

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
August 9, 2005

A public hearing of the Zoning Board of Adjustment was held on Tuesday, August 9, 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  
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.

Mr. Jenkins advised the audience that a full Board was not present tonight. A full Board would consist of five members and only four members are present. He said in addition to this, he

would be recusing himself from hearing Case #1, Case #2, and Case #3, leaving three members to vote on these cases. He said Mr. Duffy would chair for these three cases.

Postponed to 8/23/05

8. Sam Katz (Owner) 7-7C Paige Avenue (Sheet 45 Lot 257) requesting variance for minimum lot area, 14,000 square feet required, 9,484 square feet proposed, to maintain four dwelling units on one lot after proposed subdivision of one lot into two lots. RC Zone.

Postponed to 8/23/05

10. Sam Katz (Owner) Morello Granite Properties, LLC (Applicant) 36 Granite Street (Sheet 44 Lot 37) requesting the following variances: 1) lot frontage, 50 feet required, 40 feet proposed, and 2) lot depth, 80 feet required, 73 feet proposed - both requests to subdivide one lot into two lots. RB Zone.

Atty. Hollis said he is representing both Case #8 & #10 and he is asking for a postponement of these cases to 8/23/05.

1. 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]

Atty. Brad Westgate, Winer & Bennett, 111 Concord Street, Nashua. Atty. Westgate said this is an application that was

granted a rehearing. The variance is from the frontage requirements and lot width requirements in the ordinance. He referred to the three plans that were posted for display. He said at the lower right is Plan 517 recorded with the Hillsboro County Registry of Deeds, recorded on 8/27/23. It is the plan that created the lots. He said above that plan is a detailed plan and profile prepared by Maynard & Paquette depicting the proposed layout of this proposed single-family dwelling.

Atty. Westgate said in April of this year, Mr. Falk, the Zoning Administrator made an administrative determination that building permit for a single-family home could not be issued unless a variance was granted. That decision was upheld and the Zoning Board upheld that decision, effectively putting them in the variance posture. He said their case tonight is effectively the same as what was presented on April 12.

He said the minimum lot size in a RA District is 7500 square feet. The minimum frontage requirement is 60' and the minimum width requirement is 75'. He said Mr. Falk determined that even though the property is on what is called a paper street (Oakland Avenue), he determined that because it didn't have frontage on a City accepted street, it didn't have the requisite frontage in the ordinance.

Atty. Westgate said the access to this property would be off of Catherine Street by way of a driveway shown on the plan drawn up by Maynard & Paquette. A single-family dwelling would be constructed. He said the lot has 17,500 square feet - a little more than two times the lot minimum in the RA Zone. It has 175' of frontage on Oakland Avenue.

He said the zoning ordinance and New Hampshire case law protect lots that are established on a pre-existing subdivision, so called non-conforming lots, from changes in zoning. He said under Section 16-302 of the zoning ordinance, lots that are non-conforming are protected and allowed to be developed if they can meet the setback requirements of the present zoning arrangement. In this case there is a lot that is far greater than the minimum lot size and more than adequate to meet the

setback requirements. He said this is the type of lot that Section 16-302 of the ordinance was designed to protect. The typical lot covered by this section is one that has 20', 30' or 40' of frontage, for example, on a City accepted street and is often small in lot size. What's missing in this case is the City accepted street, but this is handled easily by way of the driveway access, which is not an unusual circumstance.

He said the layout of this property on the original subdivision Plan 517 from 1923 from the Registry of Deeds created a number of lots typically 25'X100' in size. Because of the age of the subdivision, these lots are what are known as vested - same equivalent as Section 16-302 - to protect non-conforming lots. When you have a street system that's created on a recorded plan you, the lot owner, have the benefit of the use of that street system, even if the streets aren't all fully established. Otherwise, people would have bought lots without any ability for access.

