

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

A public hearing of the Zoning Board of Adjustment was held on Tuesday, March 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
Jay Coffey
Jack Currier
Don Berthiaume
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 that 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.

Postponed to 4/12/05

- 1. Jeffrey M. Hirsch (Owner) 550 Amherst Street (Sheet H Lots 181, 184 & 646) requesting the following: 1) special exception to allow site grading within the critical wetland buffer of Round Pond; and**

2) variance to allow light trespass to exceed 0.2 footcandles at internal property boundary lines. GB Zone.

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2. 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 the following variances: 2) to encroach into a buffer between a commercial zone and a residential zone, 25 feet required - 0 feet proposed, 3) to exceed maximum number of wall signs, 3 permitted - 11 requested, 4) to exceed maximum wall sign area, 100 square feet allowed, 304 square feet requested, and 5) to allow an electronic changing sign to display three lines of text with messages other than display of current time and temperature - one line of text allowed. GB/MU & RC Zones.

Voting On This Case:

- Tom Jenkins
- Sean Duffy
- Jay Coffey
- Don Berthiaume
- Jack Currier

Atty. Gerald Prunier, 20 Trafalgar Square. Atty. Prunier said this property is located at the corner of Main Street and West Otterson Street. He referred the Board to the plan and the building that was used as Nashua Auto for a long period of time before they built across the street. It has been used for the past few years for a motorcycle company repair. He pointed out an office building, an apartment building with two retail uses in the front, and another apartment building with two units. He said the proposal is to replace this with a 14,000+ Walgreen's.

He said the development would have an entrance off of Main Street to go through the drive-thru window. It would also have an aisle to pass by and come through if they wanted to get out of the aisle and go into the store or pass by to leave.

He said since the plan the Board saw at the last meeting they have

changed the parking that was up against the wall. This has been removed. Landscaping has been put in and a privacy fence has been added. He showed the location of the parking. The Elm Street entrance has been eliminated as well.

He said when the plan was tabled by the Board there was a question about whether or not a traffic signal was going to be required by the City of Nashua. It has been determined that a traffic signal will be necessary and Walgreen's will install it at the intersection (referring to the plan).

He said there was also a question as to the architectural design of the building. The Master Plan asks that buildings that are built on Main Street have at least the appearance of being a two-story (or more) building. He said they have a building now that gives the appearance of a two-story building. This has been reviewed by the Planning Staff and are acceptable to them.

Atty. Prunier said they have a problem in the development of this parcel because there is more than one zoning district involved - GB & RC. He pointed out the location of the line on the plan. He said the use is permitted in the GB Zone, but not in the RC Zone. He said they have tried to keep most of the activity toward the Main Street side. They are providing sidewalks for easy entrance.

He said they feel this is a reasonable use of the property. They are trying to develop property located within two zoning districts. The land in question was close to almost 25,000 square feet of building and they are replacing it with about half. This will open up the area and provide more open space. This development will replace the "motorcycle building" that is right up against West Otterson Street/Main Street. This has always been a problem because of how narrow Otterson Street is. People park there even if there are signs stating not to. He said they will be providing parking spaces on site so there should be no problem with parking for their business.

He said they have tried to conform to the Master Plan and the plan has been reviewed by the Planning Staff. They have made some comments and the applicant has taken those comments and implemented them.

He said they have put most of the activity into the General Business area, leaving the residential zone for the lesser activity, such as the parking area. He showed the location of the privacy fence. He said they are heavily landscaping the area in the residential area.

He said they meet the buffer zone where the parking meets the residential area. He pointed out the area where they do not. He said if they were required to erect a fence in the location it would interfere with the development of the parcel.

He said there is a request for eleven signs and they have reduced this down to seven. They had also requested a total of 300 square feet and they have reduced this to 204 square feet. He said this is very similar to what the Board has seen on other buildings such as CVS, Citizens Bank, etc.

He said they are requesting an electronic monument sign that would have three lines of text where only one line is permitted. He showed the proposed location of this sign. It will meet the requirements of the City's zoning ordinance.

Mr. Jenkins said this revised plan is much better. It is much better than the current building because that building is more than 50% into the residential zone. Also, there is no buffer at all between the residential use and the business use at the present time.

He said the reduction in the signage is good, but he does have a problem with the electronic message center. He said they denied one at CVS. Brooks Pharmacy doesn't have one. They like to keep a nice clean image on Main Street. If they start putting flashing signs up it deters from visibility and safety. The compromise would be a message center with three lines of text, but eliminating the electronic part of it.

Atty. Prunier said that if this is a condition that the Board places on any approval, it is a condition that his client will have to abide by.

Mr. Berthiaume asked if Otterson Street would be widened at all.

Atty. Prunier said "no." He said they are providing land along their border so that if the City ever does want to widen Otterson Street, the land will be there and it won't interfere with any of the buildings or their parking.

Mr. Jenkins asked if the applicant has received an answer from Department of Public Works specifying anything other than the indication that they want a traffic light.

Atty. Prunier said it's a traffic light. It is subject to whatever the City Engineer wants.

Mr. Currier asked the results of the traffic study. There is talk about a "build" or "no build" comparison. He said he just received the nine-page report this evening.

Atty. Prunier said the City Engineer wanted a further measurement of movements along Main Street at various times. There has to be a certain amount of movements before they need a warrant. This is based upon the number of vehicles that use the intersection. Based upon the projected traffic, it meets the warrant.

Mr. Currier asked what happens if the traffic light didn't solve the problem. He said the worst part of Main Street is between Simoneau Plaza and the hospital and now they are going to put in another light. There is no indication that it will be synchronized.

Atty. Prunier said the City has met with his client's traffic consultants. They have stated they want the traffic light and they have agreed to put the light in. It's based on what they expect the traffic to be in the future, not tomorrow.

Mr. Jenkins said he thinks there is a benefit to having a traffic light here. There are kids getting out of Elm Street Jr. High and they walk up Otterson Street and cross over Main Street where there is no traffic light right now. The light will give them a chance to cross the street. Also, it will help people who are trying to make a left hand turn from Otterson Street onto Main Street. It's up to Public Works to synchronize the traffic lights. He indicated that even though the Zoning Board places some stipulations on the granting of the request, this still has to go to the Planning Board.

Atty. Prunier said usually the City sequences the lights to where they feel they want the break in traffic. They may need it more towards the hospital, for example.

Mr. Duffy said he thinks that in the old Ford building there is a little bit more retail so there is a little bit more pedestrian traffic. If there's a light here it will slow traffic coming down as well as traffic trying to turn left. It is pretty hard to get across Main Street at this location because of the volume of traffic.

Mr. Currier said the Master Plan talks about not having retail in this area. He asked if they talked to the Planning Staff about the facade of the building.

Atty. Prunier said retail uses are allowed in the GB Zone. He pointed out the zoning line and said if they didn't have to go into the residential zone they wouldn't be in front of the Zoning Board for the use.

There was discussion that the Downtown Master Plan talked about not having retail/office space between the hospital and Simoneau Plaza.

He said he thought that on the Mobil Station site there was a restaurant with office space above. He said that was approved recently.

Mr. Currier said there is a bit of conflict between the Master Plan, which talks against the use, and the zoning ordinance that allows the use.

Mr. Jenkins said he thinks the proposed plan helps to meet the Master Plan and also corrects some of the issues that currently exist. If the current building was to be renovated in its current footprints, not demolished, they wouldn't be doing downtown, Otterson Street, or Elm Street any justice whatsoever.

Atty. Prunier said the red brick facade will meet all the other new buildings that have gone into the area so it will be harmonious as far as the coloring, etc. on Main Street.

Mr. Berthiaume referred to the traffic report. He said if he is

reading it correctly, Figure 12, 13, 14 & 15 all show no traffic taking a right of the first exit onto Otterson Street. All the cars coming out are going onto Main Street.

There was some discussion about this, with Atty. Prunier indicating he wasn't sure what it meant.

Earl Blatchford, Hayner/Swanson. Mr. Blatchford said he is not the traffic engineer. He asked if the right-turning movements are higher for the other driveway. He said the logic is that if someone is going to be heading up Otterson Street they are going to come out the other driveway (he referred to the driveway on the plan) because it's central to the site and it's close to the intersection with Elm Street.

There was some discussion about how people might exit the site and which direction they would go when they exited the site.

Mr. Berthiaume asked if the large lot on Otterson Street is all one lot.

Atty. Prunier said it is one lot and it is in a split zone.

Mr. Duffy addressed electronic signs in general as to the animation, flashing, etc. He said it is a compliance issue.

Atty. Prunier said if the Board grants the electronic sign they are willing to have a stipulation that there be no animation.

Mr. Duffy said this is in the ordinance. He said it creates a safety issue with the traffic.

Atty. Prunier said the signage would just have letters indicating what the special is and not to show firecrackers blowing up and other items of that nature.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

Ald. Mark Plamondon, Ald. Ward 4. Ald. Plamondon said the architects and developers appear to be doing the best they can to comply with the Downtown Master Plan, particularly after their first presentation to the Zoning Board. It looks a lot better than the earlier plans that he has seen.

He said having a traffic light on Otterson Street is going to help. The City is looking into opening East Otterson Street to two-way traffic, which will help this business and others in this area.

