

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
February 8, 2005

A public hearing of the Zoning Board of Adjustment was held on Tuesday, February 8, 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
Jeffrey 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.

1. White Family Ventures LLC (Owner) The Holistic Self Care Center (Applicant) 12 Murphy Drive (Sheet 140 Lot 60) requesting use variance to allow a personal service establishment in a portion of an existing building. PI Zone.

Voting On This Case:

Tom Jenkins
Sean Duffy
Susan Douglas
Jay Coffey
Donald Berthiaume

Barbara Tremlett, 17 Emerson Road, Nashua, NH. Ms. Tremlett said she believes the space she is asking for at 12 Murphy Drive is reasonable for the type of business she is trying to use it for. There are adequate parking spaces at the site.

She said most of her customer base will be people who will be using the building during later hours of the day. The building is an office building.

She said she didn't feel that there would be any impact on the schools, additional parking, etc. involving the community. Emergency access will not be affected.

She said the property values would not be affected. She said if anything it would raise the value of the local area.

She said she did not believe this will affect any local businesses. This use will be moving into an empty space within the building. The services will be used by people throughout the community as well as by the people who are within this office

building.

Ms. Tremlett said the services that this company is offering will be used a lot in the community because it is directed at the baby boomer generation.

She said opening this business will give a positive impact on holistic in the community and local businesses in the area. The services are ones that can be used by the community.

Mr. Jenkins asked if this building is new.

Ms. Tremlett said it is a brand new building. She said she believes there are only four or five other companies located in it right now.

Mr. Jenkins asked what other types of companies are within the building.

Ms. Tremlett said its office use. She said the zoning is Park Industrial and she is looking to provide personal services, which is not permitted in this zone.

Mrs. Douglas asked what Ms. Tremlett's hours would be.

Ms. Tremlett said 8:00AM - 9:00PM five days a week. The schedule for Saturdays would be 8:00AM - 5:00PM.

Mr. Anderson asked if there is a locker or a changing room or if people have to come dressed a certain way.

Ms. Tremlett said there are going to be six rooms for massage and each one of these rooms are going to have a lock on them so people can change. She said it will not be a heavily trafficked area so she won't have showers.

Mr. Currier asked Mr. Tremlett if she had looked at other locations and why she chose this location.

Ms. Tremlett said she thought the location was ideal for the

type of customer that would be going here. The traffic is low, there is good parking and good lighting. She said most of the places that have this type of business are in areas that have a lot of congestion. Part of the important part about holistic care is not having high tension.

Mr. Carrier asked if Ms. Tremlett thought she would be drawing from the industrial base as well as the residential neighborhood that's on Northeastern Blvd.

Ms. Tremlett said she thought there would be some growth from these.

SPEAKING IN FAVOR

Atty. Jeffrey Zall, 221 Main Street, Nashua. Atty. Zall said he represents the owner of the building, White Family Ventures, LLC.

Atty. Zall said the building is located at the end of Murphy Drive. It was originally approved in 1999 for about a 180,000 square foot building for Teradyne. It was going to be a two-story building that was going to be used for manufacturing and for administrative offices. Teradyne started it and got the shell up and they never proceeded any further. The shell was there for a long time.

He said White Family Ventures, LLC bought the building last year and amended the site plan to turn it into a single-story multi-tenant office and manufacturing and warehouse facility - about 88,000 square feet divided evenly. He said at the present time the building has about 20% occupancy. He mentioned the companies that are presently occupying the building.

He said that although a personal service business is not a permitted use in the Park Industrial Zone, this is a park industrial zone that it is serving. If you drive up and down the few streets that are in this Park Industrial Zone you will see a lot of uses that are not permitted uses. He said there are apartments, a deli & catering service, a pizza shop, banking, realty office, hardware store, a billiards club, and

Northbridge Business Center. The Business Center has a lot of medical uses in it, so they are either in there by variance or some other reason.

He said the building at 12 Murphy Drive is set way back. It's against the highway, not near Northeastern Blvd. He said there is nothing that will show in the Park Industrial Zone that a personal service business is located here other than at the front of the building where there is a Board with the names of the tenants that are in the building.

Atty. Zall said that there are so many other non-conforming uses in the zone that are even further away than park industrial type uses than this use. It would be unfair and unreasonable to deny a request for a personal service use. It is unreasonable to impose a stricter requirement on this particular property and this particular applicant.

SPEAKING IN OPPOSITION

No One.

