

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
July 12, 2005

A public hearing of the Zoning Board of Adjustment was held on Tuesday, July 12, 2005 at 6:30 p.m. in the Auditorium at City Hall.

Tom Jenkins conducted the hearing.

Members present were: Tom Jenkins, Chair
Sean Duffy, Vice Chair
Susan Douglas, Clerk
Jay Coffey
Jack Currier
Jeff 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.

Mr. Jenkins advised the audience that the Board had a very full agenda for the evening and he wasn't sure that they would be able to get through all the cases that were on the agenda, but they would do their best. He said at 10:00PM they will determine which cases are left to be heard and make a determination whether they will have to postpone the remaining cases until the following night.

12. Norman E. Jr. & Shirley J. Wrenn (Owners) 138 Concord Street (Sheet 55 Lot 94) requesting the following: 1) use variance to expand nonconforming use by removing existing florist shop/greenhouse and constructing new two-story building with 1,320 sq.ft retail florist/gift shop, one residential dwelling unit on second story, and a 720 sq.ft outdoor display area; and the following variances: 2) to encroach 10 feet into the 25 foot rear yard setback, and 3) to encroach 10 feet into the 25 foot required front yard setback (on Adelaide Ave) for parking. RA Zone. [Postponed to 7/26/05]

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. [Tabled from 6/28/05 Meeting]

Voting on This Case:

Tom Jenkins

Sean Duffy

Jay Coffey

Jack Currier

Jeff Anderson

Mr. Jenkins said this case had been tabled at the 6/28/05 meeting. He suspended the rules to open the public meeting back up for people who wish to testify and have not previously spoken on this case.

MOTION by Mr. Duffy to remove Case #1 - Donna Street - from the table and open it to a public hearing.

Mrs. Douglas recused as she did not hear the original testimony.

SECONDED by Mr. Jenkins.

MOTION CARRIED

Atty. Gerald Prunier. Atty. Prunier objected to the motion that this be open to public testimony. He said it was supposed to be a public meeting. He said he wasn't prepared to do anything tonight other than to hear the Board's deliberation.

Mr. Jenkins said he would think that Atty. Prunier was always prepared. He said it's been some time since this was before the Board and the members want to review everything. They also have a few questions they would like to go over. He said the testimony the Board wanted to hear would be from people who have not already spoken.

SPEAKING IN OPPOSITION

Ald. Ward 6 - Robert A. Dion. Ald. Dion said Donna Street is his ward. He said he is opposed to this request - At this point there was a loud noise and the microphones apparently shut down. Ald. Dion's testimony picked up as follows:

He said this will create more noise from the traffic.

He said he did not believe there is a hardship. He said the land is owned by the State. He understands a down payment has been made to purchase the land contingent upon the City's approval.

He said the nine condominiums that are proposed, assuming that there are two cars per unit, will produce thirty-six cars plus the people who will be visiting. The traffic will be greatly increased on this dead-end street as well as on Dale Street.

Mr. Jenkins advised Ald. Dion that even if the applicant wasn't asking for this variance he would still be able to put in single-family homes. Even if the Board should deny the request, people have to be aware that it still could be developed.

Ald. Dion said that if it were developed he thinks people in the neighborhood would be able to digest single-family homes a lot better than the proposed plan.

Mr. Duffy asked Ald. Dion if he had been able to see a tape or hear a tape of the meeting where testimony was presented on this case.

Ald. Dion said he's heard bits and pieces. He said he has a letter from one of the people in the neighborhood. He said from what he understands most of the people who were here were against the proposed development.

John Koutsos, 3 East Dunstable Road. Mr. Koutsos asked if this is really what they want their City to look like. Exit 5 is one of the main entrances into the City. It's a gateway. He said when people get off the highway people are going to be looking at these nine duplexes.

He said he's been down here and looked at it with the people in the neighborhood as well as the other properties that the applicant owns in this neighborhood. It's a poster child for bad development. He said it isn't doing the City any justice.

He said there are a lot of people that have come out tonight because they are very concerned about what their City is going to look like. They don't want to end up looking like Lowell or Lawrence. The Board is getting too lenient with all these requests.

Mr. Koutsos said this is a "crux point" for the City as the Master Plan says. He said what they do in the next ten years is going to be paramount to what the City ends up looking like. All the good people are going to leave the City if they continue to follow the path they are on now.

He said this request should be denied and the applicant should come back with a proposal that fits the neighborhood better than this one. Single-family homes would be more agreeable to the neighborhood.

Mr. Jenkins asked if Mr. Koutsos is saying that the people on Donna Street and Dale Street are adamantly opposed to the duplexes because of what the landlord has built in the past.

Mr. Koutsos said he doesn't think they are saying anything about the landlord - just the manner in which he maintains his properties.

Mr. Duffy asked Mr. Koutsos if he owned any property in this particular neighborhood.

Mr. Koutsos said he does not live or own property in this neighborhood, but he drives by it on his way to work every day.

SPEAKING IN OPPOSITION - REBUTTAL

None

Mr. Duffy asked Atty. Prunier if he didn't want to address any of the points that were brought up.

Atty. Prunier said he thought the testimony the Board heard this

evening was the same as they heard in the last meeting. He has already stated his case.

SPEAKING IN OPPOSITION - REBUTTAL

No One.

Mr. Duffy said he has looked at the essential character of the neighborhood, recent case law, and the information received the last time this was heard. He said he drove around the area. He said property at 9 Dale Street the lot size was 9,200 square feet, at 5 Dale Street the lot is 9,000 square feet, at 4 Dale Street it is 7,542 square feet, 6 Dale Street is 12,449 square feet, 11 Donna Street is 10,100 square feet, and 25-27 Donna Street has 9,200 square feet. He said he could go on - the lots are all in this range.

He said he looked at the lot values in the City records and they range from \$70,000 - \$85,000. He said they are all single story or two story structures. He said he's not sure that they received information on the peak heights of the proposed structures.

He said he looked at this unfavorably because this many units on this size lot (1.8 acres) does not agree to the character of the neighborhood, especially assuming that the State owned that property as a buffer zone to the highway. He said he believes it is too intensive of a use.

Mr. Currier said he has looked at the site a couple of times since the last meeting. He said the testimony the Board heard tonight - removing a buffer to the highway - has been heard before. They also heard that there is no hardship, which the Board has also heard before. There also was testimony that there would be increased traffic in the local area and the appearance of the housing, which the Board has also heard. He said the Board hasn't heard anything new tonight.

He said he was unfavorable to this at the last meeting and he still remains unfavorable. He said the law asks if the zoning

restriction interferes with the land owner's reasonable use. He said he doesn't believe this criteria is met by the applicant.

He said it is also contrary to the public interest. He said he remembers that the Board approved a day care center right around the corner from this location.

Mr. Coffey said he has reviewed the property several times since the last meeting. He said he felt the proposed project is too dense for this neighborhood.

Mr. Anderson said it is a unique location and a unique shape. The duplexes are in character with that end of the dead end, but he believes it is not in the public interest because of the density (the number of units in this small area).

Mr. Jenkins said he also has problems with the density. He is also concerned about the noise from the highway that would potentially affect Donna Street and Dale Street.

MOTION by Mr. Duffy to deny use variance to allow a multi-family development with nine two-family buildings on one lot at End of Donna Street. He said there is no uniqueness to this property that could not be gained by other substantial and reasonable uses within the ordinance that would be a less intense use than the surrounding essential character of the neighborhood, lot sizes, and buildings. It is within the spirit and intent of the ordinance if there are unique features of the property, but there is no substantial relationship between the request of the applicant. Even though the applicant presented information about property values, he doesn't believe in this City that the Board has seen the conversion of State Highway land to a use that is more intensive than the neighborhood.

SECONDED by Mr. Coffey.

Mr. Currier said that there has not been a demonstration that the existing zoning interferes with the landowner's reasonable use of the property in the RA Zone.

AMENDED MOTION by Mr. Duffy to add this to his motion.

SECOND TO THE AMENDMENT by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

2. John L. & Donna Bugeau (Owners) 73 Underhill Street (Sheet 14 Lot 503) requesting variance to encroach 2 feet 6 inches into the 7 foot required right side yard setback to construct an 18'x27' garage. RB Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas

Jack Currier

Jay Coffey

John Bugeau, 73 Underhill Street. Mr. Bugeau said he is trying to maximize the utility of the structure. He said he is the first house in a cul-de-sac, one side of his property is square - it doesn't have the typical pie shape and that is the side that would have the attached garage. He said he has looked at other ways to position the garage, but this would harm the utility of the property in several ways and use up more of the land on the property.

He said he does not believe granting the variance would violate the spirit and intent of the ordinance. There is no negative impact on the abutters or public safety and because it is a garage, there is no impact on population density.

He said as part of this construction he intends to remove a shed that's in need of repair and a chain link fence that's been there for twenty years. He can only see an increase in property values for the neighborhood.

He said in his opinion the increase in property values is a public benefit.

Mr. Bugeau said this property is located in the Crown Hill area. He said there are several structures that are within a few feet of other people's properties and, in fact, this is the case with his property where two of the abutters have structures that are within 2' of the property line.

Mr. Jenkins asked Mr. Bugeau if he had talked to the abutter at 71 Underhill Street.

Mr. Bugeau said he has. He said about a week ago he submitted a statement of support which all of the abutters signed. He said he has been in this neighborhood for twenty-six years and the abutters have been there for this period of time as well.

Mr. Jenkins said if the house had been placed a couple of feet back further on the lot he wouldn't be coming to the Board for this request.

Mr. Bugeau agreed.

Mr. Currier said the size of the garage (18'X27') is unusual. He asked what the intent of the 27' is.

Mr. Bugeau said if the Board saw the layout of the property and the bulkhead and other structures on the lot, it aligns pretty well. He said the 27' is to give him some extra depth. It's not the area involved in the encroachment. It's for a small workshop in the back.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Carrier to grant the variance to encroach 2'-6" into the 7' required right yard setback to construct an 18'X27' garage at 73 Underhill Street. The variance is needed to enable the applicant's proposed use of the property, in particular because of the cul-de-sac. The lot is not a traditional pie shape and the encroachment is needed to construct the garage. 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. Duffy.

MOTION CARRIED UNANIMOUSLY

3. Michael & Susan Fitzgibbons (Owners) 40 Pinebrook Road (Sheet C Lot 2362) requesting variance to encroach 6 feet into the 40 foot rear yard setback to construct an 18'x23' addition. R18 Cluster Zone.

Voting on This Case:

Tom Jenkins
Sean Duffy
Susan Douglas
Jay Coffey
Jeff Anderson

Susan Fitzgibbons, 40 Pinebrook Road. Mrs. Fitzgibbons said they are seeking a variance for a 6' encroachment into the 40' rear setback to construct an 18'X23' addition.

She said they believe this is a reasonable request because the 40' buffer in the rear of the property exceeds the 30' setback that is required in their R18 Zone. It will still leave an adequate setback of 34'. It cannot be seen from the main road. Other additions similar to what they are proposing have been built in their neighborhood.

She said their property still has emergency access and the home remains a single-family home. There is no impact to schools, roadways, or public services.

Mrs. Fitzgibbons said they feel that by improving their home it will increase the property values in the neighborhood.

She said their taxes will be increased because of this addition and this is a public benefit as it will bring in more revenue to the City.

She said the addition will allow their children to stay in the area and the schools that they have been growing up in. Their project is consistent with others in the neighborhood.

Mr. Jenkins asked if the plan is to remove the existing deck.

Mrs. Fitzgibbons said it is.

Mr. Jenkins said it's only the corner of the proposed addition that's encroaching into the 40' setback. He asked if the lot behind them is wooded.

Mrs. Fitzgibbons agreed that it is. She said all they are doing is taking out the deck going out a few feet for the addition where the deck has been. All trees will remain.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Coffey to grant the variance to encroach 4' into the 40' rear yard setback to construct an 18'X23' addition at 40 Pinebrook Road. The variance is needed to enable the applicant's proposed use of the property given the special

conditions of the property. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for their pursuit. They have a uniquely shaped lot. The addition will not be visible from the street. A reasonable distance remains to the rear of the lot. It is within the spirit and intent of the ordinance. It will not adversely affect the property values of surrounding parcels. It will be similar in nature to other properties around them. It will not be contrary to the public interest. Substantial justice will be served by granting the variance.

SECONDED by Mr. Duffy.

