

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
May 24, 2005

A public hearing of the Zoning Board of Adjustment was held on Tuesday, May 24, 2005 at 6:30 p.m. in the Auditorium at City Hall.

Tom Jenkins conducted the hearing.

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

Also present: Carter Falk, Deputy Planning Manager/Zoning

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Michael D. & Laura A. Lippert (Owners) 1080 West Hollis Street (Sheet D Lot 41) requesting variance to exceed maximum height of accessory structure, 20 feet allowed, 25 feet proposed, to construct a 24'x40' two-story garage on an existing foundation. R30 Zone.

Voting On This Case:

Tom Jenkins

Sean Duffy

Susan Douglas

Jay Coffey

Jeffrey Anderson

Michael Lippert, 1080 West Hollis St. Mr. Lippert said in 1999 he applied for a permit to construct a garage. It was approved and he got the foundation in. Some things happened and he couldn't afford to build the garage. He now wishes to continue to build the garage and since he has a little extra funds he wanted to add a second floor to it. He wanted to have a tall garage door so that he could pull a camper or something similar into it. When he went to obtain a permit he was advised that it was too tall and that is the reason he is requesting a variance.

Mr. Jenkins asked what type of camper Mr. Lippert has.

Mr. Lippert said his parents have a motor home.

Mr. Jenkins said when he visited the property he saw a tractor-trailer.

Mr. Lippert said as soon as the garage is up that will be leaving. There are some items in the trailer that will be going into the garage.

Mr. Jenkins asked if the garage is going to be used for a commercial business.

Mr. Lippert said it is not. It is for personal use.

Mr. Jenkins asked what the second floor of the garage will be used for.

Mr. Lippert said it is going to be a rec room for pool tables, etc.

Mr. Jenkins asked if Mr. Lippert is going to rent it out as income property or utilize it as living space.

Mr. Lippert said "not at all."

Mr. Jenkins said one of the special conditions that would be placed on the granting of any approval is that there would be no plumbing in the garage.

Mr. Jenkins asked if he had talked to his neighbors about this proposal.

Mr. Lippert said he had not. He said he only has the one neighbor on the one side. The trees are about 40' high beside where he is going to put up the garage.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Anderson to grant a variance to exceed the maximum height of an accessory structure, 20' allowed, 25' proposed to construct a 24'X40' two-story garage on the existing foundation at 1080 West Hollis Street. The variance is needed to enable the applicant's proposed use of the property given the special conditions and the necessity to store a motor home. This cannot be achieved by any other method that would be reasonably feasible other than the area variance. It is within the spirit

and intent of the ordinance. It will not adversely affect the property values of surrounding parcels. In fact, it's not even visible from other parcels in the area. It is not contrary to the public interest. Substantial justice will be served.
Special Condition: No plumbing in the garage.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

2. Cynthia M. O'Connor (Owner) 10 Indian Fern Drive (Sheet B Lot 2766) requesting variance to encroach 14 feet into the 40 foot rear yard setback to construct an 11'x13' and 14'x13' deck with staircase. R18 Zone.

Voting on This Case:

Tom Jenkins
Sean Duffy
Susan Douglas
Jay Coffey
Jack Currier

Chad O'Connor & John O'Connor, 10 Indian Fern Drive, Nashua.

Chad O'Connor said he and his brother are standing in for their parents who are away at this time.

He said they have a 40 arborvitae natural tree line across the rear, almost in place of a fence. The ordinance would allow them to put on a deck of only 4'.

He said there is no impact to city services for the expansion of the deck. There will be no roof. There will be no heat, no air conditioning. It's attached to the house.

He said they have contacted the abutters and everybody has indicated they have no problems with the proposal.

He said it will be visibly appealing. At this time they have a

smaller deck on the left side of the house. This will balance off the back yard a little bit. It will also provide an additional exit for the house.

Mr. Jenkins asked if the existing deck will remain.

Mr. O'Connor said it will. What they are asking for will be to the right of it.

Mr. Jenkins said this is on a corner lot, creating the need for two front yard setbacks.

Mr. Jenkins asked if this will extend past the end of the house.

Mr. O'Connor said it will not. He said if they refer to the pictures they will see a door to the right and this will extend to that door.

Mr. Anderson asked if there had been a deck there before.

Mr. O'Connor said there was no deck where they are looking to put the proposed deck. They can't use the door because it's all boarded up right now.

Mr. Anderson asked how long the door has been there.

Mr. O'Connor said they just re-did their kitchen a few months ago and that is when the door was put in. It was done in the hope that the variance would be approved.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Duffy to grant the variance to encroach 14' into the 40' rear yard setback to construct an 11'X13' and a 14'X13'

deck with a staircase at 10 Indian Fern Drive. The variance is needed to ensure the applicant's proposed use of the property. It is reasonable. The special condition on this property is that a hardship was found because of the lot shape, the positioning of the house on a corner lot. It is within the spirit and intent of the ordinance. It should not adversely affect the property values of surrounding parcels. It should not be contrary to the public interest. It is a minor accessory use. Substantial justice will be served.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY

3. Michael A. & Tracy M. Homsy (Owners) 11 Cheshire Street (Sheet F Lot 371) requesting variance to encroach 6 feet into the 30 foot rear yard setback to construct an 18'x18' home addition. R9 Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas

Jay Coffey

Richard Rondeau

Michael Homsy, 11 Cheshire Street. Mr. Homsy said he wishes to build an 18'X18' addition off the back of the house. There is a 26'X15' deck off the back of the house at this time. This will be torn down and the addition will be off the rear of the house where the kitchen is. Basically they want to do a family room with cathedral ceilings upstairs and downstairs.

Mr. Jenkins said a lot of homes in this area have gone for variances because of the fact that they are in a R9 Zone and have small lots.

Mr. Jenkins asked if this is a one-story or two-story addition.

Mr. Homsy said it's one. He said they have a split so the bottom part will be the basement. He said they are going to cut into the existing foundation. He said he wants to maximize space upstairs and downstairs (324 square feet upstairs and another 324 square feet downstairs). The plan is to finish the basement as well.

Mr. Jenkins asked if Mr. Homsy had talked to his neighbors.

Mr. Homsy said he did. Everyone said they didn't have any problem with it.

Mr. Jenkins said this is a corner lot so it sort of creates a hardship because of the need for two front yard setbacks. The house had to be squeezed into that lot.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Coffey to grant the variance to encroach 6' into the 30' required rear yard setback to construct an 18'X18' addition at 11 Cheshire Street. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property and the benefit sought by the applicant cannot be achieved by some other method. The property is on a corner lot and has two front yard setbacks. 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 by granting the variance.

SECONDED by Mr. Rondeau.

Mr. Duffy assumed that the applicant is not asking for another deck to come off of the extension.

Mr. Homsy said there are plans to put a deck on the side of the house. He asked if he would need a variance for it.

Mrs. Douglas said if it is encroaching it will need a variance.

Mr. Jenkins said the applicant should speak to Mr. Falk because depending on the height he may need a variance.

Mr. Homsy said it wouldn't be any higher than the one that's there now.

Mr. Jenkins said the deck that's there now looks like it's about 5' in height.

Mr. Homsy said it's about 4 1/2' in height.

Mr. Falk said if it's less than 4' in height, you may encroach halfway into the setback.

Mr. Homsy said the deck is going on the side where the driveway is located. He has about 50' there. He said he would deal with it when the time comes.

MOTION CARRIED UNANIMOUSLY

4. Ralph E. & Dorothy C. Mills (Owners) 29 Ashland Street (Sheet 60 Lot 52) requesting special exception to allow an accessory (in-law) dwelling unit. RA Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas

Jay Coffey

Jeffrey Anderson

Dorothy Mills, 29 Ashland. Mrs. Mills said she could not hear Mr. Jenkins.

Chris Jones, 39 South Street, Boston, MA. Mr. Jones said the proposal is to have an in-law unit placed on the existing house where the garage is and the back of the porch. This will be roughly about 400 square feet.

