

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
January 11, 2005

A public hearing of the Zoning Board of Adjustment was held on Tuesday, January 11, 2005 at 6:30 p.m. in the Auditorium at City Hall.

Tom Jenkins conducted the hearing.

Members present were: Tom Jenkins, Chair  
Sean Duffy, Vice Chair  
Susan Douglas, Clerk  
Jay Coffey  
Jack Currier  
Don Berthiaume  
Richard Rondeau  
Jeff Anderson

Also present: Carter Falk, Deputy Planning Manager/Zoning

Mr. Jenkins 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 non-conforming 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. Three affirmative votes are needed for granting a variance or special exception.

**5. James N. & Shirley C. Tamposi Revocable Trust (Owner) 33 Pine Street (Sheet 80 Lot 91) requesting use variance to allow a medical facility in an existing building. GI/MU Zone.**

**Postponed to 1/25/2005**

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**2. Thomas J. & Tracy C. Pappas (Owners) 12 Swart Terrace (Sheet 48 Lot 70) requesting that a Special Condition from variance granted at the 10-26-04 ZBA meeting be reconsidered. RA Zone.**

Voting on This Case:

Tom Jenkins  
Susan Douglas  
Sean Duffy  
Don Berthiaume  
Jay Coffey

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Tom Pappas, 12 Swart Terrace. Mr. Pappas said the Zoning Board granted a variance with a special condition that there be no plumbing or heating. He said when he presented the case to the Board he indicated that he hoped to have a room above the proposed garage for a quiet place for him to work nights and

weekends as well as having storage. He said there was some concern by some of the members about the use of that space which resulted in the special condition. He said he would like to know what that concern or concerns are so that he could address them or discuss them. He wants a quiet place available throughout the year in order to some "homework" instead of driving back and forth to his office in Manchester. He is asking the Board to modify the special condition to allow him to put in some electric heat so that he can be warm in the winter months.

**SPEAKING IN FAVOR**

No One.

**SPEAKING IN OPPOSITION**

No One.

Mr. Jenkins said in looking back at Mr. Pappas' request, he made it clear that he did intend to use the upper part of the garage as an office. In order to utilize this space all year round it does need heat. He doesn't have a problem with this.

Mrs. Douglas said her concern was that it not become a commercial enterprise.

Mr. Jenkins said he didn't see that happening in this neighborhood.

**MOTION** by Mr. Duffy to grant the request to amend the special condition at 12 Swart Terrace on the granting of a garage. The applicant has presented some additional information that reasonable use of the second story on the garage should include some heat. There is no adverse impact to property values of surrounding properties. It is not contrary to the public interest. It is within the spirit and intent of the ordinance. Substantial justice will be served as the applicant will have reasonable use.

**SECONDED** by Mr. Jenkins.

**MOTION CARRIED UNANIMOUSLY**

1. AHN North & South Company, LLC (Owner) 168 Main Dunstable Road (Sheet E Lot 101) requesting the following variances: 1) to exceed maximum wall sign area, 12 square feet allowed - 42 square feet requested; 2) to exceed maximum number of ground signs, 1 existing, 1 additional sign requested; and 3) to allow a freeway-oriented sign that does not identify food, lodging or automotive services. LB & HB Zones.

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas

Jay Coffey

Don Berthiaume

Paul Tripp, Classic Signs, Amherst, NH. Mr. Tripp presented some copies of what is being proposed. He said this property is located in two zoning districts - Highway Business, which incorporates about 2/3 of the property and Local Business which is the rest of the property. The line runs right through the middle of the property. He said he believes this is the only property within the zone where it is split in two zones. He said it uniquely qualifies this parcel.

He said they would not have to be before the Board if the lot were zoned entirely as Highway Business because all the signage they are requesting would be permitted.

Mr. Tripp said Section 16-481 in the ordinance states signage is to provide information, direction, advertising and building of business and industry and at the same time protecting the welfare of the public. He said this request aids the public in

being able to identify the buildings and businesses associated with the property. He said the property had an addition placed on it and there are two distinct and separate businesses. One is a 24-hour emergency medical animal care and the other is for general practice veterinary center. It is important that there is distinction between the two practices. The architecture and colors of the buildings are being used to show that these are two separate businesses and they are trying to achieve the distinction with the signage as well.

He said he does not believe there will be an adverse impact on the property values of surrounding parcels. The location of the signage faces into the Highway Business Zone, not the Local Business Zone.

He said this is a 24-hour medical center. It is important for the public to understand a concise understanding of each business. Each sign has been uniquely designed to assist the driver in determining the separation between the 24-hour operation and the general practice.

He said substantial justice will be served in the granting of the variance. The business will have adequate signage. He said the relief from the freeway oriented sign definition will correct an unconstitutional wording in the ordinance relating to discrimination of content of the sign.

Mr. Tripp said the first request is that they be allowed to have three types of signs. The ordinance allows two types of signs - one ground and one wall sign. He said they are asking for two ground signs and one wall sign.

He said the driveway splits just about where the zone splits between the Highway Business and Local Business. The existing ground sign is on the Local Business side. It is 13 square feet where 32 square feet would be allowed. He said they are asking that the allowed 32 square feet be split into two signs, with the other sign being 15 square feet for a total of 28 square feet.

Mr. Jenkins asked how far apart the two signs will be.

Mr. Tripp said they are separated by a driveway. He didn't measure the distance, but he estimates it would be about forty feet.

Mr. Jenkins asked if both signs have the same wording.

Mr. Tripp said they do not. He said one sign is designed for the 24-hour emergency medical care. He referred the Board to the drawing he handed out earlier. He said the existing sign's color and wording will be changed to match the white building which is for the 24-hour medical care. The other sign which will be located in the Highway Business Zone will be for the red building. It is a non-illuminated carved sign with gold leaf letters low to the

ground with granite posts to identify with the Animal Hospital of Nashua.

He said the second request is for the wall sign on the animal medical center - Emergency Care. In the Local Business they are permitted 12 square feet. If the building could be slid into the Highway Business Zone, they would be allowed 125 square feet. They are asking for a 42 square foot sign on the building. It will match the ground sign. He said the building is set back from the street a fair distance and a 12 square foot sign is not adequate.

He said the third request is for a freeway-oriented sign. He said Highway Business Zone allows for a freeway-oriented sign. He said they do not need a variance for this type of sign. He said they are asking for a variance from the definition that states that only food, lodging or automobile services are allowed to have this type of sign. He said this is a serious restriction on what signage can say. It is a content-based restriction. He said the industry's standpoint is that this is unconstitutional.

Mr. Jenkins asked Mr. Tripp if there is public interest to have

the freeway oriented sign. He asked if people didn't already know where they are going when they put their animal in the car and taking it to the hospital.

Mr. Tripp said that local people and residents of the City of Nashua might know this, but they get referrals from other veterinaries from outside the community and outside the State send people here. It is important for the public to have the signage. He said the facility is set back from the highway behind the car dealership.

Mr. Duffy said the current ordinance indicates that freeway oriented signs are for the purpose of advertising food, lodging and automotive services. He said the ordinance does not state this is a content-based decision. It's a use-based decision that has been upheld in the State of New Hampshire.

Discussion ensued.

Mr. Jenkins said that in most cases the people who are being referred will know where they are going - they are going to know the address. He can't see someone driving along the highway in need of emergency care for his or her animal.

Mrs. Douglas asked how the proposed freeway oriented sign compares with the height of the sign that Value Homes has.

Mr. Tripp said it would be similar in height. It would conform to the ordinance. He believes it can be 40' tall and a maximum of 150 square feet. He said they would be more than happy with a restriction on the highway-oriented sign that it be single sided and only face the highway. It would be parallel to the highway.

Mr. Rondeau said there is an existing wall sign with an "open" flag. He asked if that is going to be removed.

Mr. Tripp said it will be removed.

## **SPEAKING IN FAVOR**

No One.

## **SPEAKING IN OPPOSITION**

No One.

