

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
April 26, 2005

A public hearing of the Zoning Board of Adjustment was held on Tuesday, April 26, 2005 at 6:30 p.m. in the Auditorium at City Hall.

Sean Duffy conducted the hearing.

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

Also present: Carter Falk, Deputy Planning Manager/Zoning

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

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

(1) A zoning restriction as applied to your property interferes with reasonable use of the property, considering the unique setting of the property in its environment; (2) no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; and (3) the variance would not injure the public or private rights of others.

(2) The spirit and intent of the ordinance must not be broken by granting the variance.

(3) Granting the variance will not adversely affect other property in the district.

(4) Granting the variance must be of benefit to the general public and not solely the individual.

(5) Not to grant the variance would result in an injustice.

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

(1) The use requested must be listed in the Table of Use Regulations as a special exception in the district for which the application is made or is an existing non-conforming use for which a request to expand is being in accordance with Subchapter 13 of the Nashua Revised Ordinances.

(2) The requested use will not create undue traffic congestion or unduly impair pedestrian safety.

(3) The requested use will not overload any public water, drainage or sewer system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the City will be unduly subjected to hazards affecting health, safety, or the general welfare.

(4) Any special regulations for the use set forth in other sections of the zoning ordinance are fulfilled.

(5) The requested use will not impair the integrity or character of the district or adjoining zones nor be detrimental to the health, morals or welfare of the residents of Nashua.

He said the order of receiving testimony will be in the following manner: Testimony will be heard from the applicant seeking the adjustment. The applicant will have fifteen minutes to address the five points of law just described. The Board

will not consider in their decision any information which does not address those points.

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

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

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

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

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

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

5. Kenneth D. Constant (Owner) 72 Anvil Drive (Sheet 105 Lot 125) requesting use variance to construct a two-family house. R9 Zone. [POSTPONED TO 5-10-05]

1. Maria Rowe & Daniel J. & Jennifer Abel (Owners) 34 Park Avenue and 25 Stevens Street (Sheet 124 Lots 48, 49 & 54) requesting the following variances: 1) minimum lot depth, 90 feet required, 75 feet existing, 65 feet proposed, and 2) minimum rear yard setback, 25 feet required, 10 feet proposed - to relocate rear (northern) lot line of Lot 48 ten feet south, consolidate remainder of Lot 48 with Lot 54 and construct a 24'x30' home addition on east side of 25 Stevens Street. RA Zone.

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Voting on This Case:

Susan Douglas
Sean Duffy
Jay Coffey
Donald Berthiaume
Richard Rondeau

Richard Maynard, Professional Engineer, Maynard & Paquette, Nashua. Mr. Maynard said the two property owners are also present. There are two homes and one vacant lot involved in this case. They are surrounded by Stevens, Lawndale and Park Avenue. All of the lots are non-conforming in one or more aspects. The request before the Board is to significantly reduce some of these non-conformities.

He said the "Abel's" own the house at 25 Stevens Street, which contains only 3,900 square feet where 7,500 square feet is required. He said they would not to purchase a substantial portion of the vacant lot, which would add 4,875 square feet to their lot and make their lot conforming as to lot size. They would like to add on to their home with a 30'X24' addition where

the rear yard would only be 10' versus the 25' that is required.

He said Maria Rowe & Ricardo Matos own lot 49 at 34 Park Avenue and own the vacant lot, number 54. Their house has only a 2' rear yard setback adjacent to the vacant lot. Would like to retain 10' of the vacant lot and add it to the rear of their lot, thus making the rear yard less non-conforming.

He said the "Abel's" have a very undersized lot. Acquiring most of the vacant lot will allow them a modest addition to their small home and bring their property into conformity with the character of the neighborhood. They have no other way to bring their lot area into conformity. The minor rear yard setback variance will allow the land that is to be acquired to be allowed for a modest expansion to their small home.

He said the proposed lot line relocation would increase the rear yard for the Lot 29 from 2' to 12', making the house at 34 Park Avenue also less non-conforming.

He said the proposal will reduce the extent of the non-conformity and make the two properties more in character with the neighborhood.

Mr. Maynard said this is within the spirit and intent of the ordinance. The properties meet or exceed all other aspects of the regulations. The increase in the lot size for the existing homes would definitely increase property values and tend to enhance neighborhood property values. The public, especially the immediate neighborhood, would benefit because the properties would become less non-conforming and increase in value. Substantial justice would result with both properties becoming less non-conforming, especially for the "Abel's" at 25 Stevens Avenue because they will be able to put a modest addition on their small home. Without the addition the "Abel's" will be forced to move elsewhere in the next several years.

Mr. Duffy asked if the homes are single-family and if the

addition is a single-story.

Mr. Maynard said the Abel's want to have a family and need the bedroom space. It is a single-story addition.

Mr. Duffy asked the distance from the existing house to the lot line in the back.

Mr. Maynard said the existing home is 10' and is existing, non-conforming. He said there are many homes in this area that, for some reason, seem to have 10' rear yards.

SPEAKING IN FAVOR

Dan Abel, 25 Stevens Street. Mr. Abel said the reason he wants to purchase the land is to construct an addition. They have a two-year old son right now and want to increase their family size.

SPEAKING IN OPPOSITION OR WITH CONCERN

Dorothy Lavoie, 34 Lawndale. Mrs. Lavoie said she is not in opposition, but has a concern about the sewerage and water system here. When they have heavy rains the sewers at that end of the street back up. There is raw sewerage and all kinds of trash coming out onto the street. She said if there is an addition put on the house are they going to be able to take care of the sewerage and water system.

Norman Cote, 33 Park Avenue. Mr. Cote said he doesn't know if this will change the situation, but they've had four to six cars in the back yard at Stevens Street. He's curious where the cars will go now.

Some discussion occurred with Mr. Duffy stating he is assuming that with a house addition taking up the space where the cars were that there wouldn't be any cars there. He said they would have the applicant address the concern.