He said he and his wife are going to be purchasing the property from Mrs. Mills. The garage and porch will be converted into the in-law unit.

Mr. Jenkins asked if it is only the existing structure(s) that are being converted into the in-law unit.

Mr. Jones said it is.

Mr. Jenkins asked if this is going to exceed 30% of the maximum floor space or 700 square feet. He asked the actual living space of the in-law apartment and the square footage of the house itself.

Mr. Jones said the house has over 2,000 square feet. The in-law unit will have a little over 400 square feet.

Mr. Jenkins asked if this is the only accessory unit in the home and Mr. Jones said it is.

Mr. Jenkins asked if it will alter the one-family appearance or be out of conformity and Mr. Jones indicated it would not.

Mr. Jenkins said the unit is not be used for anyone who is not related by blood or marriage.

Mr. Jones agreed.

Mr. Jenkins said the owner must occupy the structure and provide documentation of relationship and Mr. Jones agreed.

Mr. Jenkins said the owner is to provide the city with a covenant for filing with the Registry of Deeds.

Mr. Jones agreed.

Mr. Duffy said the garage is 22'X12' and the patio/porch is 10'X17'. That's 32' long and the addition is 30' long. He asked if a new foundation is going to be poured.

Mr. Jones said they are not having a new foundation. He said they are going to take the garage and the porch and use it for the in-law. He said they won't be pouring any foundation.

Mr. Duffy asked what the porch is sitting on right now.

Mr. Jones said it's a slab.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Duffy to grant a special exception to allow an accessory in-law dwelling unit at 29 Ashland Street. The special exception is listed in the Table of Uses, Section 16-162. It's a minor adjustment to the property, using the existing garage and patio area. It should not create undue traffic congestion or unduly impair pedestrian safety. It should not overload public water, drainage, water or other municipal system. The in-law criteria are met. It should not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of the residents. There are other different sizes and shapes of homes in this area. This is on a substantial corner lot.

SECONDED by Mr. Anderson.

MOTION CARRIED UNANIMOUSLY

5. 321 Main Street Realty, LLC (Owner) 321 Main Street (Sheet 100 Lot 3) requesting variance to exceed 12 month limit to secure a building permit for an additional year - in order to reconstruct a fire-damaged building. GB/MU Zone.

Voting on This Case:

Tom Jenkins
Sean Duffy
Susan Douglas
Jay Coffey
Jack Currier

Atty. Brad Westgate, Winer & Bennett, 111 Concord Street, Nashua. Atty. Westgate said he is representing 321 Main Street Realty, LLC. He said Tony Basso from Hayner Swanson, the project engineer, is also present. Dan Harding & Peter Lyons, the managers of 321 Main Street Realty, LLC are also present. Jeff Decker of Mapleleaf Construction is also present. They are the company that will be doing the construction of the building project.

He said they are seeking a variance from Section 16-299 of the Zoning Ordinance which provides that any non-conforming structure damaged by fire or other natural cause may be rebuilt provided such work is completed within one year of the damage and does not place the structure in greater non-conformity.

He said this is the location of the Steve King Tire Center. On December 10, 2004 there was a substantial fire that destroyed much, if not all, of the building. Some components remain, but even the remaining components are fire damaged.

He said it turns out that they need to get a permit from NH Department of Environmental Services because the property abuts Salmon Brook and some years ago the City designated this brook

as a prime wetland under State law. When that occurred, it triggered the need to obtain a wetlands permit for work adjacent to Salmon Brook, even if the work is not in Salmon Brook itself.

Atty. Westgate said the foundation is still present. That portion of the foundation that runs along or near Salmon Brook will remain, even when the reconstructed building is built. He said DES has determined that the permit is necessary even though they are proposing to reconstruct the building further away from Salmon Brook and they are keeping the foundation (in effect acting as a retaining wall) because the site is adjacent to Salmon Brook.

He said the Nashua Conservation Commission will have some input on the permit application. He said Mr. Basso appeared before the Conservation Commission earlier this month. They are going back to the Conservation Commission on June 7th, hopefully to get their final input on the application. Then Mr. Basso will send the application to DES for the Wetlands Permit. He said they can't begin construction until the permit from DES is obtained. It could take as long as 90 days, although they hope it will be less. The Army Corps of Engineers has a thirty day window to make comments or to not be involved. When the time is added up, it may be into the September/October time frame before they are cleared on the DES permit. During the interim the property owners will work with Mapleleaf and the City Building Department to firm up the elements of the building permit application. Mapleleaf is estimating that it will take about 5 ½ months to undertake construction, assuming they get to start in reasonable weather. This will bring them beyond December 10, 2005. The strict reading of the non-conforming, one year rebuild ordinance is to complete construction within the one year time frame. He said it's unlikely that they will be able to complete this within that time frame.

He said they have looked at this as an area variance. It's a time element, not really dealing with a use. It seems that the Boccia test is applicable.

He said the variance is necessary the proposed use given the

special conditions of the property in that the special conditions are:

1) The fire that occurred

2) The proximity of the property to Salmon Brook, which in turn generates the need of a permit from DES.

He said they have to obtain the permit from DES before they can proceed. They can't proceed without it. There are elements of time that are necessary to process that.

He said they can't achieve this result by any other reasonably feasible methods. He said there is no way to extend time other than by variance. The time limitation is a hard and fast rule in the zoning ordinance. It's not something that the staff can grant a waiver from. The only relief is through the Zoning Board.

He said the request does not violate the spirit and intent of the ordinance. The variance will allow the rebuilding to be completed, eliminating the casualty loss and encouraging the most appropriate use of the property.

He said the present state of the property is not attractive to neighboring property values. The reconstructed building will be attractive for neighboring property values and can only be enhanced by the applicant having sufficient time to obtain the permits and complete the reconstruction.

Atty. Westgate said the variance would not be contrary to the public interest. Eliminating a casualty loss - removing an unattractive situation and providing sufficient time to do so are in the public interest.

He said all the factors taken together does substantial justice.

Mr. Jenkins said the Board is familiar with the fact that it takes a while to come from DES because of other projects that have come to the Board. He said he thinks the request is a fair

one.

Mr. Duffy asked why the applicant waited until now.

Atty. Westgate said they have been working on this literally since days after the fire. Initially it was not thought that a permit was needed from DES because it was a rebuild and reconstruction of a non-conforming use. There was some back and forth between Mr. Basso's office and an environmental firm in Manchester that the owner's had hired. A determination was made that a permit had to be secured.

Mr. Duffy asked why they didn't wait till the end so they would know how much they are talking about for build time versus building permit time. They are only four months into the process.

Atty. Westgate said they are 5 ½ months into it now. They didn't want to come in November with a building that had barely started and worry about being able to complete it or not complete it in the remaining six weeks. He said they thought it was better to be proactive.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

Mr. Carrier said he didn't have any objections to this request. He said he thinks its good to be proactive.

MOTION by Mr. Carrier to grant the variance to exceed the twelve month limit to secure a building permit for an additional year in order to reconstruct a fire-damaged building at 321 Main Street. The variance is needed to enable the applicant's proposed use of the property. The property was originally developed long before wetland and DES regulations were in

place. Extra time is required to get the permits. It is reasonable for the applicant to have that extra time. It's within the spirit and intent of the ordinance. It will not adversely affect the property values of surrounding parcels. In fact, it could enhance it as it allows time for a better design. It is not contrary to the public interest. Substantial justice will be served.

SECONDED by Mr. Duffy.

MOTION CARRIED UNANIMOUSLY

6. The Huntington at Nashua (Owner) 55 Kent Lane (Sheet B Lots 25, 26 & 322) requesting variance to exceed maximum height of accessory structure, 20 feet allowed, 27'-5" proposed, to construct a 35'x35' two-story maintenance garage. R18 Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas

Jay Coffey

Richard Rondeau

Atty. Brad Westgate, Winer & Bennett, 111 Concord Street, Nashua. Atty. Westgate said he is representing The Huntington at Nashua. Christine Hallock, the CEO of the Huntington at Nashua and Steven Humphries of EGA Architects of Newbury, MA. are also present.