He still has a concern regarding the increased vehicles on Elm Street, particularly coming off of Kinsley Street. He said he was out there a couple of days periodically watching the traffic. He said in excess of 90% of the vehicles turn right off of Kinsley Street and go down Elm Street and either take Otterson Street or continue down and take a left on Lake Street. Basically, it's a shortcut road. This business will increase those numbers, but what's worse is the speeding vehicles. He said this is one of the most densely populated neighborhoods in the City, particularly along the intersection of Kinsley & Elm Streets. There are about 65 residential units just on Elm Street between Kinsley & Otterson Streets.

Ald. Plamondon said this is a better working plan, but he foresees an expense to the City coming up to reverse the traffic flow, which currently is southerly one-way on Elm to a northerly on Elm. The expense would be modifying the traffic signal at Kinsley & Elm Street. That would cost approximately \$50,000 - \$75,000.

He said the other concern he has is Elm Street Middle School - the largest in the State. There is a high population of walking children. In the evening it is also the primary auditorium site. It's a busy location. He said he would have liked to have seen some kind of bump out on Elm Street in conjunction with the crosswalk to try to help slow vehicles down, thus making pedestrian crossing safer.

Mr. Jenkins said he had indicated that the plan that the applicant has submitted will better fit the City a lot better than renovating the footprint of the current building.

Ald. Plamondon said this also helps alleviate the current problem

on Otterson Street. They had to eliminate parking on West Otterson on the north side. The structure is actually in the right-of-way. They've had a lot of problems with the prior owner.

Mr. Jenkins said there is a letter from Stephanie Bouchard in opposition to the proposed project.

Bob Jungkman, 6 Lutheran Drive. Mr. Jungkman owns property at 99 Elm Street, across from the proposed site. He pointed out the location of his property on the plan. He said the problem he has with this plan is that it's a 24-hour business. There's going to be noise and a lot of light infiltration. Other than that he really doesn't have a problem.

Mr. Jenkins asked if this is an apartment building.

Mr. Jungkman said it is a three-family.

Mr. Jenkins said he is familiar with the property. He said he thinks the applicant has addressed some of the concerns. He said the Board has to look at the over-all picture - the benefit to the general public.

Mr. Jungkman questioned the need for a 24-hour facility.

Mr. Jenkins said most drug stores are open 24-hours. He pointed out the Brooks Pharmacy and the CVS Pharmacy that are both located in this area. He said he didn't know about others in the City as he just looked at the ones on Main Street.

Mr. Jungkman said as far as he knows there aren't any others in the City that are open for 24 hours. He said he hasn't really heard anything about hardship.

Mr. Jenkins said the hardship for this property is the fact that the site has more than one zone.

Mr. Jungkman said the owner is utilizing the property. There are businesses already operating at the site and there is an apartment building. The hardship is that he isn't making enough money from the property.

Mr. Jenkins said that isn't the hardship. The hardship is whether the use is a reasonable one. The Board looks to see if it's for the betterment of the public as well as the reasonable use and hardship. Also, this building's footprint, as it exists today, sits on the street without any setback whatsoever. If it were to be renovated as it currently exists with that footprint, it would not be a benefit to the general public.

He said the lighting issue will be taken at the Planning Board meeting. He said the lighting has to remain on their property. They can't spill out beyond their own property.

SPEAKING IN FAVOR - REBUTTAL

Atty. Prunier said some of the problems with traffic are not being caused by the pharmacy. The reason they are providing the traffic light is to address some of the traffic concerns that have been raised because of the proposed project.

SPEAKING IN OPPOSITION - REBUTTAL

None

Mr. Coffey said that he thinks the changes they have made on the proposal make it a better site overall.

Mr. Currier said with reference to the sign, he is not in favor of the three lines of text.

He said he still had some lingering concerns that they didn't get answers to Mr. Berthiaume's questions. Although Atty. Prunier said they had a discussion he would think or propose a stipulation about the traffic report is accepted and approved by the Nashua Public Works Division.

Mr. Jenkins said this is a stipulation that he feels absolutely should be added.

Mr. Currier said they might look at it and say they disagree with it and the Board doesn't want to put them in the position of saying the Zoning Board approved it so they have to accept it.

Mr. Jenkins concurred. He said all traffic flow, lights, etc. be approved by the Dept. of Public Works.

Mr. Anderson said that the applicant has addressed nearly all the concerns the Board had at the last meeting, other than the lighted sign, which he did not think matched the rest of the Main Street area.

Mr. Berthiaume said the plan is a better plan overall. He said he still has concerns about the traffic. He said the signs have been reduced. As far as the electronic sign is concerned he has concerns about having three lines of text flashing on it.

Mr. Duffy said he didn't think the information presented tonight was compelling enough about the electronic messaging unit. He said the traffic concerns are more of a Planning Board and Dept. of Public Works issue. There are all sorts of creative things being done all over the State of New Hampshire in directing traffic in certain areas. He is hoping that someone takes a look at that because this is a significant walking pedestrian area. He believes this project will create more flow of pedestrians walking through the lot that don't go through right now.

MOTION by Mr. Duffy to grant the use variance to allow a retail drug store with a drive thru at 275, 277-279, 281 & 283 Main Street. The zoning ordinance regarding re-development, as it applies to this property is a reasonable use considering the unique setting of the property in its environment in both the GB and residential zones. At this time there is even more intensive and multiple uses on the property. It is within the spirit and intent of the ordinance. The applicant has significantly addressed the architectural requirements as suggested by the Master Plan. It should not adversely affect the property values of surrounding parcels. There is more significant open space with this proposed use than currently exists. It is not contrary to the public interest. The traffic study is study is comprehensive and the Planning Board and Dept. of Public Works will review that report. Substantial justice will be served. Special Condition: 1. The applicant shall provide traffic signaling as may be required by Dept. of Public Works and/or Planning Board.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

MOTION by Mr. Duffy to grant the variances to encroach into the buffer between a commercial zone and a residential zone, 25' required - 0' proposed and the variance for the maximum number of wall signs, 3 permitted - 7 requested, variance to exceed maximum wall sign area, 100 square feet allowed, 204 square feet requested at 275, 277 - 279, 281 & 283 Main Street. In allowing the re-development of this property the zoning ordinance impairs the applicant to reasonably consider a split-zoned parcel. The wall signage is reasonable considering the aesthetics and the abutting areas zoned GB and across the street. It is within the spirit and intent of the ordinance that reasonable use of the property and advertising be allowed. It should not adversely affect the property values of surrounding parcels. There are similar properties in the area. It should not be contrary to the public interest. Substantial justice is served. The applicant has use of the redevelopment of their property.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

MOTION by Mr. Duffy to deny the variance request to allow for an electronic changing sign to display three lines of text with messages other than to display the current time and temperature at 275, 277-279, 281 & 283 Main Street. The information presented tonight was not compelling to convince that reasonable use of the property in advertising was not available to the variances just granted.

Mr. Jenkins said if they are going to allow the three lines of text, which he believes is a reasonable request for that area, he doesn't think it should be electronic. He said the other locations on Main Street have three lines. Due to pedestrian/auto safety he doesn't feel the electronic messaging is necessary.

MOTION by Mr. Jenkins to permit three lines of text on a ground sign at 275, 277-279, 281 & 283 Main Street, but the sign cannot be an electronic messaging center. The reasons are for the fact that it would be distracting to drivers and pedestrians. It is a

heavily trafficked area.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

3. Mary Ann Picard (Owner) 189 Kinsley Street (Sheet 122 Lot 15) requesting the following variances to subdivide 1 lot into 2 lots: 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; 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; 9) to encroach 6 feet into the 10 foot required right side yard setback; and 10) special exception to construct a two-family structure on the new lot. RA Zone.

Voting on This Case:

Sean Duffy
Jay Coffey
Jack Currier
Jeffrey Anderson
Don Berthiaume

Mr. Jenkins recused - applicant is related to him by marriage.

Atty. Gerald Prunier, 20 Trafalgar Square. Atty. Prunier said his client owns this parcel located at the corner of Kinsley Street & Liberty Street. He referred the Board to the plan. He said at this time there is a pizza store that is pretty much delivery only. Next door is an apartment. He pointed out the garage as well. He said the garage is going to be torn down to allow for some parking.

He pointed out the vacant lot on the plan. He said the proposal is to construct a duplex. Lot #15 would have 7,500 square feet and the new lot will have 7,259 square feet after the subdivision.

He said there is a duplex located right next to it on the same side

of Kinsley Street. Next to that is an office building. All of this area have different business uses or multi-family dwellings.

He showed the Board a plan that showed some of the different addresses in the area - 200 Kinsley Street (a rental property), 21 Liberty Street (a two-family). He said there are variances that have been granted throughout the area. It shows that this area has changed over a period of time with multi-family being added to all the areas. He said what is being proposed is really not out of character with the area.

He said Lot #15 will have ten parking spaces, instead of the nineteen that are required. The pizza delivery service usually has about two employees and one delivery vehicle. There are five parking spaces out front and that is more than enough for this business. It's not a sit-down pizza restaurant. It's solely for pick up or delivery. As far as the two-family is concerned, adding the six spaces will more than help offset the pizza facility, even though they feel that they don't really need that many.

Referring to the lot with the pizza shop on it, he said the minimum lot width is 75'. They are only able to provide 61'. The maximum buildable area can't exceed 20% and they are asking for 21%, an excess of 1%. They are also asking for parking in the front yard setback. The minimum open space requirement is 50% and 38% is proposed.

