

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
June 14, 2005

A public hearing of the Zoning Board of Adjustment was held on Tuesday, June 14, 2005 at 6:30 p.m. in the Auditorium at City Hall.

Tom Jenkins conducted the hearing.

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

Also present, Carter Falk, Deputy 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. A full Board is present tonight.

2. Southern New Hampshire Medical Center (Owner) 286-288 Main Street (Sheet 17 Lot 1) requesting variance to allow luminaire heights at 22.5 feet, 8 feet allowed - for control of light glare. GB/MU Zone.

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Jim Petropulos, Civil Engineer, Hayner/Swanson, Inc., 3 Congress Street. Mr. Petropulos said his firm represents Southern New Hampshire Medical Center. He said Scott Cote is present tonight. They are redeveloping the property at the corner of Main Street & East Otterson Street and a variance is needed per Section 16-232(d)(3) which deals with site lighting issues.

He said this property is butted by Southern New Hampshire's campus to the north and various commercial and retail projects surround them. The site has had a number of uses in the past, most notably as a used car and auto dealership. The site is completely paved.

He said the auto dealership had ten light poles located around the perimeter of the property. Southern New Hampshire is proposing to redevelop the site by constructing a gated parking area for Southern New Hampshire Medical Center employees similar to Prospect Street. He said currently the paved area houses about 40 - 45 cars in an ill-defined manner. The medical center will have one defined entrance off of West Otterson for ingress and egress. There will be a single bay of parking with a total of 34 spaces. There will be a green area around the parking where none exists today. Mr. Petropulos said there is a curb cut to the property on Main Street and that will be removed. They believe it is a safety issue with regard to the proximity to the Main Street/East Otterson Street intersection. They will have sidewalk on East Otterson Street where there is none today. They are also incorporating some storm water treatment

measures to the property.

He said the outdoor lighting regulations seeks to promote good lighting - to reduce glare and not have light trespass over the property lines. He said they do not have light trespass over the property. He said there is a photometric design in the packet. The code also establishes pole heights in relationship to property lines - the theory being that the closer you get to a property line, the lower the pole so that it minimizes glare.

He said the code for this project indicates they would need poles 8' in height fifteen feet from the property lines. In order to do that they would be right back to the used car situation where they would probably have 10 - 12 poles. That casting of light probably wouldn't even cast to the center of the parking lot.

Mr. Petropulos said they have had a professional design the lighting and they are proposing two light poles along East Otterson Street. They are 20' poles and sit on a 2 1/2' high base.

He said the hardship runs with the land - the size of the property, it's a corner lot and it is a very narrow lot. In order to meet setbacks for the light poles it becomes difficult.

He said the intent of Section 16-232 is to promote good lighting and they believe they are doing that. There are two poles and they are using state of the art light measures.

He said the use is compatible with surrounding sites. Lighting is also compatible with surrounding sites. The recently approved Walgreen's has 20' high light poles as does the Globe Plaza.

He said as far as the public benefit is concerned, the site will have a much better appearance. There will be landscaping and there will be a definition to the parking and the curb cut on Main Street is going to be removed. There will be a sidewalk on East Otterson Street.

He said granting the variance allows Southern New Hampshire to provide a safe parking lot for its employees.

Mr. Jenkins asked if the pavement up to the street is going to be brought back approximately four feet.

Mr. Petropulos showed where it would be 6' from one of the property lines, 6' - 8' at another property lines and almost 15' along East Otterson Street.

Mr. Currier asked about the gate that was going to be around the parking lot that was addressed in testimony.

Scott Cote, Property Manager, Southern New Hampshire Medical Center. Mr. Cote said the finish they are looking at for the portion of the site facing Main Street and East Otterson Street is very similar to the one they just completed at the site of the former Texaco Station. He said the difference is they need to have control of access to the site because they have competition from the users just to their south. They are losing most of their spots because of that.

Mr. Currier asked if people have to go one way on East Otterson and come out to Main Street at the light.

Mr. Duffy said they come out East Otterson and turn right.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Currier to grant the variance to allow luminaire heights at 22 1/2' where 8' is allowed for control of light glare for Southern New Hampshire Medical Center, 286-288 Main Street. The variance is needed to enable the applicant's

proposed use of the property. It is currently used as a parking lot and has been for many years. The proposal is for a different design for the lights. The proposed system will be a better design. This will be 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.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

1. Joseph W. Jr. & Anthony Dubois (Owners) 8 Grenada Circle (Sheet C Lot 1400) requesting variance to encroach 2 feet into the 6 foot required right side yard setback to construct a detached two-story 20'x38' garage. R9 Zone.

Joe Dubois. Mr. Dubois said he brought his contractor, Tom Landry. He said this proposal is for a two-story garage. He said it will benefit his son, who is in a wheelchair and on a ventilator. He said his son has a specially designed conversion van for transportation. He said he has made numerous modifications to his property, including the installation of an elevator in the main house. He is trying to make the property handicap accessible all around. He removed the original two-car garage to increase living area.

Mr. Jenkins asked if the reason the proposed garage is detached because if it were attached to the house he would not be able to meet the setbacks.

Mr. Dubois said this is correct. He said as part of this construction he is going to be installing a rating heated driveway so his son will have traction during inclement weather. It will not be that far from his door to where the van would be parked in the garage.

Mr. Jenkins asked why the garage is so large.

Mr. Dubois said they have a lot of medical equipment that they need storage for.

Mr. Jenkins asked if the second floor of the garage is going to be used for storage.

Mr. Dubois said that this is correct. He said there may be some recreational use as well at a later date, but the main intent is for storage.

Mr. Jenkins asked Mr. Dubois if he had talked to the abutters.

Mr. Dubois said he spoke to one of the abutters and they didn't seem to have a problem with the request.

Mr. Jenkins asked if this is part of a condominium complex and if he needed a letter of approval from the condominium association.

Mr. Dubois said it is part of a condominium. He said he sent a letter to the association on May 17 and he has his receipt from the Post Office. He said he sent them a copy of the plans, but they have not responded to him yet.

Mr. Jenkins asked who would actually be seeing the garage.

Tom Landry, Tom Landry Construction, 4 Cheryl Street, Nashua, NH. Mr. Landry said he is the contractor. He said the only visible portion of the garage will be the front garage door facing the street. He said it sits far enough back that the other houses around shelter it. It's going to compliment every single house in that complex. It's going to have the same color windows, etc.

Mr. Dubois said there is a boulder retaining wall behind the garage so the people in the condominium wouldn't even see it.

Mr. Duffy said there is an eave overhang that's infringing into the side yard setback because of the width of the garage, not

the depth (38').

Mr. Dubois said this is correct.

Mr. Duffy said from what he understands with a handicap accessible van there is an additional 10' or 15' needed for unloading.

Mr. Dubois said this is correct. He said this is an extra long van which creates a problem in finding adequate places to park it. It also goes up high.

Mr. Duffy said it looks like at the back of the garage area there's another area before you get to another utility room and an upstairs landing.

Mr. Dubois said he is planning to have recreation space in the garage. At some point in the future he would like to put an elevator in the garage so he is having it constructed so the area is there so all he has to do is get the mechanisms for the elevator installed at some point in the future. He can't afford to do this right now. He said they also need a second furnace to drive the heating system for the driveway. An emergency power generator will be installed at some point.

Mr. Duffy said this is a very large building, especially for the depth. He said he understands about the requirement for the width because of the van.

Mr. Dubois said there will be two cars parked in it.

Mr. Duffy asked if this is going to be converted at some future date into a detached living arrangement.

Mr. Dubois said it is not.

Mr. Duffy asked if there isn't a way to change the design. Somebody else has to live next to it.

Mr. Dubois said the condominium won't even be able to see it

because of the retaining wall behind the property. People driving by on the street will only see the front part of the building.

Mr. Jenkins asked if the neighbor that Mr. Dubois spoke to was to the left or right of him.

Mr. Dubois said to his right. He said it's the one that would be most impacted.

Mr. Jenkins said the extended driveway will go right along their property line.

Mr. Dubois said this is correct. He said they didn't have a problem with this. He said several years ago they widened their driveway and put a retaining wall up on the side. The State paid for that.

Mr. Landry said there is an existing driveway that already accommodates the proposed garage. He said the driveway is in disrepair. It's been washed out at the bottom.

He said if you try to put the garage on the left hand side of the house, the grade is approximately 12' higher so it isn't possible to do this. He said the best way for the heating system to work is with a concrete driveway and that is what is planned. The extra room in the garage is also addressing the furnace the elevator pit. The 38' depth accommodates the extended van and the other needs just mentioned.