Mr. Cote asked what the difference is between the variance they

are asking for now and the one they came to the Board for previously - in the last year or so.

Mr. Duffy said it's a new application so they have not stipulated any testimony from any previous meeting.

Mr. Falk said the last one was to put a house on the vacant lot so this is a better plan from the staff's perspective because it's still the same number of dwelling units. It's just reconfiguring the lot line and putting on an addition.

SPEAKING IN FAVOR - REBUTTAL

Mr. Maynard said as far as the sewerage is concerned, this is storm drainage that is overwhelming the local system because in some areas it's probably combined. What they are doing is an addition. There will be a minor amount of additional sewerage with one or two kids. What they will be doing has nothing to do with the pre-existing problem. He doesn't know when the City might fix it.

He said the cars were associated with Mrs. Rowe's property. She had a few boarders living with her. They no longer do so. They were fully registered vehicles.

He said the addition is not adding any more units to the property. It allows Mr. Abel and his young family to have a small expansion. It's a small home on a very small lot. This brings the situation much closer to the regulations and spirit of the ordinance.

SPEAKING IN OPPOSITION - REBUTTAL

Norman Cote. Mr. Cote said he has problems at his house with the sewerage issue - all the houses around this area do.

Mr. Duffy said this is an issue for the Public Works Department to address.

MOTION by Mr. Berthiaume to grant the following variances: 1)

minimum lot depth, 90' required, 75' existing, 65' proposed, and 2) minimum rear yard setback, 25' required, 10' proposed - to relocate rear lot line of lot 48 ten feet south, consolidate remainder of lot 48 with lot 54 and construct a 24'X30' home addition on east side of 25 Stevens Street. The variance is needed to enable the applicants' proposed use of the property given the special conditions of the property. The lots are smaller and older. The area was mapped out long before the current zoning. The homes are placed close to the lot lines. It is also a corner lot. The benefit sought by the applicant cannot be achieved by some other method reasonable for the applicant to pursue other than through the variance. It is within the spirit and intent of the ordinance. It will not adversely affect the property values of surrounding parcels. It's likely to increase the values because the lot sizes will be larger. It is not contrary to the public interest. Substantial justice will be served.

SECONDED by Mr. Rondeau.

MOTION CARRIED UNANIMOUSLY

2. Michael R. & Maria C. Barry (Owners) 14 Columbia Avenue (Sheet 65 Lot 189) requesting variance to encroach 4.5 feet into the 10 foot required right side yard setback to construct a 10'x12' garage addition. RA Zone.

Voting On This Case:

Sean Duffy
 Susan Douglas
 Jay Coffey
 Don Berthiaume
 Jeffrey Anderson

Brian Lavoie. Mr. Lavoie said he is representing the owners of the property. He said they are requesting a variance because they want to put in a 10'X12' addition to enlarge their kitchen. The kitchen is going to be moved into the existing

front half of their garage.

He said granting the variance will not violate the spirit and intent of the ordinance. They will not be adding congestion to the streets. It will not cause any safety hazards. It will not overcrowd the land. The lot has about 29,000 square feet.

He said the existing house was built in 1930. This used to be one large parcel and the owner subdivided. The property line ended up being close to the existing garage.

He said the surrounding properties will not be affected or lessen in value because the addition will have the same characteristics as the existing structure. Adding a 10'X12' addition will not affect the exterior appearance of the main structure. It won't be seen from the street as the addition is on the backside of the garage.

Mr. Anderson asked what happens to the old driveway.

Mr. Lavoie said the old driveway is going to be moved.

SPEAKING IN FAVOR

Michael Barry, 14 Columbia Avenue. Mr. Barry said he is bringing up four children and for all intents and purposes the kitchen right now is the size of a postage stamp. He said they need a bigger kitchen.

He said he has spoken to his neighbors and shown them his plans and he doesn't believe there is anyone who has objections to it.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No One.

MOTION by Mr. Coffey to grant the variance to encroach 4.5' into the 10' required right side yard setback to construct a 10'X12' garage addition at 14 Columbia Avenue. This will enable the applicant to use the property given the special conditions of

the property. The benefit sought by the applicant cannot be achieved by any other means. The home was built prior to existing zoning regulations. The lot was subdivided at an earlier time and the existing house was close to the setbacks. It is within the spirit and intent of the ordinance. It will not adversely affect the property values of surrounding property values. It is not contrary to the public interest Substantial justice will be served by granting the variance.

SECONDED by Mr. Berthiaume.

MOTION CARRIED UNANIMOUSLY

3. City of Nashua (Owner) Division of Public Works (Applicant) L Chestnut Street (Sheet 108 Lots 8 & 76) requesting special exception to work within the 75 foot prime wetland buffer of Salmon Brook to replace a damaged 50'x50' playground. RA Zone.

Voting on This Case:

Susan Douglas
Sean Duffy
Jay Coffey
Don Berthiaume
Jack Currier

Theodore Setas, Division of Public Works. Mr. Setas said Nick Caggiano from the Park Recreation Department is also present. He put up an exhibit for the Board to view which shows what they are proposing to do on the site.

He said they wish to replace the existing playground. He showed the location. They will put in a new playground with an ADA ramp. He said Main Street is located to the right side of the plan and Salmon Brook is located to the north.

Mr. Setas said the City of Nashua, Division of Public Works is requesting a special exception to work in the 75' wetland buffer of Salmon Brook that will allow the construction of a replacement playground at the existing site. The existing site is non-conforming. He said the original playground was destroyed by fire in the fall of 2003 and also falls within the 75' prime wetland buffer. The replacement playground is similar and will be placed in the disturbed area.

He said the improvements will not create any undue traffic congestion and will improve pedestrian access to the playground by adding an ADA compliant ramp.

He said the improvements will not overload Salmon Brook or any municipal system in the area nor will any other areas of the City be subjected to hazards affecting health, safety or general welfare. He said temporary and permanent erosion control measures are proposed in this project.

