

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
June 28, 2005

A public hearing of the Zoning Board of Adjustment was held on Tuesday, June 28, 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
Richard Rondeau

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.

1. 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.

Mr. Jenkins advised Atty. Prunier that one of the members that had heard testimony on this case was not present. Only four of them were present. He indicated he didn't feel that it would be fair to vote on this case with only four of the members who heard the testimony.

Atty. Prunier said he did want the five voting.

MOTION by Mr. Coffey to further table the case for End of Donna Street (NH DOT right-of-way) to July 12, 2005.

SECONDED by Mr. Duffy.

MOTION CARRIED UNANIMOUSLY

2. Rita D. & Allen D. Simons (Owners) 33 Vespa Lane (Sheet G Lot 153) requesting variance to exceed maximum building area, 15% allowed, 15.9% requested - to construct a 10'x14' shed. R18 Zone.

Allen Simons, 33 Vespa Lane. Mr. Simons said he wishes to install a utility shed and by doing so he will exceed the maximum buildable area. He said it's better to install a shed than to extend the garage because of the required setbacks. He is asking for a 14'X10' vinyl shed. His abutters have agreed to his proposal. The neighbors to the rear and to the right have sheds.

Mr. Jenkins said it's hard to believe that this request puts the applicant over the buildable area.

Mr. Falk said the zoning is R18, but originally the lots were platted as R9 lots.

Mr. Jenkins said he did drive through the neighborhood and there were numerous homes with sheds.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Coffey to grant the request to exceed the maximum buildable area, 15% allowed, 15.9% requested to construct a 10'X14' shed at 33 Vespa Lane. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. The benefit sought by the applicant cannot be achieved by any other method. There was a change in the zoning of the lots from R9 to R18. There are other sheds similar to what the applicant is requesting throughout the neighborhood. It is within the spirit and intent of the ordinance. It will not adversely affect the property values of surrounding parcels. It is not contrary to the public interest. Substantial justice will be served.

SECONDED by Mr. Rondeau.

MOTION CARRIED UNANIMOUSLY

- 4. Berndt H. Bittner & Shawn M. King (Owners) 11 Eastbrook Drive (Sheet A Lot 673) requesting special exception to allow an accessory (in-law) dwelling unit. R9 Zone.**

Berndt Bittner & Shawn King. Mr. Bittner said they are seeking

a special exception for an in-law dwelling for Mrs. King's mother. He said this will be within the existing portion of the house. They are putting on an addition to the house, but it doesn't have anything to do with the in-law apartment.

Mr. Jenkins said one of the criteria is that the floor space for the in-law dwelling unit is that it not be more than 30% of the gross floor area of the principal dwelling, not to exceed 700 square feet. He asked what the actual square footage of the unit would be.

Mr. Jenkins said that Mr. Falk indicated it is 533 square feet.

Mr. Jenkins asked if this is the only accessory unit within the single-family dwelling.

Mr. Bittner said it is.

Mr. Jenkins asked if it alters the appearance of the single-family dwelling.

Mr. Bittner said it doesn't change anything on the outside.

Mr. Jenkins asked if it would be used for rental purposes other than by persons related by blood or marriage.

No answer was heard.

Mr. Jenkins said the owner must occupy the home and provide documentation of relationship.

Question was answered, but it was unintelligible.

Mr. Jenkins said the owner must provide the City with a covenant for filing with the Registry of Deeds.

The applicants agreed to this.

Mr. Currier asked if the in-law dwelling is going to be on the bottom floor or ground floor.

Mr. Bittner said "yes". He said it's a family room now.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Currier to grant the special exception for accessory in-law dwelling unit at 11 Eastbrook Drive. The request is listed in the Table of Uses. It will not create undue traffic congestion or unduly impair pedestrian safety. It will not overload public water, drainage or sewer or other municipal systems. Special regulations are fulfilled. It will not impair the integrity or be out of character with the neighborhood. 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.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

5. Greg M. & Yvette Nelson (Owners) 70 Avon Drive (Sheet 47 Lot 363) requesting variance to encroach 3 feet into the 10 foot required left side yard setback to replace a 16'x26' carport with an attached 22'x24' garage. RA Zone.