Mr. Jenkins asked why they need the elevator in the garage.

Mr. Dubois said it's to get to the second floor. His son is in a wheelchair. He is just doing the pit right now and it will have to be made secure at this time. As funds become available he will install the elevator. He said the utility room for the elevator has to be a stand-alone type of thing. He can't have anything else in there.

Mr. Jenkins said it may increase the value of Mr. Dubois' home,

but he didn't want it to decrease the value of the neighbor.

Mr. Dubois said it won't have any impact to the neighbor at all.

Mr. Anderson asked what utilities will be in the garage.

Mr. Landry said the utility room will be for the furnace that's going to heat the driveway. There will be a room to hold the pump mechanisms, etc. for the elevator (at a later date). There will be a wash sink in the garage.

Mr. Anderson asked if there will be plumbing upstairs.

Mr. Dubois said "no."

Mr. Jenkins asked if there would be a bathroom.

Mr. Dubois said "no."

Mr. Landry said he spoke to Pennichuck about the water. He spoke to PSNH about running the power to the building. The gas line will be a single meter going to the garage and piped into the house afterwards. There will only be one meter on the property. The drainage will be tied into the existing drain coming down through the driveway. The water will be tapped off above the shut-off toward the house side of the water line.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

Ralph Pushor, President - Westgate Village Condominium Association, 57 Spring Cove Road. Mr. Pushor said this is an association of 159 townhomes within the greater Westgate Village Association. It's two separate associations. It encompasses all the single-family homes and Candlewood Park garden style apartments.

Mr. Pushor said that Mr. Dubois has stated that he is part of the condominium association, but this isn't correct. He's part of the Westgate Village Association, which is not part of the condominium association.

He said if he understood Mr. Dubois correctly, he stated that he notified the condominium association. He said they have not been notified. He said the only notification they have seen is the notification of this meeting.

Mr. Jenkins asked for clarification of the association/condominium.

Mr. Pushor said there are three presidents involved in Westgate Village. Westgate Village is unique in Nashua. There are 198 single-family homes, 159 townhomes, and 60 garden-style apartments. That's three associations. He said he is president of the condo association - that is the 159 townhomes.

Mr. Jenkins asked if Mr. Dubois would have to have permission from the Westgate Village Association in order to utilize his property.

Mr. Pushor said that will have to be addressed by who will follow him, the President of the Village Association.

He said they have two, 4-unit townhomes with a direct line of sight to this proposed garage, with one of them located directly behind it. This is an area of single-family houses and adjacent townhomes.

He said it is their opinion that a two-story garage, which is basically designed to be used as either a commercial entity or for the second story to be used as living quarters is incompatible with the general appearance or usage of the neighborhood. The proximity to adjacent homes not only creates a privacy issue, but they also believe it presents a serious negative aesthetic image relative to the neighborhood in general. It may subsequently have a negative impact on area property values.

He said the property at 6 Grenada Circle, directly adjacent to the proposed garage, is in the property of being sold. To say that the owner of this property doesn't have a problem is dubious.

He is asking that the variance request be denied because it is incompatible with the neighborhood and that it may be potentially detrimental to the economic welfare of the other homeowners in the area.

Mr. Duffy asked if Mr. Pushor had any information from either a realtor or an appraiser that would support his statements.

Mr. Currier said he noticed the townhomes and it was hard for him to gauge how high the garage would be and what it would be like looking out the back of the townhouses. He said from the testimony it sounded like it would be a nuisance and in the way of the view that's there.

Mr. Pushor said the garage will be visible from the townhouses and could create a privacy issue. He said if he were living at 6 Grenada Circle he would be upset.

Hannah Nedsphal ???, President, Westgate Condos & homeowners.

Ms. Nedsphal said they have an association meeting tomorrow night at which they will be discussing this request.

Mr. Jenkins asked if permission is needed in order for this structure to be built.

Ms. Nedsphal said "yes." She said the by-laws state that residents are supposed to ask whether or not they can build. For the most part they have given permission if the design is okay. She said in this respect, this is a two-story detached garage, which is a little more than painting your house another color or something like that. She said that it indicates that temporary structures - trailers, tents, shacks, garages, barns or other buildings shall not be used on any lot at any time as a residence, either temporary or permanently.

Mr. Jenkins said if the Zoning Board were to grant the request he would still have to get permission from the association in order to construct and the association might deny the request.

Ms. Nedsphal said that could happen. She said she is more concerned with the new owners being aware of what's been proposed. She said they do not know if they are aware of this proposal.

Mr. Jenkins asked Ms. Nedsphal if she had any feelings on the property values.

Ms. Nedsphal said she didn't know. She said Mr. Dubois has expanded his home already and it looks very nice. She said she is concerned about the buffer for the person next to him.

Mr. Duffy asked if there are any other accessory uses in the whole community. He said he didn't see either big or small accessory uses such as sheds or pools or other things that were inside of other setback areas on Grenada Circle or some of the other areas.

Ms. Nedsphal said there is one detached garage in Westgate Village that she is aware of. It is a one-story garage. She said if the proposed garage were to become living space it would be a concern. She said the Board will be talking about this tomorrow night. She said she didn't have a copy of what it looks like or what the design is. She said Harvard Management is their property manager and they may have a copy.

Mr. Jenkins said she could have a copy of what the Board has.

SPEAKING IN FAVOR - REBUTTAL

Mr. Dubois said the first speaker is correct in saying that he isn't part of the condominium association. However, there's common verbiage where it's referred to as a condominium association. It's called Westgate Village Homeowners Association.

He said they erected a 6' wooden stockade fence at the condominiums directly behind his property. Unless they get a ladder and stand on top of the ladder and look over the top of the fence they aren't going to see the garage.

He said as far as the person who lives next to him, he purchased the home about this time last year. He was there for three months and put it up for sale. He has a job in Massachusetts - the reason he wants to move. It doesn't have anything to do with the garage.

He said as far as Westgate Village Association is concerned, he did send correspondence to them on May 17. He has a post office receipt indicating it was delivered.

Mr. Jenkins said whether Mr. Dubois is part of a condominium association or homeowners association or whether there are covenants where he lives, the Board is not affected by them. It's another process that Mr. Dubois will have to deal with.

Mr. Dubois said the association has the right to approve, but in the by-laws there isn't anything that talks about disapproval.

Mr. Jenkins said that is civil litigation between Mr. Dubois and the association. It doesn't have anything to do with the Zoning Board.

He said that if Mr. Dubois scaled the plan back a couple of feet he wouldn't even have to come to the Zoning Board. He said it is an awful big building and he's not convinced that it's in character with the neighborhood.

Mr. Dubois said there was a garage built on Valencia that belonged to Ed Mann, a former Board member. He said he built a garage as big as the one he wants to build.

Mr. Currier said they have received testimony that the building he is proposing has negative aesthetic appeal. He asked Mr. Dubois to address this.

Mr. Dubois said the retaining wall where the condominiums are sitting is well above the garage. There may be 6' that will be sticking up, but the fence hides that. The condominium association put the fence in because they wanted privacy. He said he has invested a lot of money on his property since he has lived there and its value is over \$400,000. He is not about to put in an eyesore.

Mr. Duffy asked if there is any way that Mr. Dubois could more reasonably bring the garage down in size and not incur the intrusion into the setback area.

Mr. Dubois said there is only approximately 8' of the roofline that would go over the buffer because as the property goes back it widens out.

Mr. Duffy said one story is different from two stories when it's something that close. If he was a neighbor living there he would have to look at this.

Mr. Dubois said there is a fence on the side as well as in the rear. The property next door is in a valley.

Mr. Anderson asked what the total height of the building is going to be.

Mr. Jenkins said this is new information. It can't be part of rebuttal testimony.

SPEAKING IN OPPOSITION - REBUTTAL

Mr. Pushor said he is concerned that the new homeowner at 6 Grenada Circle is not aware of this proposed project and may have serious objections to it. They are the ones that are going to be impacted the most.

Mr. Jenkins asked if the property values on the street are all averaging.

Mr. Pushor said he doesn't follow single-family home sales so he doesn't have any idea. He said in fairness to Mr. Dubois, his property is very attractive.

Mr. Carrier asked if Mr. Pushor believes that this garage will have a negative aesthetic value to his association.

Mr. Pushor said a two-story garage doesn't fit into the neighborhood. He said in his mind it would have an aesthetic impact on the whole neighborhood.

Mr. Jenkins said he isn't comfortable with this. He said the owner took the garage he had and made it into living space. He said he feels the proposed garage will become living space, especially where there is heat and a second floor. He said it is out of character with the neighborhood.