He said the proposed use is in character with the neighborhood as the use is the same. It will not destroy or be detrimental to the health, welfare or morals or the City.

He said the location of the proposed improvements was chosen after looking at several options and determining the best location for the ADA compliant ramp and playground that would not impact the trees or other existing features. The proposed design includes a retaining wall around the playground to lessen silt impacts or fill into the buffer area and produces the least impact to the area.

He said the repair of an existing retaining wall near Salmon Brook is proposed as mitigation for this improvement. He indicated the location of this wall as well as some trimming of invasive species. The area of encroachment is previously disturbed wetland area. The overall impact to the buffer is necessary for the use of the land. This is outweighed by the benefits derived from the proposal. He said there are no anticipated impacts to the aquatic habitat of rare or endangered species in the area.

Mr. Setas said biodegradable silt fence and the replacement of a portion of the existing retaining wall should provide adequate erosion and sedimentation control for the project area.

He said the plan was approved by the Conservation Commission on April 19th.

Mr. Duffy asked the Board received the findings of the Conservation Commission this evening. He asked if they are aware that there is a condition that all invasive species within the park had to be removed by September 30, 2005.

Mr. Setas indicated he was aware of the condition.

Mr. Duffy asked how long the project would take from start to finish.

Mr. Setas said about a month. They are looking to begin in June.

Mr. Duffy said they are replacing a granite cap on a wall. He asked what causes that to break down.

Mr. Setas said he believes this was something that was done manually. Somebody pushed the granite cap off of the wall. They are putting it back. It will allow the water to flow in back of the retaining wall and spread out the flow instead of what they are having - erosion on the bank.

Mr. Berthiaume asked how the cap would be replaced and secured so that it doesn't get knocked off again.

Mr. Setas said the top of the retaining wall is granite block and they put granite block on top. It is pretty heavy so they haven't thought about using any device to secure it. It would take a piece of equipment to knock it over.

Nicholas Caggiano, Supt. of Parks, City of Nashua. Mr. Caggiano said the playground was destroyed about 2 ½ years ago. They made some temporary repairs to the playground to at least keep

something there for the children. They had to seek a funding source which they were finally able to secure. They just want to replace the existing playground to a slightly different location to make it a little better and to add the ADA ramp to be compliant with those requirements.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No One.

MOTION by Mr. Currier to grant the request for special exception to work within the 75' prime wetland buffer of Salmon Brook to replace a 50'X50' playground at Chestnut Street, Sheet 108 Lot 8 & 76. This is listed in the Table of Uses, Section 16-575. It will not create any undue traffic congestion. It will actually enhance pedestrian safety by the addition of the ADA ramp. There's no affect on public water or sewer. It will actually help the drainage by replacing the cap. The special regulations will be fulfilled. It will be within the character of the neighborhood as there is an existing playground. Special Condition: Invasive species shall be removed by September 30, 2005

SECONDED by Mr. Berthiaume.

MOTION CARRIED UNANIMOUSLY

4. City of Nashua (Owner) City of Nashua Fire Rescue (Applicant) L East Hollis Street (Sheet 36 Lot 71) requesting variance to allow light trespass to exceed 0.2 foot-candles at surrounding property lines. GI Zone.

Voting on this Case:

Susan Douglas

Sean Duffy

Jay Coffey

Donald Berthiaume
Richard Rondeau

Atty. Gerald Prunier, 20 Trafalgar Square, Nashua. Atty. Prunier said Steve Auger, Project Engineer from Hayner/Swanson is present. He said the Board has seen this plan before and has approved some variances for it.

He said the Board had a similar request two weeks ago for a property that was to be a shopping center that consisted of three lots, but they were all united. The lighting was going to spill over into the internal property lines.

Mr. Duffy asked if the subject lot wasn't very narrow.

Atty. Prunier agreed.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No One.

MOTION by Mr. Berthiaume to grant the variance to allow light trespass to exceed 0.2 foot-candles at surrounding property lines L East Hollis Street, Sheet 36 Lot 71. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible to the applicant to pursue. The lot is narrow. The light trespass is on the street and railroad bed to the rear. The store is closed at night and there should be no impact to that property. It is within the spirit and intent of the ordinance it will not adversely affect the property values of surrounding parcels. It is not contrary to the public interest. Substantial justice will be served.

SECONDED by Mr. Rondeau.

MOTION CARRIED UNANIMOUSLY

6. BCIA New England Holdings, LLC (Owner) 410 Amherst Street (Sheet H Lot 38) requesting special exception to work within a critical wetland buffer to install a conduit line. AI Zone.

Voting on This Case:

Susan Douglas
Sean Duffy
Jay Coffey
Don Berthiaume
Jeffrey Anderson

Ron DeSimone, BCIA, 410 Amherst Street. Mr. DeSimone passed out some information to the Board. He said the request before the Board is to encroach into the 40' wetland buffer. He said they basically will be installing a 4" PVC conduit line to the rear of the property in order for Verizon to install fiber optic cable.

He said silt fencing will be installed to minimize any impact. The project will be completed over a two-day period. They will be digging and repacking the soil the same day. There will be no stockpiles of soil left on the property.

He said the project does not adversely affect the spirit of the ordinance. It demonstrates reasonable use of the property for a commercial office building by bringing new technology into the building. The project will not injure others or negatively impact the surrounding property values.

He said the project was approved by the Conservation Commission on April 19th with some conditions such as posting some signs around the property not to feed the wildlife and growing some grass 3' from the wet edge of the property.

Mr. Currier asked if they are connecting a couple of buildings with this cable.

Mr. DeSimone said they are. He said the major building is 410 Amherst Street. There is some existing conduit in the ground that is going to connect up to it to connect the building in the rear.

Mr. Currier said it looks like it's a straight line so it appears that the least damaging best practical alternative is being proposed.