Greg Nelson, 70 Avon Drive. Mr. Nelson said he wants to remove an existing carport and construct a garage to get the cars out of the weather in the wintertime. The rest of his testimony is **unintelligible.**

Mr. Jenkins said he viewed the property and found that most of the homes in the neighborhood have a garage of various sizes and

styles. He said it looks like it would fit within the character of the neighborhood.

He said the zoning is R9. He asked if the home pre-dates zoning.

Mr. Falk said this goes back to the 20's so it does pre-date zoning.

Mr. Jenkins asked if the neighbor to the left has any problem with this request.

Mr. Nelson's said he had talked to him and they just wanted to make sure that it wasn't going to decrease their values.

Some testimony took place, but it was **unintelligible**.

Mr. Duffy asked if they are sure they know where the property line is located.

Mr. Nelson said there are some granite markers.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Duffy to grant the variance to encroach 3' into the 10' required left side yard setback to replace a 16'X26' carport with an attached 22'X24' one-story garage at 70 Avon Drive. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property - the position of the house on the lot compared to other lots in the neighborhood. It is within the essential character of many of the houses in the neighborhood. It is within the spirit and intent of the ordinance. It should not adversely affect the property values of surrounding parcels. In fact, a garage is an improvement over a carport. It should not

be contrary to the public interest. Substantial justice will be served.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY

6. Stephen R. & Laurie F. Bertrand (Owners) 83 Marshall Street (Sheet 15 Lot 28) requesting variance to exceed maximum building area, 20% allowed, 22.3% requested - to construct an attached 26'x28' garage. RB Zone.

Laurie Bertrand, 83 Marshall Street. Mrs. Bertrand said they are hoping to build an attached two-car garage. Currently there is just a driveway in the area where they propose to construct the garage. They have numerous vehicles because they have a lot of kids. They want the vehicles off the road and under cover. They have been damaged baseballs coming from the ball field.

She said neighbors have garages. She said their lot is a little bit bigger than some of the neighboring lots of land.

Mr. Jenkins said he has seen the lot and felt that this particular garage would be out of character with the neighborhood. He said he felt this was encroaching onto the neighbor too much. It looks like one massive building in front of the house compared to the other homes on Marshall Street which have relatively small homes. They are proposing a large garage. He asked if they had considered building a detached garage. The front setback in that situation would be 20' and the side setback would be 6'. He remarked that he wasn't sure the house was located 20' from the front property line.

Mrs. Bertrand said if they move the garage further back on the property it will push it further back into the rear and she wasn't sure that they would have enough room to be in line.

Mr. Jenkins said that according to the plan the Board has it

would be moved to the back corner. He said they just built a porch.

She said they built a 13'X14' sunroom.

Mr. Duffy asked why they are proposing a 26' wide garage instead of 22' or 24'.

Mrs. Bertrand said it's a two-car garage and it will have storage on the inside of the garage.

Mr. Duffy asked the depth of the garage.

Mrs. Bertrand said 28'.

Mr. Duffy asked if Mrs. Bertrand didn't feel they would be able to have storage in the back.

Mrs. Bertrand said she's sure they could. She said if the Board wanted to shrink the size by a few feet she said that it would be okay.

Mr. Duffy said he felt it was out of character to the essential feel of the homes in the area. A lot didn't have garages and there weren't a lot of double garages either. He said if the garage was shrunk 2' on the side and 1' on the back he didn't know if it would be necessary for the applicant to even be here.

Mr. Falk said that they would be. He said they are allowed 2,097 square feet and they are at 2,340 square feet. They are a couple of hundred square feet over.

Discussion ensued - about a possible 24'X24' garage, detached versus attached - most of it **unintelligible**.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

Mr. Jenkins said the applicant has stated that she is amenable to a 24'X24' garage. He said he supports this. The percentage of buildable area would then be decreased to about 21%.

MOTION by Mr. Duffy to grant the variance to exceed the maximum buildable area, 20% allowed, approximately 21% approved to construct an attached one-story, 24'X24' garage at 83 Marshall Street. The applicant's proposed use of the property is reasonable given the special conditions of the property. The benefit to the applicant cannot be sought by some other method. It is a reasonable use of the property and is only a little over the percentage allowed by the ordinance. The applicant is amenable to all the other setback stipulations. It is within the spirit and intent of the ordinance that the applicant has development rights that are reasonable. It should not affect the property values of surrounding parcels. It should not be contrary to the public interest. An attached garage is a permitted use in this zone. Substantial justice will be served.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

8. Madeline R. & Gerard R. Bergeron (Owners) 23 Gosselin Road (Sheet C Lot 68) requesting the following variances: Proposed Lot "A": 1) minimum lot frontage, 75 feet required - 12 feet proposed, 2) minimum lot width, 90 feet required - 12 feet proposed; Proposed Lot "B": 3) minimum lot frontage, 75 feet required - 12 feet proposed, and 4) minimum lot width, 90 feet required - 12 feet proposed - all requests to subdivide one lot into three lots. R9 Zone.