Mrs. Douglas said the size of the freeway-oriented sign is reasonable. She said that before she found out that this facility was open 24 hours she got a voice message that the nearest facility was in Manchester on such and such a street and that would be it and then you'd have to go looking for it. This way it's in Nashua right off of Exit 5 and the sign would be right there to guide the public.

Mr. Duffy said that the ordinance concerning freeway-oriented signage has been heard and upheld by the State. He said there is a certain amount of freeway space they are allowed to protect in the City of Nashua with an ordinance that is use based.

Mr. Jenkins said he has no problem with the wall sign at 42 square feet. It is a large building and it does sit back from the road. He also has no problem with the request for two ground signs.

Mr. Coffey said he has no problem with the two ground signs or the wall sign. He said he is opposed to the highway sign. He believes this location was more for the use of a car dealership or food. The applicant chose to put his business in this location.

Mr. Carrier said he concurs. He said Nashua Pet Care Center is at Exit 6 and there is another pet care center off of Exit 1, which might be in Tyngsboro, but it is right off the highway. They could ask for signage as well and there is enough sign clutter as it is. He is not favorable to the highway sign.

Mr. Berthiaume said the ground signs and the wall sign look good to him. He agrees with everything that has been said. He said he actually went up and down the highway to try to see what

purpose the freeway sign would serve. He said if you are heading north you are already there and if you are heading south you would really have to pay attention otherwise you are going to miss it.

**MOTION** by Mr. Duffy to grant the variances: 1) to exceed the maximum wall sign area, 12 square feet allowed, 42 square feet requested & 2) to exceed the maximum number of ground signs - one existing, one additional sign requested at 168 Main Dunstable Road. The property is right off of a busy exit from the interchange. This is a reasonable feature. It is within the spirit and intent of the ordinance. It should not adversely affect property values of surrounding properties. It is not contrary to the public interest. Substantial justice will be served.

**SECONDED** by Mr. Berthiaume.

**MOTION CARRIED UNANIMOUSLY**

**MOTION** by Mr. Duffy to deny the request for a freeway-oriented sign that does not identify food, lodging or automotive services at 168 Main Dunstable Road. The ordinance is clear in the use of service-based signage for freeway-oriented signs. It has served the City of Nashua well. The applicant has not proven reasonable explanations other than the content-based discussion. The applicant mentioned that the signage use for the property was for advertising. It serves no public interest.

**SECONDED** by Mr. Coffey.

**MOTION CARRIED - 4-1, Mrs. Douglas opposed.**

**2. Robert B. & Debra A. Fillebrown (Owners) 12 Elmer Drive (Sheet C Lot 221) requesting variance to encroach 10 feet into the 40 foot required front yard setback to construct a 10'x20' breezeway and 4'x10' farmers porch between house and garage. R40 Zone.**

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas

Jay Coffey

Don Berthiaume

Robert Fillebrown, 12 Elmer Dr. Mr. Fillebrown said they wish to connect their garage to the house with a breezeway. He said the front yard restriction interferes with the reasonable use of their property by not allowing them to build a breezeway between the house and the garage to connect the two structures. He said no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property. He said they are not building anything out of the ordinary and the farmer's porch, which is part of the proposed breezeway, does not extend beyond the existing house structure. The 10' variance to the setback will allow them to build a breezeway between the house and garage.

He said this will not injure the public or private rights of others because it is in between the two existing structures. It will not have any physical affect to other neighboring properties.

Mr. Jenkins said the way that the foundation of the house was placed, it was too close to the road. Basically the front steps are covered with snow and ice.

Mr. Fillebrown said the house is closer than the garage. All they want to do is connect the two. Nothing is going out beyond the structure of the house. The farmer's porch will end at the house structure. It will not go out closer to the road. He presented a colored photograph of what it will look like.

Mr. Coffey said he noticed that his house isn't any closer to the road than the neighbor's to the left of him. They are all about the same.

Mr. Fillebrown agreed. He said the house to the right is set well back.

**SPEAKING IN FAVOR**

No One.

**SPEAKING IN OPPOSITION**

No One.

**MOTION** by Mr. Coffey to grant the variance to encroach 10' into the 40' required front yard setback to construct a 10'X20' breezeway with a 4'X10' farmer's porch between the house and the garage at 12 Elmer Drive. The variance is needed to enable the applicant the proposed use of the property given the special conditions of the property and to provide the benefit sought by the applicant. It cannot be achieved by some other method reasonably feasible by the applicant to pursue. It enables the applicant to have full utilization of their property. It is a reasonable request. 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 will be served.

**SECONDED** by Mr. Duffy.

**MOTION CARRIED UNANIMOUSLY**

**3. Mark S. Cookson (Owner) 18 Inca Drive (Sheet E Lot 1183) requesting variance to encroach 5 feet into the 10 foot required right side yard setback to construct a 15'x45' deck in back of house, and a 5'x7' deck on side of house. R9 Zone.**

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas

Jay Coffey

Don Berthiaume

Mark Cookson, 18 Inca Drive. Mr. Cookson said he wishes to build two decks - a 5'X7' one on the side and 15'X45' one on the back of the house with a walk-through between the two of them.

He said the foundation of the house on the lot is further to the right of the property. It is 5' from the property line. The property is shaped like a triangle. There is no access to the back yard from the right side of the house.

He said he wants to be respectful to the side yard setback, but the terrain doesn't allow for a deck. There is about a 4'-5' drop on the backside of the house.

Mr. Cookson said he would hope that the improvement to the house would only increase property values of surrounding properties by making the house more livable and more functional.

He said the public would benefit from a better house that would be more marketable. It will increase the value of the homes and the surrounding homes in the neighborhood.

He said substantial justice will be served as this will benefit the property to the fullest extent and will allow the outdoor access of an elderly grandfather who lives in the home and shares living space as well as for future children.

Mr. Jenkins asked if Mr. Cookson had talked to any of his neighbors.

Mr. Cookson said he spoke to two of his neighbors. One of them is at 20 Inca Drive, which is the house directly to his right and 51 Cheyenne - Don Peterson. He said he explained that he was trying to improve the livability of the home and to see if there were any issues that they might want to resolve prior to coming to the meeting.

Mr. Duffy asked the approximate square footage of the lot.

Mr. Cookson said he didn't know.

Mr. Duffy asked when the house was built and Mr. Cookson said he believes it was 1971.

Mr. Jenkins said primarily the encroachment will be toward #20 Inca Drive and unless there is opposition from that neighbor he doesn't really have a problem with the side deck. He doesn't see a problem with the back deck. He said the house looks like three stories from the back because of the topography.

**SPEAKING IN FAVOR**

No One.

**SPEAKING IN OPPOSITION**

No One.

There was some discussion about the square footage of the lot and the hardship in the lot.

**MOTION** by Mr. Berthiaume to grant the variances: 1) to encroach 5' into the 10' required right side yard setback to construct a 15'X45' deck in the back of house at 18 Inca Drive. He said the variance is needed in order to enable the applicant's proposed use of the property given the special conditions of the property - the lot shape and the placement of the home on the lot. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue. It is within the spirit and intent of the ordinance. It will not adversely affect the property values of surrounding parcels. It is not contrary to the public interest. Substantial justice will be served.

**SECONDED** by Mr. Coffey.

**MOTION CARRIED UNANIMOUSLY**

**5. Homes by Paradise, Inc. (Owner) Emilio & Tina DiIorio (Applicants) 40 Hibiscus Way (Sheet C Lot 2685) requesting special exception to allow an accessory (in-law) dwelling unit. FUOD Zone.**

Voting on This Case:

Tom Jenkins  
Sean Duffy  
Susan Douglas  
Jay Coffey  
Don Berthiaume

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Atty. Jeffrey Zall, 221 Main Street, Nashua. Atty. Zall said he is representing the applicant, Mr. & Mrs. DiIorio as well as the owner, Homes by Paradise, Inc.