MOTION CARRIED UNANIMOUSLY

4. Francis E. & Lisa J. Bozek (Owners) 23 Pinebrook Road (Sheet C Lot 2376) requesting variance to encroach 7 feet into the 30 foot rear yard setback to construct an 8'x16' addition. R18 Cluster Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas

Jay Coffey

Jack Currier

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Francis Bozek, 23 Pinebrook Road. Mr. Bozek said the placement of his house on the lot lacked foresight from the builder. Had the house been shifted further to the east, he believes there would be sufficient room to expand 8' to the west.

He said the integrity and style of the addition he is proposing would be consistent with the style of the house and all the 52 houses in the development.

He said additions cause assessments to go up. Property values go up and the tax base goes up.

He said as owners add onto their homes, the value of their properties and other properties increase. The tax base goes up and this is a public benefit to the City of Nashua.

Mr. Bozek said there are 52 houses in the development. Approximately 20% have had additions. Many of them have required variances to do so.

Mr. Jenkins said that this house is on the corner and therefore requires two front yard setbacks. He said the addition is in character with the neighborhood and wouldn't diminish the property values of other parcels in the neighborhood.

Mr. Coffey asked what the addition is.

Mr. Bozek said they are expanding their family room. It's a single story. It will be built on four pilings.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Jenkins to grant the variance to encroach 7' into the 30' rear yard setback to construct an 18'X16' addition at 23 Pinebrook Road. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue. It is in character with the neighborhood. It is a cluster development. It is a corner lot. 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.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

5. Homes by Paradise, Inc. (Owner) Andrew & Mona Louis (Applicants) 4 Daffodil Drive (Sheet C Lot 2689) requesting variance to encroach 7 feet into the 25 foot required rear yard setback to construct a 10'x10' deck. FUOD Zone.

Voting on This Case:

Tom Jenkins
Sean Duffy
Susan Douglas
Jay Coffey
Jeff Anderson

Andrew Louis. Mr. Louis said he just bought this new home. He said the builder had put on a deck and his lender did a survey and made them take it down because it violated the setback requirements. He presented pictures of the house with and without the deck.

Mr. Jenkins said there is a door that goes out into mid air if they don't put a deck on it.

Mr. Louis agreed. He said the slider is about 10' - 11' from the ground.

Mr. Jenkins said the Board has visited the site and seen the house. They all know what it looks like.

He said this is a cluster type development and the homes are closer to each other. He said this home is sort of the end of the street and the topography of the land puts this house higher than the home that is behind this one. He said the only special condition that he would impose on the deck is that the bottom not be enclosed - that it be left open.

Mr. Louis agreed.

Mr. Duffy asked if there are other similar sized decks in the area.

Mr. Louis said others have much bigger decks, but he only needs a 10'X10' deck because he already has a farmers porch on the front of the house as well as a porch on the back.

Mr. Duffy said the position of the foundation on the lot is also a little bit of a hardship. If the house had been turned a little bit more to be square it wouldn't have looked as aesthetic, but the house would have been inside the setback.

Mr. Louis said he didn't realize it didn't sit so tight in the setback area.

Mr. Duffy asked if he had a two-car garage.

Mr. Louis said "yes".

Mr. Currier asked if the builder is "Homes by Paradise".

Mr. Louis said "yes".

Mr. Currier said he is mystified how they built this deck outside of where they were supposed to because they came before the Zoning Board and other Boards when they sought approval for the Flexible Use Overlay. The house isn't even done and they are over the setback. He asked if Mr. Louis asked them to build it and they went ahead and did it.

Mr. Louis said he asked them to build it and they didn't say anything about it needing a variance. It was the surveyor for the lender found that the deck was over the setback.

Mr. Duffy asked if there was going to be a shed or outside accessory uses.

Mr. Louis said "no".

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Coffey to grant the variance to encroach 7' into the 25' required rear yard setback to construct a 10'X10' deck at 4 Daffodil Drive. The variance is needed in order 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. This is a cluster development. The dwelling and deck is similar to the other properties in the neighborhood. The placement of the dwelling on the property created the hardship and forced the deck into the setback area. It is within the spirit and intent of the ordinance. It will not affect the property values of surrounding parcels. It is not contrary to the public interest. Substantial justice will be served. Special Condition: Area below the deck will remain open and not be enclosed.

SECONDED by Mr. Duffy.

MOTION CARRIED UNANIMOUSLY

6. Memorial Realty, LLC & Nashua Retail, LLC (Owners) JLM-Mass, Inc. (Applicant) 275, 277-279, 281 & 283 Main Street (Sheet 97 Lots 21, 23, 118 & 125) requesting variance to exceed maximum height of a portion of proposed fence, 6 feet allowed - 8 feet requested. GB/MU Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy
Susan Douglas
Jay Coffey
Jack Currier

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Atty. Gerald Prunier. Atty. Prunier said this came to the Board for a Walgreen's Pharmacy at a prior meeting and was approved. Ald. Mark Plamondin had asked if there was a possibility of putting an 8' fence and he was informed that only a 6' fence would be allowed and a variance would be needed for an 8' fence. The applicant indicated they would apply for the variance and that is the reason for this request.

Mr. Jenkins asked Atty. Prunier to show the location of the proposed fence on the map and he did so. He said for all the reasons that were given when the applicant came for approval of the Walgreens, the same reasons apply to the fence. He said it will give the abutters a lot more privacy and protects them that much more.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Duffy to grant the request for variance to exceed the height of a proposed fence, 6' allowed, 8' requested at 275, 277-279, 281-283 Main Street. The applicant's proposed use of the property given the special conditions of the property and the benefit to the applicant cannot be achieved by any other method. This is actually an agreement between the abutters and all the hardship and information from the last case stands. The spirit and intent of the ordinance, public interest, and substantial justice are the same.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

7. Toys R Us Inc. (Owner) 270-272 Daniel Webster Highway (Sheet A Lot 127) requesting the following variances: 1) minimum lot width, 100 feet required, 98.84 feet proposed, and 2) minimum rear yard setback in GI zone, 15 feet required, 0 feet proposed - to subdivide one lot into two lots. HB/GI Zones.

Voting on This Case:

Tom Jenkins
Sean Duffy
Susan Douglas
Jay Coffey
Jeff Anderson

Atty. Morgan Hollis, 39 E. Pearl Street, Nashua. Atty. Hollis said this property is located on Daniel Webster Highway South, part of the mall developed back in 1990.

Some testimony lost - tape change.

Atty. Hollis said the owner is proposing to split the lot down the middle. In doing so there is going to be loss of frontage. He said they have already received variances for the buildings that sit on the property line. A front and rear setback variance had already been granted in 1990. The lot line will go right down between the building that was Kids R Us and the Toys R Us building. Two flag lots are being created. The problem comes about in the minimum lot width requirement. The minimum requirement is 100' and they have 98.84'.

He said while they were doing the research on this they also discovered that at the time of the original approval the variance for encroachment into the setback was never granted so they thought they thought this should be cleaned up as a housekeeping measure.

Atty. Hollis said this is a unique situation. The lot was approved by a special exception in order to have multiple buildings on one lot. The discussion for the granting of the variance at the time was more like a condo situation so there were a lot of zero lot lines. These were granted in order to allow the project to proceed. He said they are now in the situation where Toys R Us wants to be in one building and spin off the other building and create a new lot. The variance will allow them to do this. Each has their own access.

He said the entire project is covenanted by cross access covenants so there will be no change other than title description.

Mr. Jenkins asked if the footprint of the building changes.

Atty. Hollis said nothing changes. He said it will be consistent with the spirit of the ordinance. There will be no affect on values. There will be no adverse affect to the neighbors. The spirit and intent will be maintained.

Mr. Duffy asked if there are going to be any new additions or expansions.

Atty. Hollis said "no". This is strictly to separate the two buildings so they are on their own lots.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Duffy to grant the variances for minimum lot width, 100' required, 98.84' proposed, minimum rear yard setback, 15' required, 0' proposed to subdivide one lot into two lots at 270-272 Daniel Webster Highway. The variance is needed in order to allow the applicant the current existing and

approved use. The buildings are both existing. It is an amenable and reasonable correction. It is within the spirit and intent of the ordinance that the applicant have reasonable development use of the property. It should 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. Anderson.

MOTION CARRIED UNANIMOUSLY

8. Carl E. & Suzanne M. McMullen (Owners) 102 Dodge Street (Sheet 135 Lot 217) requesting variance to encroach 20 feet into the 20 foot front yard setback to erect a 12'x20' accessory tent garage. RA Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas

Jay Coffey

Jack Currier

Carl McMullen, 102 Dodge Street. Mr. McMullen said he wishes to place a garage right at the tree line, 5' back from the road. The back of the garage is basically right at his door.

Mr. Jenkins asked what this is going to be used for.

Mr. McMullen said he is restoring a '65 Mercury Comet. He would like to store the vehicle in it out of the elements.

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

Mr. McMullen said he has. He said there is a neighbor present who is in opposition. He said they informed him that if he had gone with a regular garage they wouldn't have such a problem with it.

Mr. Jenkins said a regular garage might increase the property values, but he couldn't say that putting a tent up in front of the house is going to do that.

Mr. McMullen said he doesn't look at it as being a tent. He said he'd very much love to have a garage. He said he thought he had a better chance of getting approval for this than a permanent structure.

He said he can't do anything on the other side of his lot because of the trees. The ground drops off 2' and then slides down from there to the railroad tracks.

Mr. Jenkins asked if this is basically in his front yard.

Mr. McMullen said it's off to the side right against the tree line. It's going to be 3 1/2' - 4' under ground because he has to notch out the yard because he's on a upraised lot. With flowers and shrubbery he doesn't look at this as being such an eyesore.

Mr. Jenkins asked how long Mr. McMullen plans to keep this.

Mr. McMullen said two years. He will be coming back at that time for a variance for a permanent garage.

Mr. Duffy asked Mr. Falk if the applicant withdraws or tables the application if the fees that were paid to appears before the Board could be used to pay for a building permit for a regular garage.

Mr. Falk said that they could not - it's a totally different fee. He said this was advertised for this specific case. If they want to come in with something different it would be a different request.

Mr. Duffy said that the way he is looking at this the applicant could build a regular detached or attached garage on the property. He could meet the ordinances and not have it so close.

Mr. Jenkins said he thinks that Mr. McMullen is indicating that financially he's not in the position of putting up a regular garage.

Mr. McMullen said this really isn't the case. He said he thought he had a better chance of getting this variance than putting on a regular garage.

Mr. Currier said the location where this is proposed looked like the ground goes up about 3' or 4' from the road. He said a little to the left where the driveway is there's walls and something like half a tunnel. He asked if he was going to dig out the yard.

Mr. McMullen said he is going to dig out the yard. He said the structure is going to sit 3 1/2' - 4' under ground - hidden from view. He is not going to put it on top of the yard - it will be at street level.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

Tom Jasalavich, 103 Dodge Street. Mr. Jasalavich said no matter where they look out from their house all they are going to see is this structure - accessory tent.

He said they already have a problem now when the City comes to plow. The street is paved at an angle at the end of the street and it didn't require a cul-de-sac. He said his driveway is at the end of the pavement. The rest of the street is extended to the corner. There is a telephone pole that is marked as Mr. McMullen's entryway.

He said he doesn't feel Mr. McMullen has a hardship because there is plenty of land to move it back. If the variance is granted, even if the yard is dug out, all he is still going to

see it. He feels that this is going to affect the property values.

He said there is also a parking issue. He said right now he can move his vehicle out onto the street and mow his lawn area and then move his vehicle back in. When company comes everything gets blocked. If the variance is granted and there is going to be a driveway, he will have no place for his company to park. They will have to park further down the street in front of other neighbor's homes. He already has to be careful when he backs out of his driveway that when Mr. McMullen does leave his vehicle near there that he doesn't back into it. He said at night they've had many people come down the street and when they try to back out or turn around he's had three cars that have had their taillights knocked out because they can't see.

He said if he wants to sell his house and they come to look at it they will see this structure. He said he didn't think it was going to be attractive. He did talk to Mr. McMullen a couple of weeks ago and said that he would rather see a garage there and have it sit further back.

Mr. Duffy said he drove around the area and the neighborhood. He said he didn't see any other garages that were within 5' or 10' or 15' into the setback area. He asked Mr. Jasalavich if he was aware of any.

Mr. Jasalavich said he doesn't know of any.

Mr. Duffy asked if people parked in their driveways during the evening.