Mariam McDonald, 22 Gosselin Road, Nashua. Mrs. McDonald said Mr. Bergeron, the applicant is present. She said he is her father and he has asked her to speak on his behalf.

She said Mr. Bergeron is proposing to subdivide one lot into three lots and needs several variances. For proposed Lot A, the applicant is requesting a variance for the minimum lot frontage of 75' and is proposing 12'. The second variance is from the required lot width where 90' is required and he is proposing 12'. This will result in an approximate 140' driveway leading up to Lot A. The lot will have approximately 17,000 square feet.

She said proposed Lot B requires lot frontage of 75' and 12' is proposed. The other variance needed for Lot B is from the width requirement of 90'. The proposal call for a width of 12'. This will result in an approximate 165' driveway leading up to proposed Lot B. The lot has 15,000 square feet.

She said the applicant is seeking to make reasonable use of his property by subdividing the one lot into three lots and making the back two lots available for single-family home construction. The zoning restriction as applied to this property interferes with the reasonable use of the property. Without the variance the applicant has no alternative way to access the back lots.

She said there is no fair and substantial relationship between the general purpose of the zoning ordinance and the restriction on the property. Granting the variance to allow access to the two proposed lots by the approximate 140' & 165' driveways will still provide for a homogenous conforming neighborhood without overcrowding and thus not injure the public or private rights of others in the neighborhood.

She said the spirit and intent of the ordinance is not broken as the ordinance permits 9,000 square foot lots and both of the proposed lots will be significantly larger than that.

She said granting the variance will not diminish the surrounding property values because the proposed lot sizes will be in keeping with the other area lot sizes.

She said the variance will be a benefit to the general public because it will provide two residential home lots for

construction of single-family homes.

She said it will result in substantial justice to the applicant because it is a reasonable use of his property and there is no alternative available to the applicant for accessing these two lots.

Mrs. McDonald said the area variance is needed because the property is an unusually large lot and it is "L" shaped. There is no other alternative method to achieve access to the proposed lots. The two proposed lots meet the other requirements for density in the R9 Zone.

Mr. Jenkins asked if the only reasonable use of this property would be a subdivision into three lots.

Mrs. McDonald said "yes".

Mr. Jenkins asked if a subdivision into two lots wouldn't be a reasonable use of the property.

Mrs. McDonald said it's an oversized lot.

Mr. Jenkins said the lots across the street are also oversized. He asked if she has the sizes of those lots. He asked also if the lots are part of the Westgate Village Homeowner's Association.

Mrs. McDonald said the #22 Gosselin has 27,205 square feet, #24 Gosselin has 24,540 square feet, #26 Gosselin has 37,761 square feet, 1 Hazel Avenue has 11,068 square feet, 3 Hazel Avenue has 10,176 square feet and the lots on either side of #23 Gosselin are approximately 12,600 square feet each.

Mr. Duffy asked if the property to the left and right of #23 Gosselin are owned by the applicant or owned in the past by the applicant.

Mrs. McDonald said #21 & #25 were owned by the applicant in the past.

Mr. Duffy asked if those were subdivided off of this odd-shaped lot.

Mrs. McDonald said #21 was originally part of a subdivision of Westgate Village which dates back to the late 70s. The applicant purchased that lot individually at that time. The other lot, #25 Gosselin Road, was subdivided from #23 Gosselin Road back in the early 80s.

Mr. Duffy said Mrs. McDonald has talked about reasonable use of the property. He said the ordinance talks about reasonable use of the property given special conditions of the property. He asked what was special about this property that they believe they should have three lots instead of two lots.

Mr. Jenkins said if all the lots were the size of the lots on Hazel Avenue directly across the street there might be an argument, but there are other lots with larger square footage directly across the street. He said the lot doesn't fall into a unique setting where he felt it had to be subdivided into three lots. A subdivision into two might be a reasonable use.