Mr. Currier said over the years a lot of the properties in this Park Industrial Zone have shifted to non Park Industrial uses. He said he thinks the general relaxing of the requirements has made an impact to the area.

Mr. Jenkins said this originally started out as an industrial building and obviously it didn't get finished. At this point it is an office building. He said he didn't think it was a bad thing to have a personal service in an office building.

MOTION by Mr. Berthiaume to grant the use variance to allow a personal service establishment in a portion of the existing building at 12 Murphy Drive. The zoning restriction as applied interferes with the landowner's reasonable use of the property considering the unique setting of the property. No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property. The granting of the variance would not injure the

private or public rights of others. 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 4-1, Mr. Duffy opposed.

2. Patrick D. Roy (Owner) 39 Lake Street (Sheet 98 Lot 29) requesting variance to encroach 5 feet into the 7 foot required left side yard setback to enclose an existing 8'x20' first floor open porch on a nonconforming structure. RC Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas

Jay Coffey

Donald Berthiaume

Richard Maynard, Professional Engineer, Maynard & Paquette, Nashua. Mr. Maynard said the request before the Board is to enclose the area below a second story non-conforming rear addition on a two-story building.

He said the existing second story was probably a three-season porch or a deck at one time. He said when Mr. Roy purchased the property in June 1997 the second story was already there, fully enclosed insulated living space. He said Mr. Roy did not add this addition to the building.

Mr. Maynard said the existing house, which is about fifty years old, is only 1.9' from the side lot line. The second-story enclosed addition to the rear is 2.2' from the side lot line. He said Mr. Roy, the owner, would like to do two things. First, he needs to reinforce the supports and columns below the second

floor addition because there appears to have been some settling and separation. At the same time he wants to fully enclose the open area below. It will provide a better structural foundation and support and make the appearance of the rear of the building look much better and provide a little more living area (approximately 160 square feet).

Mr. Maynard referred the Board to the picture of the rear of the building. He said this gives the Board an idea of what it looks like. He presented a set of architectural plans to the Board.

He said the existing second story addition has existed prior to Mr. Roy purchasing the property about seven years ago. He said this building has existed in its present configuration for some time. The columns and supports need to be upgraded and replaced. Enclosing the first floor, including the supports and columns will not alter the existing non-conforming situation. There will be no further encroachment than what currently exists today. He said the main part of this house was constructed in an extremely skewed angle to the side property lines and at one point is only 9' from the property line.

He said the neighboring property values will be enhanced because the enclosed lower floor will make the rear of the building look better.

He said the benefit of the reinforcement of the first floor enclosure will make the building safe and attractive and improve this older residential structure.

He said substantial justice will be done in that Mr. Roy will be able to make some needed structural improvements as well as improve the appearance of his building and gain a small amount of enclosed space.

Mr. Jenkins asked the age of the second story addition.

Mr. Maynard said he is guessing it's about twenty years, but that's a big guess.

Mr. Jenkins asked if the building is a two-family.

Mr. Maynard said it is.

Patrick Roy, 39 Lake Street. Mr. Roy said the house is being utilized as a two-family.

Mr. Jenkins asked Mr. Roy if he lives in the house.

Mr. Roy said he lives on the second floor and rents out the first floor.

Mr. Duffy asked if they had contacted the abutter about the proposal.

Mr. Maynard said they have not.

Mr. Berthiaume asked what was on the third floor.

Mr. Roy said that the third floor has a bedroom and the second floor has two bedrooms, which makes it a three-bedroom for him and his girlfriend and her two children.

Mr. Currier said that the plan shows a footprint for a porch. He asked if that is there now or if it is what's proposed.

Mr. Maynard said that under the second floor there is a little porch/deck entryway. That will be eliminated if the lower half is enclosed so there will be a proper concrete footing. He said his plan shows the existing conditions and the architect's plan shows the proposed improvements.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Duffy to grant the variance to encroach 5' into the 7' required left side yard setback to enclose an existing 8'X20' first floor open porch on a non-conforming structure at 39 Lake Street. This will be an improved use to this two-family dwelling unit. The property pre-dates zoning. The applicant's proposed use of the property, given the special conditions of the property in the shape of the lot, the size of the lot, the position of the building on the property denote that this is a reasonably feasible use of the property. It is within the spirit and intent of the ordinance that the applicant have use to extend his current living space to an area that already encroaches on a buffer area. There was no testimony about property values of surrounding parcels, however, this is not a significant impact. It is not contrary to the public interest. There is no further significant encroachment into the existing setbacks. Substantial justice will be served.