Mr. Jasalavich during the day most people leave their vehicles in the street. At night most of them pull in. He said there would be a problem if the Fire Department or an emergency vehicle or even trash pickup had to come down. They usually back out of the street because they have trouble turning the trucks around. He said in the wintertime he uses his snowblower to keep snowblowing out the bank because the City plow can't push it far enough on his side of the street because of the

whole design of the street. He said his driveway is exactly across from Mr. McMullen's. His driveway is one vehicle behind the other.

SPEAKING IN FAVOR - REBUTTAL

Mr. McMullen said as far as the issue of turning around is concerned, this structure is going to be 5' into his yard. It doesn't bother plowing or anything. He said Mr. Jasalavich does have a problem because of his location. There is a snowbank during the wintertime and there is an issue with turning around. There is a dead end sign at the beginning of the road, but apparently some people don't pay attention to it. The three neighbors at the end deal with the turning around issue.

He said his driveway is very narrow. He said when he and his wife park side by side they have to watch their doors when they open them up. A cluttered driveway or a car with a cover over it is worse than having the structure to store the vehicle in.

SPEAKING IN OPPOSITION - REBUTTAL

Mr. Jasalavich said Mr. McMullen won't be able to see this from his house. If it was further back he would.

Mr. Jenkins said he doesn't know how this would help property values. He said he wouldn't want to sit there and look at it.

Mr. Duffy said he doesn't see any special conditions. Even the applicant has said he had room to build a garage on the property, which he was going to do in a couple of years.

He said the thing that surprised him was that he was going to dig down into the ground. He said he didn't think there is anything of that in the neighborhood.

Mr. Jenkins said there are a lot of these tent garages in Nashua. A lot of them are just put up and don't come to the Board for a variance.

Mr. Duffy said they may not be in the setback.

MOTION by Mr. Coffey to deny the request for variance to encroach 20' into the 20' front yard setback to erect a 12'X20' accessory tent garage at 102 Dodge Street. The applicant did not present any evidence to show that there is a hardship in the property. It is not within the spirit and intent of the ordinance. It possibly could adversely affect the property values of surrounding parcels because it is a temporary structure, not a permanent detached garage. Substantial justice is not presented.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY

9. Northwest Mini Warehouse Group (Owner) 15 Northwest Boulevard (Sheet I Lot 35) requesting the following variances: 1) to exceed maximum ground sign area, 100 square feet allowed - 153 square feet proposed, 2) to exceed maximum ground sign height, 15 feet allowed - 32 feet proposed, 3) to allow an electronic changing sign to display messages other than display of current time and temperature, and 4) to allow three lines of text on electronic changing sign - one line of text allowed. PI Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas

Jay Coffey

Jeff Anderson

George Michaud, 16 Fulton Street, Hudson, NH. Mr. Michaud said the intent of this sign is to have a manual changeable copy board, not electronic. He said they are seeking relief for the size and height of the sign. They wish to replace the existing sign with a larger sign. This request comes about as a result

of new owners and new management. The single business that is now in operation is going to be replaced with three businesses. They will be Granite State Self Storage, Budget Truck Rentals & Moving Supplies, and College Bound Movers.

Mr. Michaud said he did a balloon test at the site to show the proximity of the sign to show its height in relationship to the one that is existing. He presented pictures to show this to the Board.

He said currently there is a 96 square foot pylon sign that is 20' in height. The intent is to raise the sign to 32' in height to give it visibility from the nearest thoroughfare - Amherst Street.

Mr. Michaud said the hardship is in the setting of the property itself. It's approximately 650' back from Amherst Street and they needed a lot large enough to house the storage building and facility that they are in. They couldn't that on Amherst Street and this is as close as they can get to it.

He said the property sits on the border of the zoning district. One side of the street is GB Zoning and the side of the street this facility is located on is zoned PI. If this property were on the other side of the street (less than 100' away) it would be allowed a 150 square foot sign at 40' in height by right.

He said the proposed sign is in keeping with the purpose of the zoning ordinance. If granted, it would not injure the public or private rights of others. The sign is in keeping with others.

Mr. Jenkins asked if the current sign is not visible now because of the tree line.

Mr. Michaud said this is correct. He said it's too low.

Mr. Jenkins said that they are looking for the same relief that the abutter has and Mr. Michaud agreed.

Mr. Duffy asked how long the property has been used for this use.

Mr. Michaud said he believes its been more than five years. He said as of May there are new owners.

SPEAKING IN OPPOSITION

Mr. Jenkins said there is a letter from Southern NH Medical Center, an abutter to this property. The letter indicates they feel there would be a negative impact to the character of the area as well as the future plans to construct another medical office building immediately adjacent to this site.

SPEAKING IN FAVOR - REBUTTAL

Mr. Michaud said he believes the reaction from Southern NH Medical Center is coming primarily from the notice which talked about an electronic message center.

Mr. Jenkins said that the only problem he had was with the electronic message center and that has been addressed. There won't be one. There is a problem with the line of sight because of the trees.

Mr. Coffey said they are 650' away from Amherst Street. He said he doesn't know if that necessitates having to put up a larger sign so you can be seen from that distance.

Mr. Jenkins said he couldn't see their sign until he was directly on top of it. He thinks it does have a hardship. He is not asking for any more than what the abutter has.

Mr. Currier said that he thinks the wording of the Park Industrial zone laws are very well worded. It's more restrictive signage than on Highway Business or General Business. It's not intended to be a billboard sign to be seen from the highway. He said he didn't see a hardship.

MOTION by Mr. Jenkins to grant the variances 1)maximum ground sign size, 100 square feet allowed, 150 square feet proposed 2) maximum ground sign height, 15' allowed, 32' proposed at 15

northwest Blvd. The variance is needed to enable the applicant's proposed use given the special conditions of the property. The property is located within the PI Zone, but it abuts a GB Zone across the street where this would be allowed. A competitor has the same. It is within the spirit of the ordinance. The request is not unreasonable. It will not adversely impact the property values of surrounding parcels. It is not contrary to the public interest.

SECONDED by Mr. Anderson.

MOTION CARRIED - 3-2, Mr. Duffy & Mr. Coffey opposed.

10. Douglas Dichard (Owner) 125 Concord Street (Sheet 48 Lot 230) requesting the following: 1) use variance to expand nonconforming retail food store to construct a 1,376 square foot building expansion for retail food sales and restaurant with 8 seats; and the following variances: 2) minimum open space, 50% required, 30% proposed, and 3) minimum parking requirements, 15 spaces required, 14 spaces proposed. RA Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas

Jay Coffey

Jack Currier

Atty. Gerald Prunier, 20 Trafalgar Square, Nashua. Atty. Prunier pointed out the area of Concord Street and Hills Ferry Road and the location of Kirkpatrick's Store on the plan.

He said they are withdrawing the request for the eight chairs which means that they will meet the parking requirements. Therefore the only request before the Board is the open space requirement and the expansion of a non-conforming use.

Atty. Prunier handed out a packet of information to the Board. He said in this packet there is an opinion from Rod Clermont regarding the value. There is an analysis of a lot of the small convenience stores in Nashua such as "Geonotte's", "Lake Street Convenience", "Liamos", etc. He said they are using this to compare what is being proposed. It's not anywhere near what some of the other convenience store are.

He said there are letters of support in the packet. Some of these people are present tonight. There is also a petition signed by about 200 people who are in favor of the request.

He said there is also a copy of the minutes and card of a piece of property abutting this one that was granted a variance to be closer to this market.

He said this market has been a fixture in this neighborhood since the late 1940's or early 1950's. It pre-dates zoning. It is a non-conforming use. It hasn't changed very much over these many years and the applicant wishes to add some services to the neighborhood. They wish to provide sandwiches and other cooked foods similar to another market, Dugas Market, which no longer exists. Towards the end of their existence they had cooked foods. It was to service their neighborhood. This is what all of the small markets have done at this time. This is a natural accessory to a convenience store at the present time.

Atty. Prunier said there is a hardship if they are unable to bring it up to service the neighbors. It is a reasonable use. They are not asking to make this into a supermarket. They are only asking for 1300 square feet. It will have one oven.

He said it will blend into the area. The parking is there. It's not out of character because the store already exists.

He said substantial justice will be done, not only to the applicant, but to the whole neighborhood. They will be better served and won't have to travel out of the neighborhood to get some of the services that could be provided at this location without a great increase in size.

Atty. Prunier said it will not adversely affect the property values of surrounding parcels. The opinion of Mr. Clermont is in the Board's packet and it states that this proposed project should not have any effect upon the surrounding properties. He said most times new construction adds to the surrounding property values.

Mr. Jenkins said they are not disputing the fact that Kirkpatrick's is much smaller than other convenience stores. Thirty years ago or whenever Kirkpatrick's opened, Concord Street was a small quiet residential street. It's no longer a small quiet residential street.

Atty. Prunier said it's a major truck route going up to Nashua Corporation, Budweiser, etc. It has changed tremendously. He said they don't want to make major changes. They just want to service the neighborhood with a small addition.

Mr. Jenkins said he's been into Kirkpatrick's parking lot and it's tough to get out of and cross Concord Street. Also if you are coming north or south and want to turn into Kirkpatrick's it's tough. It has one way in and one way out. There is no on-street parking like some of the other convenience stores have. He said even if it has enough parking spaces per the zoning ordinance, it still has tight parking.

Atty. Prunier said it does meet the zoning requirements. There is a lot of walk-in traffic. People can park in the rear and don't have to go out into Concord Street. This parking will be accomplished with the new addition. He showed the Board how this would work.

Mr. Jenkins asked how far it is from the corner to the new

driveway.

Atty. Prunier said it's 110'.

Mr. Jenkins asked how many parking spaces.

Atty. Prunier said fourteen.

Mr. Jenkins asked if there is an apartment above the store.

Atty. Prunier said there is a residence above the store. It requires two spaces.

Mr. Jenkins asked how many employees the store has.

Atty. Prunier said there will be two to three there at any time.

Mr. Jenkins said that is five spaces taken up between the employees and residents of the apartment.

Atty. Prunier said this is not intended to be a supermarket. It's a neighborhood store.

Mr. Jenkins said he understands this, but he is still concerned about pedestrian right-of-way and pedestrian access, especially with the speed of vehicles traveling on Concord Street.

Atty. Prunier said this addition is not going to add to traffic or any pedestrian safety factor in the area. It is the same people that use the store now that will use it after the addition is constructed.

Mr. Jenkins said this is a dangerous intersection. It's right on top of Hills Ferry Road and close to the intersection of Henry Burke Highway.

Atty. Prunier said nothing Kirkpatrick's has done is responsible for the increase of traffic to that area.

Mr. Carrier asked if he understood that the request for the

seating is being removed.

Atty. Prunier said this is correct. It has caused controversy. It is a take-out situation.

Mr. Currier asked if the 1375 square foot expansion was still being proposed.

Atty. Prunier said it is.

Mr. Duffy asked if this is really an area variance and the word restaurant should be taken out.

Atty. Prunier said the word "restaurant" should be taken out. Whenever there is an expansion of a non-conforming use there is still a requirement for a use variance.

Mr. Currier said the application shows the store is open seven days a week from 6:00AM - 10:00PM. He asked if this is the current hours of operation.

Atty. Prunier said "yes".

Mr. Currier said the application shows a possible 1:00AM on Fridays and Saturdays.

Atty. Prunier said at the present time there is no restriction on the number of hours they can be open.

Mr. Coffey said on the plan it shows two rear entrances. He asked if this is going to be for customers or if it is strictly for delivery.

Atty. Prunier said one is going to be for customers and the other is going to be for deliveries.

Mr. Currier said the application talks about 2 - 3 commercial vehicles per day.

Atty. Prunier said they are going to be taken away from the

front and they will now go to the rear.

Mr. Duffy asked how much of the 34'X40' is going to be retail food sales similar to what the front is.

Atty. Prunier said approximately 1/3 more for shelving.

Mr. Duffy asked if the dumpster shown on the plan is enclosed.

Atty. Prunier said it is.

Mr. Duffy asked the location of the current dumpster.

Atty. Prunier said he does not know. He said when Mr. Maynard comes to testify he may know the answer.

Mr. Duffy asked how the other convenience stores that are mentioned compare with Kirkpatrick's open space.

Atty. Prunier said he doesn't have any calculations, but he knows some of them don't have any open space. If they are located in the local business zone they only require 10% open space.

Mr. Currier said there are a lot of neighbors here tonight for this case. He asked when the decision to withdraw the seating from the plan.