Mr. Carrier said he doesn't like the design. He said he thought it was only 2', but it might be a little more on the front corner. He said Mr. Dubois doesn't think it will detract from the other properties in the neighborhood, but the abutters say it will have a negative impact.

Mr. Duffy said when he looked at this he felt that the essential character of the neighborhood would be significantly, even though garages are an approved use in this neighborhood.

MOTION by Mr. Duffy to deny the request to encroach 2' into the 6' required right yard setback at 8 Grenada Circle to construct a detached two-story 20'X38' garage. The accessory use is contrary to the public interest and is incompatible with the essential character of the neighborhood and surrounding parcels based on the testimony they have received. Substantial justice would not be served in granting the variance.

SECONDED by Mr. Jenkins.

MOTION CARRIED UNANIMOUSLY

3. Daniel D. Tomolonis & Tammy E. Parks (Owners) 7 12th

Street (Sheet 87 Lot 229) requesting variance to encroach 2 feet into the 7-foot required left side yard setback to construct a second story addition on existing home. RB Zone.

Daniel Tomolonis. Mr. Tomolonis said he spoke to his neighbor to the right and left and they didn't have a problem with the proposal, which is to add a 37'X27' second story addition. It will be colonial style.

He said they need to add a second floor addition to provide the best possible living arrangements for their children. It is in their best interest to continue living in Nashua in the home they have lived in all their lives. The addition will allow them to stay in the home.

Mr. Jenkins asked if the foundation footprint is being expanded.

Mr. Tomolonis said it was not being expanded.

Mr. Jenkins asked if there are other second story homes in the area.

Mr. Tomolonis said there are two on his street.

Mr. Jenkins commented that the current footprint of the house doesn't meet setbacks so it pre-dates zoning.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Anderson to grant the variance to encroach 2' into the 7' left side yard setback to construct a second story addition on an existing home at 7 Twelfth 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 can't be achieved by some other method reasonably feasible for the applicant to pursue other than adding a second story. The setback encroachment already exists. It is within the spirit and intent of the ordinance. It will not adversely affect property values of surrounding parcels. It is not contrary to the public interest. It will fit in with other homes in the neighborhood. Substantial justice will be served.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

4. City of Nashua (Owner) 103 Perimeter Road, L Deerwood Drive and L Northwest Boulevard (Sheet H Lots 577, 488, 18, 290 & Sheet E Lot 60) requesting the following: 1) special exception to work within an "other" wetland and wetland buffer to allow selective tree removal in the approach zone, and 2) variance to allow tree cutting in the water supply protection district. AI & PI Zones.

Carol Niewola, Civil Engineer - Gale Associates. Ms. Niewola said that the Nashua Airport Authority has recently been found to be non-compliant with some standards from the Federal Aviation Administration relative to maintaining its protected air space around the airport free from penetrating vegetation.

She said the FAA has mandated that the airport clear certain of these areas immediately or face restricted use of the airport, which would greatly diminish the airport's capabilities, especially for safely landing planes during low visibility conditions.

She said the identified vegetation requiring immediate clearing is at the northern end of the runway-to-runway 14 within the "so called" approach surface. She said there are other penetrations, but FAA is not mandating that those be cleared immediately. However, ultimately the removal of all vegetation

obstructions will be required in order to comply with FAA safety regulations and in order to remain eligible for future Federal funding for future airport improvements.

She said the current application responds to the immediate requirements of the FAA to bring the airport into compliance with the defined protected airspace for runway 14, that is judged to be the most critical portion of protected airspace.

Ms. Niewola said there are two applications in the Board's packet. One is for a special exception to allow selective clearing within the "other" wetlands and the buffers and the other is for a variance.

She said with regard to the special exception, the use is listed in the Table of Use Regulations. Non-commercial forestry is permitted within both the Airport Industrial and Park Industrial districts. The temporary and limited nature of the selected tree cutting that has to be done will not create undue traffic or unduly impair pedestrian safety. The clearing will take place in wooded areas away from public roadways and sidewalks. The selective tree clearing will not place any hazardous impacts on the public water supply, drainage or sewer systems or municipal systems. The project is temporary in nature and will not tie into any of these systems. She said with the exception of the variance to allow selective tree clearing within the water supply protection district, all the other special zoning regulations are fulfilled and consistent with the Airport Zoning Regulations. There will be no wetland or open water crossings that will impair the integrity of the zoning districts or the neighborhoods.

She said the City of Nashua's conservation land (H-577) will remain as both wooded wetlands as well as wooded uplands, having only a shorter canopy that enhances the herbaceous and shrub dominated systems. The airport site impacted by this project will remain mostly wooded with some small areas left in a malleable condition.

Mr. Jenkins asked if they agree to all the Conservation

Commission's findings.

Ms. Niewola said they do.

Mr. Jenkins asked what they will be doing - approximately how many trees will be removed, to what degree, etc.

Ms. Niewola said there are two parcels that they need to do some tree clearing on in order to protect the approach surface into the runway. She said the first parcel is the City's conservation land, which is approximately 250 acres, but they are only impacting a small area just north of the airport. She pointed out a pink area on her display and said this is the area where they will be removing trees on this land. She said these trees are approximately 80' tall, which is right about at the level of where the surface is. She said they don't have a feel for the number of trees. They did have a professional forester come in and identify the trees that are at about the 80' height or higher that need to come down.

Mr. Jenkins asked if the trees have been tagged for the Conservation Commission.

Ms. Niewola said they haven't been yet, but they will be. She said they will either be tagged or the area within it and the contractor will be given specific instructions with full time construction inspection services to confirm that only those recommended trees are coming out.

Mr. Jenkins asked what time period this will take place.

Ms. Niewola said it looks like it will be during the dry season, probably early August at the very earliest. She said they need to record a navigation easement deed that will allow them to do the tree clearing on the City's property and pursue a grant and go out to bid. FAA will be paying 95% of the tree removal process and the State will contribute 2 1/2% and the Airport will pay 2 1/2%.

She pointed out the airport property that needs to be cleared.

She said the tree clearing in this area consists of approximately 6 - 7 acres in the wetland area itself. She said these are very selective. The trees that are in those areas will be penetrations that are about 40' tall. The forester had made a recommendation that trees that are over 4" diameter breast height would be the ones that need to come down. She said through the full time construction inspection services they will make sure that those are the only ones that come down.

She said the areas closest to the airport are less than one acre in the wetland.

(Some testimony lost - tape change.)

She said the less room there is at the bottom of the plane and the ground and less room for recovery in case of emergency, so having any penetrations up into that surface is a safety issue.

Mr. Duffy asked if this is a new FAA regulation that they are trying to comply with. He asked why it is coming up now.

Ms. Niewola said it is not a new regulation. The airport has recently gone through a planning study to identify how to meet standards on the airport because there have been faster planes that have been coming in on a more regular basis and the FAA says they need to go to the next standard for design. They have had a couple of public meetings on this. She said part of the study allowed them to obtain aerial photos with treetop topography which gave them the tops of all the trees. Its something the airport has never been able to get before. It's new information to the FAA as well as to the airport. She said the City has a zoning ordinance that mimics FAA surfaces.

Mr. Duffy asked how long the project will take.

Ms. Niewola said they are anticipating about a month.

Mr. Duffy asked the total acres involved or board feet.

Ms. Niewola said they don't have an estimate for board feet.

All they have is acreages. There are about 21 total acres of impact.

Mr. Duffy asked if they are crossing of wetlands to get to these trees.

Ms. Niewola said there are no mechanized crossings of open water or wetlands is being proposed and should not be needed. She referred the Board to their packets.

Mr. Duffy asked if this was a stipulation by the Zoning Board if they would be amenable.

Ms. Niewola said they would be. She said the Conservation Commission made this stipulation.

Mr. Duffy asked if this will be creating access for further growth of hangars.

Ms. Niewola said they are doing this to be in compliance with FAA standards.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

Mr. Currier said he doesn't see an approved application from the Conservation Commission, although there is an E Mail that indicates there are stipulations. He is assuming that they application has been approved.

Mr. Falk said the applicant did go to the Conservation Commission and was approved. The City had a staff member that left so all they have is the E Mail with the stipulations.