He said they are seeking a special exception for an accessory (in-law) dwelling at a house to be built at 40 Hibiscus Way within the Maplewood subdivision. He referred the Board to their copy of the plans for this house. He said that the single-family home is going to be approximately 3397 square feet. The accessory dwelling unit will have 696 square feet.

He said Section 16-162 specifies certain conditions for an accessory dwelling unit. One of them is that the accessory dwelling unit will be the only accessory dwelling within the single-family home. The existence of the accessory dwelling unit does not alter the one-family character and appearance of the house and is in conformity and character of the neighborhood. He referred to the drawing of the house. He said it looks like a single-family house. He indicated he had some examples of homes being built by Homes by Paradise in this subdivision and showed these to the Board. He said the proposed home is well in conformity with other homes in the area. He said the primary dwelling will be occupied by Mr. & Mrs. DiIorio and the accessory unit will be occupied by Mrs. DiIorio's parents, Orlando & Rosa DeSenzo. They are both in their 70s and

both have serious health problems. Mrs. DiIorio will be staying home and taking care of both her parents. He said the proper covenant will be signed that will be recorded with the Registry of Deeds.

He said this use will not create undue traffic congestion or adversely affect pedestrian safety. The parents do not drive. There will be no overload to public water, sewer or drainage facilities. It is not out of character with the neighborhood and not detrimental to the health, safety or welfare to the residents of the City of Nashua.

Mr. Duffy asked where the in-law unit would be located within the structure and if there is a separate entrance.

Atty. Zall showed where the unit would be located. He said there is no separate entrance. He showed the front porch with the main entrance into the house and where the entrance to the accessory dwelling unit is located.

Mr. Currier asked if the abutting properties are sold.

Atty. Zall guessed that they were sold because they are selling like hotcakes in this project. He suspects that they are under contract if they are not yet built.

Mr. Currier asked if these abutters have been notified of this proposal.

Mr. Zall said if they have taken title to the property they would have been notified.

#### **SPEAKING IN FAVOR**

No One.

#### **SPEAKING IN OPPOSITION**

Mike Dunhom, 53 Cherrywood Drive. Mr. Dunhom said the house directly across the street is listed as a "spec" home which is

currently being constructed. He said they live in the house across from 40 Hibiscus Way.

He said the plans for this house were shown to them by Homes by Paradise and only one included a garage. There is only one house of the approximate 150 homes between Buckmeadow, Conant and Main Dunstable that does not have a garage. It is built in such a fashion that there is room to add a garage and that is the intent according to Homes by Paradise. He said the concern is that this is a large house and there will be extra people and there won't be a garage so the neighbors will see quite a few vehicles in the driveway, which would be out of character in this neighborhood.

He said the other concern is that the testimony indicates that this is an elderly couple in poor health. When the house is sold there is no restriction as to how the unit would be used or how many vehicles might be located on the property. These are small lots with small driveways. If the plan does not contain a garage, he has reservations about it.

Mr. Jenkins said they are not required to have a garage.

Mr. Dunhom said the house is much larger than the houses surrounding it. There isn't a house anywhere in sight of this one that is larger than 2800 square feet. He is concerned about many vehicles being on the site. He believes the plans for the house he was shown that did not include a garage were out of character with the neighborhood.

Mr. Jenkins said this request is for a special exception for an in-law dwelling unit. Unless there is some other problem the Board is inclined to grant the request. There is no law that requires a house have a garage. He said someone that has a garage could enclose it and make it into another room if they choose to do so.

Mr. Duffy said if the house is sold in the future the same covenant will be there. It can't be rented out as an apartment. They have to be related by blood or marriage.

Mr. Dunhom said the reason he brought this up is because it was stated that the occupants in this instance wouldn't increase vehicle traffic. The next people who move in could be a 23-year old son and his wife. It doesn't have to be an elderly couple with medical conditions.

**SPEAKING IN FAVOR - REBUTTAL**

Atty. Zall said the issue appears to be whether this is within the character of the neighborhood. He said it clearly is. The use does not alter the one-family character or appearance of the one-family dwelling or its conformity with the character of the neighborhood. He said this has the appearance of a one-family dwelling. Maybe all of the houses in the neighborhood have garages, but there is no requirement that there be a garage. All the homes are on about 9,000 or 10,000 square foot lots. There are about fifteen different house designs and this particular home is within character of all of them.

**MOTION** by Mr. Coffey to grant the special exception for an accessory in-law dwelling unit at 40 Hibiscus Way. It is listed in the Table of Uses, Section 16-162. It will not create undue traffic congestion or unduly impair pedestrian safety. It will not overload public water, drainage, sewerage or other municipal systems. 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. The in-law criteria are met.

**SECONDED** by Mr. Duffy.

**MOTION CARRIED UNANIMOUSLY**

**6. Sam Katz (Owner) 7-7C Paige Avenue (Sheet 45 Lot 257) requesting the following variances: 1) to allow two principal structures on one lot - one four unit building existing; and**

**2) minimum lot area, 20,102 square feet existing, 28,000 square feet required - to construct an additional four-unit multi-family building for a total of eight units. RC Zone.**

Voting on This Case:

Sean Duffy

Susan Douglas

Jay Coffey

Don Berthiaume

Jack Currier

Atty. Morgan Hollis, Gottesman & Hollis, 39 E. Pearl Street.

Atty. Hollis said currently there is a building on this lot with four units on the property. The lot size is 20,102 square feet. The zoning density in the area is 3,500 square feet per unit, which would allow six units.

He referred the Board to the site plan on display. He said the proposal is to have another four-unit, two-story building on the same lot. He said the current parking would remain and the parking requirements for the new building would all be shared parking.

He said originally the property was laid out as four lots. He passed around some material to the Board. He said it contains a plan of the neighborhood and their particular lot is outlined in yellow on the plan. He said they have identified the number of units for the houses shown on the lot(s). There were a mixture of single-family, two-families, and multi-families in the immediate area that he pointed out to the Board.

He said the second page in the packet was a photocopy of an aerial from the City's GIS mapping system. He said marked in yellow is the large lot. He said there is a previous aerial which shows the previous history of the property as four lots. He said they can see the building and the cars that are parked as well as the two other lots that previously existed. He said the property was consolidated into one lot by merger on February 7, 2001 and recorded with the Registry of Deeds.

Atty. Hollis said the other choice his client has would be to subdivide the lot where he would have one lot with four units with the necessary 14,000 square feet and then a smaller lot. Because of the topography at the rear of the property and the end of the street and how the parking would have to be arranged, there would be some setback issues. He said they have laid it out several different ways and they end up with variance requirements on both of the lots in order to make it work and make some sense. You would lose the ability to keep two parking lots. The only way to have a parking lot they would have to have declaration of covenants/cross easement rights to share the parking. The answer was to ask for a variance to have two buildings on one lot. It would all be under one ownership.

He said the second variance is for the size. They could put in two additional units based on the square footage of the lot, but they are asking for four additional units. He referred the Board to the third and fourth page of the packet he handed out. He said all the lots in the area are listed (42 properties). He said they looked at the sixteen properties that are immediately around their property. The average density of the sixteen properties is 2,925 square feet per unit. They are asking for 2,512 square feet per unit, close to the average density in the neighborhood. They believe they are in keeping with the character of the neighborhood, even though it is not a requirement for a variance.

Atty. Hollis said if the Board grants the variances, the applicant must still go to the Planning Board where other issues such as lighting, landscaping, fencing, etc. would have to be addressed.

He said there is a hardship. This is a dead-end street. It is a unique lot and they would like to maintain a common parking area and not have covenants on two separate lots. He said because of the topography in the back and the layout of the lot at the corner and dead end street, the house can't be moved to the rear and the parking can't be moved to the rear of the lot so parking needs to be closer to the street and leave the area

in the back undeveloped.

He said there is no fair and substantial relationship of the ordinance to this matter. It has to do with the topography of the site and having to pull the building closer, squeezing everything to the front of the lot. He showed where the line would be drawn to create another lot and then both lots would be under-sized.