Mr. DeSimone agreed.

Mr. Currier asked Mr. DeSimone to address the mitigation again.

Mr. DeSimone said the Conservation Commission came to the site. They wanted to see some grass around the pond. He said they thought that this would help with the wildlife. They are going to install some silt fencing to prevent soil from going into the water.

Mr. Currier said there is no adjoining buildable land because the land is already built on. He asked if there are any rare or endangered species.

Mr. DeSimone said there are no endangered species.

Mr. Currier read the Conservation Commission stipulations as follows:

Put up signage not to feed the geese. No cutting for 3' from the edge of wet on the property. Report back to the Conservation Commission with a geese update next year.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION OR WITH CONCERN

No One.

MOTION by Mr. Coffey to grant the special exception to work within a critical wetland buffer to install a conduit line at 410 Amherst Street. It is listed in the Table of Uses, Section 16-575(b)(3). It will not create any undue traffic congestion or unduly impair pedestrian safety. It will not overload any public water, drainage or sewerage. No special regulations needed at this time. It will not impair the integrity or be out of character of the neighborhood. This is for a fiber optic line to improve the communications to the property. The wetlands special conditions have been reviewed. The recommendation of the Conservation Commission is incorporated into the granting of the request.

SECONDED by Mr. Anderson.

MOTION CARRIED UNANIMOUSLY

7. Donna I. Ploof Rev. Trust (Owner) 56 Lock Street (Sheet 45 Lot 105) requesting the following variances: 1) minimum lot area, 9,000 square feet required, 6,815 square feet existing, and 2) minimum lot width, 90 feet required, 66 feet proposed - to convert a single-family house into a two-family house. RB Zone.

Voting on This Case:

Susan Douglas
Sean Duffy
Jay Coffey
Don Berthiaume
Jack Currier

Donna Ploof, 169 St. Marie Street, Manchester. Ms. Ploof said she is asking to convert the house at 56 Lock Street into a two-

unit building. The house has nine rooms. There is room for nine cars to park so there should be no parking on the street. There are two fenced-in yards. The house looks like a two-unit building so everyone thinks it has two units as it is.

Mrs. Douglas asked if the footprint or outward appearance of the building is being changed.

Ms. Ploof said not at all.

Mr. Duffy asked if the curb cuts and driveways will remain the same.

Ms. Ploof said "yes".

Mr. Carrier asked if there is any yard space left.

Ms. Ploof said there are two front yards. They are fenced. There is a four-car garage in the rear. There are an additional nine parking spaces.

Mr. Carrier asked what the layout of the two apartments would be.

Ms. Ploof said there would be five rooms downstairs and four rooms upstairs. There are two bedrooms in each unit. She said they already have a kitchen on each floor.

Mr. Carrier asked how long Ms. Ploof has owned the property.

Ms. Ploof said she inherited it from her parents four years ago.

Mr. Carrier asked how long it had been two families.

Ms. Ploof said a couple of months. She put in a kitchen. She didn't know she needed to come to the Zoning Board for approval. She provides heat, electricity and hot water.

Mr. Duffy asked if there are other two-family dwellings or multi-family dwellings in this area.

Ms. Ploof said the houses in this neighborhood are very close. Behind her property is a three-family house. One on the side of her is a single-family home. On the other side of her is a store. The DAV hall is across the street in front of her. There is a four-unit building kitty-corner on the other corner.

Mr. Carrier asked if Ms. Ploof is paying taxes on one or two units.

Ms. Ploof said one.

Mr. Carrier asked Ms. Ploof the purpose for turning this into a two-family dwelling.

Ms. Ploof said she moved from this home and didn't want to rent out a nine-room house and she wanted to keep it for an investment.

Mr. Duffy asked Ms. Ploof made her realize that she needed a variance.

Ms. Ploof said when she rented the apartment they needed another trash bin. She called for a trash bin and she was told it was not a two-family house. She said she remembers when she was a kid it was a two-family house. She said she was told that it may have been, but not legally. That's when she found out that she had to go through the process.

Mr. Carrier asked if this was a two-family at one point in time.

Ms. Ploof said years ago it was. When she used to go to school it used to be.

Mr. Coffey asked if it was her parents who converted it to a single-family.

Ms. Ploof said as far as she knows it was.

Mr. Duffy asked Ms. Ploof if she had any letters or some kind of evidence concerning property values in the area.

Ms. Ploof said she didn't have anything like that.

Mr. Duffy asked Ms. Ploof what affect she thought the conversion would have on the property values.

Ms. Ploof said the neighbors know she is doing this and people think it is a two-family anyway. There are two front doors and two back doors.

Mr. Currier asked if the upstairs apartment has a separate entrance.

Ms. Ploof said "yes". She said when you look at the house there are two entrances. One goes up and one is for the downstairs.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No One.

Mr. Currier asked Mr. Falk if there is anything to indicate that this was a two-family dwelling. Mr. Falk said there was no indication that it was a two-family dwelling.

The Board discussed the fact that it does look like a two family from all angles and that there is ample parking.

MOTION by Mr. Coffey to grant the variances: 1) minimum lot area, 9,000 square feet required, 6,815 square feet existing 2) minimum lot width, 90' required, 66' proposed to convert a single-family home into a two-family at 56 Lock Street. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. The benefit sought by the applicant cannot be achieved by some other method reasonably available to the applicant. The house appears to be a two-family. Testimony from the applicant indicates that

at one point in time it was a two-family dwelling. It is reasonable in light of the surrounding properties. It is within the spirit of the ordinance. It will not adversely affect property values of surrounding parcels. It is not contrary to the public interest. Substantial justice will be served by the granting of the variance.

SECONDED by Mr. Berthiaume.

MOTION CARRIED UNANIMOUSLY

8. Juan D. Jacquez (Owner) 39 Crown Street (Sheet 23 Lot 6) requesting: 1) special exception to expand a nonconforming use by converting a two-family dwelling into a three-family dwelling; and 2) variance for minimum lot area, 10,500 square feet required - 9,656 square feet proposed. GI Zone.