Atty. Prunier said there was some discussion on it before because people were asking it was going to be a restaurant. He said it was never the intent to be a restaurant. The tables and chairs were going to be there to accommodate somebody who might want to buy a sandwich and eat it there. It caused confusion and they decided to eliminate it.

Mr. Anderson asked what kind of buffers there would be between the new parking drive and **..unintelligible..**

Atty. Prunier pointed out the buffers on the plan. He said there is a hedge row in now. There will be grass. The Planning

Board will review the site plan and make a determination what else they would like to see.

SPEAKING IN FAVOR

Richard Maynard, Professional Engineer, Maynard & Paquette, Nashua. Mr. Maynard said they are giving up a couple of parking spaces in the front to have a one way driveway, come in and drive around. That part of it significantly improve the safety factor of this site.

He said this was never intended to be a restaurant. It's intended to be a convenience store that sells prepared foods. This is a small convenience store. The applicant needs more space in order to compete with other convenience stores and be similar to other convenience stores. He said one of the prime convenience stores are "Mobil on the Run" and other places like that and they tend to be 3,000 - 5,000 square feet.

Mr. Maynard said the rear driveway is the same location of the existing garage. The garage is going to be removed. It's over 120' from the intersection.

Mr. Jenkins asked what the requirement is and Mr. Maynard said it is 50'.

Mr. Jenkins said if he remembers, there was quite a grade between Hills Ferry and this lot on the back.

Mr. Maynard said he has a picture of it. It may be a couple percent.

Mr. Jenkins asked if the spaces on Concord Street are 18'.

Mr. Maynard said they aren't striped, but they'd probably be 18'.

Mr. Jenkins said if they took 18' of the parking spot if there would be enough room for a car to come behind it and go around the building so they wouldn't have to exit onto Concord Street.

Mr. Maynard said it's close, but they wouldn't be able to.

Mr. Jenkins said the only ones that would be able to exit around the building would be the ones that actually pulled into the driveway to park on the back side.

Mr. Maynard said some work may have to be done on Concord Street if the Planning Board gets to see the proposal. He has to think about this - he didn't have an easy answer.

He said there was a question about the southerly property line. He said back in the 90's the existing residents received a variance so that their house could be 5' away from the property line. It appears that it is actually 3' away from the line. He said the second story has a bay window. He said the shrub line is all along the Kirkpatrick's lot. It is a substantial buffer. He presented pictures to the Board. He said they could possibly supplement the buffer. They could also put up a fence if somebody wanted to do that. He said the driveway to the garage is pretty gentle.

He pointed out the location of the dumpster. If necessary they could move it all the way back behind the existing store. That generally is where the existing dumpster is today. The dumpster will be totally fenced.

He said there will be no more deliveries to the front. They will be at the rear of the store. There will be a full customer access also.

He said they are only asking for an expansion of an existing non-conforming use. They will have one more parking space than what is required. It is not a restaurant. It's strictly a convenience store that sells some prepared food products, just like every other convenience store in town. He could sell those prepared foods in the existing store if he had the room.

Mr. Currier asked if the driveway was going to be at the grade of the street so its angled or if they are going to fill. He asked if there is going to be fill or a retaining wall between

this property and the first house on the right going down Hills Ferry Road.

Mr. Maynard said it's a little deceptive out here. He said the grade at the beginning of the driveway will match the street and it will gently rise at 2% - 3%. It will reach existing grade by the time it reaches the corner and continue out. He said maybe half way there will be 18" to 2' of cut. That's a gentle slope. He said he doesn't believe they will need any wall or anything like that. If necessary they might do a little curbing.

Mr. Duffy asked if they are changing the foundation area of the building in the front or any change to the facade of the building.

Mr. Maynard said they may change the facade, but not the outline of the facade. They aren't going up or putting in dormers.

He said that many of the convenience stores in town are zoned Local Business. He doesn't understand why this isn't also zoned Local Business. In the local business zone the green space required is 10%. They are proposing 30% green space, which far exceeds the green space for any business requirement in the City of Nashua.

James Dacey, 14 Overhill Avenue. Mr. Dacey said he is off of Hills Ferry on the other side. He said Kirkpatrick's has been a convenient place for him to do business. He said he has lived in this area for the past sixteen years and has been familiar with the store for the past (almost) twenty-five years. He said he knew the previous owner and has gotten to know the current owner.

He said he backs out of the front existing spaces every single day on his way home from work. The ability to go into the back of the lot as well will be helpful when some of the spaces in the front parking lot are filled.

Mr. Jenkins asked what Mr. Dacey does when the parking lot is completely filled.

Mr. Dacey said he parks across the street and runs across Concord Street between the traffic.

He said the way the plan has been explained to him and the research he's done he can only see this as somebody making good use of their property and being able to make a stable business; adding a few jobs to the neighborhood.

Catherine Feely, 65 Hills Ferry Road, Nashua. Mrs. Feely said she is a direct abutter to Kirkpatrick's. She said her father, George Pasquale, was the founder of the store in 1928. She said when her father ran the store he always wanted to expand it and add more prepared food items. She said they served the surrounding neighborhood until he sold the business in 1973.

She said at this time Mr. Dichard is requesting to add to the store. She said she knows Mr. Dichard to be a very responsible honest man who keeps the yard clean and is concerned with people's needs. She said he has discussed his plans for a new building with her. She believes these plans will have a positive impact on the neighborhood and the area property values. She supports the addition.

She said the parking in the rear of the building will help the traffic on Concord Street. She supports the parking lot.

Denise Mogyey???, 14 Overhill Avenue. Mrs. Mogyey said she also frequents this store. She needs to back up onto Concord Street. She finds that the expansion and being able to go around will be a convenience.

She said the store is so small that if there are four customers in it you have a problem moving around. By expanding the store and expanding the driveway it will make it more convenient if something is going on at Greeley Park.

Howard Anderson, 4 Kirkwood Drive, Nashua. Mr. Anderson said he is a friend of Doug Dichard. He said he's heard discussion about the amount of parking spaces in front of the store. He

knows that Doug is adding parking spaces, but he challenges anybody in the room to find a day when that parking lot is full. There are many people who pull in and out of there every day without any problem.

Mr. Duffy asked if there has been an accident or two up in that area, but not related to Kirkpatrick's.

Mr. Anderson said there have been accidents on Concord Street.

Jim Gagnon, 16 Maywood Drive. Mr. Gagnon said this street is off of Hills Ferry Road. He said he has lived in the north end all of his life. He has been a patron of Kirkpatrick's since he could walk. He believes the store is an icon in the neighborhood. It provides tremendous value to the people living in the neighborhood. He said he has seven children and they go to this store walking or riding their bikes for many years.

He said he thinks that what is being proposed will provide a great value to the people in the neighborhood as well as the people who frequent Greeley Park.

He said he's used convenience stores such as Genottes. A lot of people go there who frequent the stadium and the ball parks and they've provided similar services over the years.

He said he thinks this is a great addition to the area. There's mixed general business from the florist down the street to "The Big One" to a church and other businesses. He said he didn't think it would be providing anything that would be negative to the neighborhood.

David **Dichard**, 131 Concord Street. Mr. Dichard said he lives right on the corner of Hills Ferry & Concord. He said he would like to see Mr. Dichard succeed in his plan. He has a head on his shoulders. He has improved the store since he's had it, which has been about six months.

He said to answer Mr. Duffy's question about accidents, there have been accidents there, but it hasn't been on account of the

store. The reasons there are accidents there is because people don't heed the signs that are there. There are speed limit signs there. Nobody goes by this store doing 25 MPH or 30 MPH.

SPEAKING IN OPPOSITION

Bob Burgess, 32 Bates Drive. Mr. Burgess said this is going to be nothing but a hard topped $\frac{1}{2}$ acre of land. The only thing left is a little ridge of about 5' to the abutter in the back. There is going to be a driveway coming in and a driveway going out.

He said he finds it very strange that they quoted the existing store at over 1300 feet.

Mr. Jenkins said the proposed addition is 1300 square feet. The existing store has 750 square feet.

Mr. Burgess said according to the card about property in the City the first floor is 1270 square feet. That means the addition will double the size of the building.

Mr. Burgess started to address the restaurant and Mr. Jenkins said there isn't going to be a restaurant.

Mr. Burgess said to call it fast food.

Mr. Jenkins said fast food can be served in any convenience store.

Mr. Burgess said the zoning ordinance states that fast food and retail use is not allowed in a residential zone. This is a non-conforming use.

Mr. Jenkins said this is a non-conforming use because it is in an "RA" Zone. If this were in a business use district, they wouldn't be here.

Mr. Burgess said this use was grandfathered a long time ago and he can't see possibly expanding it. He said whether the people

get their food and eat in the car or eat it there, the zoning ordinance states you need two parking places for every one hundred feet. He said he has a big problem with the density. He referred to Section 16-278 in the zoning ordinance which states two spaces are needed for fast food eating & drinking establishments where consumption is frequently within automobile or off-premises.

He said they will need more parking than was previously stated. They are going to need five for the store. If this is strictly "fast food" or "take out" an additional seven spaces are needed. You need a handicap space. You need two spaces for the apartment. You also need parking for the employees. They don't have this number of parking spaces.

Albert Mueller, 11 Bates Drive. Mr. Mueller said he has lived here for thirty years or so. He said he likes living in a residential area and would like to keep it that way.

He said as far as he knows the reason the store is being tolerated there is because it is grandfathered. He said he didn't believe there was any hardship in this case.

He said as far as he knows the new owner bought this property very recently. He knew exactly what he was getting into. He should have thought about it before he bought the store.

He said this is a very dangerous intersection. He can't say that the accidents that have happened are because of the store. There's a lot of traffic on Concord Street and if you want to get out of Hills Ferry Road it's a problem. Right now there are delivery trucks there. People are pulling out of the store area parking lot and you can't see to the left. The view is completely blocked. If the store is allowed to expand the traffic problem is going to increase very much and accidents are going to be happening more frequently.

He said a few years ago there was a fatal accident there and there have also been collisions.

He said there is no need to have prepared food at this location. There are a lot of places that deliver to the houses.

Ald. Kevin Gage (Ward 3 Alderman), 29 Cabot Drive. Ald. Gage said he has come at the request of many constituents to mention a couple of concerns that they have.

He said these neighbors are opposed to the addition of a pizza and sandwich shop at Kirkpatrick's Market. The concerns he has heard range from traffic and safety to the smell. The part that concerns him the most is the increase in traffic.

He said he has been working in the Traffic Engineer's Office to come up with a traffic plan at this intersection since a series of accidents in this area. The Board is being asked to allow another wrinkle in this traffic situation by allowing even more traffic, including on Hills Ferry Road itself (behind the store).

He said he believes people from all areas of the ward will travel to this establishment by car and throughout the City as they pass through from Merrimack and other areas to get something on their way home. The traffic by car will increase. It will not be a small, mostly foot traffic business any longer.

Ald. Gage said as he understands it they have gotten rid of the restaurant so it changes the parking requirement.

Mr. Jenkins said they meet the parking requirement.

Ald. Gage asked how many spaces there are on site at the present time.

Mr. Maynard said currently there are ten spaces along the front. Under the proposed plan there would be eight in the front and six in the rear. With the elimination of the eight seats, the requirement is reduced by two.

Ald. Gage said his constituents are concerned about the traffic. The City is looking at traffic calming measures and traffic and traffic lights and an island down the middle of the road coming

up to that intersection on both ends. He said he hopes the Board takes into consideration that there's going to be a large increase in problems.

Socrates Photiades, 131 Princeton Road. Mr. Photiades said his house is on a corner with one side being on Hills Ferry Road. He said he's lived here since 1972.

He said in the past several years he's seen an increase in pedestrian traffic - children, adults with children, parents with prams. There are no sidewalks. He said he thought they've forgotten one thing about Hills Ferry Road. It takes every truck, SUV, boat and trailer down to the boat landing. There is a lack of visibility because of the height of the boat and trailer. He said he's seen them park on Hills Ferry Road within the 120' that Atty. Prunier and Mr. Maynard have talked about.

He said it's not that accidents might happen, they will happen. He said a ten year old boy died last year at Hills Ferry & Concord.

Richard Gelinas, 123 Concord Street, Nashua. Mr. Gelinas said Mr. Maynard alluded to something in the Board's packet about his variance for his second story addition. He said Mr. Maynard's firm is the one that prepared his site plan.

He said he doesn't know about Maywood Drive, Kirkland Drive or Oakland. He pointed out a plan that showed Kirkpatrick's store on it with some red dots. The red dots represent people who are opposed to the request and that's people who live nearby. He said he submitted closed to seventy-five signatures on a petition that the Board should have in the file.