SECONDED by Mr. Berthiaume.

MOTION CARRIED UNANIMOUSLY

3. Walter W. & David Anderson, Trustees, (Owners) 539 Amherst Street (Sheet H Lot 88) requesting the following variances: 1) to exceed maximum number of ground signs per premises, one allowed, one existing - one additional 50 square foot ground sign proposed; and 2) to encroach 20 feet into the 20 foot required front yard setback for proposed ground sign. HB Zone.

Voting on This Case:

Tom Jenkins
Sean Duffy
Susan Douglas
Jay Coffey
Don Berthiaume

Tim Pappakostos, Charman's Restaurant, 537 Amherst St. Mr. Pappakostos said he is the new owner of Charman's. He purchased

it about two months ago. He said he is requesting a stand-alone sign. One of the reasons he is asking to encroach into the setback is because currently after the easement there is a driveway and then they go straight into parking. They need to go as close to the easement as possible.

He said they had an agreement to change the name since there is a Charman's in Hudson. Traveling down Amherst Street is quite dangerous at times and if there are people who are not familiar with the area it is a safety concern when people have to take their eyes off the road to look for a sign.

He said another concern they have is that with Mobil getting the new Dunkin Donuts, there are cars constantly looking to do a "U" turn to get into the Dunkin Donuts. If his customers aren't exactly sure where Charman's is and they have to take their eyes off the road, it could be a hazard.

He referred the Board to pictures that he had presented. He said they are not the first ones asking for a second stand-alone sign. He said he believes the Ford dealership has three or four stand-alone signs. He mentioned other businesses that have more than one stand-alone sign, with some of them encroaching into the setback. The restaurant parcel has about 250' of frontage and the sign is about 230' away from the entrance. When you are driving west to east, by the time you see the sign, you have already passed the entrance. He said he doubted a person would drive two blocks up and try to make a turn to come back.

Mr. Jenkins said he visited the site and the only problem he can see with the proposed second sign is that if the sign goes where he proposes it, it would block the visibility of the Mobil sign.

Mr. Pappakostos said they are proposing to go in the middle of the property.

Mr. Jenkins said coming down Amherst Street, the way the sign is angled, the Mobil sign is blocked.

Mr. Pappakostos said it is over 100' away from the Mobil sign.

Mr. Jenkins said he was very careful to look at this situation. He said Charman's has been in this location for as long as he can remember. He said it did a thriving business so people knew where it was located. He said he went there on a Sunday morning this past Sunday looking at the signs and he couldn't even get in the parking lot because it was so packed.

Mr. Pappakostos said he has a concern because of the change in the name of the business.

Mr. Jenkins said his concern is that if he is granted the second ground sign that he will be blocking Mobil's sign. He said Mr. Pappakostos made a statement that people are looking for Dunkin Donuts now that it's at Mobil. If the sign is blocked, people are going to have a harder time finding it.

Mr. Pappakostos said his sign is proposed to go a good 100' away from Mobil. Currently Fletcher's is 30' away from his sign and seven times the size and his sign is blocked by Fletcher's. This is a hardship to him.

Mr. Jenkins said that Mr. Pappakostos is asking for two signs and he still thinks that he will be blocking the Mobil sign.

Mrs. Douglas asked if the proposed sign is 20' tall.

Mr. Pappakostos said "yes."

Mrs. Douglas asked how tall the existing Mobil sign is.

Mr. Pappakostos said it is close or maybe just a little lower. He said they are asking for a 50 square foot sign, but the sign will be over their driveway. Trucks have to go underneath it.

Mr. Jenkins said his concern is that they would be causing more traffic and more of a hazard by granting a second sign where it is proposed because he would be blocking the Mobil sign and when people actually saw the Mobil sign they would be right on top of the entrance or beyond it.

Mr. Pappakostos said right now their sign is 250' away from their entrance.

Mr. Jenkins said they also have a roof sign, which most businesses don't have.

Mr. Pappakostos said they are going to eliminate the roof sign because he feels it is a hazard when you are traveling down the road at 45 MPH and have to take your eyes off the road to look for a sign.