Voting on This Case:

Susan Douglas

Sean Duffy

Jay Coffey

Don Berthiaume

Richard Rondeau

Raul Anguiano. Mr. Anguiano said he doesn't speak English very well. He said he is here to help his friend, Juan Jacquez. He said the third floor of this house is almost completed for a third unit. He is asking for permission for a three-family unit.

Mr. Duffy asked if there is already a full kitchen upstairs.

Mr. Anguiano said there are two rooms and one would be used as a kitchen.

Mr. Duffy asked if there is a separate entrance for the third

unit.

Mr. Anguiano said "yes".

Mr. Duffy asked if there would be three total entrances.

Mr. Anguiano said "yes".

Mr. Anderson asked if there is porch on the third floor.

Mr. Anguiano said there is.

Mr. Duffy asked if they are aware that this will have to be reviewed by the fire regulations and the Planning/Building Department because there have to be exits and entrances that have to be maintained for safety.

Mr. Anguiano said "yes".

Mr. Rondeau asked about the parking for the additional unit.

Mr. Anguiano said there is enough space to fit seven cars plus two in the garage for a total of nine spaces.

Mr. Berthiaume asked if there is anything in the garage now.

Mr. Anguiano said Mr. Jacquez has some tools in it.

Mr. Berthiaume asked if there is going to be access to the garage for parking.

Mr. Anguiano said "yes".

Mr. Berthiaume asked where the seven cars would fit - on the pavement?

Mr. Anguiano said "yes".

Mr. Duffy said he thought the parking was a little "tight". He asked if Mr. Jacquez really thought there would be enough

parking.

Mr. Anguiano said the space is big.

Mr. Duffy asked for testimony about other multi-family houses or similar houses in the neighborhood.

Mr. Anguiano said he just moved there about six months ago and he is kind of shy and he doesn't know his neighbors.

Mr. Duffy asked if work is being done on the house right now.

Mr. Anguiano said "no".

Mr. Duffy asked if the material that is on the property is going to be cleaned up.

Mr. Anguiano said "yes".

Mr. Duffy asked if there would be any other structures or porches on the lot. He remarked again that to him this lot is very "tight".

Mr. Anguiano said Mr. Jacquez has no plans to do any of this.

Mr. Coffey said in one of the photographs it looks like the back yard to the right of the garage has been plowed. He asked if the area is going to be paved.

Mr. Anguiano said "yes".

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No One.

Mr. Carrier said with this parking situation it can get muddy.

He doesn't think there is anything wrong asking that it be paved and that it be striped for parking.

Discussion ensued about the type of material that could be used for the parking as well as the size of a regular parking spot (9'X20').

Mr. Duffy said he believes that the applicant would be amenable to provide and maintain adequate parking.

He said he understands there is a minor tax bill that has to be cleared up. That will be a special condition for approval. It would have to be paid to the satisfaction of the Tax Department.

Rules suspended.

Mr. Duffy asked if Mr. Jacquez would be willing to pay his tax obligation within a five-day period.

Mr. Anguiano said it will be paid before the five days.

Mr. Berthiaume asked if the parking area could be enlarged and not be lawn area.

Mr. Anguiano said "yes". He said as soon as he has a permit he will do it.

More discussion about the parking area ensued.

MOTION by Mr. Berthiaume to approve the special exception to expand a non-conforming use by converting a two-family dwelling to a three-family dwelling at 39 Crown Street. It is listed in the Table of Uses, Section 16-208 & 16-254. It will not create undue traffic congestion or unduly impair pedestrian safety. It will not overload public water, sewerage or sewer or other municipal systems. There are no special regulations. It will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, welfare or morals of the residents. Special Conditions: 1. Tax bill is satisfied within five days to satisfaction of the Tax Department 2.

Suitable parking be prepared and maintained.

SECONDED by Mr. Rondeau.

Mr. Duffy said if the granting of the tax bill is not paid within five days of this motion, the special exception is not approved.

MOTION CARRIED 4-1, Mrs. Douglas opposed.

MOTION by Mr. Berthiaume to grant the variance for minimum lot area, 10,500 square feet required, 9656 square feet proposed for 39 Crown Street. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue other than the area variance. There are relatively few single-family homes in the neighborhood. There are two-families, if not larger so a three-family wouldn't be out of character. It is within the spirit and intent of the ordinance. It will not adversely affect the property values of surrounding parcels. It is not contrary to the public interest. Substantial justice will be served. Special Conditions: 1. Tax bill is satisfied within five days to satisfaction of the Tax Department 2. Suitable parking be prepared and maintained.

SECONDED by Mr. Rondeau.

MOTION CARRIED 4-1, Mrs. Douglas opposed.

9. Estate of Esther C. Baybutt (Owner) West King Properties, LLC (Applicant) 39 King Street (Sheet 13 Lots 51 & 54) requesting the following variances: Lot 51: 1) minimum lot area, 6,000 square feet required - 5,528 square feet proposed, 2) minimum lot width, 60 feet required - 50 feet proposed; Lot 54: 3) minimum lot area, 6,000 square feet required - 5,495 square feet proposed, and 4) minimum lot width, 60 feet required - 50 feet proposed - all requests to transfer common ownership between two contiguous

nonconforming lots. RB Zone.

Voting on This Case:

Susan Douglas
Sean Duffy
Jay Coffey
Donald Berthiaume
Jeffrey Anderson

Atty. Gerald Prunier, 20 Trafalgar Square, Nashua. Atty. Prunier said this property is located on the corner of Newbury & King Streets. The two lots that are involved have been the same since 1954. They've been taxed separately since that time. They have been deeded separately by two separate descriptions.

He said the proposal is to build a single-family home on the vacant lot. Because of the merger clause in the ordinances for the City this is a conforming lot so separating them makes them non-conforming.