Mrs. McDonald said there are other lots that surround this property that have smaller sizes.

Mr. Duffy said he understands this. He asked if there are other neighbors that have dual access driveways to back lots.

Mrs. McDonald said "no". She said these are going to be two-12' driveways. Each lot will have its own driveway.

Mr. Duffy said it's abutting right up to the property line of 21 Gosselin Road.

Mrs. McDonald said to the left is 25 Gosselin Road.

Mr. Duffy asked how much buffer area is between the two-12' driveways.

Mrs. McDonald said it's right up against the line.

Mr. Duffy asked if Mrs. McDonald if she was aware of any other properties on Gosselin or Hazel or Westgate where there is one driveway or dual driveways going to a back lot.

Mrs. McDonald said "no". She said she is not aware of any other lot in the neighborhood that has an unusually shaped lot as #23. It's "L" shaped. She said the back area is all level and basically ready to build on.

Mr. Duffy said the ordinances of Nashua address minimum lot frontage for a certain reason - to avoid having short or long driveways for back lots. He asked if there is a special condition of the area in the back that one 12' driveway couldn't get back to. He said he could see one 12' driveway going back to one lot for the reasonable development of a single-family home. He asked if Mrs. McDonald had some testimony to convince him otherwise.

Mrs. McDonald said she didn't. She said that the lot is large enough to split to get two additional lots.

Mr. Jenkins said if this were to be granted they aren't sure that it wouldn't diminish the property values of the homes in the area.

Mrs. McDonald said she doesn't see how this would diminish property values.

Mr. Duffy asked if Mrs. McDonald had any expert testimony from a realtor or an appraiser regarding how this might affect property values.

Mrs. McDonald said she is a realtor and she could not make an argument why this would diminish the value of the surrounding area. She said right now, because this is basically vacant in the back, it has become a concern to the applicant that it's become a possible collection point.

Mr. Jenkins asked if the applicant is amenable to subdividing this into two lots rather than three.

Gerard Bergeron, 23 Gosselin Road. Mr. Bergeron said the reason there are two driveways is so that each owner would have their own driveway. Each lot would have privacy. The square footage of the lots is good and they will be able to build nice houses.

Mr. Jenkins said he isn't comfortable with squeezing two homes in the back of this lot even though this is a large lot. He said he didn't see the hardship. He said if this is denied for three lots, Mr. Bergeron can always ask for two.

Mr. Jenkins asked if the applicant wanted the Board to vote on the request for three lots and after talking with her father she said "yes."

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

Kevin Reardon, 3 Hazel Avenue. Mr. Reardon said he is not in favor of Mr. Bergeron's request. He said this alters the basic characteristic of the neighborhood. He said he bought a house in the neighborhood about a year ago. His children enjoy the back yard. It would be unnerving to wake up and see a bulldozer and crane in the back yard tearing up the hill without any notification or communication.

He said he appreciates the fact that Mr. Bergeron has the right to develop his property. However, the negative impact to the community is of concern to him and his neighbors. He said he has talked to some of the neighbors. One of the abutters has a half-acre of land. He said he thought he was in the neighborhood of 1/4 of an acre himself. He said they're trying to squeeze what turns out to be five houses on double lots. It maximizes profit for somebody who is a real estate agent, but it doesn't help the rest of those that are going to live there.

He said it isn't consistent with the development of the lot size in the neighborhood. He said there's nothing to stop him or anybody else in the neighborhood from selling their property, tearing down their houses and put two houses up.

Mr. Reardon said there's nothing going on in the back of this property. He said Mr. Bergeron is overly concerned about people trespassing on his property in the back. He said one day he walked up to Mr. Bergeron in a neighborly fashion and he was pretty hostile and aggressive. He was taken aback because he accused his three-year-old son of thievery.

He said Mr. Bergeron is trying to maximize his profit in this area, which he has right to do, but not at the expense of consistency in the value of other people in the neighborhood.

Mr. Jenkins asked if what Mr. Reardon is saying is that a house going up beside him and another house behind him is a bit much.

Mr. Reardon said one house on a nice big lot such as a big colonial would actually raise the value of the neighborhood. It may draw financially secure people to the area, which would be good, and it wouldn't infringe on what the rest of people are trying to do here - maintain a reasonable amount of frontage and a reasonable amount of distance from your neighbors.

