicant would be meeting any appropriate departments regarding any outstanding issues, including delinquent property taxes. He also added that it would be good to see the property back on the tax rolls. The other letter is the one to Jeffrey Therriault with nine suggested project recommendations or conditions for consideration.

SPEAKING IN OPPOSITION

Jim Hall, 11 Baldwin Street. Mr. Hall indicated where his home is located. He said he is a graduate civil engineer from Worcester Tech. He worked for the City of Nashua for fourteen years as the Assistant Street Superintendent. Part of his time was spent overseeing the Traffic Department. He is also an elected official on the Board of Public Works. He said his statements tonight are based on his personal feelings and have nothing to do with his position with the City.

He said as a neighbor he is glad to see the land being developed. He said the developer's have put forth an adequate plan to make it feasible to develop the site and not propose something that is way out of character with the neighborhood.

He said he knows Kevin Slattery personally and that he has done some excellent work around City.

He said he has one problem. He said he doesn't think the traffic engineer and the traffic study adequately addresses the traffic problems in the neighborhood, although there's probably not a lot that this developer or any other developer could do to alleviate the situation.

He said a traffic count was done at Amherst & Baldwin. Most people coming from the west take Putnam Street and Prescott Street so the traffic counts show a lot of people coming out Baldwin Street and nobody going in due to the fact that they avoided the intersection. They also have problems **???** **unintelligible** **???** they're not allowed to exit onto Amherst

Street. He said he's not even sure if they are allowed to enter that property from Amherst Street.

Mr. Hall had other remarks but he was hard to understand as it seems like he was not at the microphone. He said Baldwin Street sees a lot of traffic. A lot of times traffic is moving faster than it should because they are trying to beat something. He said there's also a lot of traffic at Library Hill which people try to avoid. He mentioned Main Street, Franklin Street, Charles Street, Fairmount, Baldwin out to Amherst Street and the reverse.

He said it would have been nice to see a traffic count on the block ????, on Putnam Street and Prescott Street.

He said even though there are a lot of traffic problems here he doesn't know how the applicant can possibly do much to help in this regard.

Mr. Duffy said he looked at Prescott Street. He said he thought there would be 40-80 cars a day using the two residential streets as compared to 24 houses back there. It could be elderly housing units and it could be almost double this.

Mr. Hall said he felt that they have come forward with an adequate proposal that probably minimizes the impact to the neighborhood considering the fact that they have major remediation problems with that site.

He said he thought the City just put in a drainage system at the end of West Prescott.

Helene Rapsis, 59 West Prescott Street. Mrs. Rapsis said she has been in this neighborhood for fifty years. She said she thinks the residents in this area should have the opportunity to see this. It's the first time she has seen it and she would have to stand and look at it for a while to understand it.

She said before the Board makes a decision she would hope that they would allow the residents to see what is going to happen. She said 41 units seemed like an awful impact on the neighborhood. Bennett Street is a short street and it's very narrow. Prescott Street used to be from Bruce Street down to Bennett Street. It's a double dead-end so every time she would call an ambulance for her mother they'd end up at the bottom of the hill and she is at the top. She said the City changed the

name from Prescott Street up on the hill to West Prescott to distinguish between the two.

She said the only exit she and the other houses on West Prescott Street have is Bennett. She said when she came out tonight there were five cars lined up coming out of Cumberland's to exit the site. She cut through Cumberland's site to take a right because the light would have changed by the time she got to it.

She said if people own property they should be able to do something with it, but she isn't sure the neighborhood could take 41 units.

She said it would only be right that the Board allow the applicants to have a meeting where the residents can go. She said it's like the Broad Street Parkway. They had a meeting at the Amherst Street School and they were able to go and see what was being proposed.

Mr. Duffy said that's what is being done tonight. He said this is the first meeting. Sometimes planners and developers try to meet with neighborhood people and meet with as many people as they can. The City notifies as many as they can. If it is passed it still has to go to the Planning Board.

Mrs. Rapsis said she is hard of hearing and couldn't understand what was being said. She asked if the Broad Street Parkway had anything to do with this proposal. She asked what was going to happen if the Broad Street Parkway comes through.

Mr. Duffy said the Board has to look at the plan that's before them - Prescott, West Prescott, Bennett - and how that impacts Amherst Street.