He said this area of Nashua has quite a few different sized lots. It's an old part of Nashua. He gave the Board a list of lot sizes and number of units per lots that he had prepared. He said they will see that most of the lots are closer to the 5,000 square feet than 6,000 square feet, which is the requirement in the RB Zoning District. He referred the Board to the Assessor's Tax Map which was exhibited. He pointed out the two lots that they are discussing and the surrounding lots for comparison.

He said they cannot acquire any more land to satisfy the requirements in the Ordinance. Therefore, it meets the "Boccia" test. It also meets the "Vigeant vs. Town of Hudson" case because what is proposed is permitted in the district. A single-family home is proposed for the lot.

He said it's not out of character with the neighborhood as indicated by the sheet showing the various lot sizes as well as the Assessor's Map showing that there are many lots smaller. He said the lots are either the same size or smaller than what is

proposed in this particular area. There are a few larger lots, but most of them are smaller.

He said this is going to be a new single-family house - the type of housing that the City needs - affordable housing. It will add value to the neighborhood in that it's new construction - something viable is happening to that particular area. It's not in violation of the zoning ordinance because the zoning ordinance allows single-family homes in this zone. Both lots will be approximately 5,500 square feet where 6,000 square feet is required.

He said they can't do anything about the width requirement.

Mr. Duffy said Atty. Prunier to lot sizes in this area. He asked him to address lot width in the area.

Atty. Prunier named off some of the lots that do not meet the requirement. He said this is an old neighborhood and the houses existed long before the zoning ordinance went into effect. They were built on small lots, which was allowed at that point in time.

Mr. Berthiaume asked where they are putting a curb cut.

Atty. Prunier said King Street. He said there's already one for the other house. He said there is some over-lapping of shed that will be removed.

Mr. Currier asked how long and how wide the driveway was going to be and where it was going to be located.

SPEAKING IN FAVOR

Richard Maynard, Professional Engineer, Maynard & Paquette. Mr. Maynard said these lots were created by subdivision recorded at the Registry in a plan dated July 1982.

He said they haven't quite picked the house yet, but most likely the driveway would come on either side of the house depending on

the house style. Right now there is no proposal for a garage.

He said the majority of the lots in this neighborhood have single-family homes on them. There are only a few twos and threes in this particular section of Crown Hill. Also, the majority of them are all less than 6,000 square feet in size no matter whether they are two-family or single-family. They mostly have 50' of frontage. This is the reason they are asking to put a single-family home on the vacant lot as opposed to consolidating the lots, which would then allow for a duplex. It would be somewhat out of character with the neighborhood. He said there's no question that two single-family homes as opposed to a duplex enhances the property values.

Mr. Maynard said there is sewer, water, and drainage in this particular area of the City and is more than adequate for a single-family home. There are no problems associated with undue traffic or pedestrian safety.

Mr. Currier asked if there is going to be room for two cars on the driveway.

Mr. Maynard said that they aren't going to be putting in a 20' wide paved driveway because that's not within the character of the neighborhood. They are single-width - 10' or 12' - and the cars are parked back to back. If there is a garage, the driveway would tend to go in the back and have a side entry. Many of the properties in Crown Hill don't have garages.

Howard Chain, 24 Hobart Drive, Nashua. Mr. Chain said he is a manager on this project, along with another party. He said they approached this knowing that they had the right to have a two-family dwelling on the property. He said before they decided to do that they talked to the neighbors in the area and the majority of the people he spoke to, when given a choice of two single-family homes versus a duplex, preferred a single-family home.

He said the people he spoke to who were in favor of the single-family home either can't come or don't want to come and speak in

public. They really aren't concerned about it.

He said if they are permitted a single-family home on the lot, it will have a singlewide driveway about 12' wide and the house will be on the property such that there will be two car off-street parking. There will be no garage. Most likely the home will be a small three-bedroom colonial. It will be two stories and similar to other homes in the neighborhood.

Mr. Duffy asked approximately how many abutter's property owners Mr. Chain spoke to that were positive in nature.

Mr. Chain said he spoke to a couple of direct abutters. A third one was on the fence, depending on whether they put a fence between his property and theirs. He's right next door. They told him that they would be happy to work this out with him. He spoke to another neighbor that's about four houses down. He said he probably spoke to less than seven people. He said they asked them to write something down or sign something saying what their preference was and they didn't want to do that.

SPEAKING IN OPPOSITION OR WITH CONCERNS

Mr. Duffy said there is an undated letter in opposition to the request. It's from Natalie Bibeau, 48 Newbury Street. They are opposed to the variance because of the distance to the sidewalk.

Bonnie Wilsonbose, Daughter of Joseph Stirkey, 37 King Street, Direct Abutter. She said she is going to be the mouthpiece for the abutters tonight. If there are any questions, they are here to speak for themselves.

She pointed out the direct abutters on the plan within the circled area shown on an exhibit. She said they are concerned that the improvement is for the best use of the neighborhood. She said the applicant spoke of putting in a two-family and after talking to neighbors decided a single-family would be best.

She said the abutters are concerned with the impact on their neighborhood - whether it's a benefit or a negative. She showed

where the neighbors were told the driveway would be. She said they don't know which side the driveway is going to be on, but that it's going to come out onto King Street. These streets are all very narrow. Over the years the neighbors have had to endure machinery companies that had trucks that went up and down the street and now they have to deal with the snowplows which are now wider and they have to deal with where the snow goes on their lawns. There's going to be another driveway and there's going to be the impact of traffic coming in and out. They want to know if the driveway is going to have two cars, three cars or four cars. She said there was testimony that there is no proposed garage, but is there going to be a garage and is it going to be backed up to somebody else's back door.

She said these homes were built in the 1880s and 1890s. The entire street has lovely large homes. It carries the character of that time. It's not like many other streets in Crown Hill that have had two, three and four family homes. They are beautiful and well maintained New England homes.