He said the Huntington complex contains 52 ½ acres and is located in the R18 Zone. It is a continuing care retirement community. Residents have been living in it since the later part of Fall 2004. That project received approvals from both the Zoning Board and the Planning Board. The site plan contemplates and shows a proposed 35'X35' maintenance building. This is the building they are talking about tonight.

He said the proposed location of the maintenance building is the northeast corner of the site back from Spit Brook Road and tucked into an area that is relatively heavily wooded. It also has upward sloping topography to the north. The elevation difference of where the slab for the maintenance building is somewhere around 213/214. The elevation on the back of the lots just north of it is in the 235/240 range. The houses and trees on Chaucer Avenue are higher up than the proposed location of the maintenance building.

He said in the R18 Zoning District, 35' is the maximum height that principal buildings may have, but accessory buildings may only be 20' in height. The proposal calls for a two-story maintenance building and have a smaller footprint rather than have a one-story maintenance building with a larger footprint. It makes sense given the location of the building, the buffering from topography and the fact that it's well set off from Spit Brook Road. He said the proposed building would have an average height of approximately 27 1/2'. The height of the peak of the roof would be 33'-7" more or less. The roof will be sloped to maintain the aesthetic compatibility with the main building.

Atty. Westgate explained their reasons for asking for a two-story maintenance building rather than a one-story building. He said they are talking about an average difference in height of about 7 1/2' over the 20' maximum. He said they don't believe this is substantial when noting the location of the building and thinking of it as aesthetically compatible with the main structure.

He said the upper floor of the proposed building would be to store materials, for example, additional carpeting and other finish items so that when repairs are made these materials are already available. They won't have to be ordered or specially prepared. They want to do as much on-site maintenance as they can. They would prefer to have a shop, for example, where work can be done outside of the main building and noise, dust, etc. are kept away from the main building and done inside an area of the maintenance building. There will also be a garage area in

the maintenance building to store and park a pickup truck, Bobcat, snow blowers, and other outside maintenance equipment. Outside furniture will be kept inside the storage part of the maintenance building during the winter time.

He said there is no need to have more impervious surface than necessary. If they can have a 35'X35' footprint and have two stories, it's better planning than a 35'X70' footprint and one story. There is less impervious surface. There is less runoff water generated. It's a better approach.

He said the residents are the ones who will see the building and they want something attractive. It will have a similar finish on the exterior of the building and a similar roof line.

Atty. Westgate said the variance is necessary to enable the applicant's proposed use given the special conditions of the property. The special conditions in this instance are the size of the site (52 ½ acres) and the location of the maintenance building tucked in the northeast corner buffered by topography and the wooded area immediately adjacent to it.

He said the benefit sought by the applicant can't be achieved by some other method reasonably feasible for the applicant to pursue. He said in this setting it makes more sense to have a smaller footprint and two stories when the height factor is of no material consequence to any neighboring properties rather than spreading out the building and having less utility inside and covering more space unnecessarily on the ground.

He said this proposal fits within the spirit and intent of the ordinance. Accessory uses are permitted in the R18 District. The maintenance building will allow them to store materials and equipment in the most efficient manner possible and gives them the chance to have not only a storage area, but a shop in which repairs necessary for the main building can be done outside of the environment of the main building.

He said there is no detrimental impact to property values. The location, the topography, and the wooded area buffers the

building and it is a minor structure in comparison to the major principal structure on the site.

He said permitting this reasonable use in this setting set back from Spit Brook Road is not contrary to the public interest.

He said all the factors pulled together does substantial justice.

Mr. Jenkins asked if has a one stall garage appearance on the outside.

Atty. Westgate said it's a two-stall garage. He said he thought there was a plan set submitted with the application.

Mr. Duffy said the plan shows one garage door.

Atty. Westgate said this is correct - one door, two stalls.

Mr. Currier asked if the building could be seen from the Spit Brook Road vista.

Atty. Westgate said he doesn't know for sure. He said it is a higher portion relative to the main building. He said as you're coming east on East Dunstable Road where the new Greenleaf development is located, you can see into the Huntington complex. He suspects that one would be able to see the building from that vantage point. If you are coming the other way he suspects that you probably would not be able to see it.

Mr. Currier said the plan they have has a date of 6/28/00. He asked if this is the final plan or if it is a preliminary plan.

Atty. Westgate said he's pretty sure it's the final plan. He said they had to get the site plan approval re-upped at least one time, but none of the detail of the plan changed when they did that.

Mr. Currier said there is a permanent substantial easement to the north. He said he would think that this would also hide the structure from abutters.

Atty. Westgate said this is a conservation easement granted to the City in conjunction with the site plan approval.

He said the building plans that they submitted are the ones that are to be followed for the construction.

Mr. Duffy asked if the structure will be going into setbacks or buffers at all.

Atty. Westgate indicated they are not.

Mr. Duffy asked where the road and access are going to be and Atty. Westgate pointed it out on the plan.

Mr. Duffy said the elevation is at 214. He asked if this is where the base of the foundation is going to be.

Atty. Westgate said 214 is the slab elevation.

Mr. Duffy asked about outside storage.

Atty. Westgate said none is intended.

SPEAKING IN FAVOR

Alphonse Hatenschweller ???, 55 Kent Lane. Mr. Hatenschweller said he wants to support the application. He is speaking for himself when he is saying that he would rather see a smaller footprint using up a smaller amount of the area than having to spread out the building, thereby consuming more of the area which could be landscaped or used for gardens or walking.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Coffey to grant the variance to exceed the maximum height of an accessory structure, 20' allowed, and 27 1/2' proposed to construct a 35'X35' two-story maintenance garage at

55 Kent Lane. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. The benefit sought cannot be achieved by any other means reasonably feasible to the applicant. By building a two-story structure, it will minimize the footprint of the building and the structure itself is a reasonable use. 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

7. Daniel J. Jr. & Deborah Desmond (Owners) 183 Searles Road (Sheet C Lot 580) requesting variance to encroach up to 5 feet into the 30 foot required rear yard setback to construct a 12'x14' sunroom. R9 Zone.

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Voting on This Case:

Tom Jenkins
Sean Duffy
Susan Douglas
Jay Coffey
Jeffrey Anderson

Daniel & Deborah Desmond, 183 Searles Rd. Mr. Desmond said they want to construct a 12'X14' sunroom which is also going to be part of their kitchen. They have a very small kitchen. They can't even open the refrigerator without hitting a chair and the kitchen table.

He said extending to the back is the only way they can go because of the plumbing. In addition, they have a cabana that has been there for twenty-eight years.

He said he took a measurement from the corner of the existing house to the stockade fence in the back yard. On the left hand side he got 42'. On the right hand side where the other end of the sun room would be there is 40'. Therefore, on that side they will be 2' into the 30' setback.

Note, Backup Tape is barely audible and Main Tape has a high pitched sound that has become more pronounced as the tape got toward the end of Side 1. Could not hear who was asking questions or what the questions were. Transcribed what I could hear.

Mr. Desmond said it the addition is going to be on footings. He said that there will be no plumbing. They may have an electric stove or possibly a natural gas stove. He mentioned something about the line being 2' or 4' - that he didn't want to deceive anybody about the distance.

SPEAKING IN FAVOR

Ronald Bergeron, 10 Langholm Drive. Mr. Bergeron said he is Mr. Desmond's back yard neighbor. He said if you look at the property lines, his (Mr. Bergeron's) lot is actually an arc. This is the reason Mr. Desmond has to ask for a variance. If it had been squared off like all the others he probably wouldn't require the variance. He said he doesn't have a problem with this request.

SPEAKING IN OPPOSITION

No One.

Side 2 of both tapes - same conditions as previously stated, only the whining is louder on the Main Tape.