Mr. Anderson asked if Mr. Pappakostos had considered a directional sign rather than another ground sign. He said if you look at the Mobil Station there is a small sign that says "Enter Here". There are similar signs in the area that point out the direction to their business. He said he has also been at the site and it is his belief that he would create the same hardship to the next person down the line as he is claiming the Fletcher sign is doing to him right now. He said he could see the current sign Charman's has from 300' - 400' back at around Capitol Street or 525 Amherst Street. He agrees that coming easterly on Amherst Street there is an issue, but no matter where the sign is you're already going to be past the entrance to the restaurant. He believes a directional sign would be better.

Mr. Pappakostos said they are changing the name of the restaurant and people are going to have to know where they are. He said he feels strongly about this. He said Fletcher's blocks their current sign - you might get a quick glance and then it's gone. You have to be from the area and you have to know that you have to pay attention to see the sign or else you will go by it.

Mr. Jenkins said he couldn't think of any restaurant on Amherst Street that has two ground signs.

Mr. Pappakostos said the other ground sign for Charman's will be removed.

Mr. Jenkins said he felt the Board should table this to give all the members a chance to go out and study the situation. He said he feels that if the Board grants the sign where he is proposing it that they are going to create a hardship for the Mobil Station. He said Charman's has been in business for many years and the sign has obviously worked because it has been a thriving business during this time. He said he understands this is going to be a new business and that they have to establish the fact that they are in this location. Directional signs at the entrance might be helpful to them.

Mr. Pappakostos said when Mr. Jenkins mentioned that Charman's has been doing a thriving business, they are looking back at when there was nothing else there. In the last three years, the business had declined by more than 40%.

Mr. Jenkins said that the Mobil Station has a business that people are looking for as well and by putting the sign where he is proposing it, they will be blocking Mobil's sign. He said he thought the Board would need to review the site.

Mr. Pappakostos agreed to having the case tabled.

MOTION by Mr. Duffy to table Case #3, 539 Amherst Street on the sign issue to give the Board time to review the site and perhaps come up with something that might work better.

SECONDED by Mr. Berthiaume.

MOTION CARRIED UNANIMOUSLY

Mr. Jenkins said they will take further testimony when this comes back to the Board so Mr. Pappakostos might want to take measurements so he has more information available and he might want to work with the sign company to see if they have any ideas as well.

4. BCIA New England Holdings, LLC (Owner) Holden Health

Career Training Center, Inc. (Applicant) 472 Amherst Street (Sheet H Lot 136) requesting use variance to allow a 3,000 square foot interior expansion for an existing for-profit school for nursing. AI Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas

Jay Coffey

Donald Berthiaume

Atty. Gerald Prunier, 20 Trafalgar Square, Nashua. Atty.

Prunier said this applicant was before the Board in April 2004 for the use of 6,000 square feet for a school. A non-profit school is allowed in this zone, but this school is a for-profit school. He asked that the minutes of that meeting be incorporated into the minutes of tonight's meeting.

He said there are two types of nursing being taught. One is for a licensed practical nurse and the other is for a nurse's assistant. There is a big demand for health personnel in the area and the school is asking for another 3,000 square feet in the same building for classrooms and some offices.

He said there is more than adequate parking. The plan was brought before the Planning Board last Thursday night so that the staff could administratively approve the site plan instead of having to go through a full Planning Board meeting. The Planning Board gave the staff that authority, subject to the Zoning Board's decision of granting the variance.

He said all the same conditions from April 2004 still exist.

Mr. Jenkins asked what the 3,000 square feet is currently being used as.

Atty. Prunier said it isn't being used. It had been used as office space in the past. It has been empty for some time.

Mr. Duffy asked what other uses are in the building.

Atty. Prunier said office space.

Mr. Jenkins asked the total square footage of the building.

Atty. Prunier said 99,000+ square feet.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Berthiaume to grant the use variances to allow 3,000 square feet interior expansion for an existing for-profit school for nursing at 472 Amherst Street. The zoning restriction as applied interferes with the landowner's reasonable use of the property. This is an expansion of an existing use. No fair and substantial relationship exists between the general purposes of the ordinance and the specific restriction on the property. The variance will not injure the public or private rights of others. It is within the spirit and intent of the ordinance. It will not adversely affect the property values of the surrounding property values. It is not contrary to the public interest. Substantial justice will be served. All the previous situations on the property that were present when the use variance was originally granted have not been significantly changed.

SECONDED by Mr. Duffy.

MOTION CARRIED UNANIMOUSLY

**5. 300 Main Street Realty LLC (Owner) 300 Main Street
(Sheet 17 Lots 9, 13, 20, 21 & 24; Sheet 16 Lots 30 & 33)**

requesting special exception to allow a fast food restaurant with drive-thru. GB/MU Zone.