MOTION by Mr. Coffey to grant the variance to allow tree cutting

in the water supply protection district at 103 Perimeter Road, L Deerwood Drive, and L Northwest Boulevard (Sheet E Lot 60 & Sheet H Lots 577, 488, 18, 290). 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 method reasonably feasible to the applicant. The FAA is requiring the clearing in order for the airport to continue operating runway 14. A grant is required for the project. It is a temporary intrusion into the area. It is within the spirit and intent of the ordinance. There will be selective cutting under approval by an appointed overseer. It will not adversely affect the property values of surrounding parcels. It will benefit the community as it will be safer. It will also allow greater use of the airport. It is not contrary to the public interest. Substantial justice will be served.

AMENDED MOTION by Mr. Duffy for a stipulation as follows: The applicant will protect the wetlands and other wetlands area without crossing over during the cutting phase.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY

MOTION by Mr. Coffey to grant the special exception to work within an "other" wetland and wetland buffer to allow selective tree removal in the approach zone at 103 Perimeter Road, L Deerwood Drive, & L Northwest Boulevard (Sheet E Lot 60 & Sheet H Lots 577, 488, 18, 290). It will not unduly affect traffic congestion or unduly impair pedestrian safety. It will not overload public water, drainage or sewerage or other municipal systems. There are no services in this particular area. All special regulations will 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. There is no water crossing. Special Condition: Comply with the recommendations from the Conservation Commission.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY

5. William R. & Denise A. Lambalot (Owners) 6 Clergy Circle (Sheet F Lot 721) requesting variance to encroach 26 feet into the 30 foot required rear yard setback to construct a 16'x20' deck. R9 Zone.

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Denise Lambalot. Mrs. Lambalot said their request is for an encroachment of 26' into the required 30' rear setback for the purpose of constructing a 16'X20' deck in the back of the house.

She said the location and orientation of the house on the lot creates a unique setting. The house is already encroaching into the setback so there are no alternatives. The house sits kitty-corner on the lot. She said the proposed deck constitutes a reasonable accessory use for a single-family home and is common in their neighborhood. At this time there is no direct or unimpeded access from their living quarters to the rear yard entry point. She said this creates a better access point for entry and exit during inclement weather or an emergency, there is no impact to City services, and the project will increase the value of their home resulting in a positive impact on the surrounding properties as well.

Mrs. Lambalot said under public benefit, this provides a direct and unimpeded access to the house during emergencies for both the homeowner and any dispatched public services such as police and fire.

She said as far as substantial justice is concerned, this allows for better utilization and enjoyment of their property and residence.

She said this is in the rear yard which is underutilized and not easily accessible. The rear setback abuts a wooded area of common land.

Mr. Jenkins said according to the City records in 1984 the original deck was enclosed. He asked if they owned the home at that time.

Mrs. Lambalot said they did not.

Mr. Currier asked if the common land Mrs. Lambalot addressed is wooded or open.

Mrs. Lambalot said mostly it is wooded. There are utility lines going through on one side.

Mr. Anderson asked if there is a line of sight to two homes (tape malfunction) during the wintertime.

Mrs. Lambalot said they do. She said there are still a lot of trees in between.

Mr. Anderson asked if they have talked to these people.

Mrs. Lambalot said she has not. She believes they received a letter. She said she didn't think they had any issues. She indicated they were not present. She said they have decks on their homes.

Mr. Currier asked if they had spoken to the people who live to the left of their house as you look at the street - the house with the Volkswagens.

Mrs. Lambalot said they had. They have no problem with the proposal. She said they have a deck in the rear of their yard as well.

SPEAKING IN FAVOR

Allison Sharpe, 5 Clergy Circle. Mrs. Sharpe said she is in support of this request. She said it will be a vast improvement to what currently exists. It will be much more aesthetically pleasing.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Anderson to grant the variance to encroach 26' into the 30' required rear yard setback to construct a 16'X20' deck at 6 Clergy Circle. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. The house is placed at an angle on the lot, which greatly restricts the placement addition of a deck. The benefit sought by the applicant cannot be achieved by a reasonably feasible method. It is within the spirit and intent of the ordinance. It will not adversely affect property values. This will add to the appeal of the home. It is not contrary to the public interest. There is a common buffer behind the home and it's not adjacent to any abutter. Substantial justice will be served.

SECONDED by Mr. Coffey.

Mr. Duffy said this is in the essential character of the neighborhood. There are other uses like this in and out of setback areas in the area.

MOTION CARRIED UNANIMOUSLY

6. Brian & Elizabeth S. Lowe (Owners) 110 Lille Road (Sheet B Lot 1873) requesting variance to encroach 20 feet into the 30 foot required rear yard setback to construct a 23'x29' addition. R9 Zone.

Brian Lowe, 110 Lille Road, Nashua, NH. Mr. Lowe said they wish to expand their living space in their home. In order to do so they have to encroach into the rear setback. The current rear setback is 30' and they are asking for an encroachment of 20'. Almost the entire area is used as a deck at the present time.

He said the area is going to be used as living space for a

larger family room and a mudroom. They cannot achieve this by adding anywhere else. The rear is the only place it can reasonably be placed.

He said the left side of the house (the right side if you are facing it) is a drainage area from the hill on the backside. They are pretty much on the top of a hill and they get a lot of runoff from behind them. He pointed out an area where they might be able to put this addition, but it would force the water into their neighbor's property.

Mr. Lowe said granting the variance would not affect the spirit and intent of the ordinance because of the unique situation the property sits in. He referred to an attachment in their packet and said there is a buffer area of approximately 300' of "Flatley" land **unintelligible**. The next 500' beyond that can't be used for any buildings. He said a copy of the deed should be in their packets.

He said the only two people this would impact or impact the most are their adjacent neighbors on each side. He said they have discussed this project with them and they were told that they would support it. He said they also spoke to "Flatley" and they were able to sit in a meeting with the Flatley Group and pointed out their house on a aerial map. They were fine with the request.

He said they feel it is important to maintain the house within the character of the neighborhood. Even if they could put it on the side of the house it may make it look out of place. They believe by hiding it the back of the house is important as it wouldn't impact the neighbors.

Mr. Lowe said as for the public benefit, the property values will remain strong and additionally the neighbors won't be impacted because of the drainage issues on the right side of the house.

He said it is important to them to be able to do this because they will be able to stay in their home, which is where they

want to be. They have been here for eleven years. They like the street. They believe in the school system.

SPEAKING IN FAVOR

Karen Dapkus, 111 Lillie Road. Mrs. Dapkus said she is in support of this request. She said the neighbors that she has talked with don't have any problem with it either.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Currier to grant the variance to encroach 20' into the 30' rear yard setback to construct a 23'X29' addition at 110 Lillie Road. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. One side of the house is largely a drainage area and it's on a slope. The proposed addition would be behind the house and not alter the character of the house to the street. There is a large area of conservation land at the rear of the house which would not be impacted by this addition. It is within the spirit and intent of the ordinance. There is no testimony that it would affect the property values of surrounding parcels. It is not contrary to the public interest. Substantial justice will be served.

SECONDED by Mr. Duffy.

MOTION CARRIED UNANIMOUSLY

7. James M. & Kimberly A. Dobbins (Owners) West King Properties, LLC (Applicant) 58 and L King Street (Sheet 13 Lots 34 & 37) requesting the following variances: Lot 37: 1) minimum lot area, 6,000 square feet required - 5,300 square feet proposed, 2) minimum lot width, 60 feet required - 50 feet proposed; Lot 34: 3) minimum lot area, 6,000 square feet required - 5,724 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.

Mr. Jenkins said that he just purchased a property at 44 King Street and is not a direct abutter, but if anyone has a problem with him hearing the case he would be happy to recuse.

There were no objections to Mr. Jenkins hearing the case.

Atty. Gerald Prunier, 20 Trafalgar Square, Nashua. Atty. Prunier said the lots in question are on King Street. He said even though there are four variances, it really comes down to two because both lots require 60' of width. Lot 37 has 5300 square feet of land area and Lot 34 has 5724 square feet of land area. Lot 34 has an existing building on it. It is proposed that a single-family house be constructed on Lot 37. He presented a survey of the area that showed a variety in the size of the lots that exist in the area.

He showed a plan that was recorded in the Hillsboro County Registry of Deeds in 1892. He said they are uniform lots, all with 50' frontage throughout the area. He pointed out a plan from April 1, 1999 that shows the different sized lots that exist throughout the area. He said it's a hodgepodge of lots. Lot 50-52 has 9540 square feet and is a multi-family home. He said 53 King Street has a 10,972 square feet lot and is also a multi-family home. Number 54 King Street has 5300 square feet (single-family), 57 King Street has 8743 square feet (single-family), and 58 King Street has 5724 square feet (single-family).

He said the proposal is not out of character with the area. The lots are of all different sizes in the surrounding area. A single-family house is being proposed. It will be new construction and will blend into the area.