MOTION by Mr. Duffy to grant the request for a variance to encroach up to 5' into the 30' required rear yard setback to construct a one-story, 12'X14' sunroom/three-season porch at 183 Searles Road. The variance is needed by the applicant for the proposed use of the property given the special conditions of the

property. The rear lot line has an arc to it, instead of being square. It is a reasonable request for a minor incursion into a setback area. It is not out of character with the neighborhood. There are many other properties in the area that have back porches and accessory uses inside and outside the setback areas. It is within the spirit and intent of the ordinance that a reasonable use of this nature be granted. It should not adversely affect the property values of surrounding parcels. It should not be contrary to the public interest. Substantial justice will be served. Special Condition: No plumbing.

SECONDED by Mr. Anderson.

MOTION CARRIED UNANIMOUSLY

8. Edward Gannon & Pamela Burns (Owners) 291 Main Dunstable Road (Sheet E Lot 508) requesting variance to encroach 5 feet into the 25 foot required front yard setback to construct a 7'x7' entryway foyer. R9 Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas

Jay Coffey

Jack Currier

Ed Gannon, 291 Main Dunstable Road. Mr. Gannon said the existing house is just about at the 25' setback. They wish to change the front door from a southeast direction to a southwest direction. This will enable them to extend their small bathroom.

He said they want to put a 7'X7' addition to the front. The pitch of the roof will be the same. It will be visibly appealing when it's done.

Mr. Currier asked if you are pulling out onto Main Dunstable from Valhalla and heading toward Maplewood would the proposed addition block one's view.

Mr. Gannon said there is 40' to Valhalla. The addition is pretty much centered on the house. He does not believe it would block anyone's site distance.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Coffey to grant the variance to encroach 5' into the 25' required front yard setback to construct a 7'X7' entry foyer at 291 Main Dunstable Road. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property and the benefit sought by the applicant cannot be achieved by some other method. Granting the variance will enable the applicant to put an addition on the house that will make it more reasonable and fitting for their needs. 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 public interest. Substantial justice will be served by granting the variance.

SECONDED by Mr. Duffy.

MOTION CARRIED UNANIMOUSLY

9. Kimberly Caterino (Owner) Brian L. Stevens (Applicant) 20 Mulberry Street (Sheet 82 Lot 42) requesting variance for minimum lot area, 4,285 square feet existing, 7,000 square feet required, to replace a fire-damaged single family home with a two-family home. RC Zone.

Voting on This Case:

Tom Jenkins
Sean Duffy
Susan Douglas
Jay Coffey
Richard Rondeau

Brian Stevens, 6 Branson Circle, Merrimack, NH. Mr. Stevens said he represents New Millennium Properties. He said he sat with Mr. Falk and diagramed this a number of ways. They need a variance for square footage of the lot. The new structure will conform to the setback requirements.

Mr. Jenkins asked how many parking spaces would be provided.

Mr. Stevens said there would be two under the house in a garage and two in front. The rear of the cars in front would be off the sidewalk.

Mr. Jenkins asked if the bottom floor would be strictly parking and storage and the second floor would be where the living area would start.

Mr. Stevens said this is correct

Mr. Jenkins asked if a three-story building is in character with the neighborhood as far as the height is concerned.

Mr. Stevens said it is. He said it's the median as far as square footage, height, percentage of land occupied by structure, etc.

Mr. Jenkins asked if the damaged building on the site can be saved.

Mr. Stevens said in his opinion it can't. At least 2/3 of the building has been burned and the statistics deem it a total loss. He said they will remove the building and tear up the foundation. What needs to be removed will be removed and the

rest will be retained for fill. They will pour a slab foundation.

Mr. Jenkins asked the height of the proposed building.

Mr. Stevens said no greater than 35'. He said they don't have enough detail in terms of the survey to find out exactly what the footprint will be. The 26'X44 footprint that was submitted is a "best guess" and probably a "not to exceed." He said as he understands it the height is measured midway between the eave and the ridge line. He said this will definitely not exceed 35'. They can occupy the 2 ½ story into living space without exceeding the 35.

Mr. Jenkins said the plans show dormers on both sides of the roof. He asked if this is being done for the light.

Mr. Stevens said for light, egress and square footage. He said the plan works a lot better when you dormer the center.

He referred the Board to a picture that was included with the application to give the Board an idea of the height in answer to a question that was asked. He said there are a couple of other multi-families that are at least three stories that look like they could be 35' in height.

Mr. Jenkins ??? asked if Mr. Stevens had talked with the abutting neighbor.

Mr. Stevens said as many as he could identify from the abutters list, specifically 22 Mulberry Street, which is to the right of the house and 21 Mulberry Street which is across the street and also directly in the back of the house on Kinsley Street. He said the general consensus is that it will be great to get rid of the disgusting eyesore.

Mr. Currier asked how many feet there are between the sidewalk and the front of the garage doors.

Mr. Stevens said without a survey it's difficult to tell where

the properly line is, but if you look at the sidewalk curb and start going in from there they allowed 5' for the sidewalk and 18' for a car before hitting the garage door. Their intent is to keep the parked car off the sidewalk. It's pretty easy to accommodate with the depth of the lot. The width of the lot is a lot more of a constraint.

Mr. Currier said this would accommodate small and medium cars, but not large vehicles.

Mr. Stevens said they used the 18' standard.

Mr. Jenkins??? asked if these are going to be rented or sold.

Mr. Stevens said it will likely be sold as two independent condominium units. His preference is to sell them as owner-occupied. He thinks it's better for the neighborhood. The incentive for an owner occupied structure is to keep the house up better and he thinks this is what the neighborhood is looking for out of this project as well.

Mr. Duffy said that he took a look around the area to see if he could find something that had parking underneath and couldn't find anything.

Mr. Stevens said that most of the time you either see street parking or you see the parking wedged in wherever it can be. He said they tried several options to try to get four cars on site and what happens is you would end up paving the entire lot, which is not what they want to do. They came up with this solution. He said there are a lot of other similar style homes in the neighborhood.

Mr. Duffy asked what the special condition is to convert the use from a single-family.

Mr. Jenkins said the use (a two-family) is allowed in this RC Zone. He's providing parking.

Mr. Stevens said they looked at developing this as a single-

family. The owners have indicated they are not interested. He said it makes the most sense for the owner to do it if she wants. By putting it on the market, she has clearly indicated she doesn't want to do that. With today's construction techniques, it's more difficult to make a single-family structure that would conform or sit on the existing footprint. There is every possibility that the foundation won't support a structure. The proposed structure is more conforming the way they designed it than the existing structure is now. It's realistically its only feasible to develop as a multi-family.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

Mr. Jenkins said they have a letter from 21 Mulberry Street stating opposition due to concerns about the two-family dwelling where it had been a single-family. Also there are concerns with tenants that won't take care of the property.

SPEAKING IN FAVOR - REBUTTAL

Mr. Stevens said he had a conversation with this abutter and she had not mentioned that she had submitted a letter. She said that she had mentioned this concern to him and his answer to that was that the intent was to sell it as owner-occupied.

He said that both this abutter and the one on the right-hand side said that the house at 20 Mulberry Street had an in-law unit for quite a while. The abutter who wrote the letter indicated when the house had sold and was rented they had problems.

Mr. Duffy made some remarks about the parking (unintelligible).

Mr. Jenkins said he has viewed the site and feels that this is

an improvement over what currently exists. He felt there is adequate parking. He said it is located in a RC Zone and some other remarks (unintelligible).

Further discussion ensued, but only bits and pieces of words could be discerned.