He said the spirit and intent of the ordinance will be met. If you are going to have two principal buildings, the ordinance would like to have a subdivision so they would be under separate ownership. He said this is one of the only towns he knows of from the zoning work he does that has this ordinance. It is hard for him to understand what the real intent of the ordinance was. He thinks the spirit was to not have a bunch of buildings on a large conglomerate lot so that setbacks can be avoided. In this particular instance, they are going to maintain the setbacks. If they did a subdivision it would necessitate a re-arrangement of the building and pushing the building to the back of the lot which doesn't serve anybody's interest.

He said there is no adverse impact to the neighborhood. They are simply avoiding the creation of a subdivision.

He said substantial justice will be done. This originally was four lots and the owner should not be required to subdivide again in order to put another building on the lot.

He said there is a public benefit. The building can be moved closer to the existing building to allow shared parking.

He said the second request is asking for eight units where six are permitted based on the square footage requirements under the density regulations. The hardship is that the lot is significantly larger than any other lot in the neighborhood. In fact, it is the largest lot in the entire neighborhood. There is also a hardship because it is a dead end street and because of the topography.

He said the restriction imposed would allow two more units. A reasonable use of the property is to mirror image the existing building and have four more units. He said they believe it will match the density of the neighborhood and that they are making good advantage of the lot configuration itself.

Atty. Hollis said the proposed use would not injure the public or private rights of others. It will put the property under consistent management. It will create symmetry with good planning - parking in the middle as opposed to separate parking/separate entry. These are issues that will be reviewed by the Planning Board.

He said it will not be contrary to the spirit and intent of the ordinance. The density is consistent with the neighborhood. The average density is less than 3,000 square feet per unit. He referred the Board to the materials he provided the Board.

He said this will not have an adverse impact on property values. The addition of two units more than what is permitted by law will adversely affect the neighborhood. The parking will be on an existing parking lot which will be expanded.

He said substantial justice will be done in that it will allow reasonable use of the property. There is an ability to put more units on the lot and the proposal makes some sense and is consistent with the average density.

He said there is a public benefit in that this will increase the affordable housing supply. Obviously, if you are able to put more units in a single building, you are able to have more efficiency and less expensive units than if you had to build separate units.

He presented photographs to the Board which represented some of the buildings in the neighborhood as well as a picture of the proposed house that would be built. He noted that it has a duplex-like appearance.

Mr. Jenkins said it looks good on paper, but when you visit the

site and see what is currently there and what is proposed for the site, you question where it is going to go. It drops off very dramatically and very quickly at the end of the lot.

He said it seems like the hardship was created when the lots were merged. He said it seems like what is already there is out of character with the street itself. The rest of the homes on the street are two-family. There was testimony that the house on the corner was a single-family. They are proposing another four units, which would bring the number of units on the site up to eight. He does understand that there are larger units on other streets, but on this particular street, which is small and a dead end, you don't see the remaining streets.

He said he fails to see the hardship of having two permanent structures on one lot. He said he doesn't consider the lot buildable because of the topography of the land.

Atty. Hollis referred the Board to Page 2 of the packet he handed out. He said it shows how the lot was subdivided in the past. He said they can't go back and subdivide the way they were subdivided because the first two lots with the building and the parking lot would be under-sized. By consolidating they lost some rights. If they did subdivide they would end up pulling the subdivision line farther down the end of the street and have sufficient lot size to put in units, but they would end up with a lot that would not support parking and a building because of the topography.

Mr. Jenkins asked about the property values on the remaining properties on Paige Avenue.

Atty. Hollis said they do not think that they would be adversely affected. There is an existing four-family on the site. They are asking to put another structure there which they don't believe will adversely affect the values.

Mr. Jenkins asked how long the current building has been there.

Atty. Hollis said he didn't know.

Mr. Jenkins said when he was at the site the other day there were about nine vehicles parked all over the yard.

Atty. Hollis said there is a fairly large open space there that isn't regulated by any site plan so there are no enforcement issues that can be made by the City.

Mr. Jenkins said the proposed parking lot will have fifteen spaces so that means fifteen cars traveling up and down this short street.

Mr. Duffy asked if there is any expert testimony concerning the property values and Atty. Hollis said they did not.

Mr. Duffy said his understanding from the testimony is that the Planning Board may not allow a subdivision on this type of property.

Atty. Hollis said that his opinion is that a subdivision would be allowed. It would be a question of what could be built on it after it was subdivided. They only need 14,000 square feet for the building and the parking. It ends up drawing the line in an unusual position which forces the rest of the development on the remaining lot in a very unusual situation.

Mr. Duffy said that the testimony regarding the density indicated that the difference between what they are proposing and what exists in the neighborhood is more than 400 square feet, or 17%. He said that this isn't a minor difference in his opinion.

Mr. Duffy asked for further testimony as to property values. He said they are asking for two buildings with four units each on the same lot and the homes on the street are basically two-family dwelling units.

Atty. Hollis said by right they are allowed to put in two additional units. They are really asking for two more than are permitted under the ordinance. There are fourteen units on the

street and they would be adding two more that would not be permitted. If you go back to percentages, the impact to the neighborhood is less than 1%.

Mr. Jenkins said the homes have one or two car parking and now there will be a paved parking lot with space for 15 cars. He questioned if that wouldn't affect the property values.

Atty. Hollis said it might be better than duplexes. The lots are "tight" and the cars are squeezed in. All the houses are that way on this street. With the parking lot, the parking is organized. The cars are in one place. It's not like a single-family house that became a duplex. He said that they will be putting in a new structure which will be up to code, organized parking, and new landscaping (which is not a requirement anyone else on this street has). It will be an upgrade. He said they believe that whenever you go through the Planning Board process you are adding value to the neighborhood because you have to comply with what the Planning Board thinks is a reasonable plan.

He said he doesn't believe putting a parking lot at the end of the street will adversely affect it. He said he didn't think parking lots, per se, adversely affect value. It's how they are constructed and maintained.

Mr. Jenkins said if he had a two-family across the street he would probably disagree if he had to look out at a parking lot with almost 15 cars in it. He wouldn't think he was in a quiet little residential neighborhood anymore.

Atty. Hollis said that they are really only dealing with two more units than what lawfully can be built. The parking lot could be in there now.

Mr. Jenkins said the proposal is for two four-unit buildings with a parking lot in between. It's going to have a complex look or feel to it.

Atty. Hollis said he does not think it is massive. In fact, the new building is smaller than what is existing.

**SPEAKING IN FAVOR**

Richard Maynard, Professional Engineer, Maynard & Paquette. Mr. Maynard said there are numerous multi-family properties in this community with numerous buildings on them. They are all over the place, for example, Flatley's, Kessler Farm, and Coliseum Avenue. He said variances for multiple buildings on one lot are reasonably routine. This should not be a problem - they are all over town.

He said in this particular case there is a reason for the multiple buildings. If you are going to subdivide, the placement of the lot line forces the placement of the building further down the slope. Then you have to build up the slope and you have to build up the foundation to put a building in. What they are proposing provides the best layout for the site.

He pointed out that on the current site there is a driveway and there are two cars parked there quite often. There is a parking area (he showed it's location) and vehicles back out into the street. He said this is non-conforming and unsafe. This is not a situation they want to continue to promote. They would rather have a controlled parking lot where you drive into your parking spot and then can drive back out. By allowing this situation, there can be a proper design from a Planning perspective. It will be legal and safe and meet all requirements. It is a substantial improvement aesthetically and safety-wise from the existing situation.

He said if they subdivide, they will not be required to make any improvements because it will be considered grandfathered or vested. If the new building on a new lot is a one or two family it will be exempt from planning regulations.

Mr. Maynard said the amount of traffic per unit for an apartment is one half trip per peak hour in the AM and PM. During the total part of a day there are 8-10 trips per unit. They are not talking about a lot of additional trips during any particular hour.