Bill Dempster, 18 Chautauqua Avenue. Mr. Dempster has lived in the neighborhood for about 24 years and has been involved with multiple proposed developments that have come before either Kathy Hersh's office or before the Zoning Board. He said he's been involved with GZA, who did the original environmental studies to look at the site. He said he's also been involved with the Mohawk Tannery Steering Committee.

He said this proposed project has raised a couple of concerns. One is condition #5 and that is "will not impair the integrity and character of the surrounding neighborhood." He said the previous speaker indicated she had been living in the

neighborhood for fifty years. He said he has looked and walked around the neighborhoods of Bennett, Prescott, West Prescott, Jones Court and Chautauqua Avenue. Most of the homes are single-family homes. A lot of these people have lived here for many years. One of his neighbors just died and he had lived there for eighty years. There are now second and third generation kids coming back raising their families here. He said it's a great neighborhood to raise a family. It's a unique neighborhood. There are dead end streets that are very quiet. There's hardly any traffic on them. He said he is concerned that a 41-unit condo development in this neighborhood will impair the integrity and forever change the character of this neighborhood.

He said his second concern is the traffic. He has two words for that and it's "left turn". He said trying to take a left turn into this property is a nightmare. Trying to take a left turn into his street, he's been involved in three accidents in the past five years and all three of them have been rear ends, just trying to make a left hand turn onto his street. He said it's difficult, at best, trying to make that turn during rush hour. He said they can have all the traffic studies they want, but in reality there are going to be more cars going out Bennett Street. He said on Prescott Street there happens to be a very large hill. He asked what happens in the winter time when that hill ices up. People are going to go to Bennett Street because it's the path of least resistance. He said they are going to be queuing up multiple cars.

Mr. Dempster said they live on dead end streets. It's a great benefit. The downside is they aren't on the priority list to get the streets plowed when it snows. It could take up to ten hours before a plow will come down the street and with this proposal they are looking at putting forty cars on an unplowed street. This can be an issue.

He said it was mentioned that there were sidewalks on Bennett Street. He asked what they do in the winter time. The kids living here are going to be walking to Amherst Street School, They are now putting kids in the street with considerably more traffic than there is now.

He said if this proposal is granted, the approval goes with the property. If the applicants find that it's going to cost way too much to develop, they have the option to walk, but if the request has been granted it's still in effect.

Mr. Tremblay said currently this property is not in use. He asked if it's an area that the neighborhood uses.

Mr. Dempster said many years ago the kids would ride their BMX pedal bikes here and some of the kids from Bennett Street would make jumps out here. Since the site has been fenced off the kids tend to stay out of there.

Mr. Currier said when Mr. Dempster was talking about making a left turn he believes he was saying it was not a good situation to make a left turn onto Bennett.

Mr. Dempster said coming westward on Amherst Street making a left turn onto Bennett Street - it's a pinch point.

Mr. Currier said the applicant has stated that people will make a left turn onto Baldwin and then into Prescott, which would be his feeling so there wouldn't be people trying to make a left turn at Cumby's coming from Downtown because they would use the Baldwin Street entrance.

Mr. Dempster said it's a possibility. He said all he could tell the Board is what exists now. He said the hill on Prescott Street that he spoke of can get pretty icy during the winter time. He said that he had the opportunity to talk to a couple of the neighbors and they said that when they had the last ice storm they were pushing cars up the street.

Rick Cote, 4 Bennett Street. Mr. Cote said he is in favor of the project. He said he thought it would be a good addition to the neighborhood and a good use of the property.

He said the concern he has is that a year ago at this time he came to the Board for a special exception and a variance so that he could, in effect, get rid of his back yard and turn it into a driveway and a garage. He said if he parks his vehicle in front of his house on Bennett Street and his neighbor across the street parks their vehicle in front of their house on Bennett Street they can't get a fire truck down the street. It's happened before and one of them has had to go outside to move their vehicle.

He said to make a left hand turn from Amherst Street onto Bennett Street is suicide. The easiest way to make that intersection is to take a left hand turn into Cumberland Farms

parking lot and then into Bennett Street. He said he's been stopped by the Nashua Police Dept. on many occasions telling him that it's illegal to do this.

He said that if the City wants to put this land onto the tax rolls and generate some taxes and make it useful, they ought to do something about that intersection. He said he didn't think it was up to the applicant to do this, but for the City to do and finally address what's going on there. He said in the morning when he leaves for work, if there are three cars lined up on Bennett Street who have come out of Cumberland Farms, he's not making the light. The light only allows two vehicles through at a time. If there's somebody gridlocking the intersection he's going to be waiting for the next light.