He said he also spoke to some neighbors who are not present. The people at #25 are very upset because this is happening without notice and they are afraid there's going to be some erosion because of the digging and the piles from the two houses that are going to be built.

Mr. Duffy said the size of Mr. Reardon's lot is approximately 10,176 square feet. He asked if there is a garage.

Mr. Reardon said they have a 1-½ car garage attached to the house. He said it's a split-level neighborhood. He's up on a hill and behind him there is a small stand of trees.

Mr. Duffy asked Mr. Reardon if he was aware of any other 12'-24' double driveways or driveways going in this neighborhood or Gosselin.

Mr. Reardon said "no".

Barbara Dutra, 24 Gosselin Road. Mrs. Dutra said she respects the need for the applicant to do what he is asking for. She said she has been at 24 Gosselin for just shy of 11 years. One day she got up and what was once a nice treed area on both sides of Mr. Bergeron's home was gone. She said the neighbors weren't asked or told. It wasn't discussed. Then they received the notice from the City in the mail.

She said she's been on a street for eleven years that had five family houses and they are going to go to ten. She said she finds this to be disturbing. She believes putting five houses in this one small area is going to eliminate any breath of comfort that they have.

Mr. Coffey asked Mrs. Dutra if her lot was 24,000 square feet.

Mrs. Dutra said it is. She said she does not plan to subdivide.

Mr. Duffy asked if she has a garage.

Mrs. Dutra said it's under the house - one car - one driveway.

Mr. Currier asked Mrs. Dutra if her back yard goes downhill.

Mrs. Dutra said it levels and actually goes up.

Mr. Duffy explained that Mr. Bergeron has the right to take down the trees on his property, just as she would be able to do.

Mrs. Dutra said she understands. She said it was a shock.

Mr. Duffy asked Mrs. Dutra where her driveway is located compared to #25 Gosselin.

Mrs. Dutra said the lot is across the street, but the driveway hasn't been established yet.

Mr. Duffy asked if Mrs. Dutra knows of any other accessory uses in the area where people are up against the lot lines with garages, sheds, pools, decks, etc.

Mrs. Dutra said she hasn't seen any.

Jennifer Howard, 1 Hazel Avenue. Ms. Howard said her house is directly behind 25 Gosselin. She said she has been greatly affected by the development of that lot. The development of the lot kitty corner to her would be devastating. She said it's on a hill. It's not a level lot. The trees that are there would have to come down. She is down the hill from the lot and she is fearful that the water will come down from the new lots into her lot and flood her property.

Mr. Jenkins said if this lot is to be subdivided it has to go to the Planning Board. They would make sure that the drainage would be contained on the lot.

Mrs. Howard said the aesthetics of the neighborhood will be changed because the trees will have to be removed in order to build on the back of this lot.

She said there was a reference to not being able to access this back area. Until just recently Mr. Bergeron owned 25 Gosselin Road and he had access to that land. He had a little road that he used that was on 25 Gosselin and up behind to go into this back area.

Discussion ensued - most of it unintelligible.

Mrs. Howard said that she doesn't understand the driveways and how many houses there were going to be.

Mr. Jenkins said there would be a house directly behind #25, which is the one to Mrs. Howard's right - the one that is currently being developed.

Mrs. Howard said at the present time there is a contractor who **unintelligible** and she is seeing people talking to him about the house. She said these people have no idea that this is happening. She said they ought to have the opportunity to know that this might be happening.

Mr. Jenkins said people have to be an informed buyer. If you are buying a home and you see something happening you have to educate yourself.

Mrs. Howard said there's nothing happening here. It looks like its being cleared because of the construction of the one house at #25.

She said it's basically the aesthetics. There's going to be two long driveways. There's a little hump on Gosselin and they are going to be right around that. It's going to be hard to see people coming out of one of those driveways.

Mr. Duffy asked Mrs. Howard how long she has lived in her home.

Mrs. Howard said it will be seven years in September.

Andrea Stone, 5 Hazel Avenue. Mrs. Stone said she has lived here for a little over two years. Mrs. Stone said she feels that these homes will be an infringement on her privacy. She said she has about a half-acre lot. She said from looking at the placement of the lots, she will now look out her bedroom window now and there will be somebody there. This is distressing to her. She said she felt this was going to be a big problem when it comes time to sell her home.