He said he is not sure what Mr. Duffy's concern is about doing some things on the slope, but there is no reason for doing anything there. He said there is no reason why there can't be a stipulation that there be no accessory structures such as sheds.

### **SPEAKING IN OPPOSITION**

Eleni Valeras, 14 Paige Ave. Mrs. Valeras said she lives right across the street from the site under discussion. She said her house is the last one on the street and that she has lived there almost thirty years.

She said she is concerned that the value of her home is going to go down. Paige Avenue is a quiet dead-end street. This is important to her.

She said there is a problem with the parking situation right now on the street. Every house on the street has at least two vehicles - some have more. The proposed new construction will have people there who will have the same situation. If only one home on the street has visitors there is a problem with where the cars can be parked. In the winter time the police ticket around 9:00PM to 9:30PM if a vehicle is out on the street. She said they don't really have traffic on Paige Avenue and now they will if this is permitted.

She said sometimes there is a problem in the wintertime due to the snow. Sometimes they have to call the City because the snow is plowed so that it is all right in front of her door. She said she believes the problem will be worse if this project is permitted.

Mr. Jenkins asked if Mrs. Valeras' home is a two-family and she indicated that it is. She said her children live upstairs at this time.

Mr. Duffy asked Mrs. Valeras if she had any expert testimony concerning property values and she said she did not.

Mr. Jenkins asked Mrs. Valeras if the unit across the street has been four units for as long as she has lived in her home.

Mrs. Valeras said as far as she knows it has been.

Jim Gonsalves, 16 Linden Street. Mr. Gonsalves said he has lived in his home for twenty years. He said basically this proposal would be creating an apartment complex complete with fifteen spaces. They are not talking about adding a garage or a shed or a single-family home.

He said the previous person talked about snow removal from the street. His concern is the snow removal from the parking lot at this site. He pointed out the location of his house. He asked if they were just going to plow it all along the fences.

He mentioned drainage and how it was going to be resolved.

Some testimony lost - tape change. He was talking about a row of junk cars along his fence that are covered in snow.

He said the neighborhood has a lot of single-family and two-family homes and a lot of children. He said he isn't comfortable with a 15-space parking lot right along the properties, including his. The kids play all over the neighborhood after school.

Mr. Jenkins asked if Mr. Gonsalves' yard is level with the parking lot at #7 Paige Avenue.

Mr. Gonsalves said Linden Street is level with Paige Avenue. He will be looking out and the parking lot would be right there.

Mr. Jenkins asked what kind of fence they had.

Mr. Gonsalves said it is a chain link fence.

Mr. Currier asked if the parking lot is filled up a lot.

Mr. Gonsalves said it is new. He showed the location where

people typically park. He said recently brush was cleared out and junk cars were put on the lot and since the snow came nobody has touched them.

Mr. Jenkins asked if they are registered and Mr. Gonsalves said he didn't know.

Madeline Delgado, 5 Paige Ave. Mrs. Delgado said her home is a single-family. It was built five years ago.

She said she is concerned about property values. She said this will change the configuration of the neighborhood. She said people moved here because it is quiet. She thinks the parking and the traffic will be a horror story.

Jaime Ciampa, 18 Linden Street. Mrs. Ciampa said their home is also right behind the proposed parking lot, just like Mr. Gonsalves. She presented photographs of the lot showing the vehicles covered in snow that were addressed in testimony. Some were taken about a week ago and some were taken today. She also presented a topographical map that was downloaded from the City of Nashua website. She said it shows that pretty much where the parking lot used to end it starts to slope. She said there are a few trees and the children do play in the area abutting the property

She said putting in a three or four unit building is going to overpopulate their already well-developed neighborhood, but also the schools, the parking, and the traffic. She said these are very small, single, narrow roads. She believes this will greatly depreciate the neighbor's property values.

She said between she and her husband they have five children and they live at home. She said they plan on staying in the house for a while. If she does move and rents the house, she will still own it and she feels that putting something that large in an area that narrow with some land not usable, will definitely depreciate their value.

Mr. Jenkins asked how many units she has in her building.

Mrs. Ciampa said originally it was a single-family, but previous to she and her husband purchasing it, it was a two-family. It is now a single-family.

Bill Lambert, 19 Williams Street, Nashua. Mr. Lambert said he is backing up the people in this neighborhood and a friend of his who lives in the neighborhood and doesn't want to see this happen.

William Boyle, 14 Linden Street. Mr. Boyle said he lives in a single-family home located behind the current parking lot. He has been here for a year. He said he is opposed to this request.

Mr. Jenkins asked if a chain link fence runs across the back of his property as well.

Mr. Boyle said "yes."

Mr. Duffy asked about two units more instead of four units.

Mr. Boyle said using their math, that would be eight less cars.

Mr. Duffy said they could still put in a parking lot that big.

Mr. Boyle said he really doesn't know where they would put it.

He said it sounded like they might put in some units anyway. Whatever less amount of people they would bring into the area seems better.

Joanne Falardeau, 24 Linden Street. Mrs. Falardeau pointed out the location of her home. She said she has lived here for twenty years. She said she is concerned about what would happen when they start to build the building. She asked if it was going to knock down the wall. She said her house sits on ledge. She asked if they are going to be able to build a big enough retaining wall to fill.

She pointed out another house and said they are going to lose

whatever privacy they have because of the wooded area being removed.

Mr. Jenkins said he didn't think they would be working in the area Mrs. Falardeau is talking about unless the lot is subdivided.

Jimmy Boulanger, 20 ½ Linden Street. Mr. Boulanger indicated where his house is located. He said he has a big stone wall .. Testimony hard to hear - not at microphone? In the summertime there are trees that cover everything. When the proposed building is constructed the trees will be cut and then you will be able to see this big stone wall. It won't be pretty.

He said he believes the property values will be decreased if this proposal is allowed. There will be at least two vehicles per unit and in some cases maybe there will be three or four vehicles because of kids who might have their own car. There may be 20-22 cars in the parking lot at any given time. That is a problem.

Mr. Jenkins said they would be meeting the parking requirement in the ordinance.

Mr. Jenkins asked Mr. Boulanger if he owned a two-unit building.

Mr. Boulanger said it is a two-unit, but it has not been rented out for two years because he has been using it for himself.

Mr. Jenkins asked how long Mr. Boulanger has lived in his home and Mr. Belanger said since 1980.

#### **SPEAKING IN FAVOR - REBUTTAL**

Atty. Hollis said he spoke to his client about the cars that are parked and covered with snow. He said they do not belong to the tenants. He said they are owned by people who live on Paige Street who didn't have room to park their cars and have put their vehicles there with the permission of his client. The vehicles are not unregistered.

He said if you go down the street you would see that most of the houses do not have 1.75 spaces per unit. He said his client's property would be the only one that would.

He said there are two people from Paige Street who testified. He said one of them was concerned about property values. She was worried about a six or eight unit building coming in. The proposal is for a four-unit building. There already is a four-unit building there. The neighbor directly across the street is concerned because it is a dead end and nobody uses the property and the kids in the neighborhood play there. There was talk about the snow. The City can't place the snow on somebody else's property, unless the owner allows them to do so. Otherwise, they have to remove it. The proposed parking lot will have to be plowed. The Planning Board will be asking questions about what happens to it.

He said the rest of the testimony in opposition came from people who lived on Linden Street. There was testimony how these additional units will increase the traffic in their neighborhood. He said Mr. Maynard testified about the AM peak and the number of cars. The traffic that comes out of the parking lot is going to disperse. Some of it is going to go to the north, some to the east, some to the south, and some will end up on Linden Street, but the impact is going to be negligible.

Atty. Hollis said when somebody does construction work they are liable if they disturb a neighbor so they have to take adequate measures. You can't remove someone else's trees. If you are adjacent to someone's wall you have to make sure the wall is adequately supported. All those things will be addressed at the Planning Board and as a matter of law. He said the Planning Board will require drainage computations and studies as well as a traffic calculations if they think there is an impact to traffic.