He said the new lot also does not meet the width requirement. They are asking for 62'. The lot area is 7,259 square feet where 10,500 square feet is required. The lot frontage requirement is 75' and they are providing 62.04' He said they are also encroaching 6' into the 10' setback. They are also requesting a special exception as well because this is located in a RA Zone and it is needed in order to construct a two-family.

He passed around appraisals that were conducted on the property. This was done by Crafts Appraisal Associates and based on their observations of the neighborhood it was felt that the proposed two-family dwelling would not have an adverse affect on the surrounding property values. It also stated that it seemed a development of this nature appeared to be more in keeping with the trend in the neighborhood than other uses.

Atty. Prunier said the variance requests are all for dimensional requirements that are not met. He referred the Board to a case, Vigeant vs. Town of Hudson, which was decided on February 23, 2005. It's a clarification of the Boccia case as far as area variances are concerned and how the standards are met. He quoted: We hold that it is implicit under the first factor of the Boccia test that the proposed use must be reasonable. When an area variance is sought, the proposed project is presumed to be reasonable if it is a permitted use under the town's applicable zoning ordinance." He said this is a permitted use.

He quoted further: "If the use is allowed, an area variance may not be denied because the ZBA disagrees with the proposed use of the property." He said it also says: "The question of whether the property can be used differently from what the applicant has proposed is not material to your deliberations."

He said the variance for the dimensional requirements are reasonable in view of the property. They cannot add to the property. It is not out of character with the area. It will not have any adverse impact on surrounding properties

He said the special exception is listed in the Table of Uses. There is public water, sewer, and drainage. It will not interfere with the traffic or impede pedestrian safety. It is not out of character with the neighborhood.

Mr. Anderson said Atty. Prunier testified that the restaurant has no tables. There is a porch shown on the plan. He asked if this is a two-family apartment and Atty. Prunier said it is.

Mr. Anderson asked if the garage shown services that building and Atty. Prunier said it does.

Mr. Anderson said they are now proposing six parking spaces and Atty. Prunier agreed.

Mr. Anderson asked if the garage enters and exits on Liberty Street and Atty. Prunier agreed.

Mr. Anderson asked if the odd-shaped driveway shown on the plan

represents the parking spaces associated with the new duplex and if there is ample room for the cars to turn around so that they don't have to back out into Kinsley Street.

Atty. Prunier answered "yes" to both questions. He said there is a garage "under".

Mr. Berthiaume asked if the parking spaces on Kinsley Street are 9'X20'. He said it looked like half the parking spaces are in the right-of-way.

Atty. Prunier said he hasn't measured them so he doesn't know. He said they already exist in the area.

Mr. Berthiaume said the appraisal states that Kinsley Street is a heavily traveled local road. He said he has concerns about people backing out into a heavily traveled road.

Atty. Prunier said it's there today and it will be there tomorrow. He said they aren't proposing to change it.

Mr. Currier said on the data that was handed out, the addresses on Kinsley Street all rise in number. He said that some variances were cited and he wondered if these were properties that were toward the hospital.

Atty. Prunier showed the Board.

Mr. Currier asked where #17 & #21 Liberty Street were located and Atty. Prunier showed their location to the Board.

Mr. Currier asked if there is any differentiation between a sit-down and a take-out restaurant in the ordinance.

Atty. Prunier said the way he understands it, it is done by square footage. If there were tables they would have to know how many seats.

Mr. Duffy asked if the lots in the area around Kinsley Street and Liberty Street were subdivided for the uses that are there.

Atty. Prunier said they were not. He said the lots that are there

have existed for a long period of time.

Mr. Duffy said the applicant has the use of the property as one lot right now. He said his understanding of reading the Vigeant vs. Town of Hudson case was not on a lot that was being subdivided.

Atty. Prunier agreed. He said it was a lot that existed and there was some wetlands involvement.

Mr. Duffy said it wasn't a lot that would be created and thus create a hardship on the land or a reasonable use. He said the applicant has the use of the parcel and could have a pizza parlor and have apartments above it.

Atty. Prunier said the pizza place exists today.

Mr. Duffy said he understands this. He said it's one lot, but what he is hearing is that they are taking one lot and creating two lots and then saying that the new little lot, because of its dimensional requirements, is now reasonably to be used like all these other pieces of property.

Atty. Prunier said that's why he read part of the Vigeant case which talks about the question about whether the property can be used differently from what the applicant has proposed is not material to the case.

Mr. Duffy said he is differentiating the case that he is presenting. He said Atty. Prunier is saying that this lot is the same as the Vigeant case, but it's not. This is creating a lot that's non-conforming.

Atty. Prunier read from the case: "The ZBA focused upon whether an alternative use or fewer dwelling units was more suitable in the context of an area variance. However, the question whether the property can be used differently from what the applicant has proposed is not material".

Mr. Duffy said he disagreed that the court was applying that to a case like the one Atty. Prunier is presenting. He said it would be like taking every single house lot in the City of Nashua and saying they could create a non-conforming lot and ask for anywhere from

one to ten variances.

He said with respect to the special exception if the applicant had considered to use the lot for a multi-family unit with the existing use, either adding on or redeveloping the lot, instead of asking for a subdivision.

Atty. Prunier said he didn't know the answer to this, but what this would do would be to create a larger building in this area.

Mr. Currier asked if attached to the pizza store is a single or a two-family.

Atty. Prunier said he believes it is a single-family.

SPEAKING IN FAVOR

John Picard, 189 Kinsley Street. Mr. Picard said the lot is 2' short in the front to be a buildable lot. It's not just a small piece of property.

He said they could put a building attached to the pizza store, but what they are trying to do is have two parcels with parking in a garage and parking to the back of the duplex. The garage that is existing will be torn down and additional parking for the employees, who are husband and wife. They live in the house and work in the pizza shop and they have a driver. He thinks the plan is a much nicer looking plan.

Mr. Currier said that he heard Mr. Picard say they were only 2' shy.

Mr. Picard said they are 2' short in the front or 200 square feet short of being a single-family buildable lot.

Mr. Currier said he is looking at the 90' required - 62' proposed.

Mr. Picard said this is for a duplex. He said the house right next door to the left was a single-family home and they received a variance and converted to a two-family. That lot is a little smaller than the lot they are suggesting.

Mr. Currier asked when that house received their approval from the

Zoning Board.

Mr. Picard said about 4 ½ years ago. They added on to the building in the back. He said what they didn't accomplish is to have the parking "under" as this proposed structure will have.

Mr. Berthiaume asked if the parking in the front was going to stay.

Mr. Picard said there is parking right now on Kinsley Street in front of the proposed duplex. He said that will be removed and it will become grassed area so the parking is being reduced down to three spaces, including the handicapped space.

Mr. Duffy said this parcel gets a lot of traffic in the front of it. He asked if Mr. Picard felt it wasn't going to be too intense having another unit in that area given the traffic and all the parking of cars that are on the non driveway areas along some of the properties along Kinsley Street.

Mr. Picard said there really aren't a lot of parking issues here. This is a mom and pop operation that they operate together. As they need help they have a delivery driver. It's about 5'X5' in the place where you pick up. You can just barely stand in the place.

SPEAKING IN OPPOSITION OR WITH CONCERNS

Atty. Ernest Jette, 187 Main Street. Atty. Jette said he has been asked by Diane Lavoie to speak on her behalf. He said Ms. Lavoie owns and lives just north of the subject property on Liberty Street. (He thinks it's #20).

He said she feels the request is not in the public interest. He said it's an expansion of a grandfathered non-conforming use. Originally, back in the 20's, this was a neighborhood market. The property is non-conforming because of its commercial use and also encroaches onto the required setbacks on Kinsley & Liberty Streets. The lot itself is a large lot and it doesn't violate the area requirements or any of the other dimensional requirements.

He said the owner of the property wants to do is to take the lot and reduce the size, which now requires that they seek variances.

He said Ms. Lavoie is concerned about the moving of the parking from Kinsley Street around the corner to Liberty Street and have parking facing her house so that the parking will now head in and the headlights will shine right on her house. They will be asking for a waiver of the buffer that's required for the parking from the Planning Board.

Atty. Jette said Liberty Street does not have, except for this restaurant, any commercial properties. The proposal will bring the commercial use of the property around the corner to Liberty Street. The parking they are proposing will violate the setback requirement. Cars exiting from this parking lot will not have the proper site lines in order to safely exit onto Liberty Street. Liberty Street is used as an access from Kinsley Street over to West Hollis Street so there is traffic on the road so moving the parking over will add to that traffic.

He said they will be, in a sense, expanding this non-conforming use by intensifying the use of the lot with the additional parking on Liberty Street.

He said they are taking a lot that now meets the dimensional requirements and creating two lots, which do not meet the dimensional requirements. The special conditions of the property that require the variances are conditions that are being created by the applicant. He said in a case entitled Hill vs. Town of Chester the Supreme Court made a decision in 2001 that stated that a person who purchases land with the knowledge, actual or constructive, of the zoning restrictions which are in effect at the time of the purchase, is said to have created for himself whatever hardship restrictions entail. He said that is what's going on here. He said they are creating the hardship.

He said the cases that Atty. Prunier pointed to are cases that involve lots that had some natural problems that create the hardship - for example, wetlands or topography.

He said the request violates the spirit and intent of the ordinance. The purpose of the ordinance is to provide for sufficient space.

He said this is an RA Zone and asking for nine variances and a

special exception to relieve the owner of a problem that the owner has created is not providing for substantial justice to the neighborhood.