SPEAKING IN FAVOR - REBUTTAL

Mrs. McDonald said she understands that the neighbors are concerned or surprised that lots #21 & #25 were lots of record that could be developed. They have been lots of record since the early 1980s. She said this is separate and aside from tonight's request.

She said someone raised the point that when #25 was subdivided from #23 the back lots should have been considered at that time. There was still an insufficient amount of road frontage to do anything at that point anyways and #25 was a conforming lot. That's the reason it was subdivided the way it was.

Mr. Duffy asked about #21.

Mrs. McDonald said #21 was owned by Westgate Village and was purchased by the applicant. She said there was a lot line relocation because the original lot line for #21 was crossing over into the patio of the adjacent lot at #23.

Mr. Duffy said there is a structure shown on the plan that is behind the existing house. He asked if this is going to stay.

No answer was heard.

SPEAKING IN OPPOSITION - REBUTTAL

Jennifer Howard. Mrs. Howard said what she was trying to say about #25 Gosselin is that when it was subdivided years ago it could have been subdivided in such a manner that **becomes unintelligible**, much like Dutra's lot on Hazel Avenue.

She said everybody is opposed. It will change the face of the neighborhood.

Mr. Rondeau said the problem was created when #25 was split off of #23 back in the 80s as was addressed in testimony. He didn't believe this falls within the character of the neighborhood.

Mr. Coffey said he doesn't see that this fits into the neighborhood. There's no evidence that's been presented to give any indication that there are similar properties in this neighborhood.

There were further remarks, but they were **unintelligible**.

MOTION by Mr. Duffy to deny the request for four variances to subdivide one lot into three lots at 23 Gosselin Road as follows: 1) Lot A: Minimum lot frontage 75' required, 12' proposed 2) Minimum lot width, 90' required, 12' proposed Lot B: 3) Minimum lot frontage 75' required, 12' proposed 4) Minimum lot width, 90' required, 12' proposed. The applicant has not proven the variance meets any special conditions of the property and that the benefit sought by the applicant cannot be achieved by any other reasonable feasible method. The essential character of the neighborhood would be changed by such a development as proposed by the applicant. There are other properties, both smaller and larger than the applicant's property that has significant back areas. **Becomes unintelligible.**

SECONDED by Mr. Rondeau.

Discussion ensued here, but it was basically **unintelligible.**

MOTION CARRIED UNANIMOUSLY

3. Shawn P. & Kathleen K. Robbins (Owners) 343 Main Dunstable Road (Sheet C Lot 884) requesting variance to encroach 4 feet into the 25 foot required front yard setback to construct a second story dormer on front of the house. R9 Zone.

Richard Cane, 22 Sandpiper Lane, Merrimack, NH. Mr. Cane said he is a friend of Katey & Shawn Robbins who have asked that he represent them. He apologized for missing the first roll call. He recalled that the ZBA meetings started at 7:00PM, not 6:30PM. He said Nancy Mellin is also present tonight. She is Katey's mother and former owner of the home that she sold to the Robbins' in 2001. Mrs. Robbins is home recuperating from a hospital stay and Mr. Robbins is at work tonight.

He said in 1982 when Mrs. Mellin went to purchase the house at 343 Main Dunstable Road she discovered that the northeast corner

of the building was only 21' from the front of Main Dunstable Road. The house is placed on the lot on an angle. Mrs. Mellin and the owner of the property at the time received a variance from the Zoning Board for the existing encroachment.

He said since Mr. & Mrs. Robbins purchased the home they have undertaken several construction projects by private contractors to expand and improve their home to meet the needs of their growing family.

He said recently Mr. Robbins began the construction of a dormer on the front of the home with the mistaken assumption that since he was doing the work himself rather than with a private contractor that he didn't need a building permit. When he discovered that a building permit was needed they stopped all further construction and applied for the permit.

He said because of the previous variance for the front yard setback the zoning administrator determined that an additional variance would be required for the dormer addition. This variance is required even though the dormer is to be set back about 1' from the front of the building and there is no further encroachment of the building into the front yard setback.

Mr. Cane said typically when the Board has a setback variance before them it involves a horizontal encroachment of the footprint further into a front yard. In this case they are talking about a vertical encroachment because the building is already encroaching into the front yard.