MOTION by Mr. Jenkins to grant the variance for minimum lot area, 4,285 square feet existing, 7,000 square feet required to replace a fire-damaged single-family home with a two-story home at 20 Mulberry 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. The area consists of two-family homes. There are commercial uses in the area. This will help to increase the value of the other homes in the area. It will make it more in character with what currently exists. The spirit and intent of the ordinance will be met by granting the request. It will not adversely affect the property values of surrounding parcels. It is not contrary to the public interest. Substantial justice will be met by granting the request. Special Conditions: Used as a condex and sold as such, not as an apartment.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

10. Christopher Hipp & Joanne E. Kitchel (Owners) Linda Argenti (Applicant) 29 East Pearl Street (Sheet 34 Lot 8) requesting the following special exceptions: 1) to convert a single-family home into a miscellaneous business/professional office building, and 2) to locate 6 required parking spaces in municipal lots. RC Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas
Jay Coffey
Jeffrey Anderson

Richard Maynard, Professional Engineer, Maynard & Paquette, 23 East Pearl Street. Mr. Maynard said he is representing Atty. Linda Argenti, the applicant as well as the property owners. Both the applicant and the property owners are present.

He said this request involves the conversion of a single-family house to a professional office and the substitution of on-site parking for parking in a nearby municipal lot.

He said the lot contains 3,184 square feet. It is a 1 ½ story single-family house with approximately 1800 square feet. The driveway is along the left hand side of the house. He said this entire neighborhood has been evolving over the past twenty to thirty years from residential to a mix of professional offices and multi-family buildings. Over the past several years numerous special exceptions have been granted for office use and parking in municipal lots for this area. This includes the Early Law Office and PMR Architects at 9 East Pearl Street, the **Hobb??** Law Office at 10 East Pearl, the Liakos building at 21 East Pearl, Maynard & Paquette's office at 23 East Pearl, Medalia Accounting Office at 26 East Pearl and many others that he listed.

He said to the rear of the property is the Nashua Housing Authority Senior Housing complex and their recently expanded parking lot. He pointed out the locations of the Superior Court House on the plan, the VFW Building, the offices of the Nashua Housing Authority, some real estate offices and a radiologist's office. He said there are probably only two single-family homes left on East Pearl Street. The rest of the residential uses are larger multi-family properties.

He said most of the properties that he has listed have little or no on-site parking and rely on off-site parking in a municipal lot or elsewhere. The nearest municipal lot is the Cottage Avenue lot behind the Indian Head Plaza, approximately 600'

away, which meets the 1,000' requirement under Section 16-275. He said the Cottage Avenue lot appears to have over thirty-two, two-hour metered spaces and approximately thirty-six, ten-hour metered spaces. Based on their observations at various times during the business day there appears to be anywhere between fifteen to twenty-five vacant ten-hour spaces in this particular lot. Short-term, two-hour parking is permitted all along East Pearl Street and there are typically 8-15 spaces available. Parking is also available on some of the side streets such as Holmes, Quincy, and Cottage Street.

Mr. Maynard said this office is expected to employ anywhere from four to six people so there is more than adequate space in the municipal lot for the employee parking. The occasional visitor parking is easily accommodated by the available parking spaces on East Pearl Street and the several side streets.

He said with regard to the conditions of Section 16-208, the two requests are listed as permitted uses, one under the Table of Uses and one under the municipal lot substitution. He said the office use in the RC Zone is permitted by special exception. Per Section 16-275, parking in a municipal lot within 1,000' may be allowed by the Zoning Board.

Mr. Maynard said East Pearl Street was re-constructed about two years ago with speed bumps at either end as well as new sidewalks on both sides. Pedestrian safety should not be a concern. Traffic from the proposed office use is minimal and can easily be accommodated on East Pearl Street and the other adjacent downtown streets.

He said water use and sewer discharge for an office building is less than that for a residence.

He said impervious area on the site will remain unchanged. With the new separated storm drain system in East Pearl Street, storm water drainage is not a concern. All utilities currently exist and are more than adequate to serve the proposed office building.

He said the proposed professional office is very much in

character with the neighborhood since the majority of properties are offices, most of which have been allowed by a special exception through the Zoning Board. The proposed office use will not be a detriment to the health, morals, or welfare of the residents of the City.

Mr. Maynard said the request before the Board for professional office and municipal lot parking is in line with the Master Plan, will enhance property values in the neighborhood, and will be compatible with the neighborhood.

Mr. Jenkins asked the hours of operation.

Mr. Maynard said it's a typical law office so they probably have minimal office hours - probably 9:00AM - 6:00PM, five days a week.

Mr. Jenkins said Mr. Maynard has an office right next door. He asked if the municipal parking in that area is ample.

Mr. Maynard said nobody has any problems with parking. He said there's plenty of room in the municipal lot and on the street. He said when East Pearl Street was reconstructed, they increased the amount of parking because it's on both sides for most of it now. There are also numerous private parking lots as well, if people want to make arrangements.

Mr. Jenkins said it is within the character of the neighborhood. He said it's one of the few single-family homes that are left in the area.

SPEAKING IN FAVOR

Edinalva DeJesus, 31 East Pearl Street. Mrs. DeJesus said she lives right next door to this property. He said she is in favor of the request.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Coffey to grant the special exceptions: 1) convert a single-family home into a miscellaneous business/professional office building 2) to locate six required parking spaces in a municipal lot for 29 East Pearl Street. The use is listed in the Table of Uses, Section 16-227 (13) and Section 16-273. It will not create undue traffic or congestion or unduly impair pedestrian safety. The street has recently been reconfigured and eliminated that concern. It will not overload public water, drainage, or sewerage or other municipal systems. There will be a less intense use than currently exists on the property. There are no special regulations. The proposal will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of the residents.

SECONDED by Mr. Anderson.

MOTION CARRIED UNANIMOUSLY

11. West Merrill Properties, LLC (Owner) 3 Merrill Street (Sheet 10 Lots 10 & 11) requesting the following variances: Lot 11: 1) minimum lot area, 6,000 square feet required - 5,000 square feet proposed, 2) minimum lot width, 60 feet required - 50 feet proposed; Lot 10: 3) minimum lot area, 6,000 square feet required - 5,000 square feet proposed, and 4) minimum lot width, 60 feet required - 50 feet proposed - all requests to subdivide one lot into two lots and convert existing two-family structure into a single-family home. RB Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas

Jay Coffey

Jack Currier

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

Prunier said there is a two-family house on the property at this time. If the variance is granted, they will turn the two-family home into a single-family home and construct a single-family home on the new lot. He said this would be a starter home for somebody, which is much more needed than the two apartments in the one house.

He said these lots came through their title as two individual lots up until 2001. In that year the owner filed a merger with the City. The lots will need to be subdivided if the variance is granted.

He showed a map to the Board that indicates the history of the area. He said as you come up Merrill Street there are various lots of different sizes. On the back side of Merrill Street the lots are an average of less than 65'X65' - about 4,000 square feet. He presented another map that showed lots that were 50'X100' **unintelligible**.

He said if the variance is granted, and with the permission of the Fire Department, they intend to remove the stairway on the side of the existing house so it will blend into what looks more like a single-family home. He handed out various pictures of the houses in the area. Abutting the existing house is a multi-family home with four units.

He said there are four variances requested, two for each lot. He said the frontage and width on both lots is not met.

He said the spirit of the ordinance is followed in that the whole area is a mix of lots, but most of them are about the 5,000 square foot range.

Atty. Prunier said public interest will be served as it will allow affordable housing/starter homes. This is what this whole area was a long time ago.

He said substantial justice will be done in that the

unintelligible They are not out of proportion to what is already in the area.

Some more discussion or questions went on, but could only catch a few words here and there - **unintelligible**.

SPEAKING IN FAVOR

Richard Maynard, Professional Engineer, Maynard & Paquette. Mr. Maynard said there was a question about driveways. He said in some places they just alternate ...unintelligible..

He said the stairway on the existing house is not in character with the neighborhood. They are looking to convert it back into a single-family home, which it was until a few years ago. It will bring the house back into character with the neighborhood.

SPEAKING IN OPPOSITION

"Simmy", 4 Allstead Avenue. Simmy said to call him this name as he comes from the old country and his name is pretty long. Everyone calls him this name. He said his home is next to this lot. He asked how many feet the building has to be from the property line.

Mr. Jenkins said 7' on the side yard setback.