Mr. Currier asked if parking is permitted on Bennett Street.

Mr. Cote said it is. He said the only time it's not permitted is on July 4th. He said there are "no parking" signs placed along one side of the street, but it means nothing because people come along and rip the signs down. He said they go ahead and park and they have parked on the property under discussion as well. When there have been games or other events at the stadium, you end up with a 2 ½ hour traffic jam on Bennett Street because the Police don't let anyone out of Bennett Street until Amherst Street and Broad Street are clear.

He said someone mentioned signage on Broad Street and in that intersection. He said there are signs. People choose to ignore them.

Mr. Currier asked if the homeowners on Bennett Street can park off the street or do they have to park on the street because they don't have off-street parking.

Mr. Cote said the majority of them parked in the street. He said in his own case, he has the biggest lot in the neighborhood. Even with having the biggest lot in the neighborhood he had to get a variance to put a driveway in. If the majority of the people on the street own two cars, which they do, they don't have parking for them because none of them have big enough driveways.

SPEAKING IN FAVOR - REBUTTAL

Atty. Brad Westgate. Atty. Westgate said there was one other letter submitted from Peter Johnson in support of the application. He said Mr. Johnson is a property owner on Prescott Street. He said it is in the handouts that he passed out earlier.

He said some of the issues that are raised may be helped by a safety in numbers approach, which may become a catalyst to change the status quo, for example, the signalization at Bennett Street, Broad & Amherst Street. There may be more attention paid to the situation at Bennett Street. This project will go through the planning process, if approved by the Zoning Board. They may be able to provide more data and work on the signalization timing issues. The Planning Board may want to see some traffic counts on Putnam. The other issues such as plowing or the parking on Bennett or Prescott Street may come to the forefront for solution rather than remain perpetual issues.

Atty. Westgate said this project does not involve the same amount of land as the 1987 project did. The "Liakakos" property is not involved here.

He said that they know that the special exception runs with the property. He said the developers are also builders. He said Mr. Slattery has built a number of projects in the City over the past twenty years. He is buying the land to build on it. He said that he and Mr. Plante have that goal in mind. They know that there are a lot of sensitive issues with this project that have to be dealt with. The only thing that will make the environmental issues go away is money and money can only be derived from an economic use and an economic use can only come from the permitting process.

He said some of the other traffic issues can be dealt with at the planning process. He said the Zoning Board process is the first stage. There's a great opportunity for the abutters and neighbors to participate in that as well.

Atty. Westgate said they are not out of "whack" from a density perspective with the nearby properties when you analyze the amount of land area for the two-family and multi-family properties in the immediate neighborhood. They are kind of in a corner of the RB Zone. They are very near an industrial zoned parcel, a local business zoned

parcel and the school and Holman Stadium are on the other side of Amherst Street.

Mr. Currier said the one concern he has is the traffic at the light at Bennett Street and he's not sure that this is within the pervue of the Board. He said he would hope that the applicant recognizes that it's incumbent upon them to make a solution for the people in the neighborhood if there's not going to be parking on the street.

Atty. Westgate said they have to analyze that with the help of the City Planning and Engineering staff for a final solution through the planning process.

Mr. Currier said there was testimony about the steep slope on Prescott Street. He asked if people were talking about the existing street.

Atty. Westgate said you go up a hill as you head east on Prescott. He said the site is lower than the hill on Prescott. He said that's the street Mr. Maynard mentioned was a 9% grade and 10% maximum is permitted by the City.

SPEAKING IN OPPOSITION - REBUTTAL

Jim Hall. Mr. Hall said he heard from two people that the green time on Bennett Street is not adequate. He said that he talked to the Traffic Department last week and he was informed that 45 seconds should be the green time on Bennett. Apparently they don't have this 45 seconds. He said he will be talking to them tomorrow morning to look into that because more than three or four cars should be able to get out of the street on a green light. Whether the development goes in or not, he didn't feel there was adequate greentime on Bennett Street.

He said as far as the hill on Prescott Street, more traffic will probably make it easier to get up the hill because salt takes a certain amount of traffic to make it work and when there's minimal traffic you don't get the salt to work as well.

Mr. Tremblay asked if the special exception did go with the property.