Mr. Cane said beyond the obvious hardship of the Robbins' trying to raise four young sons in a small home and the need to expand the number of bedrooms to avoid the sibling battles that sometimes erupt in a household, the Robbins' are unable to undertake the alternative of expanding their home to the rear because of the existing wetland and flood plain regulations. There is a brook that runs along the back of the property that runs along a lot of Main Dunstable Road and crosses under Main Dunstable Road into State owned land. It used to be an old pig farm. Because of the setbacks from the wetland and because it

is in a flood plain they can't expand in that direction.

He said they also explored the alternative of finishing their basement for the necessary space, but because of the water infiltration that occurs in their basement during periods of heavy rain, this was not an achievable alternative.

He said the home already has been granted a variance for the encroachment into the front yard setback. There will be no further horizontal footprint encroachment from the dormer addition. The dormer will be set back one foot or so from the front wall of the existing home. He said it is their belief that the spirit and intent of the zoning ordinance will not be violated.

He showed a photo of the home at the time it was purchased from Nancy Mellin by the Robbins'. He also showed a photo of the home as it exists today. He said the appearance of the home has been dramatically improved over the time the Robbins' have owned it. The home is located in a neighborhood composed primarily of older capes and ranches and it's now one of the more expensive homes in the neighborhood. He said they believe that both the earlier and the proposed improvements will increase, not diminish, the property values of the neighborhood.

Mr. Cane said it is their belief that the home improvements contemplated will result in a more attractive home and will improve property values in the neighborhood. It is their contention that granting the variance would be in the public interest.

He said the original encroachment of the home into the front yard setback is not the result of any action by the Robbins'. Without the variance the Robbins' will be denied the ability to undertake a dormer addition that would otherwise be possible for any other homeowner in this neighborhood. The only reason they have to come before the Board is because of the existing encroachment. In addition, the existence of the wetlands and flood plain and the wet basement prevent the Robbins' from expanding their housing needs in any other fashion.

Mr. Currier asked if the dormer was already built along the front or is it the one on the back.

Mr. Cane said the one on the back was legally built by a general contractor who had a building permit. He pointed out the one that Mr. Robbins started and was told that he needed a building permit. When he applied for the permit he was told that a variance would be needed because of the front yard setback requirement. There's been a tarp over it ever since.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Duffy to grant the variance to encroach 4' into the 25' required front yard setback to construct a second story dormer on the front of the house located at 343 Main Dunstable Road. There are rear wetland special conditions and it is in a flood plain. The position of the house on the lot is also a hardship. It is closer to the street than any other house in the neighborhood, but it's because of the rear wetlands area. There is no change to the footprint. It is within the spirit and intent of the ordinance that the applicant have reasonable use of the property that cannot be achieved by any other reasonable feasible method. It should not adversely affect the property values of surrounding parcels. There are one story and two story homes in the area. The essential character of the neighborhood is maintained. It is not contrary to the public interest. Substantial justice will be served.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

7. Lisa M. Cimeno (Owner) 120 Ridge Road (Sheet C Lot 239) requesting variance to encroach 19 feet into the 40 foot required front yard setback (on Ridge Road) to construct a 6'x32' farmers porch. R40 Zone.

No One was present to make a presentation for 120 Ridge Road.

MOTION by Mr. Jenkins to deny the variance to encroach 19' into the 40' required front yard setback to construct a 6'X32' farmers porch at 120 Ridge Road. The applicant has failed to appear and provide testimony to the Board.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY

MINUTES

5/10/05

MOTION by Mr. Duffy to accept the minutes of 5/10/05 meeting, waive the reading, and place them on file.

SECONDED by Mr. Rondeau.

MOTION CARRIED UNANIMOUSLY

Request for Rehearing

None

Regional Impact

Mr. Falk said he would be surprised if they got through the next agenda in one evening. He said there are a few cases that may take quite a while, plus they will have the case that was tabled for the property at the end of Donna Street. He said he will need to know who will be available the following night or if the Board gets to a certain point when it will indicate that they

will stop and the rest of the cases would be heard at the next meeting if they can't meet the next night. He said the Auditorium is already reserved for the following night.

There was further discussion about switching cases around between the two nights. The Donna Street case will be heard first since it was tabled to a date certain.

The Board did not see any items of regional impact.

ADJOURNMENT

Mr. Jenkins called the meeting closed at 8:10PM.

Sean Duffy
Acting Clerk

lt
Taped