He said you could use the paper street for access. This is a paper street in the sense that it was never built and the time frame for the City to accept it has passed. This has no bearing on people's private right to access and use that street to get to the properties that they purchased. All the lots that front on Oakland have the right of a private access or the ability to access their property through the paper street. It's the obligation of the party who wants to access it to build the driveway or means of access to get to that particular lot. They must also provide the typical utilities for the purpose for which this plan is laid out - residential use.

He said that before the meeting he submitted a memorandum that details these concepts at greater length and he hopes the Board has an opportunity to review it to fill in the background of what he's described.

Atty. Westford said they are required to prove there is a hardship under the "Boccia" case since this is a dimensional variance. He said in this case the variance is necessary to allow the proposed use. The proposed use is a single-family

dwelling. It's the least intensive use possible for this land. The land is large enough to accommodate two single-family dwellings or one, plus a duplex, if a special exception were granted or subdivision approval was granted. Without the variance, no use can be made. The special conditions are the fact that it's located off a paper street with no frontage on a City-accepted road and Mr. Falk has made an administrative determination that without the variance no building permit, or effectively, no reasonable use can be made.

He said in the memorandum he had prepared, he details how the other properties on Oakland Avenue that have frontage on Oakland Avenue are categorically different than this particular property. This is because they have been merged by ordinance or by affirmative act of the property owners. This is a distinct property and not the same as the others.

He said a building permit couldn't be achieved by any other reasonably feasible means because of the administrative decision. There is no other route for them to take other than the variance route.

Atty. Westgate said single-family homes are a permitted use in this zone. It is within the spirit and intent of the ordinance. The lot size is much larger than the minimum lot size required in the zone. It is also larger than a number of the abutting parcels or neighboring parcels that are already developed. It will need a driveway to get to it, but there are properties on East Dunstable Road that also have driveways. There are 100' driveways within a stone's throw from this site.

He said a single-family home in a residential area; property developed, of a good quality, and at least equal to the existing neighborhood can't adversely impact property values. He said their appraiser, Robert Bramley, submitted a letter to this affect in April and resubmitted this evening.

He said permitting a reasonable and permitted use of the property in this zone is not contrary to the public interest.

He said substantial justice is served when all these factors are put together.

Mr. Duffy said he didn't see any 7,500 square foot lots in the neighborhood. He listed some of the lots, which were 10,000 square feet, some with a little more and one lot on East Dunstable Road with 41,065 square feet. He didn't find any lots that complied with the 1923 lot system. He asked Atty. Westgate if he knew of any that were 7,500 square feet in this area.

Atty. Westgate said the 1923 map essentially shows 25'X100' lots. Some are a little deeper. They have all been combined, whether it was two, three, etc. to create the lots that are seen today. A lot that is 25'X100' is not big enough to do anything with.

He said attached to the memorandum that he submitted is a colored map. He said their property is the one that is highlighted in yellow. The abutting properties are highlighted in pink or orange. He pointed out two on Catherine Street and said they are basically four of the 25'X100' lots and they are 10,000 square feet. He said the ones on Lawndale are basically on the order of 10,000 square feet. He said Mrs. Lizzie's property is larger than the property that is under discussion. He said when he "eyeballs" the GIS map it looks like there are a couple of properties on East Dunstable Road that may be close to or in the 7,500 square foot range. He pointed these out to the Board.

Mr. Duffy asked the driveway length from Catherine Street. He said it looks like it is 175.9'.

Atty. Westgate asked Richard Maynard if this is in the right ballpark and Mr. Maynard could be heard to say "yes".

Mr. Duffy asked if this is in the right location. He said the paper street is divided in half... He asked if they would be imposing to Lot 8 on Catherine Street.

Atty. Westgate said "yes to the question about the driveway being in the right location. He said the paper street is 40' in width as established by the 1923 plan. He said the driveway they are proposing is essentially on the path of the paper street closer to their lot, their half. He said he believes there is going to have to be some grading done to accommodate the driveway on the their half.

Mr. Duffy asked about the sewer and easements.

Atty. Westgate said Mr. Maynard would get into the sewer and drainage description.