Mr. Duffy asked Atty. Hollis if the special conditions for the area variance are the fact that this is a dead end street and

because of the topography of the lot.

Atty. Hollis agreed.

Mr. Duffy asked if Atty. Hollis agreed or disagreed that the subdivision process was possible or not possible.

Atty. Hollis said he thinks it could be possible. He can't say it's impossible. They haven't applied. He said the size of the lot is the third uniqueness. It is the largest lot in the entire neighborhood.

### **SPEAKING IN OPPOSITION - REBUTTAL**

Eleni Valerez, 14 Paige Ave. Mrs. Valerez said there are four owners who live on Paige Avenue. The rest of the people who live here are renters. The other two owners live right at the beginning of Paige Avenue (Paige & Tolles Street) so this doesn't affect them as much as it does her and the other owner who lives on the street.

She said she disagrees about the property values not going down. She said she doesn't understand how they aren't going to go down.

She is concerned about the parking and the traffic and that the neighborhood will no longer be quiet. She said that she doesn't know if a fire truck can come in the street because even she has a problem with her own little car.

Mr. Jenkins said that it has come to his attention during testimony that he has a relative that abuts the pieces of property on the back side of Perham Street. He will not be voting on this case nor would he be included in discussion on the case.

Mr. Berthiaume said he is not comfortable with the proposal - either the two principal buildings or with an additional four units.

Mrs. Douglas said by right they can do at least one unit.

She said she is not as uncomfortable about two buildings on one lot as she is about the number of units. She doesn't think they should grant relief from the minimum lot area.

Mr. Coffey said he feels that a total of eight units is out of character with the surrounding neighborhood. He said he didn't necessarily have a problem with two additional units.

Mr. Currier said he took a look at this site twice. Once was before the snow fell and he was in a Volkswagen. The second time there were snow banks there and he was in a larger car and he had trouble getting down there and then turning around. He is definitely not in favor of granting relief for the minimum lot area. He is struggling with the request for two principal buildings on one lot.

Mr. Anderson said he would not oppose two structures as long as they had the proper amount of parking for the units, but he wouldn't approve a four-unit dwelling.

Mr. Rondeau said he is opposed to two principal structures on the lot. He said it would be out of character to have two, four-unit buildings on the lot. When you look at Paige Avenue it is predominantly single and two-families.

Mr. Duffy said this is a significant sized lot and the applicant has another reasonable/feasible method he can use to achieve some of what he wants and this is through the subdivision process. He also feels that there could be a potential impact on property values.

**MOTION** by Mr. Duffy to deny the request to allow two principal structures on one lot at 7 - 7C Page Avenue, one four-unit building existing. There are no special conditions that warrant the current reasonable use of the property. Despite the fact that it is on a dead end street and the size of the lot, it is not significant enough to warrant the granting of the variance. The lot consolidation was done by a prior owner. There is a reasonable alternative and that is through the subdivision

process. It is within the spirit and intent of the ordinance that the abutters and the neighborhood should not be adversely affected by property values. There is no expert testimony, but it is the opinion of the Board that this could have an adverse impact on the property values. Therefore, it may be contrary to the public interest.

**SECONDED** by Mr. Currier.

**MOTION CARRIED UNANIMOUSLY**

**MOTION** by Mr. Duffy to deny the request for minimum lot area, 20,102 square feet existing, 28,000 square feet required to construct an additional four unit multi-family building for a total of eight units at 7 - 7C Paige Avenue. Even though the area pre-dates zoning and the applicant feels the density calculations are reasonable, they are in greater and significant than those in the neighborhood and abutting properties. There are alternative and reasonable options for this property. The request might adversely affect property values of surrounding properties. It is contrary to the public interest as it is a more intensive use. Substantial justice will be served in that this denial will continue the integrity of the neighborhood.

**SECONDED** by Mr. Berthiaume.

**MOTION CARRIED UNANIMOUSLY**

**7. Stephen A. & Joanne Kreisz (Owners) Barbara A. Goulet & Michael M. Mills (Applicants) 373 Main Street & 1 Park Avenue (Sheet 108 Lot 66 & Sheet 124 Lot 157) requesting variance to encroach 14.5 feet into the 25 foot required rear yard setback for a lot line relocation. RA Zone.**

Voting on This Case:

Tom Jenkins

Sean Duffy  
Susan Douglas  
Jay Coffey  
Don Berthiaume

Gap - Apparently machines were not turned on after a short break and the Board is in the middle of a discussion.

Mr. Jenkins said it looks like they are not trying to chop this up into tiny lots. He said it seems like it would be a decent use of the property.

Mr. Coffey said if they find a hardship and grant a variance would the Board be able to stipulate that the potential use be for a two-family dwelling unit.

Mr. Jenkins said they aren't even discussing that yet. He said they are talking about the division of the lot.

Discussion ensued. Mr. Duffy was concerned about business use of the property.

Mr. Jenkins said the bonus situation is the fact that they know what is going to go on the lot, they don't have to guess. He said they can put in a stipulation that the house at 373 remain a single-family home. Mr. Mills indicated he wasn't opposed to it.

Mr. Carrier said that when you look at the two-family square box, it's a square peg in a round hole. Every other one of the structures is large and looks like an original single-family home. They are old-style Main Street homes. He thinks this will look totally out of character with the neighborhood.

Mr. Jenkins said most of the single-family homes here aren't single-family homes any more. Most of them are now multi-family or businesses. They do not have any plans as far as the style of the house is concerned.

Mr. Carrier said they have been provided with a copy of the

Downtown Master Plan. He would think that approval of the subdivision would go in hand with what the proposed house would look like. He asked Mr. Falk if this request was approved by the Board if there would be any Planning Board input.

Mr. Falk said they have to go to the Planning Board for the subdivision of the lot. They don't make determinations on the use.

Mr. Currier said that not a week goes by that there are discussions about the Downtown Master Plan, Salmon Brook, the south end, the roundabout, etc. He said he is surprised that this has seemingly flown under the radar screen. He believes that how the structure in the front looks needs to be considered.

Rules suspended by Mr. Jenkins.

Mark Maynard, 7 Burgundy Dr., Nashua, NH. Mr. Maynard said he represents Ms. Fenton, who plans to live in the house. He said she owns and operates a business at 263 Main Street for twenty years and now she is purchasing this property. He said there is not going to be any home business here. A stipulation can be made to address any concerns regarding this matter.

He said they are proposing a duplex cape style house on the lot, which is in character with the neighborhood.

Mr. Jenkins said the concern is what it looks like at the Main Street side, even though the driveway is on Park Avenue.

Mr. Maynard said that is the reason they are going with a cape style so it is in style with the other homes in the neighborhood. He said the Board can make it a stipulation.

Mr. Currier asked if there are garages.

Mr. Maynard said "no." Parking will be in the driveway. He said the access will be off of Park Avenue. He said this was done for safety reasons.

Mr. Currier said what they are looking at is a foundation plan which is very different than what a build-out looks like.

Mr. Maynard said that is why he is stating that the Board can stipulate that it be a cape-style home.

Mr. Jenkins said that he feels comfortable with the location of the lot line because the Board knew what was going on the other lot.

**MOTION** by Mr. Berthiaume to grant the variance to encroach 14.5' into the 25' required rear yard setback at 373 Main St. & 1 Park Ave for a lot line relocation. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property - the site is large enough for a subdivision. The current home faces Main Street. In order for the subdivision to work, the rear yard setback has to be addressed. It can't be done any other way and this is a reasonable use of the property. It is within the spirit and intent of the ordinance. It will not adversely affect the property values of surrounding parcels. It is not contrary to the public interest. Substantial justice will be served.

**SECONDED** by Mr. Coffey.

Mr. Jenkins noted that Barbara Goulet is now the owner of the property.