Mr. Jenkins asked for some history on these two lots.

Atty. Prunier said the lots come out of various lots that go back to 1892. Some of the lots have been combined. Some have been subdivided. The two lots in question are close to the 6000 square feet needed under the ordinance to construct a single-family home, one being 5700 square feet and the other being 5300 square feet.

Mr. Jenkins asked how long these lots have been under the same ownership.

Atty. Prunier said he didn't know.

Mr. Currier asked about the wording "to transfer common ownership between two contiguous non-conforming lots". He said this wording puzzles him. He asked if it is another way of saying that the two lots are owned by the same person and now two different people are going to own them.

Atty. Prunier said if the variance is granted that would be correct. He said in 1976 the City passed an ordinance that stated if you had two non-conforming lots adjacent to each other then you had to combine them to make them conforming or more conforming. He said these two lots have always existed.

Mr. Currier asked if they are two separate lots and two separate tax bills.

Atty. Prunier said this is correct. He said the City never showed it on the tax mapping and people have just maintained these lots forever.

Mr. Duffy asked if there wasn't recent case law just handed down in the last few months about deeded lots of record with a similar use in essentially the same character of the neighborhood.

Atty. Prunier said Mr. Duffy was correct.

Mr. Currier asked what the proposal is for a driveway and parking.

Atty. Prunier said he would have the engineer answer this question.

Richard Maynard, Professional Engineer, Maynard & Paquette, Nashua. Mr. Maynard said the driveway for the proposed house would be along the right-hand side and for the existing house will be along the right-hand side. This is fairly normal and typical of almost all the homes in this particular area.

He said of the homes in this area are single-families with lots that are 50'-54' wide. This proposal is very much in character.

He said all the water, sewer and other utilities are more than adequate for this area.

He said the topography is pretty gentle.

Mr. Currier asked where the driveway for the existing house is located at this time.

Mr. Maynard said it straddles the line.

Mr. Duffy asked what the width of the driveway is going to be on the vacant lot.

Mr. Maynard said approximately 10' and it will be approximately 2' away from the lot line. There are a lot of driveways that are right on the lot line as you drive through those neighborhood.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

Andrew Tsakalakos, 54 King Street, Nashua. Mr. Tsakalakos said he lives next to the lot where the applicant plans to build a house. He said the houses that are on the lots that don't meet

the width or size requirements have small homes. He said he has a very big house. If there is a house built next to his it will take the privacy completely away from him. He has a neighbor on the other side, but there is a good distance between them. He also is curious to see if his property values will go down.

Mr. Jenkins asked if Mr. Tsakalagos talked to an appraiser or a realtor.

Mr. Tsakalagos said he just found out about this last week.

Mr. Jenkins said Mr. Tsakalagos said his lot has 5300 square feet.

Mr. Tsakalagos agreed. He said the reason that he purchased his home a few years back was because of the space between houses.

Mr. Jenkins said the only difference between what is currently built and what is coming to the Board is that the house that is proposed to be built will have to meet the side yard setbacks, which means 7' on the side. There will be at least 7' between the property line and the proposed house. In this particular neighborhood it would be in character.

He asked Mr. Tsakalagos how far his house is from the property line on the side.

Mr. Tsakalagos said 6' or 7'. He asked how far back the house would be set.

Mr. Jenkins said the front and rear yard setbacks are 20' each.

Mr. Currier said Mr. Tsakalagos might want to take a look at the design for the proposed house. He showed Mr. Tsakalagos.

Mr. Tsakalagos said he is concerned that it might decrease the value of his home.

Mr. Jenkins said it's going to be a single-family home and they are in a neighborhood with single-family homes. If anything,

there will be a nice new home next to Mr. Tsakalacos.

SPEAKING IN FAVOR - REBUTTAL

Atty. Prunier said Mr. Tsakalacos has a lot with 5300 square feet of land area, which is similar to what they have. That house is only 4' off of the property line on the side, probably because it was built a long time ago.

SPEAKING IN OPPOSITION - REBUTTAL

No One.

MOTION by Mr. Coffey to grant the variances to transfer common ownership between two contiguous non-conforming lots: 1) Lot 37 - Minimum lot area 6,000 square feet required, 5300 square feet proposed 2) Minimum lot width, 60' required, 50' proposed, 3) Lot 34 - minimum lot area 6,000 square feet required, 5724 square feet proposed, 4) minimum lot width, 60' required, 50' proposed at 58 King 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 reasonably feasible for the applicant. There are two separate lots in existence. The proposed lots are similar in lot size to the surrounding neighborhood. A survey was presented by the applicant showing similar lots in the area with similar lot sizes. It is within the spirit and intent of the ordinance. It will not adversely affect the property values of surrounding parcels. No evidence was presented either way. It is not contrary to the public interest. Substantial justice will be served.

SECONDED by Mr. Anderson.

MOTION CARRIED UNANIMOUSLY

**8. Delta Realty Co Inc. (Owner) Carlos Arias (Applicant)
161 East Hollis Street (Sheet 24 Lot 3) requesting the**

following: 1) use variance to allow automotive sales along with an existing retail gasoline sales/automotive service station, and 2) variance to allow parking and vehicle display in front yard setback (on both East Hollis Street and Hobbs Avenue), 0 feet existing, 5 feet proposed - 10 feet required. GI Zone.

Atty. Gerald Prunier, 20 Trafalgar Square. Atty. Prunier said this property doesn't really have a driveway or entrance. It has no landscaping. There is a piece of asphalt. It is bordered on one side by East Hollis Street, Hobbs Avenue on the other, and some multi-family/industrial property on the other two sides.

He said the applicant is proposing to close off part of the driveway entrances, one off of Hobbs Avenue and one off of East Hollis Street. The lot had received various variances to allow gasoline sales and the pumps have been removed. The proposal is to have automobile sales and repair of automobiles at the site. They presently do automotive repair.

He said the corner of East Hollis Street & Hobbs Avenue will be landscaped. They are asking to impose 5' into the 10' front yard setback. The landscaping will greatly increase the look of the lot. The gasoline tanks are going to be removed. There will be automotive sales in that area. There are fourteen parking spaces where thirteen are required. They will maintain the existing fence in the rear of the property. He understands that there is some type of agreement that this fence be maintained.

Atty. Prunier said this is a reasonable use of the property. Automobile repair is already being done on the property. It is located in a General Industrial zone, but it is not a large lot and is out of character for an industrial/manufacturing use.

He said this will provide a service to people using East Hollis Street.

He said it isn't going to be out of character with the other buildings that are there and the property will be greatly improved by the landscaping that will be added to the property.

Mr. Jenkins said there aren't any pumps on the site. He asked if there are tanks in the ground.

Atty. Prunier said there are.

Mr. Jenkins said the tanks are going to be removed and the site is going to be totally cleaned up with curb cuts, etc.

Atty. Prunier said it's going to have granite curbing and comply with the City's ordinance.

Mr. Jenkins asked if the building on the site will be remodeled.

Atty. Prunier said that this is correct.

Mr. Jenkins asked if this is going to have new ownership or if it is the same owner.

Atty. Prunier said it will be the existing ownership - it was just purchased.

Mr. Jenkins asked how many automobiles the applicant plans to display.

Atty. Prunier said the area only allows twenty.

Mr. Jenkins asked if the garage is going to be for the used automobiles.

Atty. Prunier said the garage is for repair/reconditioning of the used automobiles as well as to do repairs for the general public.

Mr. Jenkins said the site is an eyesore right now. He's not sure that this is an improvement, but he's not sure what else it could be used for in this area.

Mr. Duffy asked where the 22% open space is. He asked if it is behind the building.

Atty. Prunier pointed out the areas that were included in the calculation for the open space.

Mr. Duffy said he would feel more comfortable with the site as a repair shop than an automobile dealership. He is having a problem with the use.

Atty. Prunier said they are giving up the gasoline dispensing operation. If you go around to small automotive repair facilities in the city, you will find that they sell automobiles. Sometimes after a vehicle is repaired people don't pick them up and they are sold.

Mr. Duffy said the display area is going to be out into the front buffer area. There may or may not be lighting considerations that may need to be addressed.

Atty. Prunier said they have to go to the Planning Board.

Mr. Duffy gave an example of 1400 Motors on Daniel Webster Highway. He said the vehicles were down the side when it was first developed and now it's down to the street and over the landscaping/green space. This request is for a use variance and to him this site is a gateway area with mixed uses in transition.

Atty. Prunier said it's an improvement to the property to get the landscaping in and to get the wide-open areas so that cars can be directed into driveways.