Mr. Duffy asked if the applicant is willing to stipulate one single-family home on 17,500 square foot lot. He also asked why the house was positioned to the right side of the lot instead of to the dead center of the lot. He said the inference is that there is intent to continue the private driveway.

Atty. Westgate said he would defer to Mr. Maynard.

Mr. Duffy asked said he didn't see any driveways in the area greater than 50' to 60' long.

Atty. Westgate said there appear to be driveways of 100'+ or thereabouts on East Dunstable Road - Lot 207 and Lot 74. He said there are also numerous driveways in the city with that type of length as well.

Mr. Anderson asked if they had reviewed the configuration of the driveway with the Fire Department.

Atty. Westgate said he would have Mr. Maynard answer this question.

### **SPEAKING IN FAVOR**

Richard Maynard, Professional Engineer, Maynard & Paquette. Mr. Maynard said there are 16 lots within the block on either side. All but a couple of them are larger. All the rest are similar

or smaller in size than their 17,500 square foot lot.

He said the plan on display was developed in response to some of the questions that have come up from time to time. The lower part of the plan shows the driveway profile. It shows a level area as you approach Catherine Street and a level area in front of the home. It shows a 5% grade for the driveway. This is a fairly moderate slope. There are no particular regulations for driveways in the City of Nashua, but if you go to roadway considerations, they can have a public road grade as great as 10% in the City.

He said the driveway is 12' wide on the westerly half of the paper street. He said the Fire Department does not particularly review driveways, however they like to have 12' of what the Fire Department calls hardened surface.

He said there is no particular reason the house is shown to one side of the lot. It can fit in the middle or to the other side of the lot just as well. He said he wasn't sure what the Chair was talking about concerning the extension of the driveway. There is a little turn-around in case somebody wants to back out or if somebody is going to plow snow into the area. This is a private driveway and it is the homeowner's responsibility to remove the snow.

He said water and public sewer are available in Catherine Street and would be brought to the site. There are no problems with sewer capacity for sewer service.

Mr. Maynard pointed out the grade of the lot. He said it runs from 176 in the middle of the driveway and runs down to an elevation of 160 on the neighboring lot. He said they are proposing a gentle grade to the front of the house. There will be a walk out basement, which gives a difference in elevation of approximately nine vertical feet. There will be a level area in the rear, which will be created by a 4' wall. They could leave it sloping down, but it will be better to have a back yard with a 4' wall.

He said this is the high point in this particular area of the neighborhood. Drainage radiates off in all directions. They are proposing leaching cisterns tied to the roof drain system, which releases water into the ground. There are also two leaching cisterns proposed at the bottom of the paper street, which can handle any runoff that might want to come down. With this system there will be less runoff than exists today.

He said behind the wall there will be a substantial amount of stone which will also act as a leaching area and slow down any of the runoff that wants to come down that particular slope and release it slowly over time. This benefits the subject property as well as the abutting property owners.

Mr. Maynard said there had been some discussion about putting a City road into the site. A City road would serve no particular purpose here. It is much more pavement. The City would have to maintain it. With more pavement there is more runoff, more public drains, and other negative consequences. They are proposing a private driveway to serve one home. It is not particularly unusual. He said behind them on East Dunstable Road there are two properties with driveways that are 150' long. He said on Main Street there are driveways that are as much as 200' long.

Mr. Maynard said this particular matter is not much different than several previous similar requests the Board has reviewed in the past - Brigham Street, Warsaw Ave., Boylston Ave, Verdun Street, etc. - many of which had longer access ways.

He said there were questions about emergency access for ambulances. He said it's a 12' driveway with a 5% grade. It is more than adequate.

He said as far as trash removal is concerned, they are obligated to put the barrels out to the public street. The City doesn't come up to the house to collect any barrels.

He said there were questions about there being adequate site distance up and down the street. He said there is nothing

obscuring site distance. It is well over two hundred feet.

Mrs. Duffy asked about a vegetative buffer between this particular piece of property and the one next to it on Catherine Street.