Voting on This Case:

Tom Jenkins
Sean Duffy
Susan Douglas
Jay Coffey
Don Berthiaume

Atty. Gerald Prunier, 20 Trafalgar Square, Nashua. Atty. Prunier said this proposal is pretty much bringing to a close the development of the Globe Plaza/Simoneau Plaza/300 Main Street Marketplace.

He said Kentucky Fried Chicken is located in the strip center in the back. He pointed out its location on the displayed plan. The owner wishes to redo this strip center similar to what has been done with the rest of the shopping center. They want to move Kentucky Fried Chicken to a freestanding building close to Main Street. The building will be red brick to conform to what is existing at the shopping center. It will have a tower on the corners so it will comply with the towers the planning staff has requested.

He pointed out the drive-thru for the new facility. He said there was a drive-thru there before when Burger King was here and before that "Rally's". That building was removed.

He said this is within the spirit of the ordinance in trying to re-do the whole center. This is the last leg, except for the "Bradlees" building. They still haven't found a tenant for that particular building.

He said this will add to the character of the neighborhood. When the building (the old building where KFC is currently located) is finished and tied in with Dunkin Donuts they will see a uniformity of the architecture in that area.

Mr. Jenkins asked if the parking space requirement would be met.

Atty. Prunier said this would be met.

Mr. Jenkins asked if the drive-thru is located on the east side of the building.

Atty. Prunier agreed that it is.

Mr. Jenkins asked if you have to walk through the drive-thru to get to the building.

Atty. Prunier said "yes." He said the Planning Staff have seen the plan and they are happy with its location and the architecture. He said the Planning Staff feels that eventually there will be more people walking and using the front part of Main Street. The intent is to try to be pedestrian friendly. This is what they are trying to do with the buildings on Main Street.

Mr. Jenkins said if he recalls correctly, the Board was told that when the Burger King facility was moving and the old building was going to be demolished, that there was nothing that was going to go back into this area.

Atty. Prunier said there was always an intent to use this space right from the beginning.

Mr. Duffy asked if this is a larger footprint than the original Burger King Restaurant that was on this site.

Atty. Prunier said it is bigger. He said he believes it is at least 100% bigger.

Mr. Duffy asked if it is on the same lot.

Atty. Prunier said it is on the same lot. He said it is a separate lot. Bank of New Hampshire is also on a separate lot. There are a few of those that were done a long time ago.

Mr. Duffy asked if there would be a problem with a special condition or stipulation that there be no additional curb cuts onto Main Street.

Atty. Prunier said there's no way they're going to get another curb cut because of the location of the lot. He said he doesn't have a problem with this stipulation.

Mr. Duffy referred back to what Mr. Jenkins asked about the old Burger King Restaurant. He said his recollection is that the Board asked that the building come down pretty quickly, but his recollection at that time was that it would be replaced and that there wouldn't be a drive-thru - that it would be used for additional potential growth.

Atty. Prunier said he does not believe they ever represented that there wouldn't be a drive-thru. The intent was all along that if they could move Burger King out of that location the intent was to move Kentucky Fried Chicken in and allow them to do renovations to the back part of the center.

Mr. Jenkins asked Atty. Prunier to address pedestrian safety. He said he realizes that this is in a mall and that malls aren't pedestrian friendly.

Atty. Prunier said the building is going to be right up against the sidewalk so anybody can walk right into the facility from the sidewalk. They have gone over this plan with the Planning Staff.

Mrs. Douglas asked how many sit down spaces there will be in the restaurant.

Atty. Prunier said 60 seats.

Mr. Carrier said the current KFC doesn't have a drive-thru and the Dunkin Donuts doesn't have a drive-thru. He asked if the location of the building would be better if it didn't have a drive-thru.

Atty. Prunier said the new KFC's all have drive-thrus.

There was some further discussion, but basically the remainder of both tapes (Side 1) is either unintelligible or inaudible.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Coffey to grant the special exception to allow a fast food restaurant with drive-thru at 300 Main Street. It is listed in the Table of Uses, Section 16-227 (Retail Services , #14. 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. There are surrounding businesses of similar nature located in the same plaza.

SECONDED by Mr. Berthiaume.

MOTION CARRIED 4-1, Mrs. Douglas opposed.