Mr. Currier said the applicant has testified that there is very little or virtually no parking activity because of the nature of the business. He said he is aware the business is there, but he is not familiar with the parking at the site. He asked if Atty. Jette felt there would be a lot of parking going on.

Atty. Jette said he doesn't know that as the property is currently being used that there is a lot of requirement for parking, but they can't ensure that tomorrow that the business couldn't be sold to a type of restaurant or other operation that would generate a lot of parking.

Mr. Duffy asked if Atty. Jette disagrees with Atty. Prunier's presentation that the Boccia case or the Vigeant vs. Hudson case might apply with respect to this property because the situation is self-created by the applicant.

Atty. Jette said he did. He said both of these cases involve the restrictions that were created by wetlands and they were both lots that existed in their current configuration, not a situation where the applicant subdivided and created a substandard lot. The second lot that they are asking for would not even meet the requirements for a single-family home and they are asking for a two-family.

Mr. Duffy asked if Atty. Jette was aware of any special conditions with the property.

Atty. Jette said not that he can see.

Mr. Currier said the applicant provided some testimony that there would be no negative impact on property values. He asked if Atty. Jette had any comment on the surrounding property values.

Atty. Jette said the property values will be affected by the intensification of the commercial use of the property. He said the lot where the restaurant is located will be less open and will have more paved area. It's going to be a more intense use of the property. The other lot will have a two-family on a small lot, a

lot that is less than what is required for a single-family home. There is going to be a more intense use of the property, which lessens the value of those who have chosen to live in single-family homes in a RA Zone. Most of the homes in this area are single-family homes on fairly large lots.

Richard Hall, 1 Savoy Street, Nashua. Mr. Hall said he lives in the area. He said he personally thinks that the hardship is self-created. The applicant is asking to create two lots that are not standard sized lots. The frontage, the depth and the encroachment into the setback are being violated.

He said from what he understands the pizza place (former Lavoie's Market) is a grandfathered business. He asked if the property is grandfathered until it is subdivided. There is no special exception in the ordinance for having a take-out restaurant in a RA Zone.

He said this is all wrong for the neighborhood, which consists of mostly single-family homes, except for a few duplexes that are in the area.

Maurice Bruneau, 315 Lake Street. Mr. Bruneau said he has been a resident of the area for about fifty years. He said what's trying to be implemented at 189 Kinsley Street is going to end by being an extension of 192 Kinsley Street, which he spoke against last year. He said that hasn't been completed yet, but it's going to generate a lot of traffic. They don't need more cars in the Kinsley Street/Liberty Street area.

He said there is never a speed trap on Kinsley Street despite the fact that cars travel on it at 45 - 50 MPH. At Liberty Street there is a real wide corner and people come through it at 25 - 30 MPH. The power pole on the corner of Liberty Street and Kinsley Street has been taken down at least six times in the last twenty years. This has been due to cars coming the wrong way on Liberty Street and pulling to the right and going into the telephone pole. He said he has noticed that the people who use the pizza place don't park on Kinsley Street because of the fact that they can't pull out into the traffic. They park on Liberty Street. Between the corner of Kinsley & Liberty, on the west side, there are always 2 - 4 cars parked as well as cars on the east side of Liberty

Street. He said it is a dangerous corner.

Diane Urquhart, 2 Ferson Street. Mrs. Urquhart said Mr. Bruno Bergeron, who could not be present tonight, asked her to tell the Board that he is opposed to this plan.

She questioned how this plan would not decrease or diminish the property values in this neighborhood. She said the proposed use of the land is too intense for the lot and the neighborhood and would be out of character. She said the project approved at 192 Kinsley Street (approved last year) has decreased their property values and now this request for 189 Kinsley Street is asking for more units.

She said that Atty. Prunier has stated that all of Kinsley Street has multi-families and businesses. She said she lives in the neighborhood and she totally disagrees. She said there may be a couple of duplexes here and there and there is the medical center, but there are almost all single-family homes. She said they have all lived in the neighborhood for 30 - 60 years of their lives.

Mrs. Urquhart asked the Board where the neighbor's protection is. She said if they wanted to live in a commercial zone they have that choice. She said approximately 15 years ago she went to the Zoning Board because the Medical Arts Building was proposing a parking lot across the street. She would have had people peeking into her back yard where they have a pool. She had a signed petition from opposing abutters and neighbors and the request was denied and the lot is still vacant.

She said it is discouraging to see their property values go down and heartbreaking. Green space in Nashua is needed and the City is running out of it. As abutters and neighbors she felt this request is contrary to the public interest.

She said she didn't see where this will be safe. There will be more congestion on both Kinsley and Liberty Street. She said she comes out of Ferson Street every day and you have a wait a while to get out. If you are taking a turn on Liberty Street, people are parked right on the corner so there is the possibility of hitting them as well. It will intensify the traffic problems and create safety concerns for motorists and pedestrians.

Ms. Urquhart said there is some concern that if there is insufficient room to park at 192 Kinsley Street (owned by same party) that people would park in the proposed parking spaces at 189 Kinsley Street.

She said they do not meet the minimum lot width, lot area square footage, minimum lot frontage, etc. They will definitely be over-crowding the land.

Ms. Urquhart questioned the hardship. She referred to a handbook for local officials and quoted from it as follows:

"The affect a proposal may have on surrounding property is one factor. An abutter's opinion do have a bearing on this aspect." She asked if this is saying that the neighbors have some kind of say to what happens in their area.

Mr. Duffy said the applicant is required by law to present information to the Board and that is why they provided an appraiser's evaluation. He asked if Ms. Urquhart had an expert appraiser or realtor provide any information or if she was speaking about her own impressions of what the values of properties area.

Ms. Urquhart said this is just her testimony. She said that when 192 Kinsley Street came to the Board Mr. Bergeron, who could not be present tonight) provided that information at that time. She said she is sure it would be the same information for 189 Kinsley Street.

Mr. Currier asked if there is a lot of parking going on at the pizza place. He said the applicant has indicated there wasn't.

Ms. Urquhart said she didn't think there was a tremendous amount in front of it, but from what she sees there are cars parked as you make the turn on Liberty Street - usually 2 - 3 and on the right hand side as well. She said there has to be one accident a week at this location.

Ald. Robert Dion (Ward 6). Ald. Dion said he believes the applicant has a problem that they want the Zoning Board to fix. They are asking for nine variances and a special exception. He said in his opinion the request does not meet the five points of law. There's no hardship involved. The Zoning Board should deny

the variance.

Ray Bissonnette, 5 Savoy Street, Nashua. Mr. Bissonnette said when they were addressing 192 Kinsley Street last year it was stated that it wouldn't hinder the neighbor's properties at all. He said he lives in back of the 192 Kinsley Street property and he has lost all of his privacy because it's a three-story condominium. He said the appraisals were all false.

He said with reference to 189 Kinsley Street, there is no problem with the parking in the front of the pizza parlor. There are two people so there is seldom anyone parked in the front, but they have to think about the future. It could be sold tomorrow - as has been mentioned already.

He said when they were before the Zoning Board last year and talking about the traffic, one member of the Zoning Board said that he would hate to have his daughter cross Kinsley Street at this location. He said this proposal is creating a problem by adding a duplex.

He said asking for 9 - 10 parking spaces will increase undue traffic congestion and pedestrian safety.

SPEAKING IN FAVOR - REBUTTAL

Atty. Prunier said there was talk about traffic and there is traffic here. That is one of the reasons why there isn't a proposal for a single-family home.

He said one of the things the neighbors talked about was the character of the neighborhood. He pointed out some pictures to the Board. He said that they could see that there were multi uses. It's not just a single-family or a two-family area. He said what is being proposed falls within the neighborhood.

Mr. Anderson said they have heard a lot of testimony about traffic. He asked if there were any statistics about how many pick ups there are on any given day at the pizza parlor.

Atty. Prunier said he did not.

Mr. Anderson said they also heard about the lack of a buffer in the rear of the store. He asked Atty. Prunier to speak about this.

Atty. Prunier said they had no problem in putting in a fence and some landscaping in that particular area. He said even if this is approved at this level, it still has to go to the Planning Board and he thinks they would require it.

Mr. Coffey asked if there was any particular reason why the proposed parking spots weren't built facing the structure.

Atty. Prunier said for circulation on the site without having to go out into Liberty Street.

SPEAKING IN OPPOSITION - REBUTTAL

No One.

Mr. Duffy said he doesn't see any special conditions on this property. This will create a more non-conforming lots.

Mr. Anderson asked if the grandfather rights are lost if this is subdivided.

Mr. Falk said the use is grandfathered. The lot itself would become more non-conforming; it's not like the use has to go away.

Mr. Berthiaume said he has to agree that he doesn't see any special conditions with the site. He doesn't think that this is their only option.

Mr. Anderson said if the use is grandfathered and the property is sold and converted, to a walk-in restaurant, could the use be interpreted differently and still be grandfathered.

Mr. Falk said you can change a non-conforming use to something that is substantially similar, for example a pizza place to a sub place. You couldn't change it to a professional office or a different type of category. Also, if it were to become an eat-in establishment there would be an intensification of the use more than likely and they would have to see how many tables and chairs were proposed. It would have to come to the Board.