He said the ordinance seeks to geographically contain similar uses together. This is located within a RA Zone and a restaurant is not similar to a home and therefore should not be allowed. You can take out seats and not call it a restaurant, but convenience stores throughout the City don't all sell pizza, subs, fried food, etc. They may have wholesale supplied goods that they sell or a hot dog steamer on the counter, but that

doesn't mean you sell food.

Mr. Gelinas said the zoning restrictions on this property do not interfere with the owner's reasonable use of the property considering the setting of the property. He said the property has enjoyed the privilege of operating as a non-conforming use only because it pre-dated the zoning laws.

He said the zoning ordinance specifically prohibits its expansion or extension. The applicant seeks to expand to the totally new use of a restaurant and double the footprint of the commercial aspect of the property. He showed a picture of Pizza Hut. He said Pizza Hut on Amherst Street has 2247 square feet and just the commercial portion of Kirkpatrick's is going to be 2761 square feet. It will be bigger than the Pizza Hut on Amherst Street.

Mr. Gelinas said there are no special conditions on the property. The open space will be significantly reduced. Surrounding parcels have open space preserved and this will be out of character with the neighborhood. He said the applicant's property is half the size of his property and the two properties immediately to the south and a substantially more intense use is proposed.

He said this overly intense use of the property places a dumpster 25' from his house. The environment the property is situated in is almost exclusively residential with a few exceptions. He said to his knowledge these properties have not changed their use in over twenty years.

He said reasonable use is based on the fact that you are not adversely affecting any abutting properties. He referred to his property appraisal report. He said he has submitted expert testimony demonstrating the adverse affect to his property. In addition to that his family would also be subjected to vehicular traffic, including delivery trucks in very close proximity to where his children play behind their house, the noise from these trucks, the dumpster being emptied and the restaurant's exhaust fan, loss of open space, loss of privacy, odors, potential

grease damage to their home, oil, salt and gas runoff from the parking lot, headlights shining in their windows, parking lot and building lighting, and the worry for his children's safety due to foot traffic and loitering that is now contained at the front of the building.

Mr. Gelinas went on to say that this proposal doesn't do anything to eliminate the problem of a curb cut on Concord Street. If anything, it exacerbates it because it makes the use more intense. It brings more people there.

He asked where the applicant is going to put the snow. He said this past winter he had to ask the owner to stop pushing the snow quite so far because it started pushing over one of his bushes. This is with the current conditions and now there will be a large addition with pavement.

He said the applicant owns several properties in Nashua and must have knowledge of the zoning ordinance. He purchased the property seven months ago and he must have been aware of the restrictions on the property. If a hardship exists, it is self created.

He said if the variance is granted, it would violate the spirit and intent of the ordinance.

Mr. Currier asked Mr. Gelinas asked if the expansion on his house that was mentioned earlier was a second story.

Mr. Gelinas said he just went up. He canter levered out in that one spot. The foundation didn't increase.

He presented a list of four brand new homes that were constructed on Concord Street in the last nine years.

David Chick, 130 Princeton Road. Mr. Chick said this store has been here for many years and must have done well in order to be there for all these years. He said he has only been in his home for five years, but a lot of the reason why he bought his house was because it was a nice residential quiet area.

He said when he bought his house he was told that the south end of his house was too close to Hills Ferry Road. The mortgage company and lawyers got together and he was informed that he was grandfathered so he knew before he signed what he was getting into. He said his wife is a licensed hairdresser and would love to build a salon, but he was told right off the bat that he couldn't build anything else.

Mr. Chick said he works for Costco Wholesale and anywhere from 2:00AM - 4:00AM is his starting time. He is going to be looking out his bedroom window, which is going to face all of this new construction and parking lot. He will be listening to the delivery trucks at whatever hours of the afternoon or evening that he is trying to sleep. This will affect his life a lot. If this had already been there when he went to buy his home he probably would have considered buying a house someplace else.

He said the south end of his house has a rock wall. On that section of land from the rock wall to Hills Ferry, he goes out and picks up beer bottles, soda cans, juice bottles, scratch tickets, etc. There are so many cigarette butts are so numerous you can't get them all. He can't see where this addition will make this any better.

He said regardless of how much is available in front of the store, the parking is down Hills Ferry. There are people with boats and trailers and some of these boats don't fit in front of the store.

Gene Tellier, 112 Concord Street. Mr. Tellier said he lives five houses down, due south, from Kirkpatrick's. He said he's a regular customer. He'll walk there and also drive there so he knows what the traffic conditions are like over many time periods of the day. It is very difficult to get in and out, as has already been stated.

He said this proposal will double the square footage of the store and therefore will double the traffic problem. He said he doesn't know how the site is going to handle that many cars.

He said there is a lot of foot traffic that goes back and forth whenever there is some type of event at Greeley Park. He can only see this proposal as increasing that foot traffic and increasing the garbage problem because if they aren't eating in the store that means they are taking it out of the store and eating it walking down the road and tossing the refuse. He didn't buy his home to be a janitor.

Mr. Tellier said whatever you want to call this, it is basically a restaurant. The present store is a convenience store - a totally different business entity. This is basically a new business trying to come into the neighborhood.

Dianne Sirois, 116 Concord Street. Mrs. Sirois said she agrees with everything that has been said and is in opposition to granting of the request.

She has risked her life and limb crossing Concord Street to get to Kirkpatrick's or trying to get out of the driveway, which is even more of a challenge. She said she is hoping that request is not granted because of the safety issues that are involved.

She takes exception to the applicant's claim that they are providing 30% open space. She felt if the plan was examined closely, it was closer to 18%.

She presented a letter from Gabrielle Presby who lives at the same address. She is in opposition as well.

Kimberly Gelinis, 123 Concord Street. Mrs. Gelinis said the applicant is withdrawing the request for eight seats so it's no longer a restaurant. She asked if they are still going to have a pizza oven or a grill.

Mr. Jenkins said "yes".

Mrs. Gelinis said she considers this a "take-out" restaurant.

Mr. Jenkins said the city ordinance states that they can serve food from a convenience store.

Mrs. Gelinias said she hasn't seen any convenience store with a pizza oven or a grill. She said there was a reference to Genotte's. They only have cold food.

Mrs. Gelinias said she lives directly next door and they submitted pictures to the Board that show views from their yard. The proposed driveway is going to run right along their property line. Their back door is right there where the parking lot is going to be - five feet away. She is concerned for her children's safety. There are going to be delivery trucks. She gave the example of a Pepsi truck as being in their back yard.

Mr. Jenkins asked where the delivery trucks park now and Mrs. Gelinias said they park in front of the store. A lot of times they park in front of their house.

Mrs. Gelinias said the size of the store is going to be doubled and food is going to be served. She said this is going to depreciate the value of her home. She posed the question of who would want to buy a four-bedroom house with a take out restaurant next door.

She presented a list of at least ten places that make pizza and most all of them deliver. (She said something else, but she was away from the microphone so this could not be heard).

She said that they fear the commercialization of Concord Street. Right now the store blends in nicely. What is being proposed would be the size of a Cumberland Farms. It doesn't fit. The size of the lot is 1/3 of an acre. The rest of it, besides the store is going to be pavement.

Mrs. Gelinias said in her research she found that grandfathering meant that the owner would be able to operate within the existing structure doing the same service that had been done before. Now he is looking to double the size of the building

and also change the use. She said this request should be denied.

Tom Deary, 7 Bates Drive. Mr. Deary said he could understand the Gelinas' family's concern about the negative affects of this proposal. It is only 4'-6' that separates them from the proposed driveway and also the obvious dangers inherent in such additional traffic.

He said what he does see is that the owners could, in any event, create a driveway that would deliver to the back and, in fact, unload in the back. There is no question in his mind that would avoid accidents in the future. Getting in and out of Hills Ferry Road is a very dangerous practice even now.

Despite this, he is in opposition to the request because of the issues that have been brought up.

Clement Conole, 9 Wimbledon Crossing, Dracut, Mass. Mr. Conole said he is not a resident, but he is the son-in-law of Katherine Feely who spoke earlier tonight. His wife, Diana Conole, is co-owner of the property at 65 Hills Ferry Road.

He said he talked with Mr. Dichard before the hearing in regards to the quality of life issue in the rear of the building. He said he is concerded with drainage. Water drains a lot better on green land than it does on hardtop. He is also concerned with snow removal, trash, and vehicular traffic. The distance from the edge of the road to the driveway proposal is 120'. This isn't much room from the parking lot between his mother-in-law's house and the existing store.

He said the grade of the road here isn't excessively steep, but he can see a problem in the wintertime with cars entering and exiting that part of the street. When they come around that corner they come at a pretty good clip. When they come up to the crest of the hill it's a very blind corner, whether there are trucks there or not.

He said the people in this City pay high taxes and he knows that some of these neighbors have spent a lot of money on keeping up

their properties. Concord Street is one of the most beautiful streets in the State.

He said the intersection is very bad. Last year a young boy died in an accident at this intersection.

He said the owner has a right to open up a business, he just didn't want the clutter behind the building or to the side of the building.

Beverly McGinley, 141 Concord Street. Mrs. McGinley said she is totally opposed to this proposal.

Guy Stevens, 114 ½ Concord Street. Mr. Stevens said they live diagonal to 125 Concord Street. He said one of the greatest things about New England and its culture is the small shops here in this area - the mom and pop convenience stores that service the area. The expansion spots the residential affect of northern Nashua.

He said traffic, safety, and security are all major concerns for families and the pedestrians here in this area. He said even if cooking is not commercial, none the less it is cooking and it takes away from the historical culture, the value, and the significance the residents of northern New Hampshire love about the area.

David Pierce, 13 Manchester Street. Mr. Pierce said he is not an abutter to this property, but he is a regular customer at Kirkpatrick's. He said the owner has kept up the store very well and it's a great improvement.

He said he is not opposed to the change in the store if the applicant was going to be selling more milk, liquor, cigarettes, or other products, but in this case he will be selling.

He said when deliveries are made to the store, trucks park in front of the property at 123 Concord Street or right where the property begins. There is a serious line of sight problem because cars backing out cannot see cars coming from the north.

There is also the same problem at Hills Ferry Road.

He said the Board has heard about the accidents at the intersection, but there have been accidents in the parking lot at the store. He is only aware of one since the store has been taken over by the new owner. It was a case where three or four people were in a car and they backed out quickly into traffic and hit a car coming in. He said he understands that there were only two or three cars in the parking lot at the time.

He said because this is going to be for the sale of food, people will be spending time inside and will be taking up time in the parking lot and it will cause more of a problem. The parking lot is going to fill up. People aren't going to go in the back to park.

John Vanderburgh, 114 Concord Street. Mr. Vanderburgh said he is in opposition to the proposed request. He said Mr. Maynard said earlier that the applicant is hard pressed to make a decent income with the current store. Since then they have heard testimony that Mr. Dichard has turned the store around. He said he doesn't know what all the facts are, but he hasn't heard anything that demonstrates a hardship.

Rob Doyle, 79 Hills Ferry Road. Mr. Doyle said his house is two houses up from Concord Street. He has seen and heard the traffic accidents that have occurred at the intersection. He said there is a crosswalk and kids cross it all the time.

He said the Kirkpatrick's parking lot in the front is full between the hours of 5:00PM - 7:00PM almost every single night. Because of that people park on Hills Ferry Road or Concord Street.

Mr. Doyle said he knows the applicant wants to put a driveway and parking lot into the back. He asked the question of whether people will be able to park there when deliveries are being made.

He also said if the applicant is taking an establishment that is currently a variety store and is turning it into a pizza/sub

shop if it didn't double the customers. He said the store has customers right now who go in for milk, bread, etc. who can't find parking because there isn't enough. If he is going to now sell pizza you are adding to the customer base and doubling the amount of people who are going to be going to the store and doubling the amount of people who are going to try to find parking spaces at the store and aren't going to be successful.

Mr. Doyle said the pizza oven is going to change the neighborhood. There will be odors. The dumpster will attract rodents, pigeons, seagulls, etc. He said his street is littered constantly with scratch tickets, cigarette butts, cups, etc. He said this will make it worse.

Donna Garrity, 135 Colgate Road. Mrs. Garrity said Colgate Road is two streets behind Kirkpatrick's Variety. She said she is concerned about the cut through traffic that will happen up her street and Princeton in an effort to avoid the traffic congestion at the corner.