7. Alvin R. & Peter M. Bonnette Rev. Trust and Memorial Realty, LLC (Owners) Realm Realty (Applicant) 275, 277-279, 281 & 283 Main Street (Sheet 97 Lots 21, 23, 118 & 125) requesting the following: 1) use variance to allow a retail drug store with drive-thru; and 2) variance to encroach into a buffer between a commercial zone and a residential zone, 25 feet required - 0 feet proposed. GB/MU & RC Zones.

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas
Jay Coffey
Donald Berthiaume

Atty. Gerald Prunier. Atty. Prunier said the proposal for the above properties is for a Walgreen's on the corner of Otterson & Main Streets. There is an existing building that was used by Nashua Auto and is now used for motorcycle sales and repair. He said it is located in a split zone - RC & GB/MU.

He said the proposal is to have an entrance and an exit in two places on Otterson Street and with an entrance only coming off of Main Street. There is sufficient parking.

He said it will be a red brick building and will be moved back about 10' from Main Street, mainly because the Traffic Department wanted to pick up more site distance on Main Street. The Planning Staff did not object to this request. There will be a sidewalk in front of the site.

Atty. Prunier said the building will be over 28' high. The corners of the building will be similar to the buildings at 300 Market Place to tie in the downtown relationship.

He handed out a letter from Larry Richards to the Board. The letter states that in his opinion there would be no diminution in the property values in the area.

He said this use is within the spirit and intent of the ordinance. It will be the third pharmacy on Main Street. There already is a CVS and a Brooks. There was another pharmacy, Whitney's, but that closed.

He said it's in the public interest to be able to serve the public with the services offered by Walgreen's.

He said the case meets the "Simplex" criteria.

Mr. Jenkins said there is another pharmacy on Main Street - Rice's and Wingate's. Shaw's has a big pharmacy. Hitchcock

Clinic and Southern New Hampshire also have pharmacies.

He said this is on a dangerous corner.

Atty. Prunier said the Traffic Department has asked that they take the building back a few feet so they would have more visibility. At the present time the existing building comes right up to the sidewalk. By pushing the building back they will be taking care of that problem.

Mr. Jenkins asked the width of the street.

Atty. Prunier said he believes it is 40'.

Mr. Jenkins said there is a concern about the two proposed entrances on Otterson Street and the proposed entrance on Elm Street. Also, people will be exiting Otterson Street onto Main Street into a very heavily traveled area of Main Street. It takes 5-10 minutes to pull out from this location safely. If a person is going to go to this Walgreen's they would be going down Otterson Street and either turning left onto Elm Street or beside the Jr. High School. He said there are concerns about the traffic in front of/beside the Jr. High School as well as the traffic on Main Street. Otterson Street is very narrow.

Atty. Prunier said a complete traffic study was done and reviewed by the City Traffic Engineer. They have made some recommendations and those recommendations have been incorporated into the plan for the site.

Mr. Jenkins said they have a letter from Susan Klasen of the Traffic Department dated February 2, 2005 that does not support the access on or off Elm Street and that they could not provide comments on the access on Otterson Street until a final traffic study has been submitted and reviewed.

Atty. Prunier said he has not seen this. He said he has been told the traffic report reached the Traffic Department on February 3, 2005, so the communication was written before they received the traffic study.

He suggested that if the Board is concerned with the traffic that the plan be tabled until the next meeting so there is time to get a reply from the Traffic Department after they have reviewed the traffic report.

Mr. Jenkins said he is concerned about the traffic on Main Street and on Otterson Street. He is concerned about the traffic in front of the Jr. High School.

Mr. Berthiaume asked if there is parking on both sides of Otterson Street.

Atty. Prunier said there's not supposed to be parking on both sides of Otterson Street. If people are parking there, they are parking illegally.

Mr. Jenkins said the Master Plan shows a two-story building.

Atty. Prunier said the building appears to be a two-story building. The height is 28'. He said the Master Plan is only a suggestion, it is not law.

Mr. Jenkins asked Atty. Prunier to talk about the drive-thru.

Atty. Prunier said the entrance will be from Main Street. It is not an exit. He said they will be eliminating three driveways from the other lots.

Mr. Coffey asked if there will be a left-hand restriction for vehicles coming from South Main Street.

Atty. Prunier said "no." He said there has been some talk in the City about making a divided line in the middle of Main Street, although it is not proposed at the present time.

Mr. Duffy said he feels that this is a self-created hardship by putting the lots together.