Mr. Duffy said anything the Board does goes with the property. If they approve the request it would be for the use. The use is

up to a 41 or less condominium type association multi-family development.

Mr. Tremblay asked if the granting of the request continues in perpetuity.

Mr. Falk said it does, unless the use is changed to something different.

Mr. Tremblay asked if these owners find that they will not be able to do this project, the special exception stays with the property.

Mr. Duffy said they have a year to obtain a building permit after receiving approvals from the City.

Mr. Currier said this is a condominium type development so they will maintain their pump sewerage and he would rather have them own it than the City. They also have to live with the runoff drainage because they're in the low spot so they have to design it right.

He said he has a problem with the traffic. He said he isn't convinced that it's going to work, but due diligence hasn't been done and it can't be done just at this Board to play that all out. The light at the end of Bennett and the parking on Bennett is key to the success of this. He said other than the traffic he thought it was a good spot for it and a good use of the land. It is kind of an ideal location. You can go downtown or get out to the highway.

Mr. Duffy said he also looked at other approved uses by special exception, one being elderly housing. They could have more units and higher buildings. He said he sees 53% open space instead of 35%.

Mr. Anderson said he didn't think they could overlook the public benefit of the remediation of the site as an improvement to the neighborhood and to the City as well.

Mr. Currier said if the Zoning Board approves this request and it goes on to the Planning Board he wouldn't want an approval to say that they don't have issues with traffic. He asked how they could pass on the traffic concerns that have been brought up tonight to the Planning Board to assure that they look at it.

Mr. Falk said they are going to get a copy of the minutes so they will see the questions that were raised by the people in opposition as well as the questions raised by the Zoning Board. He said they are going to do a more thorough review of the traffic anyway.

Mr. Tremblay said that overall this project is positive. He said his big issue is the traffic. At this point he isn't clear on how it's going to be handled at the Bennett Street/Amherst Street/Broad Street intersection. He said Baldwin offers a possible solution, but if it's not within the Zoning Board's preview to address that, they may have to stipulate that the Planning Board address this issue. He said he's sure that they will do diligence also.

Mr. Anderson said it's a positive project. The traffic and further study has to be done on the signalization, etc. needs to take place before the project is really affected.

MOTION by Mr. Duffy to grant the special exception to construct a 41-unit multi-family development at L Bennett Street and 58 Prescott Street (Sheet 62 Lots 61, 170 & 232). The use is listed in the Table of Uses, Section 16-227, Residential #3. It should not overload public water, drainage, sewer or other municipal systems. There's a condominium site plan type of ownership of private association so there are no special regulations which need to be fulfilled. The Board feels that the character of the neighborhood is mixed based on the testimony they have heard tonight. He said there is no one essential character of the neighborhood. He said this is a reasonable combined use of many plats and types and sizes and uses that pre-date and post-date zoning, some conforming, many non-conforming. There is significant testimony about traffic to the area. He said the applicant has indicated they are going to work closely with City Departments and the Planning Board to come up with some kind of solution or alternative. Special Conditions: The electronic key gate systems shall be established and maintained at both entrances to the site. The approval of the NHDES for remediation, mitigation, and construction shall be placed on file before a building permit is issued.

SECONDED by Mr. Tremblay.

Mr. Currier asked about adding a special condition that the Planning Board take into testimony any comments about the traffic that have been presented to the Zoning Board tonight.

Mr. Duffy said he felt that he had addressed that in the motion. He said the applicant is very aware that in his motion he indicated they will work with the Planning Board as well as the City Departments.

MOTION CARRIED UNANIMOUSLY

7. **Robert E. & Gretchen A. Myers (Owners) 7 Columbia Avenue (Sheet 65 Lot 144) requesting variance to encroach 14 feet into the 25 foot rear yard setback to construct a roofed breezeway connecting house with new garage. RA Zone.**

Eric Vayette (sp?) Architectural Woodworks Design & Development, Nashua, NH. Mr. Vayette said He is representing Robert & Gretchen Myers. He said his firm built a two-car garage on the Myers' property. They have frontage on both Columbia & Webster. The garage was built 11' from the property line and apply for a variance to construct a breezeway, which then attaches the garage to the house. The property still meets the maximum buildable area criteria.

He said the request is for a breezeway, which will help cover them from inclement weather. They still want to access from the house to the rear property without having to go around the front of the garage. The proposed breezeway is 17' long and 8' wide.