**MOTION CARRIED - 4-1, Mr. Duffy opposed.**

**8. Stephen A. & Joanne Kreis (Owners) Pong Fenton (Applicant) 373 Main Street (Sheet 108 Lot 66) requesting special exception to allow a two-family dwelling unit. RA Zone.**

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas  
Jay Coffey  
Don Berthiaume

Mark Maynard, 7 Burgundy Drive. Mr. Maynard repeated that Ms. Fenton has owned and operated a business at 262 Main Street for the past twenty years and she is looking to move into one side of the new duplex that is to be constructed and rent the other half. This is within walking distance from her business location.

He said the proposal is for a cape style house on the newly created lot. He said he believes this does fit in with the neighborhood. He said he does not have the elevation drawing with him, but he indicated the Board could make this a stipulation. He said they can also make a stipulation concerning that there be no in-home occupation.

Mr. Currier asked Mr. Falk if the Zoning Board approves this if there is a review by the Planning Board.

Mr. Falk said it is not in the Historic District and not in the Downtown Master Plan. He said if the Zoning Board is going to approve the request, they may want to stipulate that the Planning Board review the architectural features of the structure.

Mr. Currier said he doesn't know that the Board should even stipulate that it be a cape, as long as the house ends up looking like the rest of what is in the neighborhood. He doesn't want it to look like a square peg in a round hole.

Mr. Maynard said that is the reason they are going to build a cape and he is willing to have it stipulated.

Mr. Currier said his thought is that a better stipulation might be what Mr. Falk suggested - that is, the Planning Board review the architectural features of the house.

Mr. Maynard said he has no problem with any kind of

architectural review.

Mr. Anderson asked if the units are going to be up and down.

Mr. Maynard said the units are side by side with two floors each.

Mr. Jenkins asked how the entrances are proposed so that it is going to feel that it is in character with Main Street.

Mr. Maynard said from Main Street people are looking at a side view. He said he will be happy to bring the plans in for architectural review by the Planning Staff.

Mr. Jenkins asked what business Ms. Fenton runs at 263 Main Street.

Mr. Maynard said it's "Pong's Elegant Nails." He said she is right across from the hospital.

#### **SPEAKING IN FAVOR**

Michael Mills. Mr. Mills said right across the street is Atty. Kaklamanas' office. His driveway and his building does not front out onto Main Street, but onto Taylor Street. He said he believes this is also true of the building he just bought across the street so everything doesn't front out onto Main Street.

He said as far as the architectural structure is concerned, across the street he believes there is a real estate office and has been other businesses in the past. It is a one-story building. He said he's been in real estate for 35 years and he isn't quite sure what he would call the architectural structures of these properties.

#### **SPEAKING IN OPPOSITION**

No One.

Mr. Berthiaume said Mr. Mills has brought up a good point and that is how you determine what style is appropriate.

Mr. Jenkins said the Planning Board has enough members that they can take a look at it.

Discussion ensued concerning lot sizes in this neighborhood.

**MOTION** by Mr. Berthiaume to grant the special exception to allow a two-family dwelling at 373 Main Street. This is listed in the Table of Uses, Section 16-227. It will not create undue traffic congestion or unduly impair pedestrian safety. It will not overload public water, drainage, or sewer or other municipal systems. 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 Conditions: 1. Architectural design be satisfactory to the Planning Board. 2. Residential Use Only.

**SECONDED** by Mr. Jenkins.

**MOTION CARRIED - 4-1, Mr. Duffy opposed.**

10. Sandy A. Fabre & Olga A. Gombins (Owners) 32 Wilder Street (Sheet 96 Lot 71) requesting the following variances: 1) maximum building area, 25% allowed, 36.3% existing - 40.9% requested; and 2) to exceed maximum square footage for a major home occupation, 300 square feet allowed - a total of 657 square feet requested. RB Zone.

Voting on This Case:

Tom Jenkins  
Sean Duffy  
Susan Douglas  
Jay Coffey  
Don Berthiaume

Sandy Fabre, 32 Wilder Street. Mr. Fabre said he wishes to enclose an open porch on his home to use as a library. They have many books and they are all over the house. They wish to

put them in the one place which will leave more room in the main part of the house.

Mr. Jenkins said this will change the square footage of the house for building area from 36.3% to 40.9% by enclosing a porch into a library.

Mr. Fabre said they are not going to make it bigger - they are just going to enclose it.

Mr. Jenkins said the other request is for a major home occupation. He said the request is to use 656 square feet where 300 square feet is permitted. This is for an in-home day care operation. He asked how many children they provide this service for.

Olga Gombins. Ms. Gombins said she has been approved for 17 children.

Mr. Jenkins said Ms. Gombins came to the Zoning Board in August 2002 and the Board approved her home occupation for six children.

Ms. Gombins said the inspector came from Concord and approved the big group. She has never had a problem with the neighbors and never had complaints from the parents.

Mr. Jenkins asked about the play area outside and if it is fenced in.

Ms. Gombins answer was not understood.

Mr. Jenkins said Ms. Gombins has stated that the State came in said she was qualified for 17 children.

Mrs. Gombins agreed.

Mr. Fabre said they measured the space they have in the home.

Mr. Jenkins said even though the State says they have a home that is large enough to accommodate 17 children, the problem the

City has is that you are only permitted to take a certain percentage of the home - in this case 300 square feet. He said they are asking for more than double what the City allows. He said he is having trouble coming up with the 657 square feet.

Ms. Gombins said she has a playroom, another room where she changes diapers, a living room, and a lunchroom. She has one assistant, her son, who works with her.

Mr. Jenkins said this is a two-family home. He asked who lives on the first floor.

Ms. Gombins said she lives in the second unit and the first unit is for the daycare.

Mr. Jenkins asked who lives on the third floor.

Ms. Gombins said nobody.

Mr. Fabre said the third level has a bedroom. The second level has a living room, a kitchen, and bathroom. The first floor is all daycare.

Mr. Jenkins said he is having trouble understanding why Ms. Gombins feels that the request that was approved for six children wasn't adequate enough. This is a smaller home in a small neighborhood.

Ms. Gombins said right now she has eleven children, but the City approved for seventeen.

Mr. Jenkins said Ms. Gombins was only approved for six. She is saying she has almost double what she was approved for.

Ms. Gombins said the Fire Marshall came and inspected her home. The inspector from Concord came and checked.

Mr. Jenkins said he went to the house and saw five signs on the house advertising a daycare center. He said she needed a commercial piece of property. This is in a residential

neighborhood and when you drive up it looks like a commercial piece of property. He said the ordinance permits one sign of two square feet.

He said Ms. Gombins had permission for six children, which was more than reasonable and now she is saying she has eleven children and it sounds like she is asking for seventeen.

He said when the Board allows somebody 300 square feet, that is an adequate amount of room to run a minor home occupation.

Mr. Duffy asked Ms. Gombins if the State of New Hampshire give her a site review report as well as her license and if she had it with her.

Ms. Gombins said she did receive this from the State, but she didn't have it with her.

Mr. Duffy asked how many employees work with her.

Ms. Gombins said one.

Mr. Duffy said when Ms. Gombins came to the Board she received permission for six children and there would be no employees and one sign. He said his understanding is that once you go over ten children there are some significant space requirements for both inside and outside, staffing, and fire protection. He said he doesn't have any information about what the State has said about her ability to operate this facility.

Mr. Jenkins asked what she has from the State and what it says.

Ms. Gombins said she doesn't recall, but she does have a license.

Unknown male speaking - He said that the State indicated that there are a certain amount of children that you can have. Five of the children are only after school. They are there for about three hours. They may have three infants ages 1 - 3. The rest are over three years of age. He said they will never have all the children all of the time.

Mr. Jenkins said they live in a small residential neighborhood and they are running a major home occupation. Six children is a reasonable amount of children and they are allowed 300 square feet. They were granted their request in 2002. There were to be no employees.

He said he doesn't have a problem with the applicant enclosing the porch because basically it's not utilized and they may want to utilize the property a little better. He said he does have a problem with the square footage of the day care operation at 657 square feet - double what they are allowed. This is not a commercial piece of property, it is a home. People that run daycare centers do it "on the side" to help bring some income in, not as a business. That is what Mrs. Gombins is doing and she can't be doing this from her home.