Atty. Prunier said the "Simplex" case talks about reasonable use.

Mr. Duffy said he looks at this as a redevelopment. It's a significant change in the structure of several different lots and uses that are pre-existing. He said the "Simplex" lot was an empty lot.

He asked if the parking on the right hand side coming down the driveway is all to be parking to the north and rear of Walgreen's. He said he would like to see more open space. He believes this facility would receive a lot of walk-up traffic from Main Street and from the Jr. High School.

Atty. Prunier referred to the plan and pointed out the parking. He said if they didn't have all this parking they would not meet the requirements in the zoning ordinance.

Mr. Duffy said that in the Downtown Master Plan there are some aesthetic suggestions that are not law, but it was passed and discussed by the Aldermen and by a lot of the business owners and citizens in the area. He said they are supposed to connect to this as much as possible.

Atty. Prunier said this plan is trying to meet the new requirements as best as possible. He said it calls for retail on the first floor and offices or multi-residential above that. It's the intent to have retail on the first floor.

Mr. Jenkins said the size of the retail at 14,425 square feet is massive for Main Street. The required parking spaces are substantial and they have to get into the residential zone. He said this is one of his major concerns.

Atty. Prunier said the existing building is encroaching into the residential zone.

Mr. Jenkins said if they are going to change the use they want to make it a better use. He said it seems like they will be putting more traffic and more pedestrians onto Otterson Street. Otterson Street is narrow and turns into Main Street. It also accesses into Elm Street where they have a Jr. High School.

This is a major concern.

Atty. Prunier said they will be discussing this with the City Traffic Engineer and have that report at the next Zoning Board Meeting.

Mr. Duffy said there are some photos that show different Walgreen's Pharmacies. He said there is one that looks like it has a second floor. He said he wasn't sure if they were used or not.

Atty. Prunier said Walgreen's is usually not in the landlord business. He said they may find that Walgreen's is on the first floor of a building, but they are leasing.

Mr. Jenkins asked if this proposed pharmacy is a 24-hour pharmacy with a 24-hour drive-thru.

Atty. Prunier said "yes."

The Board discussed whether the other pharmacies in Nashua were operating 24-hours.

Mr. Currier said there is a pedestrian crosswalk right at Otterson & Main Streets. He said you will have people trying to cross and people trying to make their turns either into or out of Otterson Street. He said he questioned having a crosswalk there in the first place, but adding more traffic to it is a challenge. He suggested a left turn lane or have the crosswalk moved so that it's not adjacent to the intersection.

Atty. Prunier said the City asked for a crosswalk across Main Street when the Burger King plan was proposed so they could walk right across the street to Burger King and not have it at an intersection.

Mr. Berthiaume made some comments, but they were unintelligible.

MOTION by Mr. Duffy to table the case for Walgreen's until 3/14/05 with the applicant's agreement for further information

on the traffic study.

Mr. Jenkins apologized to Ald. Plamondon and others who were present for this case tonight. He said this has been done so that the applicant can come back and testify with any new information. He didn't want to go into rebuttal testimony at this point. He said they will hear both sides on 3/14/05 when it comes back to the Board.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

6. Mary Ann Picard (Owner) 189 Kinsley Street (Sheet 122 Lot 15) requesting the following variances: Lot 15: 1) minimum parking requirements, 10 spaces proposed, 19 spaces required; 2) minimum lot width, 61 feet proposed, 75 feet required; 3) maximum building area, 20% permitted, 21% proposed; 4) to allow parking in front yard setback, 25 feet required, 0 feet proposed; and 5) minimum open space, 50% required, 38% proposed; also, Proposed New Lot: 6) minimum lot width, 62 feet proposed, 90 feet required; 7) minimum lot area, 7,259 square feet proposed, 10,500 square feet required; 8) minimum lot frontage, 62 feet proposed, 75 feet required; and 9) to encroach 6 feet into the 10 foot required right side yard setback - all requests to subdivide 1 lot into 2 lots to construct a two-family structure on the new lot. RA Zone.

Voting on This Case:

Sean Duffy

Susan Douglas

Jay Coffey

Donald Berthiaume

Jack Currier

Mr. Jenkins recused.

Mr. Duffy said before this case is heard the Board will discuss the advertising that was done on this case.

Mr. Falk said the advertising lists the nine dimensional variances in order to subdivide one lot into two lots. A two-family dwelling would be constructed on the new lot. This is located in a "RA" Zone and a two-family dwelling is only allowed as a special exception. The ad does state in order to construct a two-family dwelling, but it doesn't say "special exception" to construct a two-family.