Mr. Duffy asked if this is a single-family home.

Mr. Vayette said it is.

Mr. Duffy asked if this would adversely affect the property values of surrounding parcels.

Mr. Vayette said it would not.

Mr. Anderson asked if this is just a roof.

Mr. Vayette said it's a breezeway He said they are rebuilding a deck which comes 5' out from the house. They'll have 6'X6' columns supporting the deck and the roof and then a lower roof connecting to the garage.

Mr. Duffy asked if this was one-story.

Mr. Vayette said it's a one-story garage and a one-story roof.

Mr. Tremblay asked if this is going to be closed in and heated and used all year round.

Mr. Vayette said it is not. He said they specifically don't want this because they want to have access to the front and back yard.

Mr. Currier asked if they have talked to the neighbors.

Mr. Vayette said the neighbor to the side (big brick Colonial house) is in favor of the request. The neighbor across the street doesn't mind either.

He said there was a one-car garage and there wasn't room for their two cars. It was located 6' from the property line. That was torn down and the two car garage was constructed 10' from the property line. He said it's actually improved the property.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Anderson to grant the variance to encroach 14 feet into the 25 foot rear yard setback to construct a roofed breezeway connecting house with new garage at 7 Columbia Avenue. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. It is within the spirit and intent of the ordinance. It will not adversely affect the property values of the surrounding parcels. It is not contrary to the public interest. Substantial justice will be served.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY

8. Michael A. & Linda L. Felch (Owners) 14 Tampa Street (Sheet 130 Lot 109) requesting the following special exceptions:
1) to work within the 75 foot prime wetland buffer of the Nashua River; and 2) to allow construction in the special

flood hazard area - both requests to construct a single-family structure. RB Zone.

Mike Felch. Mr. Felch said this property is vacant land. He said it's the last undeveloped piece of property in the area. He wishes to construct a single-family ranch on the site.

Mr. Duffy asked if this is a deeded lot of record.

Mr. Felch said it is.

Mr. Duffy asked if it has been taxed as a single lot.

Mr. Felch said "yes".

Mr. Duffy asked Mr. Felch how long he has owned the lot.

Mr. Felch said he just had it turned into a single lot in April. He said it was two lots and it's been consolidated into one lot.

Mr. Duffy asked Mr. Felch if he has talked to any of his neighbors.

Mr. Felch said he had not. He said one of his neighbors is his in-laws.

Mr. Tremblay asked how far into the buffer Mr. Felch planned on going.

Mr. Felch said he believes it's 15'.

Mr. Tremblay asked if that was the foundation or a deck or a porch.

Mr. Felch said it's the foundation. He said there is no deck on the proposed house and no future plans for a deck because it would go into the buffer zone too far.

Mr. Duffy asked if Mr. Felch would be amenable to having a special condition that stated there would be no accessory uses into the 75' prime wetland buffer of the Nashua River.

Mr. Felch agreed. He said there is a shed on the right hand side of the property at this time and it sits in the buffer zone already.

Mr. Duffy asked if this would be left there.

Mr. Felch said it would remain as is and there would be no further accessory uses in the buffer. He agreed again to a special condition citing that there would be no further accessory uses in the wetland buffer.

Mr. Duffy said there are other houses in that area that pre-date zoning that are built inside of the buffer. He asked Mr. Felch if he know how long the houses in the area have been there.

Mr. Felch said more than twenty years.

SPEAKING IN FAVOR

Linda Bretz, 6 Tomolonis Drive. Mrs. Bretz said she is the Chair of the Nashua Conservation Commission. She said that they are currently looking at four sites that are legal lots of record. She said this one is the one that has the least impact.

She said the Conservation Commission doesn't feel that the wetland and the buffer should take the full impact of these legal lots of record so they are asking for reduced impacts from the street.

Mr. Currier said they didn't ask that of this particular request.

Mrs. Bretz said they are pulling the house 4' forward from their original plan. She said they are at the limit of the setback. She said she believes these owners have done a nice job trying to make a small impact. She said the topography is good on this property. There aren't a lot of trees on the site and they are going to do a little bit of work to try to protect the wetlands by putting in some shrubs in the back

Mr. Duffy asked if Mrs. Bretz if she was aware of any flooding in this area.

Mrs. Bretz said they were told that this is out of the 100-year flood zone. She said it's pretty high.