Mr. Currier said there is some conflicting testimony, such as the property values. There's a professional report saying the values will be the same or increased. The abutters say they will be decreased. He said the suspicion he has about the professional report is that it doesn't address some of the uniqueness of the situation. He said Liberty Street is more than a ninety degree street. It's a one-way street and has a lot of traffic issues. These are missed in the report and he is persuaded by the other testimony that property values will be impacted. He is persuaded by the people who have lived here for many years about the parking problem.

Mr. Coffey said there was no factual testimony regarding the property values.

Tape change at this point. Some testimony may have been lost.

Mr. Duffy said the applicant is required by law, if it is necessary or the Board feels it's important to provide that testimony. All five parts of the test have to be met. Even though the Board feels there may not be an impact to the property values, for example, the applicant still have to meet all five criteria.

MOTION by Mr. Currier to deny all nine variance requests for the property located at 189 Kinsley Street. There is currently reasonable use of the property with a single unit house on the lot as well as a store. By increasing the intensity of the use with these variances it will negatively affect the property values of surrounding parcels. It is not in the public interest. There has been conflicting testimony about the parking, but that is supportive evidence that intensified use is contrary to the public interest.

Mr. Duffy asked if there is a possibility that Mr. Coffey not include the property values and talk more about the spirit and intent. He said if they talk about property values they are going to have to provide information about what they are basing their decision upon that flies in the face of the applicant's testimony.

Mr. Currier said the current zoning is "RA." To take a non-conforming use and create two more intensive non-conforming lots do

not apply to the spirit and intent of the ordinance. Substantial justice will not be served to the abutters and the other property owners in the area.

SECONDED by Mr. Berthiaume.

Mr. Anderson said moving the parking to the back doesn't necessarily intensify the use of the lot. He said he didn't see that a couple of cars a day entering and exiting the duplexes intensified the use.

MOTION CARRIED 3 - 2, Mr. Anderson and Mr. Coffey.

MOTION by Mr. Duffy to deny the special exception to construct a two-family structure on a new lot located at 189 Kinsley Street. He said there's been testimony that it might impair the integrity and be out of character with the neighborhood to take a non-conforming use lot and create two even more intensely used non-conforming uses in this area.

SECONDED by Mr. Currier.

MOTION CARRIED 4 - 1, Mr. Anderson opposed.

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Postponed to 3/22/05

4. Cotton Transfer Bridge over Nashua River, between Nashua Clocktower Housing & Nashua Corporation (Owners) 2 Clocktower Place and 30 & 36 Front Street (Sheet 77 Lot 20 & Sheet 78 Lot 87) requesting special exception to work in the 75 foot prime wetland and wetland buffer of the Nashua River to rehabilitate the Cotton Transfer Bridge. GI/MU Zone.

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5. John T. Jackson (Owner) 50 Wellington Street (Sheet 65 Lot 29) requesting variance to exceed maximum building area, 20% permitted, 25.3% granted by ZBA on 1-27-04, 26.2% requested - to allow a lot line relocation and construct a 276 square foot home

addition. RA Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Jay Coffey

Don Berthiaume

Jeffrey Anderson

Andrew Korowski, Brookline??? Mr. Korowski said he is representing Mr. Jackson. The request is to increase the maximum building area to 26.2% from 25.3%. He said the lot line has been moved 10' to the south so that the proposed addition meets the setback requirement.

He said there is no substantial relationship being created between the spirit and intent of the ordinance and the request.

He said the project will have a positive impact on both the property values and the public benefit.

He said granting the variance would be morally correct and fair to all parties involved and would result in substantial justice.

Mr. Jenkins said even with the lot line relocation, the lot that abuts it has 12,500 square feet and it will still meet the requirements. With the proposed addition that would be added to the house it will still be in character with the remaining neighborhood.

Mr. Korowski said this is correct.

Mr. Jenkins said he is pretty sure the home itself pre-dates zoning and Mr. Korowski said this is correct.

Mr. Jenkins said the addition will make the house a more reasonable use of the property and would be in character with the remaining neighborhood.

Mr. Korowski said this is correct.

Mr. Berthiaume asked if there is a reason why additional acreage was needed.

Mr. Korowski said to keep the value of the lot as high as possible.

Mr. Berthiaume said the applicant is actually moving the line now. He said it's an odd shape and he couldn't see why they couldn't encompass the whole area that was needed.

Mr. Korowski said it could be done. He said his client preferred to take just what was necessary in order to meet the setback requirement of 10' and leave the adjacent lot, which he also owns, as large as possible.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

Atty. Paul English, 32 Stark Street. Atty. English said he is a landowner diagonally across from the adjacent parcel. He said what they have here is someone making a lot line adjustment as part of this, which is not necessarily before the Board tonight. He said the subdivision of the property will go to the Planning Board.

He said the variance is for a 1% increase over the existing building area. He said there has already been a variance granted (he thinks in January 2004). He said the owner of the property owns the abutting property and they are, in fact, creating the lot line. They have the ability to move the lot line down and bring it within the 20% requirement. There is nothing stopping them from doing this. He is arguing that they are self-creating their own hardship. There was a little testimony alluding to the fact that the reason they want to do it this way is to be able to keep another buildable lot. He said this is not a basis for granting a variance.

Atty. Elliott said he is concerned about the impact of them being allowed the variance as it goes down the road because the buildable lot is very tight. He said he didn't have the ability to present the other adjoining lots and parcels and footprints as compared to

this parcel. What he is getting at is they would be "mansionizing" a house and allowing the expansion and then will leave a buildable lot next to it. He said he didn't think the owners intend to build, but eventually they are going to sell. He said they have a beautiful home now and he suspects it will be a beautiful addition.

He said it's his intention to preserve the character of this neighborhood. By expanding houses and cutting up little lots and just getting under the requirements is not what the Zoning Board is here to do.

Atty. Elliott said they currently have reasonable use of their property as it exists today.

He said he suspects the property value will increase if they put on an addition, but the long-term affects could be negative.

He said there is nothing that has been presented tonight that substantial justice will be done.

He said the request is contrary to the spirit of the ordinance to limit the size of the home.

He asked that the Board deny the request and that they look at the other avenues that they have to properly put this into a setting that will conform to the other properties in this area.

Mr. Jenkins said Atty. English's property is unusual - it is long and narrow. He said he has looked at the other lots on Wellington Street and #50, even with the lot line adjustment, would be in character with the remaining parts of Wellington Street. He said the area pre-dates zoning.

He said the lot that is being subdivided has 12,500 square feet of land area and they are taking a partial piece of it. He said if a single-family home were to be built here they would need 7,500 square feet. If they were asking for a two-family the lot requirement would be 10,500 square feet.

Atty. Elliott said to meet the 20% requirement at 50 Wellington they would need approximately 11,000 square feet. There would still be 9,000 square feet left over. There are also deed

restrictions on the setbacks on placing a home on the vacant lot. He said he believes they would be hard pressed to put a home in.

He said they are asking for a variance for their economic gain, which is not part of the basis for granting a variance.

Mr. Jenkins said the Board didn't have every lot size in front of them for the rest of Wellington Street. He said they have the layout of the lots and in looking at this, it looks like there are several lots on Wellington Street and several lots on Stark Street that would never meet the required setbacks and buildable area percentages because they do pre-date zoning.

Mr. Jenkins said they don't have to destroy the lot that is next to this one. He finds that this is a minimal request. It's a 293 square foot addition (1%) and he doesn't see this as unreasonable.

Atty. English said this isn't 1% - it's 1% above the already granted variance.

SPEAKING IN FAVOR - REBUTTAL

Mr. Korowski said the home is not being mansionized. They are increasing it by 276 square feet. He said this doesn't constitute mansionizing anything.

He said the Zoning Board granted a variance for maximum buildable area last year. They were at 21.5% and Atty. English is asking for them to go back to something which was done probably back in 1920 or so.

Mr. Jenkins asked about coming back in the future and changing the lot line again to incorporate the shed that currently exists on the other lot.

Mr. Korowski said if that needed to be done he's sure Mr. Jackson would comply. He would do what he needed to do in order to comply with the law.

Mr. Duffy said he wanted to be really clear about what he is voting for tonight. He said he understood that they are not asking for other non-conforming uses, such as a duplex. He said he is taking

in faith what the testimony has been about the reason for the lot line.

Mr. Korowski said as far as the conforming lot located next door is concerned, he doesn't know what Mr. Jackson's plans are for it. He does know that he wishes to keep that lot conforming.

SPEAKING IN FAVOR - REBUTTAL

No One.

Mr. Jenkins said he believes this is a reasonable request because it is only the addition of about 300 square feet of living space. He said the lot was non-conforming and the Zoning Board made it a little more non-conforming when they granted the prior variance. He said if you look at the character of the street and the character of the area it still fits in with the character. By adding on to the property, the property values of surrounding parcels has increased. He finds that it meets the spirit and intent of the ordinance. He said he has made it clear that if he is going to come back and ask for another lot line relocation to incorporate the shed into the lot to make it more non-conforming, that it wouldn't happen. Most likely he would lose the shed that is now on the other lot.

Mr. Currier said he is in favor of this as long as the area doesn't go beyond 25.3%. He said he has the sense that the owner is trying to maximize the economic value of the other lot. That is not a reason to allow a further encroachment, even though it's .9%.

Mr. Anderson said he didn't find the request unreasonable.

Mr. Berthiaume said he should encompass the whole thing. It's only 3300 square feet and it will not make the other lot non-conforming.