Mrs. Douglas said the applicant could proceed and maybe get approval with the understanding that it would be only for a single-family and then come back later for a two-family.

Atty. Prunier said he thinks it would be better if they just did this one time.

The Board felt that this would be a lot cleaner because they don't want to have any procedural errors.

Mr. Falk said this will have to be re-advertised.

Mr. Duffy apologized to those people who were in the audience and waited for this case to be heard. He said this case will be heard as the second case on March 14, 2005. The Walgreen's case will be heard first.

MOTION by Mr. Berthiaume to table Mary Ann Picard in order to re-advertise for the March 14, 2005 meeting so that the special exception can be included in the advertisement.

SECONDED by Mr. Duffy.

MOTION CARRIED UNANIMOUSLY

Mr. Duffy suspended the rules. He said if anyone has any procedural questions they could ask them now. He said they can't talk about the case itself.

Mr. Falk said that the ad will be the same as it is now, except it will have the additional wording "special exception". It

will be advertised for March 14, 2005. They cannot hear testimony for or against the case.

Someone in the audience had a question - unintelligible.

Mrs. Douglas said when there is a procedural error, which is what has happened because the special exception was not advertised specifically, it would be grounds for any decision the Board might make either way to be overturned and then it would have to be reheard again. She said it is a cleaner record for the Board to have everything procedurally correct to start with so that when they make their decision they are making it based on all the information and they will not be subjected to criticism for a procedural error as well.

Someone else asked a question from the audience - again unintelligible.

Mr. Duffy said that they cannot discuss these cases ahead of time. He said even among those who are experts, there are oversights. It happens every 20 or 90 cases. He said the Board can't discuss this with anyone ahead of time. They can't do it until the case is called, otherwise they are doing something wrong.

Mr. Falk said if they know before the meeting starts that someone is withdrawing or postponing they will announce it ahead of time before the meeting starts. Sometimes they have a full agenda and somebody could be the tenth case, come to the podium and decide at the last minute that they want the case postponed because they want to look at some issue in greater detail.

Mr. Duffy said each of the members of the audience present for this case who might be opposed to this request may write a short letter or E Mail to the City and make their feelings known. They can list their reasons why or that they are just objecting to it. He said these will be read into the record.

Dianne Lavoie, 20 Liberty Street. Mrs. Lavoie said she is a direct abutter to the property. She said she just wants the

Board to know that people took the time to be here for the case.

She was heard to ask if the case might be held on another date since she might be away on March 14, 2005.

Mr. Duffy said the applicant has the general control of the application. People who are either opposed or in favor of a request can give testimony. If a person feels comfortable doing it on tape, they can get it transcribed if needed. Most people like to come so they can hear the testimony and rebut any testimony that is given.

Someone asked what could be done and whom Mrs. Lavoie could talk to. She said Mrs. Lavoie is a direct abutter and it's important for her to be present.

Mr. Duffy said she has a right to write a letter ahead of time or review the testimony up to thirty days after a case has been heard and a motion made and voted on. He said anybody can agree or disagree, can review the tape, review the television tape, review the minutes and if a rehearing is requested and the arguments are strong enough or there are some points of law that the requestor feels were not covered, you are allowed to do that.

This individual asked if Mrs. Lavoie wanted to change the date of the meeting now how she would do it.

Mr. Duffy said he doesn't believe there is any way to do this for somebody who is not the applicant.

Mr. Falk said there is no avenue for an abutter to do this. The person who owns the property and is paying taxes on the property and is spending thousands of dollars to get a site plan done is the entity who can do this. It is their request. The abutters are notified as to when the meeting will be held. It is up to the abutter to send a letter or come to the meeting.

Mr. Duffy said they can also be represented by counsel. They also have the choice afterwards if they feel that something was not done correctly.

Regional Impact

Mr. Carrier said he believes there is regional impact with the Wal-Mart case because the tributary that runs behind the site runs into the water supply for Pennichuck, which supplies water to other towns besides Nashua.

Mr. Duffy said he will not be present for the next meeting as he will be away on a cruise. This is the meeting where Wal-Mart is to be heard. Mr. Carrier said he also will not be present as he will be away as well.

MINUTES

None

ADJOURNMENT

Mr. Jenkins called the meeting closed at 8:20PM.

Susan Douglas
Clerk

lt
Taped