She said they are concerned that if there are going to be more than two cars if they are going to be parked out on the street - if it was going to cause congestion.

She said they want firm answers to the number of vehicles and whether there will be a garage or not. She said many of the homes here don't have a garage because they wouldn't fit. The ones that have garages rent to each other.

She said the neighbors are basically concerned about the integrity of these old New England homes on the street having more houses crammed in.

Mr. Duffy said with regard to some of the things that Mrs. Wilsonbose addressed, there is some new case law "Bergeron vs. City of Nashua" that has come from State Superior Court that talks about deeded lot sizes and deeded lots of record. This was a deeded lot of record at one point.

Mr. Carrier asked if the neighbors are essentially opposed to

building anything on the lot or if they are concerned about what it's going to look like and that it might end up being out of character with the neighborhood.

Mrs. Wilsonbose said it really could be and it would have a direct impact on them. The driveway for the other lot comes out onto Newbury Street. The proposed new house will have a driveway onto King Street.

Mr. Currier asked if the design of the house were available and it was a beautiful one if the neighbors would still be opposed to it.

Mrs. Wilsonbose said the question is how many cars are there going to be there. If there are going to be two cars or if there is going to be a garage and if there is a garage it backs up to a neighbor's back door.

Joe Skirkey, 37 King Street. Mr. Skirkey said his property abuts the "Baybutt" property. He said he has been a resident here for fifty-one years.

He said he had no information until tonight as to what was going to be done with this property. He said he understands that they need a variance because of the size of the lot. He isn't sure whether they want to put a house on both lots, or what. He said his house is on the corner of King & Newbury, just like the "Baybutt" property - just on the opposite side of the street.

He said most families today usually have a couple of cars and he is concerned about where all these cars are going to go. He said there is an apron in between the street, which makes it that much narrower. He has seen people parking overnight because there's no place for them to park in their yards. He thoroughly disagrees with the request.

Natalie Bibeau. Mrs. Bibeau said she is the individual who sent a letter in concerning this request. She said she is a direct abutter. She said nobody came to her house to talk to her about this.

She said when Mr. Baybutt was alive he put three maple trees on the property line and they are encroaching and ruining her driveway. She said she doesn't own these trees.

Mr. Duffy said this is not within the jurisdiction of the Board.

Mr. Falk said that the applicant does not have to go to speak to the abutters. He said the staff notifies everyone who is an abutter of the upcoming case by certified mail. There is also an ad placed in the newspaper. This is the legal requirement for notification. He said the applicant can speak to the abutters if they want, but it's not required.

Mrs. Bibeau said that the man who presented the case claimed he met with people who approved this. She said she received a letter from the City and she had a visit from a lady (sitting in the back).

She said she is hoping that this home doesn't have a canopy over it like the mess on Williams Street, which was done by the same people.

Dorothy Hurley, 36 King Street. Mrs. Hurley said she was never asked what her opinion was concerning this property. She did receive a notice from the City. She said she is worried about the sewerage in front of her house with another home added to the system.

Mr. Currier asked if the storm drain on the street backs up.

Mrs. Hurley said the sewer backs up on the street. She said her land is low.

SPEAKING IN FAVOR - REBUTTAL

Atty. Prunier said it's kind of hard to argue with the abutters when they've told the Board exactly what he has said about the size of the lots, etc. The land has been there for many years and the Baybutt's paid taxes on the land for fifty years. He

said based on the Supreme Court cases on use, they have the right to use the lot.

He said King Street is a 50' right-of-way. When these houses were built they didn't have a lot of dimensional requirements so they could build the houses close to the street. At least the street gets plowed.

He said they are trying to use the lot for an allowed use - a single-family colonial house.

Mr. Currier said he came to the Board after the Williams Street thing had kind of blown up. He said one of the things that seemed to happen on that was the plan drifted along the way and it ended up a problem. When he looked at the subject application he asked himself why the applicant wouldn't state what the design of the house was going to be and the location of the driveway. Then if people had a problem with it they could testify to it and if there were no problems they could be supportive of it.

Atty. Prunier said there are no objections if the Board wants to table the case until they come back with a design. He said they have indicated it would be a colonial. He said they can also stipulate that it be a colonial.

Mrs. Douglas said she heard testimony that it was going to be a three-bedroom colonial and that there would be a driveway to accommodate two cars.

Mr. Falk said the variance is for dimensional issues. He said it doesn't have anything to do with the type of a house to be built. He said he knows the applicant has made a statement that it is going to be a three-bedroom colonial without a garage.

Atty. Prunier said they are willing to have a special condition concerning the type of house if the Board wishes to place one. He said it's not unreasonable given their testimony.

Mr. Duffy asked if the house would be within all the setbacks.

Atty. Prunier said it would meet the setback requirements.

SPEAKING IN OPPOSITION - REBUTTAL

Mrs. Wilsonbose said most of the people in the neighborhood have been there for fifty years. The attorney said the attorney indicated change is difficult for everybody, but you get used to it. She said the owners of homes in the neighborhood have also paid their taxes just like the "Baybutt's" did.

She said the value of the home is the biggest concern; if the home that is to be built is something that's appealing and brings up the value of the neighbor's properties or if it's something that's deplorable like the Williams Street thing and it brings down the property values.

She said they are concerned about the parking and if there is going to be a future proposed garage that encroaches on other people. There is a lot of unknown. When dealing with a small 5500 square foot lot these people don't want it in their space. They don't want change now.

Mr. Duffy asked Ms. Wilsonbose if she is aware that all the abutters and people in the area could be putting up garages and adding to their driveways without having to come to the Zoning Board.

Mrs. Wilsonbose said she understands this. She also understands that there were three people who were denied a variance for a garage on their property.

Mr. Duffy said those may have been in setback areas or frontage areas.