Mr. Maynard asked if it is Lot 55 and got an affirmative answer. He said other than what might be in the setback and remembering that this is a single-family residential use, there hasn't been anything proposed other than for anybody else building a single-family home. He said if somebody wants a 10' or 20' treed buffer on the side where the house is proposed, that is possible.

Mr. Duffy said that putting the house to the center of the property in most locations avoids the appearance that somebody wants to drop another house next to it as some future date.

Mr. Maynard said all they are asking for is a single-family home.

Mr. Duffy asked Mr. Maynard if he is aware of any paper streets that had been developed in the last thirty years.

Mr. Maynard said he isn't aware of this.

Mr. Anderson asked what the view of the 4' concrete wall would look like to the two houses on Lawndale.

Mr. Maynard said it's going to be an architectural block walls - 4' tall. He said it's no different than anybody's wall on anybody's property.

Mr. Anderson asked what the elevation difference is to the neighbor's yards.

Mr. Maynard said they are 2' - 3' lower than the base of the wall so the top may be 6'. He said the wall is not right on the property line. It's set in on the property about 10' - 12'. He said they have spoken to one of the neighbors and this will help a little with his runoff problem.

**SPEAKING IN OPPOSITION**

Atty. Steven Frasca, 2 Auburn Street, Nashua, NH. Atty. Frasca presented some exhibits to the Board. He said he is appearing on behalf of the John Koutsos Revocable Trust. It owns part of Lot 42, Lot 43, 44, 45, 46 & 47 on Oakland Avenue.

He said Oakland Avenue was dedicated on the plan, but was never opened for public travel. It was automatically released and discharged in 1943. In January 2005 the City sent letters to the abutters informing them that the City had changed their map to reflect the elimination of Oakland Avenue, revised their tax bills and taxed the abutters on the portion that they now owned. He said the applicant seeks to assert an easement over the property of the abutters for the purposes of ingress/egress, water, sewer, power, and other utilities.

He said they recognize the right of Mrs. Trottier and the applicant to develop the property. They object to the method that is being proposed, which is a 175' right-of-way. He said a better way to do this would be to construct Oakland Avenue as was intended in accordance with Plan 517.

Atty. Frasca referred to Exhibit 1. He said it depicts as many as six lots that could be developed on Oakland Avenue, including two potential lots by the applicant developing those lots by right-of-way. He said Mr. & Mrs. Koutsos have the ability to develop as many as three lots and Mrs. Lizzie, who owns Lot 120, has the ability to develop a lot of her own. They will be in the same position as the applicant is in today asking for a variance to allow the development of their lot with no frontage on an accepted City street and developing it by use of right-of-way or implied easement. He said they believe this is poor planning.

He said Exhibit 2 depicts Oakland Avenue as it was constructed and intended in accordance with Plan 517. The abutters and the neighborhood have signed a petition agreeing to assent to the construction of Oakland Avenue in accordance with the plan.

He said they would like the Board to consider the impact on the abutters including Mr. & Mrs. Koutsos, Mr. & Mrs. Lizzie and the precedent the Board will set if they grant the variance. He said they would all be coming to the Board seeking a variance of their own for lots that they own and they will expect the same treatment.

He said practically speaking there is no difference between the lots owned by the other abutters, including "Lizzie" and "Koutsos" and Mrs. Trottier's, except for the topography. The topography of the lots owned by Mrs. Trottier is much worse for development than the lots owned by the other abutters.

He said Mrs. Trottier has painted herself into a corner. She purchased the lots in 1969, including Lots 59-65. She sold off the lots, which would have allowed her to have access to Lawndale Avenue, and now she finds herself on a paper street that has been discontinued.

Atty. Frasca said the applicant has to show that the variance would not be contrary to the public interest. He asked what public interest is served by developing these lots by right-of-way. He asked if a public street would better serve the public interest because there would be better available snow removal and trash removal as well as emergency vehicles and fire vehicles being available via a public street.

He said there is nothing special and unique about this property. There are as many as four other lots in the same position. The second item on the agenda tonight is a similar situation on a street that is right next door. There are properties all over the City in the same situation. The one thing different about Oakland Avenue is that there are as many as five or six lots. It isn't a street that has only one extra lot.