Mrs. Gombins said she only has eleven children and she has never had any problem.

Mr. Jenkins said even eleven children is twice as many as she is supposed to have. He said it's not fair to her neighbors for her to be running a business next to them. They are in a residential neighborhood.

Mr. Fabre said he didn't know the rules about the signage, but if it is a problem he will remove them and leave only one small sign.

Mr. Jenkins said it wasn't just the signs. It is also the number of children. He said he did not believe that the Board would support even eleven children at this location.

Ms. Gombins repeated that she has never had a problem with her neighbors.

Mr. Jenkins said he understands this, but this is not fair to her neighbors and the people around her to be running this type of business out of her home.

Mr. Anderson said there was testimony that the State looks at this to see about the number that are after school versus infants, etc.

Mr. Jenkins said the City doesn't look at it this way. Whether they are there all day or part of the day doesn't matter.

### **SPEAKING IN FAVOR**

Elkin Gombins, 32 Wilder Street. Mr. Gombins said he understands what the Board is saying about the number of children, but Ms. Gombins does have a license from the State that she has been approved for 17 children. She also has a kindergarten license. He asked if there is any way that this can be presented to the Board at a later time.

Mr. Berthiaume said that the State isn't looking at the zoning. They are looking at the square footage of the facility versus what the Zoning Board has to look at. The Zoning Board looks at what the neighborhood is made up of.

Mr. Duffy said that he doesn't have any information in front of him that shows what the State did. He doesn't have a copy of the site survey that the State did. He said just by the testimony, the fact that Ms. Gombins wants to run a kindergarten is a business.

Mr. Gombins said the State approved this. They went through everything. They inspected the whole house. She has a copy of the license.

Mr. Duffy said there are two independent processes. He said the State authorizes whatever it is they are going to allow, but the City of Nashua's ordinance governs the property and uses in certain neighborhoods. Sometimes they are in agreement and sometimes they are not. He said when he hears that there is a kindergarten and a daycare, that is a business. It is not an in-home daycare. The City has authorized six and Ms. Gombins is up to eleven.

There was some discussion about making the decision on the enclosure of the porch and leaving the issue of the daycare for another day since there is no documentation concerning the allowed number of children.

**SPEAKING IN OPPOSITION**

No One.

Further discussion on the issue of the daycare operation and the fact that there are major compliance issues. Mr. Duffy said it may be that they may want to ask for a use variance, rather than an area variance.

Mr. Jenkins asked Ms. Gombins if she wished to withdraw the application for the maximum square footage for the home occupation. If they do this, the Board will not vote on it and then they can re-apply for a use variance.

Mr. Gombins explained this to his parents. They understand that they will have to come back and apply for a use variance. The request for the square footage of the home occupation is being withdrawn.

**MOTION** by Mr. Coffey to grant the variance for maximum building area, 25% allowed, 36.3% existing, 40.9% requested at 32 Wilder Street. The variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property. The benefit sought by the applicant cannot be achieved by any other method reasonably feasible for the applicant to pursue. He said this dwelling pre-dates zoning. It is on a small lot. In order to get reasonable use of the property and enclose the existing porch, the variance is needed. It is within the spirit and intent of the ordinance. It will not adversely affect the property values of surrounding parcels. It will not be contrary to the public interest. Substantial justice will be served by granting the variance.

**SECONDED** by Mr. Berthiaume.

**MOTION CARRIED UNANIMOUSLY**

**Request for Rehearing**

**15 Williams Street - Vigilant Properties**

Mr. Jenkins recused himself.

Voting on This Case:

Sean Duffy

Susan Douglas

Jay Coffey

Don Berthiaume

Jack Currier

Mr. Currier said in the middle of Page 3 there is a line that jumps out at him. The argument is that the Zoning Board inappropriately relied on the Miller vs. City of Nashua case, which was part of the testimony. He said he thought this was just one component of what the Board considered.

He said another argument that they talk about is a common wall. They Board talked about this and they considered that a carport really wasn't a common wall.

He said another factor was the character of the neighborhood. The Board felt that on this street it was out of character with the neighborhood, even though there are other properties that are connected like this.

He said an argument that has been presented is that the court's decision was fact centered concerning a common wall. They feel that Miller vs. City of Nashua was strongly influenced by the location of the project in a non-compatible surrounding Historic District.

The Board realized that the property they were discussing was not in a Historic District, but they concluded that it was still

out of character with the neighborhood. He does not agree with the premise contained in the request for rehearing.

Mr. Berthiaume said the common wall weighed heavily for him. His feeling is that with a common wall someone lives on either side.

Mrs. Douglas said the decision was proper. She said she didn't believe there were any illegal procedures and she doesn't believe it was an unjust decision. There is no new information.

Mr. Carrier said he didn't really understand the argument about the hearing notice being defective.

Mr. Duffy said his understanding in reading that is that may be their impression of trying to document that there may have been an improper procedural process that wasn't talked about .. Becomes unintelligible .., whether the Board agrees or not.

Mr. Carrier said the Zoning Board had re-advertised this so that it could be made crystal clear about what they were actually requesting. He said he thought it was well advertised.

Mr. Duffy asked the Board if there was any procedural error, including improper notice denying someone the right to be heard.

The Board didn't feel that this was the case.

Mr. Duffy asked the Board 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 didn't feel that this was the case.

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

The Board didn't feel that this was the case.

Mr. Duffy said the request is trying to quote some of the Miller information and some other information. Whether it was clearly presented at the meeting or not, they are trying to talk about the estoppels requirements and regulations. He said he doesn't know if they addressed it in the way they created the motion. He referred the members to Page 4 of the request where the request talks about Miller vs. City of Nashua, not that the Board made an unreasonable interpretation of a principal structure, but they are commenting that the Board didn't address it in their motion or in their discussions. He believes this is new information. Also, on Page 6 they address McMahon vs. Town of Rye, which he could not find, but it talks about estoppels as well.

Mr. Currier said their argument is that there are other two-family dwellings, such as on Fairmount Street, and that the Board was incorrect by not allowing it here. He said the Board did have pictures of about ten of these two-families and the Board agreed that there were some in other places in Nashua, but it wasn't Williams Street. He disagrees with the argument.

He said on Page 6 they are addressing Town of Rye vs. McMahon. This was in 1977. He said the inference that he reads into it is that in that case the Zoning Board of Adjustment is municipally required to come to a similar decision. He said that is inferred. What the letter is saying is that based on this the Board should have come to a different conclusion. He said that anybody can cite any case law. He asked why this wasn't brought up that night.

Mrs. Douglas said both parties are represented by counsel.

Mr. Currier said he agrees that they are throwing some case law at them that wasn't discussed that night which may or may not be applicable, but it should have been done before. They can keep coming back with another new case law.

Mr. Berthiaume said he didn't see anything in the request that would make him change his mind about the common wall.

Mr. Duffy asked if there was anything at all that might 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 for rehearing on 15 Williams Street based on the discussion that has just taken place on the four points.

**SECONDED** by Mr. Coffey.

**MOTION CARRIED 4 - 1, Mr. Duffy opposed.**

## **Minutes**

**12/14/04**

**MOTION** by Mr. Duffy to approve the minutes of 12/14/04, waive the reading and place on file.

**SECONDED** by Mr. Coffey.

**MOTION CARRIED UNANIMOUSLY**

## **Regional Impact**

The Board did not find any items of regional impact.

## **Other**

Officers for the New Year:

**MOTION** by Mr. Coffey offered the slate of officers for the New Year as follows:

Tom Jenkins, Chair  
Sean Duffy, Vice Chair  
Susan Douglas, Clerk

**SECONDED** by Mr. Duffy.

**ADJOURNMENT**

Mr. Jenkins called the meeting closed at 10:50PM

Susan Douglas  
Clerk

It  
Taped