MOTION by Mr. Duffy to grant the variance to exceed the maximum buildable area, 20% permitted, 25.3% granted by the ZBA on 1/27/04, 26.2% requested to allow a lot line relocation to construct a 276 square foot home addition at 50 Wellington Street. The variance is needed to enable the applicant's proposed use of the property. It is reasonable given the size of the request at 276 square feet. All the area variance criteria that were applicable to the original

going from 20% to 25.3% are in place and the increase is a reasonable one. It is within the spirit and intent of the ordinance. It should not adversely affect the property values of surrounding parcels. It is not contrary to the public interest as the building will be in conformity with the homes in the area. Substantial justice is served as the applicant has reasonable continued development of his property.

SECONDED by Mr. Anderson.

MOTION CARRIED 4 - 1, Mr. Berthiaume opposed.

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Postponed to 3/22/05

6. David A. Cull (Owner) 12 Robert Drive (Sheet E Lot 97) requesting variance to exceed the maximum number of non-related people living together, 6 allowed - 9 requested. R9 Zone.

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Postponed to 3/22/05

7. David A. Cull (Owner) 9 New Searles Road (Sheet B Lot 622) requesting variance to exceed the maximum number of non-related people living together, 6 allowed - 9 requested. R9 Zone.

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8. Steven J. & Regis M. Donohue (Owners) 375 Main Street (Sheet 109 Lot 82) requesting the following: 1) use variance to convert 1 unit of an existing 3-unit multi-family building into professional office space; and 2) variance to allow a 9 square foot ground sign, where commercial signage is not permitted in this zone. RA Zone.

Voting on This Case:

Tom Jenkins
Sean Duffy
Jack Currier
Jay Coffey
Don Berthiaume

Atty. Gerald Prunier, 20 Trafalgar Square. Atty. Prunier referred the Board to a plan showing this property. He pointed out the driveway that is located on the left side of the building and it has a garage in the rear.

He said the proposal is for a three-story/three unit building. The first floor, which is about 1050 square feet, is proposed to be used as an employee's benefit insurance office. It is solely for the owner of the business and his employees, which total about four. They rarely have anybody that would come to the office. They go to the company to discuss the benefits that are offered. He referred the Board to a letter that had been submitted by the owner of the business that described the business. He presented letters from abutters to this parcel that indicate they support the request.

Atty. Prunier said the area of Main Street from Allds Street up to East Dunstable Road has been under a lot of change in the past fifteen years. He presented a list to the Board of all the businesses on both sides of Main Street up to that area showing that there is a funeral home, chiropractor, legal, finance, architectural uses that have been granted along this section of Main Street.

He said part of their request is also for a sign - 3'X3'. He presented a survey that showed the signs that were on property that's abutting this parcel.

Atty. Prunier said the "Simplex" case states that a reasonable use of your property is based upon the fact that you aren't adversely affecting any abutting properties. In addition, the use must be a reasonable one. It is a reasonable use considering the surrounding parcels in the area. The area has changed as shown on the list he presented showing the number of changes made on Main Street in this area.

He said part of their proposal is not to make any exterior changes and to leave the building as it is. He said there will be some changes along the driveway that they are going to have to make in the lawn in order to get the required 7 - 8 parking spaces that are required for the use. They will have to appear before the Planning Board for site plan approval.

Mr. Jenkins asked if it was seven or eight spaces.

Atty. Prunier said eight.

Mr. Jenkins asked what happens if the business grows.

Atty. Prunier said if it grows, it might mean they would want to move to the second floor, in which case they would have to come back to the Zoning Board.

Mr. Jenkins asked the actual square footage of the office.

Atty. Prunier said the first floor has 1051 square feet.

Mr. Duffy asked if the foundation of the building is being changed.

Atty. Prunier indicated it is not being changed.

Mr. Currier referred to the sign dimensions on four signs. He asked if they were the only four signs.

Atty. Prunier said they are not. He said they just did a quick survey to see whether the square footage that they are proposing for this site would be similar to what's in the neighborhood. He said they are actually asking for less than what some of the businesses have. Some of the businesses have larger signs and some have smaller signs. He said the Board just granted a sign at 381 Main Street that is substantially larger than what this business is asking.

Mr. Jenkins asked if the business operates Monday through Friday from 9:00AM - 5:00PM.

Atty. Prunier said this is correct.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Coffey to grant the use variance to convert one unit of an existing three unit building into professional office space at 375 Main Street. The zoning restriction as applied interferes with the owner's reasonable use of the property considering the unique setting of the property in its environment. No fair and substantial relationship exists between the general purposes of the ordinance. The basis of granting the variance is that this is a reasonable use. It fits into the nature of the surrounding properties along that section of Main Street. It is within the spirit and intent of the ordinance. It will not adversely affect the property values of the surrounding parcels. It will not be contrary to the public interest. Substantial justice will be served to the applicant.

SECONDED by Mr. Berthiaume.

MOTION CARRIED UNANIMOUSLY

MOTION by Mr. Coffey to grant the request for a nine square foot ground sign where commercial signage is not permitted at 375 Main Street. The variance is needed in order to enable the applicant's proposed use of the property given the special conditions of the property. The basis of the variance is that it is a reasonable use of the property and similar to surrounding parcels in the redevelopment of that area. 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.

SECONDED by Mr. Berthiaume.

MOTION CARRIED UNANIMOUSLY

9. Leda Lanes, Inc. (Owner) 340 Amherst Street (Sheet G Lots 97 & 98) requesting variance for minimum parking requirements, 280 spaces required, 193 spaces granted at 8-24-04 ZBA meeting, 160 spaces proposed - to construct a 12,250 square foot, 12-lane youth bowling alley. GB Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Jack Currier

Jeffrey Anderson

Don Berthiaume

Atty. Gerald Prunier. Atty. Prunier said this applicant came to the Board in late summer 2004 regarding the construction of a building with 16 new lanes. At that time the Board granted a variance to allow the use of 193 parking spaces. Since that time they have determined that they would be intruding into the 40' wetland buffer based on the plan they presented. He said they are coming back to ask that they be able to construct the building and provide 160 parking spaces. He said they have reduced the number of lanes down to twelve. They are now proposing a building of 10,500 square feet versus 12,500 square feet. He asked that the minutes from the previous meeting be incorporated into tonight's testimony.

He presented a parking study to the Board. He said Mr. Simoneau conducted this himself every day.

Richard Maynard, Professional Engineer, Maynard & Paquette. Mr. Maynard said the previous plan showed the parking going quite far back towards the concrete pad area. He said they found that the brook had slightly shifted and when they applied the 40' wetland buffer they were going to use several parking spaces. Therefore, they were unable to put in as many parking spaces as they thought they would be able to.

He said if they were to look at the new proposed zoning regulations

the minimum parking for bowling alleys is one space per 650 square feet of building. Based on this proposal they would only require 62 spaces. If retail ever should replace the site, there would be sufficient parking spaces for that use. For those who have seen this site, only half of the parking lot is used. There are 36 lanes in the existing building and they are only adding 12 lanes. They have an outdated ordinance with regard to the parking requirements when it comes to bowling alleys.

Atty. Prunier said they don't need anywhere near the parking that's required by the zoning ordinance. They have reduced the number of lanes as well as the square footage of the building. The proposed building is for the use of children. More than likely those people over 16 years of age will be using the existing bowling lane.

Mr. Jenkins asked the number of required parking spaces for the building with 10,500 square feet.

Atty. Prunier said 193. He said they are asking for a reduction to 160 spaces.

Mr. Jenkins said he has gone by the site when the parking lot was pretty full. He asked if the parking spaces shown in the back are currently there.

Atty. Prunier said "no."

Mr. Currier said he's gone by the site a couple of times and he didn't see that it was populated with cars.

Mr. Berthiaume asked if the hours of the new alley are going to be somewhat opposite.

Atty. Prunier said usually the busier times won't conflict between the proposed children's alley and the existing alley.

SPEAKING IN FAVOR

Ray Simoneau, Leda Lanes. Mr. Simoneau said he didn't think he would be building this if he thought he didn't have enough parking. He said there are a lot of businesses around town that don't have any parking and they are allowed to parking. He feels that he has

ample parking.

He said he doesn't know why they call the brook a critical wetland. It's a drainage brook. It is used to drain the water off of Amherst Street. All of the surface water from Amherst Street goes into it. There's a 36" sewer pipe on one side of his property and a 36" sewer pipe on the other side. In the summertime he prays for rain so it can wash the smell out of the water. He said there are beaver, muskrat, and skunks and they thrive in that ditch.

He said from Building 19 to his property line it's underground and at his property line it goes above ground. When it gets to the highway it goes down below ground again all the way to the Nashua River. He asked why they couldn't bury it all the way.

Catherine Sofikitis, 54 Marshall Street. Ms. Sofikitis said her son grew up in the youth bowling alley at Leda Lanes and she can't say enough about what they did for him.

She said the parking lot at the site is the largest one in Nashua, except for the Pheasant Lane Mall. She said she didn't think there would be an issue with the parking and she said they should stick with the 16 lanes.

SPEAKING IN OPPOSITION

No One.

Mr. Currier said he doesn't have a problem with this request. He said this is not the same watershed as Building 19 - that goes right to Nashua's water supply and this other goes somewhere else.

He said what they are doing is in respect to the wetlands so he thinks there is a benefit.