Simmy said that this house had always been a single-family house. In the last two years it changed. There have been three different owners since the fire. He asked what is going to happen with the apartment if the Board grants this request.

Mr. Jenkins said they are going to get rid of it.

Diane Urquhart, 2 Ferson Street. Mrs. Urquhart said that she owns 11-13 Merrill Street, which directly abuts this lot. She said she is concerned about placing a single-family home on the vacant lot that would be created by the subdivision of the lot. She said it will overcrowd the lot. It does not have sufficient width. It will decrease the value of surrounding properties and

it will be out of character with the neighborhood. She said this is a dead-end street and it's very congested.

She said she was on the street today and there were six cars from the corner of the street to where she owns - three on either side. The barber shop is on the corner and there really isn't any parking on Allds Street.

She said she doesn't see or understand the hardship. She believes it should remain a two-family dwelling. She said there was testimony about the staircase being out of character. She said it's more out of character to try to squeeze a small family home in the proposed lot than to keep what exists.

Mr. Currier had some comments, but most of them were unintelligible. He did say that he thought the two single-family homes were better than the one two-family home.

Mrs. Urquart said that they are not really changing anything at the two-family structurally - except for the staircase on the side. They may have added the second unit after the fire.

She repeated that her concern was putting a house on the small lot that would be created. She said she felt that it would be overcrowded. She said she'd rather see them add another unit to the existing building to create a three-family, have a nice parking area, and keep it all as one lot. She said at least there is some space to the neighborhood. The other way there won't be any space at all.

SPEAKING IN FAVOR - REBUTTAL

Atty. Prunier said when there is a single-family home, the tendency is to keep them up better than if you are just a tenant.

He said the property Mrs. Urquart owns - 11-13 Merrill - is 50.2'X100' - a little over 5,000 square feet for four units.

SPEAKING IN OPPOSITION - REBUTTAL

No One.

Mr. Jenkins made some remarks, but they were unintelligible. He did say that this is a RB Zone and a single-family is permitted without a special exception in this zone.

MOTION by Mr. Carrier to grant the variances at 3 Merrill Street for 1) minimum lot area, 6,000 square feet required, 5,000 square feet proposed, 3) minimum lot width **etc.** The variances are needed to enable the applicant's proposed use of the property given the special conditions of the property. Many of these lots were laid out prior to the zoning ordinance. The proposal is within the spirit and intent of the ordinance. It is within the character of the neighborhood. It will not adversely affect the property values. Substantial justice will be served by the granting of the variances. Special Condition: Two-family dwelling to be converted to a single-family dwelling unit. If permitted by the Fire Department, the staircase is to be removed from the existing two-family.

SECONDED by Mr. Coffey.

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

12. Christopher W. Eckler (Owner) 24 Amory Street (Sheet 38 Lot 45) requesting the following: 1) special exception to maintain expansion of nonconforming use, one dwelling unit approved, two existing, and 2) variance for minimum lot area, 7,000 square feet required, 4,006 square feet existing. GI Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas

Jay Coffey

Richard Rondeau

Mr. Currier recused.

Christopher Eckler, 17 Amory Street. Mr. Eckler said he has occupied Jackson Square for the last twenty years. He is seeking a special exception to maintain the use of the second apartment at 24 Amory Street.

He said he believes the apartment was developed by someone working for a tenant of a previous owner approximately twenty years ago.

Mr. Jenkins asked Mr. Eckler when he purchased the property.

Mr. Eckler said he believes it was 1996.

Mr. Jenkins asked him if he purchased it as a two-family dwelling.

Mr. Eckler said he did.

Mr. Jenkins asked how it is taxed.

Mr. Eckler said it is taxed as a single-family. He said years ago he invited Fred Turgiss down, but it didn't change. He is guessing that it didn't change because zoning didn't have it as a two-family.

Mr. Jenkins asked if Mr. Eckler has anything to show that he purchased it as a two-family.

Mr. Eckler said he does not.

Mr. Jenkins asked if he had any rent receipts from 1996 or anything that shows it is a two-family.

Mr. Eckler said he didn't bring rent receipts.

Mr. Jenkins asked how it occurred that he is now coming to the Board with this request.

Mr. Eckler said he has several buildings that he purchased with extra units and it has been recommended to him that he come to clear up the records.

Mr. Jenkins asked if this was a Code Enforcement issue.

Mr. Eckler said it isn't. He said the next case they are going to talk about (26-32 Amory Street) was recently re-financed and the bank required that he come for the variance for that building. Since 24 Amory Street is right next-door and they share parking and there is a lot in common between the buildings, he thought he would apply at the same time for both properties.

Mr. Jenkins said there is one meter on the building. He asked Mr. Eckler if he paid the electric bill.

Mr. Eckler said he does. He said he pays the electric on several buildings he owns that don't have enough meters on them.

Mr. Jenkins asked the layout of the building and the number of bedrooms.

Mr. Eckler said there are an apartment on the first floor with two bedrooms and an apartment on the second floor with one bedroom.

Mr. Jenkins asked how many parking spaces there were.

Mr. Eckler said four. He presented pictures of the site to the Board.

Mr. Jenkins asked if the property was financed.

Mr. Eckler said it was financed as a two-family.

Mr. Jenkins asked if Mr. Eckler had a copy of the deed.

Mr. Eckler said he didn't have it with him, but that he would be able to provide it, if requested to do so. He said the

appraisal for the property shows that it is two units. He could try to find a copy of the appraisal - he isn't sure he had it any more.

Questions asked by one or more of the members, but the tape was unintelligible as to who asked the question and what the question was. The following testimony was given by Mr. Eckler in response.

Mr. Eckler said there is only one single-family in the entire neighborhood and he owns it.

He said most of his properties are tax corrected. He said he spoke to Laura Games before he bought most of his properties to make sure she knew how many units were in the building. She encouraged him to go for variances after he purchased them; that she couldn't give him anything in writing verifying the number of units prior to his purchasing the properties.

Discussion ensued at this point - unintelligible.

Mr. Eckler said they have been working very hard to bring the whole neighborhood up to code over the last twenty years. He said if there's anything not up to code that he's not aware of he would like to correct it as he has been working to do in the whole area.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

Discussion ensued - unintelligible.

MOTION by Mr. Duffy to grant special exception to maintain expansion of nonconforming use, one dwelling unit approved, two existing at 24 Amory Street. (**Unintelligible**) Applicant must

bring property up to code, and have tax records updated to reflect the correct number of units.

SECONDED by Coffey.

MOTION CARRIED - 4-1, Mr. Rondeau opposed.

MOTION by Mr. Duffy to grant variance for minimum lot area, 7,000 square feet required, 4,006 square feet existing at 24 Amory Street. (**Unintelligible**).

SECONDED by Mr. Coffey.

MOTION CARRIED - 4-1, Mr. Rondeau opposed.

13. Christopher W. Eckler (Owner) 26-32 Amory Street (Sheet 38 Lot 46) requesting the following: 1) special exception to maintain expansion of nonconforming use, six dwelling units approved, seven existing, and 2) variance for minimum lot area, 24,500 square feet required, 6,402 square feet existing. GI Zone.

Christopher Eckler, 17 Amory Street. Mr. Eckler said he has occupied Jackson Square for twenty years.

Mr. Jenkins asked Mr. Eckler when he purchased 26-32 Amory Street.

Mr. Eckler said 1994.

Mr. Jenkins asked Mr. Eckler if the property was non conforming at the time he acquired it.

Mr. Eckler said "yes."

Mr. Jenkins said this building has six meters.

Mr. Eckler said there are seven sockets. They were there when

he purchased it.

Mr. Jenkins asked a question, but it was unintelligible.

Mr. Eckler said he didn't know. He said he asked Public Service to put the meter back and he was told they couldn't do it unless he went to the City for approval.

One of the members asked a question - unintelligible.

Mr. Eckler said there are two apartments off one meter.

Mr. Jenkins asked for a description of the layout of the building.