She said Colgate comes off of Hills Ferry and some people addressed the boat launch traffic. She said this is constant all summer long. She said because of the congestion at the corner, people will not go all the way up to the corner to exit onto Concord Street, but will take the right hand turn, zoom up the hill right in front of her house which they do right now, but she foresees that it's going to get worse.

She said because of the proposed curb cut onto Hills Ferry Road she is predicting a worse situation for the residents of Princeton. The driveway exit is going to exit almost opposite Princeton. People aren't going to come out of the parking lot and take a left to go up to Concord Street. They are going to zoom out the end of the driveway, cut across and zoom up Princeton, which is a residential street with a lot of children.

She said that she is afraid of setting a precedent. If this allowed to go through, what else is going to be granted. Not only do the residents who live in the neighborhood lose, but future generations lose because the Greeley Park area will never

be the same.

Jerry Neuzil, 50 Marshall Street. Mr. Neuzil said he was opposed to the request for many of the reasons that have already been stated.

Tape Ended and name of speaker was not picked up when tape was changed. The speaker said she was opposed to this change in the size of the store mainly because of the rear access. She said trying to get out onto Concord Street is a nightmare. They have to watch for traffic coming on Concord Street and Hills Ferry Road and try to guess what the people who are coming out of Kirkpatrick's are going to do. With the proposal they will be coming from the back and she feels it will increase the danger in that area.

Sarah Trombley, 124 Concord Street. Mrs. Trombley said she was brought up on Amherst Street directly across from the Children's Home. Throughout the years she watched as beautiful old homes were converted into hair salons, lawyer's offices, and other businesses such as pizza shops, Chinese Restaurants, pawn shops. More and more commercial buildings continue to emerge on this now very busy thoroughfare and a one-time beautiful residential gateway to the City has become congested with traffic and traffic lights.

She said Concord Street has remained a pristine, historic gateway to the City with very few changes over the 50+ years that she has lived here. The only significant changes have been the addition of residential buildings. The "Big One", "Kirkpatrick's", "Lillian's Motel", etc. have been here for fifty years. These businesses are grandfathered to exist and operate in a residential area.

She said the traffic is already considerably busy in this Concord Street area. They have already heard about the young boy who was killed at the intersection directly in front of Kirkpatrick's. She said her husband's car has been rear-ended attempting to enter the driveway.

She said she is concerned that if the proposal is granted it will open the door to commercial over-expansion on Concord Street. She is opposed to granting any addition or expansion to any commercial building in this commercially zoned area.

Wilfred Rommsch, 124 Concord Street. Mr. Rommsch said he is opposed to the variance request. He said Concord Street is the last preserved gateway to downtown and is predominantly a residential area. The businesses on the street are well established and go back to the 1930's and most of them are grandfathered. These establishments are woven into the fabric of this neighborhood and they are more or less accepted in the community. He said they have an obligation to preserve the status of the residential neighborhood for future generations.

He said the citizens on Concord Street live a mile away from downtown. There are thirty-three pizza shops and thirty-nine fast food establishments within a three mile radius. The addition of a pizza/sub shop will not bring any value to this neighborhood. He said it will congest the already busy intersection of Concord & Hills Ferry. It will have an environmental impact - light pollution, trash pollution, water pollution and it will disturb the traditional appearance of this area.

He said he lives in a property that was a business and converted into a residential home, done in an effort to restore the residential appeal of Concord Street. He said granting the variance will set a precedent for the future and open the doors to uncontrollable development of this area which will change the uniqueness of the neighborhood.

David L. Smith, 12 Gettysburg Drive, Nashua, NH. Mr. Smith said he has lived here since 1978. He has patronized Kirkpatrick's by both walking and driving there.

He said he met with the applicant this afternoon in front of the store and reviewed the plan with him. He said there are a number of positive attributes to the plan. Architecturally the addition would be an extension of the building that is already

there. Having the deliveries to the rear would be a significant improvement. However, he said, in general he has to oppose the request. Part of it is because of the testimony the Board has already heard tonight.

Mr. Smith said when this store was started in 1923 it was a different neighborhood. When Mr. Gagnon delivered his newspapers a good number of years ago, it was a different neighborhood. Safety is a very important issue. There are inadequate sidewalks in the area to service the walking trade to the store. He said he only walks there during the summer months. You can't walk down Concord Street or Gettysburg Drive in the winter time.

He said as you go north on Concord Street you see a few businesses - Kirkpatrick's, Shirley's Floral, The Big One and Lillian's Motel. They are there because they are grandfathered. They have been there for many years. He said comments have also been made tonight that new homes have been built and significant improvements have been made to residential properties in this immediate area in a recent time period.

He said every time the Board grants a variance they are setting a precedent and if they approve the expansion they will be basically saying they are approving Concord Street for the expansion of business.

Cindy Rosenwald, 101 Wellington Street. Mrs. Rosenwald said she is a state representative for Ward 3. She is speaking on behalf of constituents who have contacted her and are in opposition to the plan.

She said when she was campaigning last fall she spent the better part of two weeks in and out of Hills Ferry Road and the streets in that area. She said it's very hard to get out of Hills Ferry Road, even if you are turning right.

She said at the end of September when the State stops selling Turnpike tokens she believes the traffic on Concord Street all the way up to Merrimack is going to get worse as the discount

falls to only 30% for the "Easy Pass Program". She said she is also opposed to the plan.

Berry Movsesian, Berkley Street. Mrs. Movsesian said she is also a state representative for Ward 3. She said she is speaking for her constituents who are in opposition to this request.

Kristen Beaulieu, 136 Princeton Road. Ms. Beaulieu said she is a frequent visitor to Kirkpatrick's. She said her main concern is that cars are going to start driving onto her street. She has young neighbors next door. They like to play basketball in the street.

Unintelligible Quirion, 120-122 Concord Street. Mr. Quirion said he is opposed to this request.

SPEAKING IN FAVOR - REBUTTAL

Atty. Prunier said most of the speakers brought up the fact that Concord Street has had an increase in traffic. He said nothing that Kirkpatrick's has done has caused this.

He said they are not going to bring other people into the area. The service they want to provide is for the people who already are in the neighborhood.

He said as Mr. Smith said, they are trying to blend this in with the architecture. He said they have tried to provide for the deliveries and tried to take care of the parking.

He said they won't have the odors that were talked about because today you have to have the ovens with the cleaners, etc.

SPEAKING IN OPPOSITION - REBUTTAL

Rick Gelinias. Mr. Gelinias said there was testimony about a dumpster. He said there isn't a dumpster right now. He said Mr. Dichard trucks the trash off-site in the back of his pickup truck.

He said he doesn't know what Atty. Prunier is speaking to when he states there won't be any odors from the exhaust or ovens. He said coming in to the meeting tonight he noticed food smells when he came in the back door to City Hall. It leads to your not being able to open your windows to get fresh air. It's too intense a use for this piece of property.

He said he has a lot that is double the size of the subject lot. The subject lot is the same size as Ms. Feely's lot. He asked if she would be allowed to put in this huge pizza addition. He said he didn't see where this is a hardship in granting the variance request.

Mr. Gelinas said the spirit and intent of the zoning ordinance is to keep you from encroaching on and being right on top of your neighbors. He said this is going to be right up on top of him. The truck traffic will be right down along the property line by his house. This is a more active type of encroachment than a house that might be encroaching into a setback.

Mr. Jenkins said he has concerns about traffic and pedestrian safety. He has concerns that Kirkpatrick's doesn't have a curb cut out onto Concord Street. Where deliveries are currently being made, it is blocking the flow of traffic onto Hills Ferry and blocking traffic pulling out onto Concord Street.

He said the expanded use would be good if they had a curb cut and more parking than what is required under the zoning ordinance.

He said he agreed with the state rep who spoke and said that when the discount program at the tolls is discontinued that Concord Street will be even busier.

Mr. Anderson said he went to the site to view it and he had a hard time getting out of the parking lot. He said the way he looks at this it will be difficult for customers to park in the rear when deliveries are being made.

Mr. Jenkins said the amount of deliveries is minimal and they can work out the delivery times. He said he still thinks because of human nature, people will park in the most convenient spot to the front door and that's on Concord Street.

He said there will be a problem with snow removal on the site. The snow will have to be hauled away because there is no place to plow.

Mr. Coffey said when they have an expansion of a site of this nature any inherent defects that exist with the property are addressed and he doesn't see that happening in this particular case.

Mr. Currier said he is concerned about the traffic. He said he doesn't live in this part of town and he has seen this site twice. There's been a lot of information that's new to him about the food shops being close in the area and the foot traffic at Greeley Park. He wasn't aware of the boat ramp at the end of Hills Ferry Road. He also heard testimony about the potential cut through to Princeton. Since there is so much information he is wondering if the Board might want to consider tabling this in order to have some more time to review the information and then they could vote on it at their next meeting.

Mr. Jenkins said he didn't have any problems with voting tonight.

Mr. Duffy said the testimony tonight was very clear and succinct. He said the realty of case law is that because of State law at some point in time there will be some expansion on this site. There may be some planning issues that may have to be dealt with.

Mrs. Douglas said she couldn't support the request. She said the expansion is much too large for the size of the site.

Mr. Duffy asked if anyone on the Board would want to drop down the size of the expansion to 750 or 1000 square feet.

Mrs. Douglas said she's sure there is some level where they can

meet the minimum open space requirement, but it doesn't solve the issue of the food.

Mr. Duffy said the applicant can return with a revised plan.

Mr. Jenkins said they have to address the curb cut, address the pedestrian safety, and address the fact that you can't back out onto Concord Street. He said maybe it would take tearing down the whole building and changing it.

MOTION by Mr. Coffey to deny the request for a use variance to expand a non-conforming retail food store to construct a 1,375 square foot building expansion for retail food sales at 125 Concord Street. The applicant has failed to show a hardship. There would be over-development of the property. There would be increased traffic on the property itself as well as the surrounding areas. There is a possible decrease in surrounding property values as a result of the expansion. It is not within the spirit and intent of the ordinance. It is not in the public interest to grant.

SECONDED by Mr. Jenkins.

Mr. Currier said the bottom line is that this is a residential zone and if you look around that is what it is. That is the reason the request for an expansion had to come to the Zoning Board. He said he is comfortable in voting on this.

MOTION CARRIED 4-1, Mr. Duffy opposed.

MOTION by Mr. Coffey to deny the request for variance to construct a 1,375 square foot building expansion - minimum open space, 50% required - 30% proposed at 125 Concord Street. The site is located within a residential area. This will over-develop the site. It will increase the traffic in the property. There are defects in the current egress from the site which will increase because of additional traffic as a result of the expansion. It is not within the spirit and intent of the ordinance. It will possibly adversely affect the surrounding property values. It is not in the public interest.

SECONDED by Mr. Duffy.

MOTION CARRIED UNANIMOUSLY

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

At this point Mr. Jenkins said that he would be recusing himself from hearing the last case and Mr. Anderson had to leave. He said there may be only four members voting on Oakland Avenue or they could come back tomorrow evening to hear it.

Mr. Maynard said he would not be able to attend any meeting tomorrow evening.

Atty. Brad Westgate. Atty. Westgate is representing Dick Raisenan, the applicant. He said they are here because of a request for rehearing that was granted to an abutter. He said they would prefer not to go forward with a four member Board. He said Mr. Maynard and all the other parties on the other side are not able to be present tomorrow evening. He suggested that this be tabled to the next Zoning Board meeting.

Mr. Duffy said that he will not be present because of a previous commitment. He had already postponed this because of the meeting tonight, thinking they would get through all the cases and he can't postpone again. He said there may not be a full Board next time either.

Mr. Jenkins said he would be recusing. He asked if they would want to make it for the first meeting in August.

Atty. Westgate said he thought August 9 would be more sensible.

Mr. Jenkins said this will be the first case on the agenda on August 9.

MOTION by Mr. Duffy to table the case for L Oakland Avenue to August 9, 2005.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

11. Neighborhood Housing Services of Greater Nashua, Inc. (Owner) 2 Shattuck Street (Sheet 44 Lot 86) requesting the following: 1) use variance to convert child care center into professional office space for nonprofit administrative offices and multi-family housing, 2) special exception to allow 4 multi-family dwelling units, 3) variance for minimum number of parking spaces, 15 required - 11 proposed, and 4) variance for minimum parking stall length, 20 ft required - 18 ft proposed, for a portion of required parking spaces. RB Zone.