MOTION by Mr. Currier to grant the variance for parking requirements - 280 spaces required, 193 granted on 8/24/04, 160 spaces proposed at 340 Amherst Street to construct a 10,500 square foot, 12 lane bowling alley. The variance is needed to enable the applicant's proposed use of the property given the special conditions on the property - mainly that on the back side of the property there is a critical wetland and the applicant seeks to

respect the 40' buffer to the wetland. Testimony has been provided that there will not be overcrowding of parking on the lot. It is within the spirit and intent of the ordinance. There has been no testimony about affecting surrounding property values. He said he did not believe there would be any adverse affect. He does not believe it will be contrary to the public interest. Substantial justice will be served.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

**10. Beebe Rubber Company Inc. (Owner) Mark Maynard (Applicant)
20-22 Marshall Street (Sheet 29 Lots 26, 39, 45 & 48) requesting
use variance to construct an 80-unit multi-family residential
development. GI Zone.**

Voting on This Case:

Tom Jenkins
Jack Currier
Jay Coffey
Don Berthiaume
Jeffrey Anderson

Mr. Jenkins said they have received a letter from an Atty. Wiggins basically stating that the property is under appeal at the Supreme Court level. It looks like a civil matter so the Board won't be acting on the letter.

—
Atty. Gerald Prunier. Atty. Prunier said this property is located in an industrial zone. In 2002 the Zoning Board approved 126 units of housing as well as some commercial retail. He asked that the minutes of the meeting from that meeting be made a part of this record tonight. He said they are not proposing any retail. They are leaving the lot in the front and marking it on the plan for future development. He said he does not know what his client will be doing with this particular lot, but they know that if it's not an industrial building they have to come back to the Board for

approval.

He said the proposal is for two buildings, four stories high with forty units in each building - eighty units versus the 126 units previously approved. They have parking for 160 cars where the requirement is 140 spaces.

He said the hardship falls under the "Simplex" case. This area has changed. There's a McDonald's, a Wendy's, the Mobil Station, etc. There are different zones - RC, RA, and GI - in this particular area.

He said the spirit and intent of the ordinance is met because they are asking for multi-family residential compared to what has been approved in this area in the past few years. This should have a beneficial effect upon the neighborhood.

He said when this site came to the Board in 2002 the last time, there was a building on the site. That building has been removed and there is a hazardous waste study going on. There is a remedial plan that is now before the State. It has been greatly cleaned up. There will still be some monitoring of water for a while and the State may request that a little more of some of the waste to be removed. It may be that whatever is left can be encapsulated and stay on the site.

He said when the East Hollis Street Master Plan was done, this site was talked about for mixed use. He said the applicant feels that this is a good transitional use. The proposed use is the most appropriate use for this particular area. It is not out of character with the neighborhood. He said there was an appraisal done for the previous meeting outlining the different uses in the area and the indication was that the 126 units plus the commercial was the best use for this property. He said they are providing more open space and providing the parking so it doesn't interfere with the neighborhood. It is a reasonable use of the property.

Atty. Prunier said there is a communication from Ald. Cardin concerning her feelings as an alderman in that area and the feelings of some of her constituents regarding this proposal.

Mr. Jenkins said from what he is seeing they are reducing the

building from five stories to four stories, reducing the number of units from 126 to 80 and will not need a variance for the parking - in fact providing twenty spaces more than is required by law.

Atty. Prunier said this information is correct. It fits better into the neighborhood.

Mr. Jenkins said the previous request was for people who were 55 and older.

Atty. Prunier said this is correct. He said they aren't limiting themselves with the proposed units.

Mr. Jenkins asked if there have been any neighborhood meetings to talk with them concerning this proposal.

Atty. Prunier said he hadn't. He said Ald. Cardin had indicated that she thought this was a much better proposal than what had previously been approved.

Mr. Jenkins asked if the site (Beebe Rubber) clean up had been overseen by DES.

Atty. Prunier said it was. He said DES still has control over the site. He said DES and Beebe Rubber are working on a remediation plan, which has to be approved by the State.

Mr. Jenkins said he was on the Board when the previous site was approved and he knows there were some concerns with parking and the height of the structure. He said this new proposal is a much better use of the property.

Atty. Prunier said it is. He said he read over the minutes of the previous meeting and parking was a concern to some of the neighbors. This has been addressed. There was also some concern about drainage, which will be addressed at the Planning Board level. There are some people in the Marshall Street area that have backups and have some sewer problems.

Mr. Jenkins asked if they have anything from Public Works on this site.

Atty. Prunier said "no." He said they have to go to the Planning Board, but it will be a while before they do.

Mr. Currier asked if this is going to be work force housing.

Atty. Prunier said it very well may be. He said they have heard that the one the Board approved on Harbor Avenue is selling very well and that there is a demand for it. If the owner feels that this is still the case they will probably look forward to doing one of the buildings as work force housing, if not both. At the present time they are planned as rental units.

Mr. Currier said the other building that the Board approved as work force housing was in line with the Mayor's Task Force on Affordable Housing. Ald. Cardin's letter speaks to it as if this is 100% affordable housing. He wondered if she is aware that this is not affordable housing.

Atty. Prunier said he spoke to Ald. Cardin and told her that these were just apartments and that they were not making a commitment for work force housing. He said he has been told that the work force housing which has been under construction for four to five months, is over half sold. This indicates that there might be a substantial market out there, but he can't tell the Board that the proposed project is going to be work force housing because he doesn't know what the market is at this point or what it will be after Harbour Avenue is finished. they are not proposing housing for the elderly.

Mr. Currier asked why they didn't go forward with the elderly housing concept.

Atty. Prunier said they are new to this. He said this is not part of the group that came to the Board previously. He said they have an executed purchase & sales agreement with Beebe Rubber Company and they never made them aware of the fact that this was on appeal. It's something he will be looking into tomorrow.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

Susan Neuzil, 50 Marshall Street. Mrs. Neuzil asked what work force housing is and how it affects her.

Mr. Jenkins said work force housing is housing that's being developed to be affordable for the average working person to be able to afford.

Mr. Currier said the housing that is under construction has a fair market value for whatever the units are. What happens is that a price below fair market value is assessed and then people have to apply. People that apply have a job, but the job is at a lower pay scale. The units are at an intentionally depressed value with the intent being for people like nurses, policeman, and firefighters who wouldn't be able to afford a home on the normal market could apply and get in.

Ms. Neuzil said she is worried about property values. She just bought her home two years ago.

She said they already have speeders on the street and there are no speed bumps. She said you come down Marshall Street to get to this if you don't come down Hollis Street. They won't go down Harbor and they won't go down Allds. She said he couldn't imagine adding another 80 units at that end of the street will make it any better.

Mr. Jenkins said a lot of these issues are Planning Board issues. They consider traffic flow and whether there is a need to put in speed bumps, traffic lights, etc. It will be reviewed by other departments, including the Dept. of Public Works. The Zoning Board looks at the property itself looks at the land use and whether it meets the criteria in the ordinance.

Ms. Neuzil said somebody mentioned something about a neighborhood meeting so that they would be involved.

Mr. Jenkins said the reason he asked the question is that the last time the site came to the Planning Board it was a larger development and the applicant had a neighborhood meeting. He said sometimes a call to the Ward Alderman will be helpful if you want to know what is happening and ask if they might have a meeting

somewhere to discuss the future development.

Ms. Neuzil asked if the meetings are published in the newspaper.

Mr. Jenkins said every single application that is going to the Zoning Board is published in the newspaper prior to the meeting, not the neighborhood meetings.

Ms. Neuzil said she is asking because she just got a flyer on her door two days ago to tell her about this meeting.

Mr. Jenkins said if Ms. Neuzil is concerned about her property values the first thing would be to check with a real estate appraiser and ask how this type of development would affect her property values.

Ms. Neuzil said two years ago when they moved into their home, over 55 housing was what had been proposed for the development and they purchased their home based on that information.

Mr. Jenkins said that is what had been proposed, but somewhere along the line something happened and it didn't go any further. The new proposal is by a different applicant. He said he looks at it as a lesser use than the 126 units. In addition, the building is being reduced from five stories to four stories. Also, they couldn't meet the requirements for parking in the old request and now they are going to provide more parking than what is required in the ordinance.

Catherine Sofikitis, 54 Marshall Street. Ms. Sofikitis said she also received a flyer on her door about this meeting. She said she doesn't know who put it there, but it was rather inflammatory. They came to the meeting to find out what it was all about.

She said she bought a big house on Marshall Street and she plans to live there the rest of her life. She said that end of Marshall Street is a blight right now. She said she couldn't see eighty more families living in this area and coming to the park that just got beautified by the City.

She said they need to work in the spirit of cooperation. She said the neighbors will be at every meeting every step of the way so

that they can be a community working together. She said that end of Marshall Street is almost inhabitable to drive in. There's no safe place for the children to walk. There are many issues down there.

She said that with the new building on Harbour Avenue and now with this building, how many more people can they put into this little area. She asked if it wasn't possible to take the land and put in a park.

She agreed with Ms. Neuzil about people speeding on Marshall Street down to Wendy's, which is open late at night. She is frightened for the children who might be playing in the park. She doesn't allow her son to go to the park, even though it is right across the street from their home.

Joe Falzone, 38 Marshall Street. Mr. Falzone said he just purchased his home six months ago. He is the person who put the flyers out. He said he is in opposition to the proposed request. He said they already have enough buildings. He is three doors down from where this is proposed.

Mr. Jenkins asked if Mr. Falzone was aware about what had previously been approved for the site.

Mr. Falzone said he was not.