Mr. Eckler said there are five three-bedroom apartments, a one-bedroom and a two-bedroom. There are seven gas meters and he verified with the gas company that they have been there since July 1987. He referred the Board to the pictures that show the gas meters.

Mr. Jenkins made the comment that parking is not an issue.

Mr. Eckler said he has fourteen parking spaces on site.

Mr. Jenkins asked if Mr. Eckler would allow the building to be brought up to code.

Mr. Eckler said he believes it is up to code.

Mr. Jenkins said the City of Manchester makes anyone who has more than a single-family dwelling obtain a certificate of occupancy every two years. The building gets inspected by the City. If the City of Nashua did this they wouldn't have all these units that are in non-compliance.

Mr. Eckler asked if "bringing it up to code" means that all apartments need handicap accessibility.

Mr. Jenkins said he didn't think so. He said he would want the

inspector to be looking for adequate fire alarms, wiring, etc.

Mr. Duffy asked about the footprint of the building. He asked if there were any drawings - information for the Board to look at to show the entrances/exits.

Mr. Eckler said he didn't bring anything like that with him. He said every apartment that's on the second or third floor has two entrances and exits.

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

Mr. Eckler said 9380 square feet.

Mr. Duffy asked in the area or neighborhood if there are any other multi-family homes containing more than five units.

Mr. Eckler said "yes." He said there is a 25-unit building at 14-20 Amory Street. He indicated they might be able to see it in the pictures that he presented. There is a four-family at 3 - 5 ½ Union Street. It has five electric meters - one house meter.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

Mr. Jenkins asked if the city records show anything about this building.

Mr. Falk said there's something about a garage or shed in the back. She said the building has been there for a long time.

Mr. Eckler said he has a picture from the 1920's that show it was a twenty-room hotel.

Mr. Jenkins said he thought it was important to get it corrected and that it be brought up to code. It will be inspected by a City Inspector and the Fire Marshall.

MOTION by Mr. Coffey to grant the special exception to maintain the expansion of non-conforming use, 6 dwelling units approved, up to 7 existing at 26-32 Amory Street. It is listed in the Table of Uses, Section 16-208(a)(1) and Section 16-254. The current property will not create undue traffic congestion or unduly impair pedestrian safety. It will not further overload public water, drainage, or other municipal systems. There are no special regulations to be fulfilled. It will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of the residents.
Special Condition: Property to be inspected and brought up to the current code and the tax card to reflect up to seven units.

SECONDED by Mr. Duffy.

MOTION CARRIED UNANIMOUSLY

MOTION by Mr. Coffey to grant the variance for the minimum lot area, 24,500 square feet required, 6,402 square feet existing at 26-32 Amory Street. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property and the benefit sought by the applicant cannot be achieved by any other reasonable method. The property pre-dates zoning. It is in a GI Zone. There are multi-family units in the area. 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: Property be inspected and brought up to code and the tax cards be changed to reflect that there be up to seven units.

SECONDED by Mr. Duffy.

MOTION CARRIED UNANIMOUSLY

Motion for Rehearing

14. 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.

15. 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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Voting on These Cases:

Tom Jenkins
Sean Duffy
Susan Douglas
Jay Coffey
Richard Rondeau

He said he is assuming everyone has had a chance to read the request for rehearing and the letter that was submitted to the City today from U.S. Dept. of Housing & Urban Development & Office of Fair Housing & Equal Opportunities. The letters indicate they will be investigating the City of Nashua regarding these locations.

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

The Board did not feel that was the case.

Mr. Jenkins asked if there was an illegal decision - in other words did the Board fail to completely address each point of law described for a special exception and/or variance.

He asked if the request for rehearing from Mr. Cull and the letter from Dept. of Housing & Urban Development contain any new

information that was not presented at the Hearing that may cause somebody to change their mind.

Mrs. Douglas said everything that is in the request for rehearing was covered at the hearing.

Mr. Jenkins said he has read the letter from the City Attorney again and he thinks that, if anything, to save the City of Nashua court legal costs, embarrassment, etc. that the Board should rehear the case. He said they are getting into a situation where a lot of them aren't familiar with the Fair Housing Act, except perhaps for Mr. Duffy.

Mr. Duffy asked if what he is hearing is that the applicant believes the Nashua ordinances may not be in compliance with either the State or the Fair Housing Code and that the Board should rehear it on the side of caution.

Mr. Jenkins said he thinks they are trying to present it that way and that they should rehear it.

Mr. Duffy said he disagrees.

Mrs. Douglas said she doesn't think they apply a standard to these two properties that they would not have applied to any other person coming in seeking nine unrelated people in a single-family home.

Mr. Jenkins said they are basing the whole case on the fact they consider these people to be handicapped under Item #4 and under the Housing Discrimination Compliant; also Section 7.

Mr. Rondeau said Atty. Prunier addressed those points specifically because he went through a discussion of reasonable accommodation with him.

Mr. Jenkins agreed. He said he doesn't think the applicant himself provided adequate testimony. He said he thought the

presentation was poor. He didn't have any documentation with him that showed he had non-profit status, grants, etc.

Mrs. Douglas asked if the definition of discrimination standards are applied to a certain section of people differently than as applied to the community as a whole. She said she feels they applied a standard to this property that they would apply to any other property, whether the individuals were handicapped or not, if proposing nine unrelated people in a single-family home.

Mr. Jenkins said this is the standard they did use. He said according to what they have received, they have to apply a handicapped standard.

Mrs. Douglas said she doesn't agree.

Mr. Duffy said obviously the applicant has felt the need and the right to ask for an investigation. He asked if it would be wise for the Board to either table the rehearing, or if they granted the rehearing, wait to rehear the case until the investigation is completed. He said the letter just came to them tonight.

Mr. Falk said according to the State RSAs, upon a filing of a motion for a rehearing, the Board of Adjustment shall, within thirty days either grant or deny the application or suspend the order or decision complained of pending further consideration.

Mr. Duffy if the pending further consideration and investigation to find out of the ordinances are out of compliance isn't what this would fall into. He said it appears that there's a perception that somebody believes there is an inequity in the regulations and ordinances.

Mr. Rondeau said there's a two-prong effect going on. There's a Federal investigation and there's the process pertaining to the local zoning ordinances.

Mr. Jenkins said the Board needs a more definitive answer from the City legal counsel.

Mr. Rondeau asked if, based on the RSA that Mr. Falk read, they could suspend making a decision until they have counsel regarding this matter.

Discussion ensued.

Mr. Falk said this is new to him as well as the Board. He said they haven't had a case like this. He said in his opinion the best thing to do would be to grant the rehearing and in the meantime they may be able to get a better reading on this from Corporation Counsel. He said he just got the letter at 4:00PM. He said they did discuss it a little bit, but haven't really had a chance to digest it.

Mr. Rondeau said he would prefer to suspend and meet with Corporation Counsel and then, after meeting with Corporation Counsel, either grant the rehearing or deny the request.

Mr. Duffy asked if they would be able to have a special meeting to meet the window of thirty days, if need be.

Mr. Jenkins said he would rather err on the side of caution and rehear the case. They have nothing to lose.

Mr. Duffy said he didn't personally feel that they should rehear this case until after the complaint has been addressed.

Mrs. Douglas asked if there is a certain time frame within which they have to have the rehearing (if approved), or if it can be a date in the future.

Mr. Falk said it can be a date in the future. They have had this in the past where someone is granted a rehearing, but they did not or have not come back within a certain time frame.

Mr. Duffy said his personal preference is to hold off.

Mr. Falk said he believes they could table it. The State RSAs says "or suspend the order or decision complained of pending further considerations."

Mrs. Douglas asked if seeking legal counsel within those perimeters.

Mr. Duffy said there is an event in between that he and the others received before tonight. He said he thought the Board would be able to hold a special meeting for this case.

Mr. Jenkins said they could.

Mr. Coffey said he'd like to see it held because there are just too many questions that are up in the air right now.

MOTION by Mr. Duffy to table the rehearing request up to the thirty-day window.