Voting On This Case:

Tom Jenkins
Susan Douglas
Jay Coffey
Jack Currier
Jeff Anderson

Atty. Gerald Prunier, 20 Trafalgar Square, Nashua. This property is located on Leighton Street, Norton Street, and Shattuck Street. It has been a public school, a private school and most recently it has been used as a day care center for approximately 60 plus students with administrative offices for the schools. He's sure all the prior schools had offices for the principal and others that were at the school. At this point he passed out some information to the Board.

He said this is a unique piece of property. It is an old school that is trying to find some rehabilitative use without being torn down. He said the proposal is to rehabilitate the property into four housing units and administrative offices for Neighborhood Housing Services of Greater Nashua.

He said in the information that he passed to the Board there is a page that shows what the building was used for most recently. When St. Christopher's was located here, there were five classrooms, housing 15 - 20 students each on a daily basis. There were 4 - 6 employees each day. The use that is being requested is a less intense use.

Atty. Prunier said there is a letter from Mayor Streeter expressing support for the project and the re-use of this building. There is another letter from Paul Newman, Manager - Urban Programs. This letter is also in support of the proposed project. There is another letter from Nashua Continuum of Care.

He said there is a map of an area in the City of Nashua which shows the target improvement area for the Housing Improvement Program. He said the area they are talking about is within that improvement area. There is a problem with affordable housing in this particular area.

He said the next exhibit is information that has been taken from the records of the City of Nashua as to the multi-family use of the various areas of Norton, Leighton, and Shattuck, and Summer Streets. He said the next exhibit is the square footage density for this particular area.

He said there is a letter from the Temple which states they will allow them to use four parking spaces to help with the parking requirements.

He said there is a letter from REMAX indicating that the use of the property should have a great affect upon increasing the property values of surrounding parcels.

He said there is a copy of a petition that was submitted to the

Board of Alderman regarding this property.

Atty. Prunier said with regard to the special exception, this use is listed in the Table of Uses. It should not impair traffic or pedestrian safety. There are sidewalks all around. The streets aren't used very much as far as the traffic is concerned. It is serviced by public water and sewer. It is not out of character with the neighborhood. He said the survey shows the multi-families that are in the neighborhood, which seem to be from Shattuck Street going south. There are single family homes toward the Berkeley Street area.

He said part of the proposal is to have two rooms be used for office space which will be used for Neighborhood Housing Services of Greater Nashua. They have two to three employees who would be working there. At this time they are located at 50 Tolles Street and they would like to convert that into a housing unit. The building at 2 Shattuck Street has had administrative office use since the building was built, so he doesn't know why they have to come for the variance, except they were told they had to. There had to have been a principal's office and other administrative offices because of it's past use.

He said there's an advantage to having the administrative offices here as well as having four units. Management is right there overlooking the housing units to make sure that they keep up the rules and regulations that they have to follow.

Atty. Prunier said there is only so much that can be done with this building. He said the parking requirements are not met. He said they don't feel they will need all the parking that is required in the ordinance because only four units are being proposed and there are only 2-3 employees. If there are any programs that are being offered at their offices they also have the use of four parking spaces that the Temple is willing to let them use.

He said because they are trying to get as many parking spaces as they can on site, they have shortened the length of the parking spaces. They have only so much space to work with. He said the

building itself will be rehabilitated. He presented pictures to the board representing the present use as well as what is being proposed.

He said this is not out of character with the area. There is multi-family use in the area. RB Zoning allows for multi-family housing. The Greater Nashua Child Care Center, the last use, was a much more intense use because of the number of vehicles that came to drop off and pick up their children every day - as many as 60 or 70 children. There were between 6-8 employees.

Mr. Duffy asked what the typewritten list of names represents. He said they are on a petition.

Atty. Prunier said he thought it represented the written signatures that were on the petition.

Mr. Coffey asked how extensive the renovations on the building are going to be.

Atty. Prunier said the windows are all being changed. The inside of the building will be changed to accommodate the four units. They will be quite large.

Mr. Jenkins asked who lives in the units.

Atty. Prunier said no one right now. He said they have proposed that tenants that are served by the Neighborhood Housing Services of Greater Nashua will be the tenants.

Mr. Coffey asked if these are long-term tenants.

Atty. Prunier said they move in and out. They might be there a year, maybe longer depending upon the situation.

Mr. Carrier said the plan shows an existing playground. He asked if this exists.

Atty. Prunier said the City of Nashua owns the property.

Mr. Currier said affordable housing is a good cause for the City, but he questioned the parking. He asked if there is a possibility to get one or two entrances and an exit. This is a curb cut all the way around.

Atty. Prunier said there is nothing that can be done to stretch the property, other than knocking the building down. They have to make do with what they have in the areas that they have. That's what they are doing with the parking..

Mr. Coffey asked if the tenants typically have two cars.

Atty. Prunier said "no".

Mr. Duffy asked about visitors or professional kind of traffic that would be generated.

Atty. Prunier said they have been granted four permanent parking spaces at the Temple for the office staff if it becomes necessary. When there are programs in the evening to show people how they can purchase homes and how they can advance themselves out of the apartments they will also have these spaces available depending upon whether the Temple has some type of programs going on.

Mr. Duffy asked whether there are any other locations run by the organization that have exemptions for parking or have other arrangements for parking.

Atty. Prunier said St. Cazimir's is being rehabilitated, but he believes the parking requirements are being met at that location.

SPEAKING IN FAVOR

Richard Maynard, Professional Engineer, Maynard & Paquette, Nashua. Mr. Maynard said right now a parking lot exists right off of Shattuck Street. The site slopes off fairly steeply at Leighton & Norton Street so its very difficult to expand beyond that. He said essentially they are preserving the existing parking lot that's been there for thirty or forty years. They

are adding five spaces in the playground area to get a total of eleven parking spots. He said the normal length of a parking space is 20' and they are asking for 18' spaces. The front wheels of the vehicles are on the curb stop and the bumper overhangs so there is plenty of space. This is the best he could do to get some parking on the site due to the uniqueness of the site and the topography.

He said if there is a problem the agency is prepared to limit tenants to one vehicle. These are supposed to be affordable housing. It may be a single-parent household. The office use is a daytime use. The residential parking tends to be an overnight use and they tend to be non-competing.

Mr. Maynard said this site was St. Christopher's School and they probably had something on the order of 75 - 100 students. There was a suite for administrative offices with something on the order of 4 - 5 employees. He said Nashua Child Care probably had 65 and maybe as many as 100 children with 10 - 15 teachers or aides and probably 14 administrative personnel.

He said with the proposed use they are talking about 2 - 3 office employees and four tenants. This is a very significant reduction in the amount of traffic. The daycare or the school probably had on the order of forty or sixty trips per peak hour. The proposed use has between five and ten trips in the peak hour.

He said this is a much lower density of occupation with fewer people. The water and sewer demand will be reduced and there is more than adequate capacity in the area. He said he has talked to Pennichuck Water about pressure because he heard some people claim there's pressure problems here. Pennichuck has told him the pressure is at 43 PSI and the minimum requirement is 30 PSI. He said Pennichuck has told him that it's possible some of these neighbors may have older services that are undersized or corroded and in need of upgrading or replacing.

He said the only new pavement is on the existing playground. There isn't a significant change in impervious area on this

site. They are talking about four units - a density of one unit per 5000. Half the neighborhood has a density between 2000 to 3000 per unit - higher than what is being proposed for the site.

Mr. Maynard said the property is run down. The building is old. The windows need replacing. The brick needs to be repointed. It will be heavily landscaped. All of these things will be done to modernize the building. The landlord is going to have their offices here. It's not a site that's going to be allowed to deteriorate.

Bridget Belton-Jette, Executive Director, Greater Nashua Housing Development Foundation. Mrs. Jette said with regard to tenancy, all their housing is permanent housing. It is not transitional housing. The average tenancy is six years. She said in the eleven years she has been there at least half of the tenants are the original tenants she rented to eleven years ago.

She said their development budget is 1.5 million dollars. She said the conversion of St. Cazimir's Church is 5.8 million. Another project which is closer to this one was Millette Manor which was the conversion of another school, the former St. Louis Elementary School behind St. Louis de Gonzague Church on West Hollis Street. She said they converted that to twenty-eight units of low income elderly housing. It's also a mixed use because they give St. Joseph Hospital and the parish nurse program half of the lower level for a wellness center for the elderly. It serves 470 elderly in this City. They also give the church space for religious ed classes.

She said they have dealt with mixed use parking and program issues and they feel the parking at the site is more than sufficient, particularly their arrangement with the Temple.

Mrs. Jette said they have 135 units and they've been in business a long time. She said their standards of property management are excellent. Part of their mission is developing safe, affordable housing and strengthening neighborhoods. She said all of their projects, without exception, have had a positive impact on the neighbors. She said they believe in the end,

despite the concerns there are now this will prove a benefit to the neighborhood.

Mr. Duffy asked if any of their other sites have office use along with the housing.

Mrs. Jette said the whole lower level of the Millett site has office space. St. Joseph's Hospital maintains offices there for the parish nurse program. There are classes offered out of there. There are 470 people coming here for classes.

She said their existing office is at 50 Tolles Street - a property they renovated. The upstairs is a three-bedroom apartment and their offices are downstairs.

Mr. Duffy asked if they have any sites with parking issues.

Mrs. Jette said they met the parking requirements at St. Casimir's. Some of the spaces in the middle of the parking lot will be marked for compact cars. This has been approved by the Board.

Mr. Currier asked if the tenants that are planned for this building will tend to have less vehicles than the average family.

Mrs. Jette said they provide housing for low and moderate income families. On the average they only have one car. At their other sites if there is sufficient parking they are allowed two spaces. She said they have other sites where the parking is limited to one and this has not been an issue.

Mr. Currier asked if they are going to get into the site first and see how it goes and then implement the restriction if they need to.

Mrs. Jette said if they felt it was necessary to do that. She said if it is the decision to restrict the parking, that would be their decision. She said she thinks they are responsible owners and managers and if tenants were having more cars than could be parked on the site it would be restricted very quickly.

Chris Durmer, 17 Berkely St., Nashua. Mr. Durmer said he is a member of the Board of the agency and he is in support of the proposal. He said he is not only a member of the agency, but he lives in the neighborhood. He's right around the corner to the north of the site. He said he's lived here for a little over nineteen years and one of the biggest things that he thinks is important is the reduction in the intensity of the use and the traffic. It's going to be a significant improvement over what it has been in the past.

He said in his opinion this is going to have a positive impact on the neighborhood and is going to be good for the City.

Steve Donohue, 57 Spindlewick Drive, Nashua. Mr. Donohue said he is in support of the request. He said he was a volunteer at Greater Nashua Child Care Center for over four years. The building is set up with five large classrooms and a suite of offices (about three). He said for the past several years they saw anywhere between 60 - 100 students daily. They had between 12 - 15 teachers and 3 - 5 administrative staff. The proposed use will be less rigorous.

He said there has been office use on this premises for some time and he has seen some of the projects that the Neighborhood Housing Services have done and they take great care of their property. He said having on-site management benefits the tenants as well as the neighbors.

Leslie Budd, 34 Norton Street. Mrs. Budd said she is an abutter and will be looking at this site. (Some testimony lost due to tape change). She said she felt that the applicant has done a wonderful thing for the neighborhood. She said she likes the fact that their office is going to be right in the building.

Angeline Kopka, 63 Buckmeadow Road, Nashua. Mrs. Kopka said she has served the real estate business since 1953 and is still in the real estate business. She is also a real estate consultant. She is also a Director of the Neighborhood Housing Service. She has been asked to bring the Board her opinion as to what will

happen if this building is accepted for the purpose they have applied for.

She said she looked at the property and visited the neighborhood morning, noon, and night to see what goes on. She has looked at the renderings that have been supplied to the Board. They are going to spend a lot of money to rehabilitate the building. She said based on her 49 years in the real estate business and the above facts, this is not a property that will depreciate the neighborhood. In the future this property will be very well appreciated by the workmanship, landscaping, and the people who will be taking care of it. It will be an asset to the neighborhood.

She said in her opinion this site will not depreciate the neighborhood. The neighborhood has improved over the years. She said she feels this will be one of the nicest buildings in the neighborhood.

SPEAKING IN OPPOSITION

Ald. Ward 3, Kevin Gage, 29 Cabot Drive. Ald. Gage said one of the things he heard tonight was that there were a lot of multi-family homes. He said from what he has seen in the neighborhood there are two-family homes, but he couldn't say there were a lot of four-family homes. He thinks this is out of character with the neighborhood.