Mr. Carrier said Williams Street is in the same neighborhood. He said one thing that struck him about Williams Street is the three or four houses to the left and right. He said there's much more to those houses than just a three-bedroom colonial. There was a specific shape and the house being built on Williams

Street matched it exactly. The carport issue blew it all to pieces. He said what happened there is that there wasn't enough specificity. People who lived there for fifty years believed it was out of character with the neighborhood. He said he didn't think it was outrageous for this Board to ask for a design of the house.

Mr. Coffey said it's not under the jurisdiction of the Board to ask the applicant the design of the house that is going to be built. If an applicant puts up a building that's out of character they run the risk of it not being sold or being sold for a lesser value than what a more attractive piece of property would.

Mrs. Douglas said the Board is also responsible for making sure that whatever goes there doesn't adversely affect other property values in the area.

Mr. Currier said he strongly disagrees with Mr. Coffey about this not being within the purview of the Board. The Board looks at the spirit and intent of the ordinance, the affect of property values on surrounding parcels, and contrary to the public interest. He said the design of the house is a direct input to those three.

Mr. Berthiaume said the Board could put all the stipulations they want on any approval and they could paint the house so it looks like a box of crayola crayons and that's not going to do anything for the neighborhood either. Do you then want to know what color the shingles are going to be. He said that there are a lot of things that affect value.

Mrs. Douglas said the attorney for the applicant didn't seem to have a problem with a stipulation based on the testimony provided by the developer - which is that it would be a three-bedroom colonial with a two-car driveway.

Mr. Coffey said if the applicant wants to put himself into a box by coming up with a specific design and having a stipulation that's his risk. The Board is looking at what's allowed and

it's a single-family dwelling.

Mr. Falk said the whole question is use. He said they are requesting the ability to construct a single-family house. The Zoning Board is not an architectural review board. If the property were in the Historic District or in the "Mixed Use" like the downtown, then it would be appropriate for the Historic District Commission or the Planning Board to review the architectural components of the structure. He said they can't dictate the number of bedrooms in the house - whether there was only one bedroom or six bedrooms or anything in between it is still a single-family house. His opinion is that if the Board wants to put in a stipulation that it simply state that this be a single-family only, colonial style home. He said the house is going to meet the setback requirements and the lot is going to meet the open space requirements. The driveway is going to be 10' - 12' wide. He said the applicant doesn't want to have a "pink elephant".

Mr. Berthiaume said Mr. Falk is correct. The builder doesn't want to jeopardize the amount of money they are going to make on the property. They don't want to build something that isn't going to be beneficial to them or the neighborhood. If staff feels that having a stipulation with the wording that the home be a colonial he is okay with it, but he doesn't think it's necessary.

Mr. Falk said due to the lot constraints with the side yard setbacks of 7' each, that leaves a 36' wide building envelope to work with. There is plenty of room for a colonial style home without a garage. It will fit relatively well in the neighborhood and that's what they have agreed to construct.

Mr. Berthiaume said notwithstanding the design issue, the lot is a deeded lot of record.

Mr. Duffy said a single-family home is an approved use before and after the zoning ordinances. He said when he was driving around looking at all the lot sizes in this neighborhood, he saw multiple lot sizes, different setbacks, structures in the

setbacks, encroachments, and probably cross easements. In other parts of Nashua he has seen some pretty dynamic homes that he wouldn't consider buying, but that the builder had every right to build, whether by variance or not by variance. Some are behind other houses as the in-fill happens in Nashua.

He said in this case they are coming right out onto a street and whether there is a lot of traffic or not he didn't think it was significant as long as the testimony is that they are staying within the setbacks.

He said he feels comfortable with this one. He doesn't mind a stipulation that there be only a single-family home. He said that he personally didn't feel that they need the "colonial" piece. He does not see any grounds to deny the request.

Mr. Carrier said his suggestion wasn't for an architectural review. The things he was addressing were whether there was a driveway and where it would be located, is there a garage or not, a carport or not and length, width, and height. He still thinks this is a reasonable request.

Mr. Berthiaume said he thinks that this would be difficult to hold up in court if they are ever held to it. It's a single-family home.

Mr. Duffy asked if the Board members felt that there was a need to see an architectural plan. They did not indicate that this was something that they needed.

MOTION by Mr. Duffy to grant the variance requests to transfer common ownership between two contiguous non-conforming lots: Lot #51: minimum lot area, 6000 square feet required, 5528 square feet proposed, Lot #51: minimum lot width, 60' required, 50' proposed, Lot #54: minimum lot area 6000 square feet required, 5495 square feet proposed, Lot #54: minimum lot width 60' required, 50' proposed at 39 King Street. The area variance is needed to enable the applicant to have the proposed use of the property, which is a reasonable use. The lots of record are both deeded and on the record before the ordinances of Nashua

were established and after the ordinances were revised. It is reasonably feasible that the applicant have reasonable use for a single-family home, an approved use in the "RB" Zone. The applicant is going to stay within the spirit and intent of the ordinance as the home will be built within the setback areas. It should not adversely affect the property values of surrounding parcels. Even though there was no expert testimony tonight, there are similar houses with lot areas, lot widths, and lot frontages and very similar in both size and shape in this area. It should not be contrary to the public interest that a single-family home be constructed. Substantial justice will be served as the applicant will have development rights that they will be able to exercise. Special Condition: Only a single-family dwelling unit building to be constructed.

SECONDED by Mr. Coffey.

MOTION CARRIED 4-1, Mrs. Douglas opposed.

Request for Rehearing

None

Regional Impact

The Board did not find any items of regional impact on the next agenda.

Minutes

3/8/05

3/22/05

MOTION by Mr. Berthiaume to accept the minutes of 3/8/05 & 3/22/05, waive the reading and place on file.

SECONDED by Mr. Coffey.

ADJOURNMENT

Mr. Duffy called the meeting closed at 8:50PM.

Susan Douglas
Clerk

It
Taped