He asked how the variance is consistent with the spirit of the ordinance. The spirit of the ordinance is to require that development be done in accordance with the City's plans and that is to have frontage on accepted City streets.

He said the variance would diminish the surrounding property values. There are appraisals that they have provided, one from Richard Donovan and one from Lance Goodman. These show that the property values will be diminished if the development is done by right-of-way as opposed to City Street.

He said he doesn't believe substantial justice will be done by allowing the applicant to use other people's property to develop his own.

Atty. Frasca asked the Board to consider whether or not this development and other lots that may follow in the manner proposed create issues with regard to snow removal and trash removal. He asked how the lot owners would regulate themselves in their access to the private right-of-way. He asked if the Board would be creating a private community with a potential for as many as six lots and what precedent they would be setting if they grant the variance.

He said the applicant fails to meet the criteria set forth in "Boccia" and the five requirements necessary for a variance. He asked the Board to deny the request.

Mr. Anderson asked if building a road make it an accepted City street.

Atty. Frasca said it would have to be an accepted City street. It is possible and an alternative to the right-of-way that is being proposed.

Mr. Duffy asked if the other owners of the five or six other lots are in any kind of agreement to share the cost of constructing the street.

Atty. Frasca said he doesn't speak for them all. He speaks for one of the owners and they are willing to help share the cost.

Atty. Paul Alfano, Alfano, Baroff, & Kasten, Bedford. Atty. Alfano said he is appearing on behalf of Shirley Craft, 8 Catherine Street. He said it's over her land that the

applicant's proposed driveway will run.

He said one of the things that Atty. Westgate talked about was the concept of vested rights, Section 16-302 of the zoning ordinance as well as the "Morganstern" and the "Henry" cases. He said he didn't think either one of those is relevant to the applicant satisfying the five criteria.

He said the concept of the lot size which has been mentioned a few times is a red herring. The lot could be twice as big as it is. The issue is the access. Section 16-302 of the ordinance deals with dimensional issues only. To argue that Section 16-302 requires that a building permit be granted for this project because the lot may be grandfathered because of size, but lacks frontage or access to a public street is a much too broad interpretation of that ordinance.

He said the "Morganstern" and "Henry" cases are vested rights cases, but the "Morganstern" case dealt with a subdivision where the road was a Class 5 road. The public had rights to it. The only issue was the size of the lots. He said the "Henry" case was similar. It didn't state specifically that it was a Class 5 road, but in that case the lots had been developed and there was no issue with respect to access.

Atty. Alfano said this is not consistent with the spirit of the ordinance. In Section 16-161 it states the purposes for the zoning ordinance. He mentioned some of them as follows:

1. Lessen congestion in the streets - He said there isn't a whole lot of congestion that would be caused by this development, however the difference is orderly versus haphazard development. He said when this was first laid out almost a hundred years ago this was an orderly subdivision. It's completely different today. Some of it is the doing of the owner herself. She reconfigured her lots 30-35 years ago.
2. To secure safety from fires, panic, and other dangers - He said the Board will hear evidence tonight about some of

the concerns the neighbors have about fire.

3. To prevent overcrowding of land - He said stuffing a house on a back lot created by the applicant with nothing more than, at best, an implied access right - is overcrowding land.

4. To avoid undue concentration of population - He said this is the same thing. Stuffing a house on a back lot with implied access rights is counter to the ordinance. That's why there are sections of the ordinance that require easements for utilities that require frontage.

5. To conserve the value of buildings - He said the Board will hear testimony on this.

6. To encourage the most appropriate use of land throughout the City - He said that's not what this is.

Atty. Alfano said Section 16-23 has not been satisfied. He said assuming the applicant shows denial of the permit would entail practical difficulty or unnecessary hardship, they have to show that issuance of the permit would not tend to distort the official map. He said this does distort the official map. This was a subdivision that showed Oakland Avenue. This is now gone and they are proposing a driveway onto Catherine Street. He said to him this is the definition of a distortion.