He said there is a petition that was submitted to the Board. He said if it's the same petition that he saw at the Board of Alderman, the vast majority - over 60% of the signatures are not within his ward.

He said it sounds to him like they are cramming the parking. There isn't a lot of green space. The pictures make it look like they are going to have some space for a barbecue. When he asked where the barbecue was going to be it basically looked like it was going to be in the parking lot. There's a small green strip along that side, then there's a fence and then there's the dumpster, if he remembers correctly.

He said the traffic at the school was twice a day - once in the morning and once at night. He said an apartment building will create traffic at different hours not only because of the tenants but also because of visitors to the site. He asked where they are going to park.

He said there was testimony that they will be using four parking spaces at the Temple. He asked what happens if there is an event at the Temple at the same time this site wants to use this space.

He said there was mention of affordable housing. At the public meeting \$1100 a month came up. Several people were surprised at this and some landlords said they were having trouble filling their apartments for \$800 or \$900 a month and they have empty apartments.

Ald. Gage said there will be no landlord on site for sixteen hours a day, nor will there be supervision over the weekend when things are going to happen.

He said this was compared to Millett Manor. Millett Manor is elderly housing. This is not elderly housing. These are going to be for families.

He said there will be traffic here with people bringing their rent checks from the other properties under Neighborhood Housing Services and from the events that go on. He asked if there is any overflow in parking where are they going to park.

He said this project has drawn a lot of attention from the neighborhood. There was a public hearing about this project at the Mt. Pleasant School a few months ago and the gym was standing room only. Of the many speakers they had that evening, only one not affiliated with Neighborhood Housing Services spoke in favor of this project.

He said when he spoke to Mrs. Jette he told her that there was a woman who had spoken to some of the neighbors and they had some

ideas that they wanted to present at the meeting. He said her response was that the person could make whatever presentation she wanted, but it was their building and they would do what they wanted to do with it.

He said he thought it was going to be almost a waste of time to have the public hearing since it sounded like Neighborhood Housing Services already knew what they wanted to do and were just going through the motions because they had to appear to be listening. He said he told the woman who wanted to make the presentation what he received as a response and she declined to make the presentation.

Ald. Gage said he believes the makeup of this neighborhood would be significantly altered if the project is allowed to go forward. Several exceptions are needed to complete the project. He believes Neighborhood Housing Services jumped into this project too soon without taking all these things into consideration.

He said there is a funding issue that they have been asked to do as a Board of Alderman - to transfer some funds from another piece of property they bought. A representative said at the Board of Alderman meeting that they had to be abandon it because they discovered a lot of asbestos.

Mr. Jenkins asked Ald. Gage what he thought would be a good proposal for this property.

Ald. Gage said he isn't sure.

Mr. Jenkins said that it seems to him that this is something that one would ask a constituent if they felt the proposed use was not a good one. He said he thinks that what is being presented is a fair proposal.

Ald. Gage said he didn't have a problem with it when it was a school. He believes there was another opportunity for that. He believes that if the Temple had been approached he believes they would have bought the property.

Atty. Steven Buckley, 440 Hanover Street, Manchester, NH. Atty. Buckley said he is representing a number of parties - three direct abutters - Jean Wells, Gary Huske, Linda Koenig-Huske, and Lauren McFarland and a number of concerned neighbors, including Debra Olszta, Sherman Davis, David Trzcinski, Marie Trzcinski, David Sanderson, John Vilios, Stephanie Brooks, Paul Murphy, Ann Murphy, Abby Finkel, Blaire King, Kathleen King, Alan Furman, Steven Tang, George Olundsen, & Elaine Olundsen.

He handed out some information to the Board.

He said that the first thing the Board should keep in mind is the zoning that pertains to the RB Zone. The RB Zone only allows three commercial uses, all by special exception. There are no committed commercial uses in the RB Zone.

He said the individuals he is representing are only opposing the commercial variance and the area variance for the parking. He said his clients asked him to say they prefer that the Board not grant the special exception, but they are not opposed to it.

He his clients have pointed out to him that on prior occasions when the applicant has either been before Aldermanic Committees or at public meetings, it's been represented that the office use would not only be for the three office workers, but also would be used for community meetings. He doesn't know that it's fair to say that it is just for office use.

He said that they have heard testimony that there was office use at this site and this is a continuation of an office use. This was an office use directly necessary for the uses in the building. They were offices for teachers and administrators for the school in the building. The proposal is for an office that would administer the 133 units throughout the whole City.

Atty. Buckley said the office use is contrary to the public interest because it's not consistent with the RB Zone. You don't generally allow commercial uses. The commercial uses that are allowed by special exception are funeral home, day care

center, and medical offices. These are not general commercial uses, but more akin to the related residential uses.

He said if this variance is granted, it's permanent. They get to use this for any retail/commercial office use in the future. It can't be taken back. This applicant may be here for this particular use, but somewhere down the road it could be another office use.

Atty. Buckley posed the question of reasonable use of the property. It is assumed that the special exception use is the reasonable use of the property. It can't be reasonable to say that one has to have an office use that would allow them to administer 133 units throughout the City. It might be reasonable to have an office that would allow one to administer the four units in the building and it isn't necessary to have three full time employees to administer four units.

He said the applicant cannot demonstrate that there won't be harm done to the adjoining property owners. He said in the information he passed out to the Board there is an opinion letter from Brian Moses from Caldwell Banker Realty stating that in his opinion the commercial use would affect adjoining property values.

He also referred to a letter from David Moran, a real estate broker, also stating that in his opinion this proposal would affect the residential uses and their values.

He said the lot area does not comply with the zoning ordinance. In his opinion they require 25,250 square feet and they don't have it. He doesn't believe they have enough open space. The Nashua ordinance says parking isn't counted as open space. He doesn't know how the 35% open space was arrived at. Also, there is no handicap parking space on the proposal and the regulations require one.

Karen Duchesne, 17 Raymond Street, Nashua, NH. Mrs. Duchesne said she lives directly across from Temple Beth Abraham. She said there is a serious parking issue in the neighborhood. She

said the Greater Nashua Child Care Center operated Monday through Friday, pretty much between the hours of 8:00AM - 5:00PM and no weekend hours. She urged the Board to go through the neighborhood on the weekend when the Temple is in session or if they have another event going on. It's very difficult to park anywhere in the neighborhood, not just on Raymond Street, but on Shattuck Street and Leighton Street. She has seen times when emergency vehicles have been unable to get through. She doesn't understand how they are going to allow this site to use four of their parking spots when they don't have sufficient parking for themselves.

SPEAKING IN FAVOR - REBUTTAL

Atty. Prunier said Ald. Gage mentioned the traffic from the school - morning and evening. The traffic from the housing units will be morning and evening. He said during the day the school had traffic because a parent might have to pick their child up if the child got sick, parent meetings, etc. There were between 60 - 100 students. He said there's no comparison in the traffic. The traffic for the school was much more than what is proposed here.

He said Ald. Gage mentioned there were landlords at a public meeting who wished they could get their apartments rented and their rent was less than what was being asked for these units. He said they may have units that are not going to be quite as nice as the ones that are proposed. These are going to be three bedroom units and a rent of \$1100 a month is reasonable. Some apartments in Nashua that have three bedrooms are being rented for \$1700 a month.

Atty. Prunier said you can't find a more unique piece of property that meets the "Simplex" case and the "Boccia" case. You can't even go next door to enlarge the property because it is a public street.

He said it was mentioned that the parking is difficult on weekends because the Temple has services at that time. He said the two or three office people on their site are not there on

the weekends so the spaces on site can be used by visitors during the weekend.

He said the ordinance states that medical offices are permitted in this zone. He said there is no comparison to a medical office as compared to what amounts to a property management company with two to three people. If a medical office is allowed, than this type of office should be allowed.

Mr. Jenkins asked what the square footage of the office space will be and how it will be used.

Atty. Prunier said 2400 square feet. It will be used by three staff members and will be used for property management.

Mr. Jenkins asked how many nights a week they would have a class to help people learn how to buy a home.

Atty. Prunier said two nights a month.

Mr. Currier said there was testimony about a variance running in perpetuity with the land. He asked if his client would be amenable to limiting the number of office personnel to three or four to safeguard against future expansion.

Atty. Prunier said "yes".

Mr. Currier asked Mr. Maynard how the open space was calculated.

Rules suspended in order for Mr. Maynard to answer this question.

Mr. Maynard pointed out the areas that were open space. He said the calculation was checked twice.

SPEAKING IN OPPOSITION - REBUTTAL

Atty. Buckley said it should be made clear that the office isn't necessary to maintain the residential use. If they don't need the office for the residential use, they can't meet the requirement of "Simplex" to argue that they have to get the

variance.

Mr. Currier said his feeling is that this is a much less intensive use on the property. He asked Atty. Buckley what he would propose this property could be used for.

Atty. Buckley said his clients are not opposed to the special exception. Along those lines, he believes there is enough open space to put in one more apartment and take out the office use.

Mrs. Douglas said she can support the multi-family use, but she does have a problem with the office use.

Mr. Currier said he is generally favorable to this plan. He said he thought it was a less intense use than it was prior to this. He said a stipulation is important to limit the office personnel to three - specifically for the administrative use of non-profit administrative offices. He said he can't see that there would be a lot of activity other than the three employees. That's not a very intensive use. The biggest concern he has is the potential classroom.

Mr. Coffey said that the proposed use of the property, including the offices, is less intense than what had been here previously. He said he didn't have a problem with it.

Mr. Anderson said the intensity is less. He said he has a concern with the classes.

Mr. Jenkins said he is supporting this application. He said it is a unique site. He agrees that there should be a limit of three employees for the office use and that the use be limited to Neighborhood Housing Services. Also, he believes they should stipulate that they cannot run the classes twice a month from this site because of the parking issue.

MOTION by Mr. Currier to grant the use variance to convert a child care center into professional office space for non-profit administrative offices and multi-family housing at 2 Shattuck Street. There are special conditions as follows: 1. No classes

on site. 2. The number of employees is limited to three. This is a reasonable use of the property considering the fact that it had previously been a school and day care center. It is within the spirit and intent of the ordinance. He said he does not believe there will be an adverse impact on the property values. The property is going to be improved. The class activity will be eliminated and the employees will be limited. It is not contrary to the public interest. Substantial justice will be served.

SECONDED by Mr. Coffey.

MOTION CARRIED - 4-1, Mrs. Douglas opposed.

MOTION by Mr. Carrier to grant the variances for minimum number of parking spaces, 15 required, 11 proposed and for minimum parking stall length, 20' required, 18' proposed for a portion of the required parking spaces at 2 Shattuck Street. Special Condition: Tenants are limited to one vehicle each. This will allow the applicant reasonable use of the property given the unique setting of the property. With the parking stipulation of one car per each unit he feels this is within the spirit and intent of the ordinance. He said this will actually improve the parking situation. It will not adversely affect the property values of the surrounding parcels. It is not contrary to the public interest. Substantial justice will be served.

Mr. Jenkins said he had a problem with the special condition. He said the landlord can police that themselves. They know their limitations.

AMENDED MOTION by Mr. Carrier to remove the special condition.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

MOTION by Mr. Carrier to grant the special exception to allow four multi-family dwelling units at 2 Shattuck Street. This is listed in the Table of Uses. It will not create undue traffic

congestion or unduly impair pedestrian safety. It is a less intensive use than the school and day care center that were here previously. It will not overload public water, drainage or sewer or other municipal systems. Special regulations are fulfilled. After the renovations are done, it won't impair the integrity or be out of character with the neighborhood. It will not be detrimental to the health, morals or welfare of the residents.

SECONDED by Mr. Coffey.

MOTION CARRIED UNANIMOUSLY

Request for Rehearing

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.

Mr. Falk said the applicant was out of town at the time of the hearing and is asking that they be granted a rehearing.

MOTION by Mr. Coffey granting the rehearing request.

SECONDED by Mr. Duffy.

MOTION CARRIED UNANIMOUSLY

MINUTES

6/14/05

MOTION by Mr. Currier to accept the minutes of 6/14/05 meeting, waive the reading, and place them on file.

SECONDED by Mr. Jenkins.

MOTION CARRIED UNANIMOUSLY

Regional Impact

The Board did not see any items of regional impact.

ADJOURNMENT

Mr. Jenkins called the meeting closed at 11:25PM.

Susan Douglas
Clerk

It
Taped