Mr. Jenkins said apparently when Mr. Falzone purchased his property his realtor didn't indicate that there was already an approval for 126 units and 210 parking spaces. What is in front of the Board tonight is a less intensive use. When you buy a piece of property in any town or neighborhood you have to do some research and get informed.

Mr. Falzone agreed. He said his problem is with the 80 units and 140 parking spaces. He said that means there will be 140 cars going up and down the street twice a day. He said it's going to create a lot of havoc on his street. As it is he has tractor trailers traveling on it now.

Mr. Jenkins said before the site was cleared it was a manufacturing company, Beebe Rubber. He said when you went by this firm when it

was operating you could smell the toner for blocks. It was black and it was sooty and you would see people coming out of there and they looked like they had been working underneath a car. It's possible that it was floating through the air and everybody was breathing it.

He said what is proposed now is not industrial. One of the things the Board has to look at is what is reasonable. If somebody is going to make a substantial investment to buy a property that is contaminated and that has to be cleaned up, they would want it to be profitable at the same time. They also have to look out for the residents of the neighborhood and the community and the City itself. They have to look at the whole picture.

Rachel Falzone, 38 Marshall Street. Ms. Falzone asked the Board to not vote on this request tonight until the neighbors know who is going to be moving in. There are 80 units and they don't have any idea who they are going to be putting in them.

Mr. Jenkins asked what type of family she is looking for.

Mrs. Falzone said it doesn't matter what type of family. She said the applicant has no idea of whom they want to put in. They could make it halfway housing, for example.

Mr. Jenkins said they can't put halfway housing in here. He said they would have to come for a variance to do that.

Mr. Falk said a halfway house is a totally different type of use.

Mrs. Falzone said that the testimony was that they didn't know what they would be doing - that they were leaving it open. It might be condos, it might be work force housing, or whatever.

Mr. Jenkins said they can't do "whatever." This is general housing. They can take the units and use them as rental property or they could make it into condos.

Mr. Falk said this is a request for 80 units of multi-family. It's not a halfway house. He said a lot of people use the term work force housing like it's a type of land use.

Mrs. Falzone said a couple of months ago they just had their house appraised. She said the value is going to drop if these units are going to sell for \$150,000 - which approximately what they are selling the other work force housing is selling for. She said their home is worth twice that amount.

Mr. Jenkins said they have a house. The proposal is going to be either an apartment or a condo.

Mrs. Falzone said there's going to be no view and it's going to be noisy.

Mr. Jenkins asked how long Mrs. Falzone has lived in her home.

Mrs. Falzone said they purchased their home in June 2004 and moved in October 2004.

Mr. Jenkins asked Mrs. Falzone if she was aware of what was aware of what had been approved for the lot before they bought their home.

Mrs. Falzone said they had an idea that maybe Beebe Rubber was going to put up some kind of housing, but that it had been denied - something to do with the parking situation.

Mr. Jenkins said the request for the reduction in parking was denied, but not the building. The building had been approved.

Mrs. Falzone said at that time it was elderly housing.

Mr. Jenkins said it was for people age 55 and older.

Mrs. Falzone said this is going to be two great big buildings.

Mr. Jenkins said it meets the height requirement in the ordinance. They are permitted a four-story building without a variance.

Mrs. Falzone said he has people parking in front of her house now.

Mr. Jenkins said it is zoned for industrial use, which is more intense than residential.

Dennis Raymond, 34 Marshall Street. Mr. Raymond said he

understands that the property has been characterized by Nashua's Master Plan. He said they all know it's never going to be used for industrial use again. He said the mixed use is heavily leaning towards residential. The neighborhood has commercial property in it and he thinks some more commercial property should be made available in that area to keep in character with the rest of the neighborhood area. The commercial property that exists now will be completely surrounded by residential property.

Mr. Jenkins said this is a substantially large site. It is zoned for industrial use and probably will never be industrial again. He said he doesn't live on Marshall Street, but his mother-in-law and his sister-in-law do and he is familiar with it. If one big commercial site was placed on the property he would think that would be a much greater impact in the neighborhood. He said he believes what has been proposed is a better use.

Mr. Raymond said he thinks the uses should be mixed up a little better.

Mr. Jenkins said if anyone is going to do anything of a commercial nature in the future they are going to have to come to the Zoning Board for approval.

Discussion ensued.

Mr. Falk said the proposed request is purely for 80 units of multi-family on the site. All the dimensional and parking requirements are met.

Mr. Raymond asked if the entire site is being re-zoned to residential.

Mr. Falk said this is not a re-zoning. He said the zone would stay the same (General Industrial). He said if somebody wants to come back in the future and subdivide it out into a couple of parcels for future development for a commercial development they will have to come back to the Zoning Board and the Planning Board for approvals.

Mr. Currier said he thought the 1.15 acres on Lot C was remaining General Industrial and only the other portion was changing.

Mr. Falk said it's showing that on the map, but the Zoning Board is not approving a subdivision. They have to go to the Planning Board for any subdivision. They may have to come to the Zoning Board for a use variance.

Mr. Jenkins said they have received a letter from Spartan's Drum & Bugle Corps stating that they are in opposition to the request. They feel that if this property becomes residential that it will decrease their property values at 73 E. Hollis Street.

SPEAKING IN FAVOR - REBUTTAL

Atty. Prunier said if this proposal is granted, before they go to the Planning Board they will set up a meeting with Ald. Cardin so that the neighborhood will have an input into the site plan prior to the public hearing.

Atty. Prunier said the site could be used for industrial purposes, such as a salvage yard. There are other industrial uses that the property could be used for. They are proposing multi-family because they feel that it is a good use to buffer the area from the commercial development on East Hollis Street. He said not everyone is going to go down Marshall Street. Some people are going to be on East Hollis Street because it is the main thoroughfare for the area.

Mr. Jenkins asked if Atty. Prunier didn't think they would try to avoid East Hollis Street and cut through Marshall Street to get over to Allds Street.

Atty. Prunier said anybody who is familiar with an area where there's traffic will use what they perceive to be the easiest and fastest way of getting there.

SPEAKING IN OPPOSITION - REBUTTAL

No One.

Mr. Jenkins said he understands the neighbor's concerns. He said the property is a hazardous waste site and they are never going to have single-family homes on it. It will either be completely

commercial or split zoned or in a tentatively split zone in the long run.

He said he thought what was approved before made some people feel comfortable because it was for people ages 55 and older and they knew exactly what was going in there. She said there was testimony by one neighbor who felt uncomfortable about it being left open as to who would be using these units. He said he thinks the type of people it will draw will be acceptable to the neighborhood. If they were condos they would have to be able to afford it.

Mr. Currier said he is surprised that realtors aren't openly informing people who may be buying a house in the area about what may be going on with the property.

He said the proposed application is not restricted to those people 55 and older, but it's a lot less units and he feels that makes it a wash. It's not as tall or intense as what had been approved previously. He is favorable to the request.

Mr. Anderson said it is a less intense use with more parking. They have to address the drainage and traffic issues with the Planning Board. He is in favor.

Mr. Berthiaume said he is looking at this as multi-family housing. He would at it differently if it was a big industrial building. It's better that the use is residential. Ideally you want to compare properties that you're appraising to other properties that have the same influence so if you find three properties that have the same influence then he wouldn't adjust.

Mr. Jenkins said there are multi-family dwellings on Coliseum Avenue behind the Nashua Mall. He said they haven't increased in value substantially because of the fact that they are abutting commercial property.

Mr. Berthiaume said he thinks they have gone up in value, but maybe not as much as other places. He doesn't think there is any property in Nashua that has stood still.

Mr. Currier said that he thinks there is some suspicion in some of the testimony as to work force housing on whether it is a good or a

bad thing. He said he thinks some of them took the time to look through the data and one of the stipulations for work force housing is that you own and live there. He said to him that's a better situation than rental property, which can kind of degrade a bit over time. While work force housing is purchased at a depressed price, which some people may be suspicious of, the fact that it's owner-occupied in the long term means it's well cared for and not a detriment to the neighborhood.

He said work force housing is needed in the City and he asked the applicant to consider it because it will probably be a greater asset to the neighborhood than non work force housing.

MOTION by Mr. Anderson to grant the use variance to construct an 80 unit multi-family residential development at 20-22 Marshall Street. The zoning restriction as applied interferes with the owner's reasonable use of the property considering the unique setting of the property in its environment. No fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction on the property. The variance will not injure the public or private rights of others. In fact, this will remediate hazardous waste in the area. It is within the spirit and intent of the ordinance. It improves upon the previous site plan in the parking and reduction in intensity. It will not adversely affect property values of surrounding parcels. It is not contrary to the public interest. Substantial justice is served.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

MINUTES

2/8/05

The Board had the following changes to be made on the minutes for 2/8/05. On Page 5 remarks attributed to Mr. Berthiaume should be Mr. Anderson. On Page 9 the last line should read Mr. Berthiaume. On Page 13 Richard Rondeau asked about the directional sign going into the driveway, not Mr. Berthiaume.

MOTION by Mr. Coffey to accept the minutes of 2/8/05 with corrections and place on file.

SECONDED by Mr. Anderson.

MOTION CARRIED UNANIMOUSLY

Regional Impact

The Board did not see any items of regional impact on the upcoming agenda.

ADJOURNMENT

Mr. Jenkins called the meeting closed at 10:20PM

Sean Duffy

Acting Clerk

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Taped