Mr. Jenkins asked if they are amenable to a stipulation that the fence in the rear of the property continue to be maintained.

Atty. Prunier said they will continue to maintain it.

Mr. Anderson asked who was taking the tanks out - the owner or the applicant.

Atty. Prunier said probably the new owner.

Mr. Duffy asked if the whole building is being razed.

Atty. Prunier said it will stay the same.

SPEAKING IN FAVOR

Richard Maynard, Professional Engineer, Maynard & Paquette. Mr. Maynard said the auto service and repair is a permitted use that will remain on the site. In order to upgrade and improve the property the applicant would like to trade retail gas sales for retail car sales. Right now the entire lot is paved all the way to the street. You can't tell where the lot starts or the street starts right now.

He pointed out the areas in orange on a plan. He said these are areas of curb cuts. There are no curbs now. They will materially improve the traffic safety and circulation in this area by controlling the cuts. He said it will also help pedestrian safety in that they have defined driveways. They will also put in sidewalk.

He said there is absolutely no green space on the site. If they can't do anything with the property, it will probably remain that way because there would be no incentive to improve it. This is another positive benefit even though the Board may not like automotive sales at this site.

Mr. Duffy said that what he is trying to ask questions about is the fact that there will be 34 cars in an area that now usually has 10 - 12 and putting the display area out in the pavement. Even though there is ugly concrete there now there's going to be twenty cars to look at every day. The incursion becomes a compliance issue if the cars go into the setback areas that are frontage setbacks for this parcel. This is what he has an issue with.

Mr. Maynard said he does understand what is bothering Mr. Duffy

about the other auto dealerships. They have their cars displayed in the front and it's obvious to everybody. If it's a particular concern, they can specify curbing along the front of the vehicle display area which will go a ways toward preventing incursions onto the lawn area and into the sidewalk area.

He said people have talked about the fence. An agreement was made at a previous approval that a fence be maintained in the rear. This will continue to remain in place.

Mr. Maynard said right now there are only a few cars at the site. It is because it's a low-key operation and the applicant is waiting to see what's going to happen tonight. If it is going to continue as a repair garage they will tend to see many more cars there in a somewhat state of disrepair. He said he'd rather see good-looking used cars than to see cars that are waiting for repair.

Mr. Anderson asked how much of the lot is going to be excavated for the removal of the tanks.

Mr. Maynard pointed out the location of the tanks on a plan. It's about a 30'X60' box that has to be pulled out and then replace the soil and put the pavement back.

Mr. Coffey asked if they will be putting in granite curbing.

Mr. Maynard said this hasn't been specified. He said the City curbing is definitely granite.

Christopher Eckler, 17 Amory Street. Mr. Eckler said he owns seventeen properties between East Hollis Street & Bridge Street, seven of which are commercial or industrial. He said Carlos has been a tenant of his for the last six years. He is the most responsible commercial tenant he's had. He is a perfectionist and meticulously takes care of all the property he rents from him. His cars are all immaculate. He said there's no doubt in his mind that he will take even better care of the property he now owns and will do anything he can to improve the value of his property. That should improve the values of the surrounding

properties.

SPEAKING IN OPPOSITION

Robert Carter, 8 Hobbs Avenue. Mr. Carter said he is an abutter to this property. He said he did not agree with a statement on the variance request which talks about an existing gas station. He said there hasn't been a gas station there for eighteen years.

He said there was a meeting in 1986 and at that time it was agreed that the stockade fence would be maintained and that they would keep a dumpster behind the fence. In that agreement there is also a stipulation that were to be no automotive repairs or auto sales. He said the original agreement has been broken. He also indicated that he is not against them doing business.

Tape change - some testimony lost.

Mr. Jenkins said the most they can have on the site is 34 cars. There is no on street parking available in this area. He can't see where this would be a detriment to the neighborhood as far as parking goes because of that.

He said the green space, the curb cut, and cleaning the site up will be a big improvement. The current site is an eyesore.

Elizabeth Albert. Ms. Albert said she just became aware of this variance request on Saturday when she went to see her brakeman. There hasn't been gas sold here in the fifteen years she has gone to this brake shop.

She said the current renters of this station are respectful businessmen. They are fair businessmen. She doesn't know what has become of them now that the property has been sold.

She said she believes there are some residential buildings around the site. The corner may not look very attractive right now, but she thinks a car lot with lights and flags and being open seven days a week until all hours of the night is not going to be good for the residents who live in this neighborhood.

Mr. Jenkins asked if Ms. Albert if she has seen cars for sale on the site during the fifteen years she had been going to the brake shop.

Ms. Albert said she has noticed cars for sale on the site. Originally she doesn't believe that there were, but over the years there have been some cars for sale.

She said it's not the most attractive corner in Nashua, but along Canal Street there are other automotive repair shops that leave their vehicles partially out into Canal Street and they don't seem to be reducing property values.

Mr. Jenkins said what currently exists is not a very pleasant looking site for the City nor does it meet the code as far as curb cuts go, landscaping, etc. Also, cars have been sold from the site in the past. They are not doing any more than what has been done in the past. There will be improvements to the site and hopefully will be a better tenant for the residents.

Ms. Albert expressed her concern that a reputable business was going to be leaving.

SPEAKING IN FAVOR - REBUTTAL

Atty. Prunier said he didn't believe the Board can make decisions based on who owns a business and who sells a business. He is hopeful that all customers will continue to patronize the new owner's business.

SPEAKING IN OPPOSITION - REBUTTAL

No One.

Mr. Carrier said he is favorable to this request. He said it's an overall improvement. He said he has driven by this site countless times, but never actually got out and walked around. In walking around he was surprised by the number of residences nearby that are in the GI Zone. He said he thought it was an

overall improvement. He said he thought there would be people who would argue why an automotive dealer would be a detraction, but there hasn't been any testimony to that affect.

Mr. Anderson said they will be removing the unused gas tanks and making other improvements to the site, including the offer to curb the inner portion of the landscaping to alleviate Mr. Duffy's concerns.

Mr. Jenkins said pedestrian safety is a big concern on that corner.

MOTION by Mr. Duffy to grant the use variance for automotive sales along with retail automotive repair service at 161 East Hollis Street. It is a reasonable use in a pre-existing use of the property, even though it may be a little more of an intensive use of the current use of the property. An existing pre-existing use may be expanded to a reasonable nature. There are no major incursions or changes to the building in the setback area of the property. There will be improvements on the property. The applicant is aware of the setback area for the display of automobiles. It is within the spirit and intent of the ordinance that reasonable development and enhancement of the property be allowed. It should not adversely affect property values of surrounding parcels. This property has been in this use or similar uses for many years. It abuts residences and other approved uses in the GI Zone. It is not contrary to the public interest to allow continued and future growth and reasonable development of this site. Substantial justice is served.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

MOTION by Mr. Jenkins to approve the variance to allow parking and vehicle display in the front yard setback on both East Hollis Street & Hobbs Avenue, 0' existing, 5' proposed, 10' required - 161 East Hollis 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 reasonably feasible for the applicant to pursue other than an area variance. This area has been used for automobile sales in the past. The building on the site is located in the back of the lot and doesn't allow for any other 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 by granting the variance.

SECONDED by Mr. Currier.

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

9. State of New Hampshire (Owner) Donna Street Realty Trust (Applicant) End of Donna Street (N.H. DOT right-of-way) requesting use variance to allow a multi-family development with nine two-family buildings on one lot. RA Zone.

Atty. Gerald Prunier. Atty. Prunier said at the end of Donna Street on the Exit 5 ramp there is some property that is owned by the State - about 1.6 acres. The proposal is to construct nine duplexes on this land. He referred the Board to the plan. He said there are duplexes that already exist in this area that about this particular piece of property.

He said this request falls under the "Simplex" case. There are surrounding properties that are duplexes. The back of the lot is to the highway. This is unique to the property. They feel the proposed use is a reasonable one.

He said as far as the property values are concerned, Mr. Bramley and Mr. Nofsinger addressed those issues and indicated that this is a reasonable use of the property as well as that it would

have no adverse affect upon property values in the area.

He said this type housing is for the lower middle-class. Housing reports have indicated that this type of housing is needed in the City. These will be condominiums and individually owned.

Atty. Prunier said in the ordinance it states that in the RA District there should be 3500 square feet of land area per unit. If that application is applied to this parcel, they would be able to have twenty-two units. They are proposing eighteen. When you go into the Table of Uses a multi-family is permitted in the RA District. The staff has been consistent in stating that this means a multi-family, not multi-families, which is what is being proposed.