He said they also have to show that issuance of the permit would not increase the difficulty of carrying out the Master Plan. The Master Plan says one of the recommendations is to protect the character of existing neighborhoods through zoning regulation and enforcement. He said they are just trying to charge right through the zoning ordinance. He said this is not what the zoning ordinance was intended to permit.

He said assuming they get over these hurdles, the applicant must prove that the property will not yield a reasonable return or that granting the permit is required by considerations of justice and equity.

Mr. Duffy asked Atty. Alfano if he or his client looked at this with regard to topography problems or drainage issues.

Atty. Alfano said that the issues he addressed were legal in nature, but there are people here tonight who will address those items.

Roberta Hanks, 16 Paul Avenue. Mrs. Hanks said she is Shirley Crafts daughter. She said her mother is the primary abutter living at 8 Catherine Street. She said her mother's property will be affected on two sides.

She said that her impression is that the Zoning Board of Adjustment makes their decisions on only tangible information that can be measured by such things as setbacks, frontage and property values. The Board doesn't look at are the quality of life issues. Quality does seem to be a priority in the Master Plan of Nashua. It is mentioned three times in the first two lines of its introduction. She said she understood that the Master Plan is not the law, but the plan does recommend that all decision-making bodies of the City consult it.

Mrs. Hanks said granting this variance would adversely affect other property in the neighborhood. She said from her observation it seems like the Board judges adversity by relying on the property values. She said in her opinion it doesn't take an appraiser to tell her that having someone's driveway running down the side of her mother's property is going to detract from the salability of her mother's house.

She asked what affects the construction vehicles will have on her mother's property as they lumber up the incline of the property and bulldoze through her land. She has a fence and mature landscaping. She asked about the erosion that would be caused by runoff from the driveway, uprooting the tall trees that line the edges of her property. None of this seems to be something that is going to enhance her mother's property.

She said the neighbors across the street will have to deal with

runoff from the driveway. The neighbors below the construction will have to deal with erosion and drainage issues. This neighborhood has been plagued with them all along. She said when her parents moved into the neighborhood in 1972 they had to have a retaining wall built to prevent runoff to the Rodriguez's yard. The area behind the land was a sandpit. This is the area that Mrs. Trottier owns now and at that time. She said people who grew up and played in that area say it was a dumping ground for building materials from the other houses, not a firm footing for a foundation.

She said she understands that building practices have changed and that the engineer has indicated that the drainage issues will be managed. She said she didn't expect any long-standing issues to be solved, but they can't convince her that this house won't affect the existing problems.

She said granting this variance will only benefit Mrs. Trottier and Mr. Raisanen. She said they will make their money and then walk away from the problems they have created and go on to a more profitable venture. The neighborhood will be left with the problems they have created. Also, she said, her mother won't benefit from paying taxes on land that someone else is using.

Mrs. Hanks said the people who buy this house are also part of the general public. Aside from having a roof over their heads they will be saddled with the responsibility of dealing with future problems that their home and lot will have on the surrounding lots. She said she didn't think they will consider a future of law suits through damages to abutting properties a benefit.

She said according to the Nashua City ordinance, Section 19-31, no underground utility service shall be installed in publicly or privately owned land until an easement has been secured from the owner of the land. She said the street is gone and this property is considered by the City Tax Collector part of her mother's yard. She said no one has approached her mother regarding such as easement and they will be hard pressed to get one. She said she's sure the utility company won't take the

contractor's word that it's okay to dig up her mother's land for the benefit of someone else. They won't want the liability.

She said the Board should consider the precedent that they will be setting if they grant this variance. She said there are many other paper streets in Nashua, many of which are in older established neighborhoods. This decision just isn't about one driveway and one house. She said there are many people in similar situations that have a vested interest in this case and are just waiting in the wings for the Board's decision. The decision the Board makes tonight will affect what Nashua's Master Plan calls "the long term character of the City of Nashua."