Mr. Tremblay asked if the house is now encroaching into the front yard setback.

Mr. Currier said they have not. He said they are right at the front yard setback.

SPEAKING IN OPPOSITION

No One.

Mr. Duffy said there is a letter received dated December 7th and received December 9th from Theresa Vitagiano, 2 Miami Street. It states that they have lived in their home for forty-five years and there has never been any flooding and that the owners should be allowed to build on the site.

He said they have the report from the Conservation Commission with twelve stipulations.

MOTION by Mr. Currier to grant the request for special exceptions: 1) to work within the 75 foot prime wetland buffer of the Nashua River; and 2) to allow construction in the special flood hazard area - both requests to construct a single-family structure at 14 Tampa Street. The use is listed in the Table of Uses, Section 16-254. It will not create undue traffic congestion or unduly impair pedestrian safety. It will not overload public water, drainage, sewer or other municipal systems. Special regulations have been fulfilled. The home will be in character with the neighborhood and not be detrimental to the health, morals or welfare of the residents. Special Condition: No additional accessory uses on the site. All Conservation Commission stipulations are incorporated.

SECONDED by Mr. Duffy.

MOTION CARRIED UNANIMOUSLY

Request for Rehearing

51 ½ Kinsley Street

Mr. Duffy asked if the request indicated there was a procedural error, including 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. In other words, did the Board fail to completely address each of the points of law required by a special exception and/or variance.

The Board did not feel this was the case.

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

Mr. Currier said there is a mention of sprinklers and soundproofing. These were two concerns that the Board had so the applicant has looked at those concerns and thought he could address it by doing those two things.

Mr. Tremblay said this is a concern that would be for any facility. He said it didn't change the issue for him that this is still a congested neighborhood with a high probability of danger with oils and fluids. He said there was also the noise issue in that neighborhood of motorcycles coming in and out. He said for him this is still a big issue.

Mr. Anderson said at issue is whether that night there was soundproofing and fire retardant rooms and a sprinkler system in the plan. He said he doesn't recall it.

Mr. Currier said it wasn't in the plan.

Mr. Duffy said his recollection is that this was talked about, but it isn't what they made their motion on.

Mr. Currier said he thought the applicant is trying to respond to what the Board didn't like by saying that he could put sprinklers in. He asked if this would be a reason to grant a rehearing or if it would be a different application.

Mr. Falk said a lot of times people submit new information in their request for rehearing. He said it's got to be significant; that it's so different now that you really have to talk about it. He said in this case traffic and noise were discussed a lot and he thinks they were the biggest issues - even the use. He said a lot of the abutters work second shift or third shift.

Mr. Tremblay said there would have been a sprinkler system in there regardless just to build.

Mr. Duffy said the Fire Code would have addressed the sprinkler system.

Mr. Currier listened to the other Board members and decided for himself that he didn't believe this information was significant enough to cause the Board to rehear the case.

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

The Board did not feel this is the case.

MOTION by Mr. Temblay to deny the request for rehearing for Jammin Motor Sports, 51 ½ Kinsley Street to allow for retail sales and service of motorcycles. There was no procedural error, no illegal decision, no new information and no information that would cause the Board to make a different decision.

SECONDED by Mr. Anderson.

MOTION CARRIED UNANIMOUSLY

MINUTES

11/9/05

MOTION by Mr. Duffy to approve the minutes of the November 9, 2005 meeting, waive the reading and place on file.

Mr. Duffy said he thought there might be one minor correction. He said he would Email it into the office.

SECONDED by Mr. Tremblay.

MOTION CARRIED UNANIMOUSLY

Regional Impact

The deadline for the next meeting is today, so there is no agenda to review.

Other

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING & MEETING

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Mr. Duffy said he had a packet of information that the Board has on their desks. He asked if this was something that Mr. Falk provided.

Mr. Falk said he didn't know where it came from.

Someone said something from the audience - unintelligible.

Mr. Duffy said if there is any information that anyone wishes to have information presented to the Board it should go to the office in City Hall so that it can be stamped in and copies made and forwarded to all the members. Otherwise it's not information that the Board can take or accept. He said the Board is there to hear public testimony and take public testimony on an agenda that flows through a regulated process.

ADJOURNMENT

Mr. Duffy called the meeting closed at 9:47PM

Jack Currier
Acting Clerk

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Taped Meeting