He pointed out the access and egress to the site on his display. He said the Fire Department has asked that the units all be sprinkled and this will be done. They have no other concerns.

He said because it is only eighteen units, the City does not require a traffic study. There would be 36 vehicles at most.

Mr. Jenkins asked if the units will have garages.

Atty. Prunier indicated where there would be parking.

Someone commented from the audience, could not hear what was said.

Mr. Jenkins then said some of the units have parking in the front, some of them have garages, some park on the back, and some park on the side.

Mr. Jenkins asked the average square footage of the units.

Atty. Prunier said around 1260 square feet, plus they all have a

basement. He said there is a kitchen, dining area, and great room on the first floor and two bedrooms on the second floor.

Mr. Jenkins asked if this wasn't a wooded area at this time that would be cleared to develop this project.

Atty. Prunier said it is. He said the land is owned by the State and it is excess land that they put up for sale. His client is purchasing it.

Mr. Jenkins asked if anyone has looked into the noise factor from the highway.

Atty. Prunier said they have looked into it and they feel there is a problem. In condominiums they put in sound deadening materials in the walls so it helps to take care of sound. In this case, it's not only the neighbor next door, but also automobile traffic in the area.

Mr. Jenkins asked what will remain of the wooded area.

Atty. Prunier said the depth is about 40'. The elevation is such that the buildings are down inside so there is a barrier. The highway is higher and sound will go over the top.

Mr. Currier asked how they are applying the "Simplex" case to this proposal.

Atty. Prunier said in the "Simplex" case it was Industrial versus Commercial. In this particular case it's better as there are existing duplexes that abut this property.

Mr. Duffy asked again for the size of the parcel and Atty. Prunier changed his answer to 1.8 acres, rather than 1.6 acres.

Mr. Duffy asked if the duplexes that Atty. Prunier was referring to was one piece of property.

Atty. Prunier said they are not. He said there are various pieces of property of different sizes. They need 3500 square

feet per unit.

Mr. Duffy asked what the proposed project has as far as density is concerned.

Atty. Prunier said it would be more than 3500 square feet per unit because they could have twenty-two units and they are only proposing eighteen. It would be somewhere in the area of 4500 square feet per unit.

Mr. Duffy said he is seeing a wall of units and he doesn't see anybody else in the area as a "wall." Also, he is considering the noise factor. He said he lives 3/4 miles from the highway and he can hear it all day and all night.

Atty. Prunier said this is better than the "Simplex" case because the uses are compatible. He said in the "Simplex" case, the uses were commercial and industrial. Also, because of the topography and uniqueness of the parcel, it is a reasonable use. In addition, they are not maxing the number of units out to twenty-two. They are only proposing eighteen units.

Mr. Currier asked what this property could be used for and not require a variance.

Atty. Prunier said it's in the RA District, so there could be single-family use or multi-family use, depending upon how the lot was divided. They would have to have the frontage, bring a road in and subdivide it into lots.

Mr. Currier said he went to the end of Donna Street, but he didn't walk down. He apparently didn't get the impression that there was a drop.

Atty. Prunier explained where the site is located off of Exit 5 and the area of Kinsley Street. He showed where the "pocket" is located where the proposed buildings would go. He pointed out the area that was flat - the area Mr. Currier apparently saw.

Mr. Coffey asked how far this is from the ramp.

Atty. Prunier pointed this out on the plan.

SPEAKING IN FAVOR

Nicholas Albano, 25-27 Donna Street. Mr. Albano said based on the plans he has seen and the discussions he has had with the developer he believes it is an improvement to the end of the road. All it is right now is a place for trash to collect. Basically everything blows off the road and collects right there. There is no landscaping in this area - it just comes to a dead end.

Mr. Jenkins asked how long Mr. Albano has lived in this home.

Mr. Albano said he has owned the property for about three years. It is a rental property - he does not live here. He said the other thing that happens is that people tend to collect vehicles in the cul-de-sac and they leave them there. He's had to call to have them towed away.

SPEAKING IN OPPOSITION

Susan White Russo, 8 Donna Street. Mrs. Russo presented some material to the Board. She apologized for the lack of detail she was able to provide the Board regarding objections as they would reflect current statutes or zoning regulations. She said she just found out about this meeting yesterday afternoon. She said she heard several people tonight saying that they didn't know about this meeting. She said she is sure all applicants would conform to the letter of the law in terms of notification, but they have to look at the spirit of the law. She said if this many people don't know about what's happening, the notification process might need to be looked at. She said they found out by accident.

She said they have serious concerns. She said Mr. Duffy brought up the elimination of the trees. She said some of the traffic noise is deflected by these trees. In addition to the noise, the environment is improved. The carbon monoxide level is

maintained or somehow naturally regulated by these trees.

Ms. Russo said this is a very small area that they are talking about. The impact of putting this many units in this area could be serious to the environment and have an impact on the infrastructure for the City of Nashua. They have to think about the traffic. She referred the Board to one of the maps so they could see how small their little street is and how small the cul-de-sac is. If eighteen units are allowed to go into this area which might mean up thirty-six vehicles if it is a two-car family. It will cause an extraordinary traffic problem. It will be detrimental to the people in the neighborhood who allow their children to ride their bikes, etc. This would no longer be possible.

She said when she hears that this is a continuation of an existing use, she questions it because the owner of all but one or two of these properties is the applicant. The applicant owns all of the multi-family houses on Dale Street and Donna Street. She said it's not as if he's getting approval of the owners of these homes because he is the owner.

She said when she hears that this will somehow enhance the neighborhood, she doesn't believe that to be true. Currently the ratio of multi-family to single-family homes on Donna Street & Dale Street is 50%. There are twelve single-family homes and twelve multi-family. With the addition of eighteen units, this will seriously affect property values. She said if the single-family homeowners wanted to sell their homes they wouldn't be able to say they were in a single-family neighborhood if they were the minority. She said she didn't have time to consult a realtor, otherwise she would have brought one with her. She did speak on the phone to one and was told that it would be a terrible loss to those neighbors who had single-family homes and want to maintain and protect the value.

She said she consulted the Nashua Police Department. Since January there have been two investigations resulting in arrests (drug busts) on these streets. She said she spoke to the Drug Task Force and they have agreed to provide her with statistics

of how many drug arrests have been made in these multi-family homes in the last five years so the Board could see the impact of adding more multi-family homes in a very old neighborhood where most people are retired or about to. It would be a serious impact. She said the introduction of this development would completely disturb the whole neighborhood feeling. The peace and serenity and feeling of safety would be eliminated.

She said as far as she knows there have been no impact studies done for environment, traffic or stress on the infrastructure.

Mr. Duffy asked how large Ms. Russo's lot is.

Ms. Russo said she has 2/3 of an acre on a corner lot. She has a single-family home with a single-car garage.

Mr. Duffy asked if her home would be near the dumpster that is proposed on the site plan for the proposed duplexes.

She said she is not.

Mr. Currier said that Mrs. Russo said there were twelve single-family homes and twelve multi-family.

Mrs. Russo said this is between Donna Street and Dale Street - the two streets that are directly impacted by the proposed change. If this proposed development is permitted, it will be part of the neighborhood because it's part of the cul-de-sac where it dead-ends.

Diane Flanagan, 9 Dale Street. Mrs. Flanagan said this house is located on the corner of Dale & Donna Streets. She said she and her husband have lived here for about 3 ½ years. She said they moved here from Massachusetts and thought the neighborhood was lovely and nice and quiet. She said they got a big surprise because of the noise factor from Route 3. She pointed out Route 3 on the display. You can hear the traffic, screeching of tires, ambulances, etc. She said she believes the trees help take care some of the noise.

She reiterated what the previous speaker said about the traffic. When you put eighteen or thirty-six more cars on Donna and Dale Street there will be some big problems. There are about a dozen children living in the neighborhood and they bomb down the streets now as it is.

She said she'd like to believe that these are going to be condominiums that people will own, which has been stated by the owner. The duplexes that are on the street now are not owned by people that live in the neighborhood and they aren't well kept. Some of the neighbors are very nice and some are not. This is true of every single neighborhood, but if you put eighteen more units either with or without children, with that amount of traffic - both people and cars - they are in for some big trouble in this small neighborhood.

Marie Grigas, 11 Donna Street. Mrs. Grigas said she is concerned about the kids and grownups that come down the street to go through her property to get onto Hollis Street. She said if they are given permission to build the condominiums, it will be worse.

Mr. Duffy asked if she is on a corner.

Mrs. Grigas said she is on the inside of the curve.