Discussion ensued about whether the Board has to give a date certain for a meeting.

Mr. Jenkins said he thinks the Board should err on the side of caution and grant the rehearing. They will have time to talk to legal counsel, time to review the communication just received today, and review the Fair Housing Act. He said he thought there was enough information received in the letters received from the Dept. of Housing and enough information on the rehearing request to rehear it.

Mrs. Douglas said from her understanding the Board's decision should be based on a request for reconsideration.

Mr. Jenkins said this information did not become available to them until tonight. He said it is regarding the same two cases.

Mr. Duffy said whatever they do it doesn't affect the complaint. That's going to be handled and managed and go forward whether they decide to rehear or not rehear.

NO SECOND TO MOTION

Discussion went back to the motion that Mr. Duffy made to table

the request. They talked about a date on which they could meet within the 30-day time frame.

Mr. Anderson said the applicant has thirty days to apply for a rehearing. He asked how long the Board has to consider it. He asked if it is a separate time line.

Mr. Falk said according to the RSA it says: "Upon the filing of a motion for rehearing, the Board of Adjustment, the Board of Appeals or the local legislative body shall, within thirty days either grant or deny the application or suspend the order or decision complained of pending further consideration."

MOTION by Mr. Duffy to table the rehearing request for 12 Robert Drive & 9 New Searles Drive to the next scheduled meeting which is on June 14, 2005.

SECONDED by Mr. Jenkins.

MOTION CARRIED UNANIMOUSLY

16. Therese G. Trottier (Owner) Richard C. Raisanen (Applicant) L Oakland Avenue (Sheet 126 Lots 59-65) requesting the following variances: 1) minimum lot frontage, 60 feet required, 0 feet proposed; and 2) minimum lot width, 75 feet required - 0 feet proposed. RA Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas

Jack Currier

Jay Coffey

Mr. Jenkins asked if any of the Board members felt there was a procedural error, including improper notice denying someone the

right to be heard, etc.

The Board did not feel this was the case.

Mr. Jenkins asked if there was an illegal decision. In other words, did the Board fail to address each point of law described in a special exception and/or variance.

The Board did not feel this was the case.

Mr. Jenkins asked if the request for rehearing contained any new information not present or available to the Board at the original rehearing.

Mr. Jenkins said he didn't think the Board discussed some of the information that was presented that night by the abutters. He said some of the information that was presented by Atty. Frasca wasn't talked about during discussion.

Mr. Coffey said he agrees. He said he doesn't think the Board had a chance to fully digest some of the information that was presented. Also, he had only five minutes to make a presentation and probably had to pick and choose what he was going to say when he came in front of the Board.

MOTION by Mr. Coffey to grant the request for rehearing for L Oakland Street (Sheet 125 Lots 59 & 65) based on the fact that the information that was provided the night of the hearing was not adequately presented or reviewed by some members.

SECONDED by Mr. Currier.

MOTION CARRIED - 3-2, Mr. Duffy & Mrs. Douglas opposed.

17. Therese G. Trottier (Owner) Richard C. Raisanen (Applicant) L Oakland Avenue (Sheet 126 Lots 59-65) appealing decision of the administrative officer that a

building permit should be granted to allow a single-family home on a paper street. RA Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas

Jay Coffey

Jack Currier

Mr. Currier said if the Board approved this request they would be rehearing whether they are appealing Mr. Falk's decision.

Mr. Jenkins said that on that night he thinks it was unanimous that the Board agreed with the City Administrator's decision that the decision that it had to come to the Zoning Board for a variance.

He asked if there was any procedural error.

None of the members felt that this was the case.

Mr. Jenkins asked if there was an illegal decision. In other words, did the Board fail to completely address each point of law?

The Board did not feel this was the case.

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

The Board did not feel this was the case.

Mr. Jenkins asked if the request contained any information in the request that would cause any of the members to change their vote.

The Board did not feel this was the case.

MOTION by Mr. Carrier to deny the request for rehearing appealing the decision of the administrative officer by Atty. Westgate for L Oakland Street (Sheet 126 Lots 59 & 65). The Board did not find that any of the four reasons for rehearing the request were met.

SECONDED by Mr. Duffy. He said the Board went over clearly that there was no procedural error, that there was no illegal decision, they addressed all the points of law, there was no new information presented that the Board heard that night, and there is nothing in the request that would cause the Board to make a different decision.

MOTION CARRIED UNANIMOUSLY

18. Christopher W. Eckler (Owner) 5 & 6 Eckler (formerly Havelin) Avenue (Sheet 38 Lots 86 & 91) requesting the following variances: 1) 5 Eckler Avenue - minimum lot frontage, 50 feet required, 29.51 feet proposed; and 2) 6 Eckler Avenue - minimum lot frontage, 50 feet required, 30 feet proposed - both requests due to partial discontinuance of Eckler Avenue. GI Zone.

Voting on This Case:

Tom Jenkins
Sean Duffy
Susan Douglas
Jay Coffey
Richard Rondeau

Mr. Falk said this request came in on the 30th day and was not listed on the Board's agenda. He said this person is alleging that they never received a notice, that they are an abutter, and

that they are against the case and looking forward to expressing their reasons why. They don't provide the reasons why.

He provided the Board with a list of the names and addresses of the abutters who were informed in this case. It provides the certified number and the number of the case.

Mr. Duffy asked if anybody tried to get in touch with this individual.

Mr. Falk said Mr. Scott did call him. He said in his opinion this is not a request for rehearing letter. The whole thing is that Mr. Scott is stating he didn't get notification. Mr. Falk said they did send notification.

Mr. Duffy asked if Mr. Scott has received a copy of the information between May 12th and tonight.

Mr. Falk said it doesn't matter. The records show the notice was sent out. He said Mr. Scott is saying that it is his name and his mother's name on the deed and it was sent to his mother's house. His name is shown clearly on the record. The address in the assessing records is where the legal notices go. After the notices are sent it's up to the Post Office and up to the people who receive the mail. The City fulfills its responsibility by sending out the notices.

Mr. Coffey said somebody at 163 Newbury Street either signed for it or they refused it.

Mr. Currier said there is a responsibility on behalf of the property owner to update the records at City Hall. It sounds like this person probably lived at this address and moved and failed to update the City.

Mr. Falk said to play it safe, he thinks the Board should look at this as a rehearing request, even though the letter doesn't say anything about a rehearing request. It's probably the intent of the letter.

Mr. Duffy asked if anything came back from the Post Office on this particular notice.

Mr. Falk said the staff doesn't go through that process.

Mr. Duffy said this goes out as a tracked piece of mail that goes out on a certain date.

Mr. Falk said the card goes to the Post Office on a certain day and they provide the list with the abutter's names and addresses with the certified numbers on them. The copy of the notice is representative of what went out - it just happens to be the one sent out to this individual. It can be tracked.

MOTION by Mr. Duffy to deny the rehearing request by William Scott concerning 5 & 6 Eckler Avenue. There is no procedural error. The City can prove that proper notices were sent to the applicable abutters. No one was denied the right to be heard. There was no illegal decision. All points of law for a variance were discussed the night of the hearing. The request does not provide any information that would cause the Board to make a different decision.

SECONDED by Mr. Jenkins.

MOTION CARRIED UNANIMOUSLY

Regional Impact

Mr. Falk said there is an extra week so the agenda for the June 14th meeting has not been done.

MINUTES

4/26/06

MOTION by Mr. Duffy to waive the reading of the 4/26/05 minutes and place on file.

SECONDED by Mr. Currier. He said he has one correction. On the

bottom of Page 18 it states that Mr. Currier asked Mr. Falk if there is anything to indicate that this was a two-family dwelling. The minutes indicate no answer was heard. He said he wants to amend that to indicate that Mr. Falk said there was no indication that it was a two-family dwelling.

MOTION CARRIED UNANIMOUSLY

ADJOURNMENT

Mr. Jenkins called the meeting closed at 9:55PM

Susan Douglas
Clerk

It
Taped