Mr. Duffy asked Mrs. Grigas if she felt that she would be seeing and looking from her house at the roof line of the houses the way they are proposed and designed.

Mrs. Grigas said she didn't know. She said she can see the trees from her house.

She said the opening will be on Donna Street. A lot of the kids will walk down and cross over. She said this has been going on for forty years - the period of time she has lived there.

SPEAKING IN FAVOR - REBUTTAL

Atty. Prunier said there are two neighborhoods in that area.

Donna comes off Main Dunstable Road. He showed this on the plan. He showed the location of the single-family homes. He said Dale Street is another neighborhood. He pointed out the location of the duplexes. He said the proposed plan is to put duplex condominiums on the other side of that area - away from them.

He said there was testimony that multi-family houses are areas of drug busts. There are drug busts in single-family homes as well. You have to have the statistics. He objected to trying to characterize the people who live or might live in a multi-family home.

He said these are going to be condominiums and will be privately owned.

He said this is a perfect area for traffic. You can go to either Donna or Dale Streets and you're right next to the turnpike, West Hollis Street, and Kinsley Street. The traffic circulation is the best for that particular area.

Atty. Prunier said he understands that when neighbors have a piece of land that has been vacant for a long period of time that they feel it's theirs and that it's going to stay that way, but it's not. It's going to be developed.

SPEAKING IN OPPOSITION - REBUTTAL

Susan Russo, 8 Donna Street. Mrs. Russo said with regard to the traffic, to say that this won't impact the neighbors once Donna Street is no longer a dead end street, is ludicrous. She said although Dale Street abuts this property directly, Donna Street is a street is going to be changed from a dead-end/cul-de-sac street to a pass-through for additional families.

She said in terms of police statistics, she will provide them. She said they are compiling the information for her. She said they have told her they have a lot of activity in the area.

She said Atty. Prunier said the condominiums will be privately

owned. It doesn't guarantee owner occupancy. Someone could scoop up a bunch of them for investment purposes and rent them out. She said it's her feeling that this is the intention. Then they will have the situation exacerbated.

She said she wishes she had an actual scaled drawing of the street so that the Board could understand how small a space they are talking about.

Mr. Jenkins said the Board members have been to the area.

Mrs. Russo said the neighbors object strenuously. If the variance is granted they intend to retain legal counsel and pursue this further. They would have had counsel tonight as well as further documentation, but they just found out about this yesterday and didn't have the time to prepare.

She said the variances that have been granted in this area have been granted to this particular applicant, with the exception of one abutter - who is not the applicant. This is a continuation of a personal plan and a business development intention. It has sufficiently changed the neighborhood to make it 50/50 and they can live with that. She said they don't want the balance to be swung in the other direction, which will devalue their property, significantly change their standard of living by not having a dead-end street, and the traffic concerns.

Mr. Anderson said it is a pretty intensive use for this neighborhood, but as you go down the street and come to it, it is all duplexes. He said it seems well planned. He said he would be concerned with traffic levels if he lived there. He asked if they had anything to measure and tell them what is normal traffic and what it can handle.

Mr. Coffey said he sees the continuation of the multi-family concept taken off of Dale Street. He said as far as the traffic goes, it will continue to be a dead end or cul-de-sac arrangement. It's not as if its going to be a pass through to West Hollis Street and Kinsley Street. He said he is somewhat concerned with the density of the project.

Mr. Currier asked what they can do here without coming to the Board for a variance. The Board is looking at this to see if it's a reasonable use of the property, but they don't have any data that states it could reasonably be developed without a variance.

Mr. Falk said this is in the RA Zone which permit single-family homes. The only thing they could do without going to the Zoning Board is to extend Donna Street and extend the cul-de-sac down and split it into single-family lots. He said the property is about 1.8 acres so it's approximately 75,000 square feet or so. It's possible they could get eight to ten single-family homes depending on the way it is laid out. He said they haven't seen an engineered layout of how this might be subdivided into single-family lots. They would still have to go to the Planning Board for a subdivision.

Mr. Duffy said he has trouble with the density of 1.8 acres that could reasonably be used for other alternatives. He sees this as too intensive of a use. When you look at the location of the dumpster area and the Donna connection, he sees the whole entrance and egress to this parcel impacting an abutter directly more than it does anybody else who lives on the property that's going to be developed. He's sure those are Planning Board issues. He said he feels this is outside of the essential character of the neighborhood.

Mr. Jenkins said the noise factor is his biggest concern, not the duplexes. He thinks it is in the character of the neighborhood. Once the trees would be cleared, the concern is for the noise that would be heard by the neighbors.

Mr. Coffey said there was no testimony either way that it would affect or not affect the neighbors. He said when you look at the aerial, it doesn't look like there's a lot of trees in there.

Mr. Duffy said 1.8 acres is not a lot of space, given the setbacks that will be required. He said he doesn't know the exact solution here. It is in a RA Zone and there are single-

family and multi-families in the whole area.

Mr. Coffey said there is no disagreement that there are multi-families in the neighborhood. It's the density of this particular project.

Mr. Jenkins said they have heard a lot of information tonight and he thinks the Board should table it, digest the information, re-visit the site, and come back to make a decision at the next meeting.

Mr. Falk said there would be no more public testimony. He said it sounds like the Board is having some issues with the density, traffic, and noise. He asked the Board why they would table the case.

Mr. Jenkins said he'd like to go over everything that's been presented. He'd also like to re-visit the site.

Mr. Duffy said he'd like to leave this open for both the applicant and the abutters and the Board to consider that there may be other information to either reduce it or increase it.

Mr. Jenkins said they can leave it open so that further testimony can be taken.

Discussion ensued.

MOTION by Mr. Duffy to table the use variance to allow multi-family development with nine two-family buildings on one lot at the End of Donna Street, State of New Hampshire, to the next meeting on June 28, 2005.

Mr. Jenkins said they haven't decided whether or not they are going to hear any further testimony at this meeting. They are going to review the information that was given tonight and hopefully vote on the case at the Board's next meeting.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

Request for Rehearing

—
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.

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.

Voting on This Case:

Sean Duffy
Jeffrey Anderson
Jay Coffey

Mr. Falk said this was a rehearing request at the Board's last meeting. In the meantime last Thursday Laura Games and he met with a HUD analyst. There is an investigation that is currently ongoing with both of these cases. They would like to get into some kind of agreement with HUD, the City, and the applicant to find reasonable accommodation for these two properties.

He said there was a lot of information that was submitted at the meeting that the Board still hasn't gone over yet. The Board had asked for additional information on what their lease is, their mission statements, their management and management operations, etc. He said when the staff met on it they thought the best thing to do would be to keep the case moving forward and grant the rehearsings.

Mr. Anderson said subsequent to the request the Board received the information that they asked for.

Mr. Duffy asked if the Board felt that there might be additional information that might cause the Board to make a different decision.

Mr. Coffey said there was information that the applicant didn't have the evening of the meeting that they did request from him. He wasn't prepared to present it as part of his testimony that evening.

MOTION by Mr. Duffy to grant the request for rehearing for 12 Robert Drive & 9 New Searles Road - both requests to exceed the maximum number of non-related people living together - 6 allowed - 9 requested. There is new information not presented or available to the Board at the original hearing.

SECONDED by Mr. Anderson.

MOTION CARRIED

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:

Sean Duffy

Jack Currier

Jay Coffey

Jeffrey Anderson

Mr. Duffy asked if any of the Board members felt there were any procedural errors, including improper notice denying someone the right to be heard.

None of the Board felt that this is the case.

Mr. Duffy asked if any of the Board members felt an illegal decision was made - in other words did the Board fail to completely address each point of law required for a special exception or variance.

The Board did not feel that this was the case.

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

The Board did not feel that this was the case.

Mr. Duffy asked if there was anything in the request that would cause the Board to make a different decision.

The Board did not feel this was the case.

MOTION by Mr. Coffey to deny the request for rehearing for 39 King Street. There was no procedural error. There was no illegal decision. There was no new information. There is no reason to believe that the Board would come to a different decision.

SECONDED by Mr. Duffy.

MOTION CARRIED

Regional Impact

The Board did not see any items of regional impact.

MINUTES

5/24/05

MOTION by Mr. Duffy to accept the minutes of 5/24/05 meeting, waive the reading, and place them on file.

SECONDED by Mr. Anderson.

MOTION CARRIED

Other

Mr. Falk said the 5/10/05 minutes are at the office. They will be on the next agenda for approval.

ADJOURNMENT

Mr. Duffy called the meeting closed at 10:01PM.

Sean Duffy
Acting Clerk

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Taped