Mr. Anderson said there has been testimony that the abutters are opposed to a driveway, but not a street. He said based on Mrs. Hank's testimony she is opposed to this either way.

Mrs. Hanks said personally she is opposed to both. She lives four blocks away from this. She said her lawyer spoke on behalf of her mother.

Ruth Lyons, 6 Catherine Street. Mrs. Lyons said she has lived here for over twenty-two years. She said they all know about the letter from the City of Nashua and the paper street given back to the abutters. In the last line it states that an adjustment will be made in the July 2005 tax bills for the additional property.

She said that people have probably seen pink flamingos on front lawns, not because they chose to put them there, but because these Nashua residents wanted to show their support for the neighbor's opposition to the proposed driveway on Catherine Street. She said the interest and response received has been a loud and clear message from the people.

Mrs. Lyons said additional mailboxes and trash receptacles that will now be in front of their homes rather than the proposed home will affect the aesthetics of Catherine Street.

She said runoff from the driveway will add to an already existing drainage problem. She said visitors to this home will be parking on Catherine Street. She said it isn't fair to burden their homes with disruptions from a house that is not on their street and doesn't even have a street of it's own.

She said as the mature character of the surroundings is altered, the proposed driveway will diminish the property values. She mentioned the catastrophic travesty at Kinsley Street where seven condominiums were squeezed into a residential back yard. The Zoning Board of Adjustment approved it.

She said the zoning ordinance requires that homes have accepted street frontage. These rules have a purpose. This variance, if granted, defeats the intent of the ordinance. She asked the Board not to make a decision that would destroy their neighborhood.

She said contractors and landowners have rights, however, the rights of residents in long ...

Tape change

She asked if anyone has looked at the big picture. There are many paper streets in Nashua. She said as one of the abutters to the proposed driveway, she is deeply opposed to allowing access to the owner's self-imposed landlocked property by way of Shirley Craft's or her (Mrs. Lyon's) property. She asked the Board to deny the request.

Paul Johnson, 44 Browning Avenue. Mr. Johnson said just under a hundred years ago when this subdivision was laid out their forefathers had the common sense to know that a street was necessary to serve the neighborhood - a street that was up to the standards of the City of Nashua. He said they would be incredulous to see what's happened to common sense in the years since then.

He said experience tells us that eventually open land in Nashua will be developed, like it or not. It tells us that there's a

right way and a wrong way to do things. In this case, the wrong way would be to allow piece meal development and one driveway and then a few years later another lot and another driveway and end up with a bad situation for the neighbors and their property values.

He asked the Board to listen to the neighbors and deny their request.

Frank Stoncius, 3 Oakland Avenue. Mr. Stoncius said he is against the driveway and wants the applicant to build a street.

Emil E. Vermette, 457 South Main Street, Nashua. Mr. Vermette said he has been a native of Nashua since 1930. He said he's seen all the developments and has seen what has happened.

He said Dick (Richard Raisanen) is a fine builder and contractor. He developed where his daughter lives on Lojko Drive. However, he would like to see a street built in this case, not a driveway.

Paul Gerstner, 9 Catherine Street. Mr. Gerstner said he and his wife are opposed to using a driveway. He said they favor construction of a street. He said they are worried about runoff. He said Catherine Street starts on a hill from East Dunstable Road and they get plenty of water runoff right from East Dunstable Road. Every rainstorm they have, there's almost a brook running down on one side. He said this driveway will add a flow of water ninety degrees from that and they are worried about that reaching their property, which is across the street.

He asked the Board to deny this request.

Diane Urquhart, 2 Ferson Street. Mrs. Urquhart said she is asking the Board to listen to the neighbors and the abutters and friends and people who have been left with decisions of the Zoning Board of Adjustment and Planning Boards.

She said Nashua has changed. It seems like a tug of war between the appreciation of aesthetics and the economics of construction.

She said over the past three years the Zoning Board seems to have voted inconsistently. She said if you read the minutes they can see what she is talking about. Some variances and special exceptions....

Mr. Duffy interrupted and advised Mrs. Urquhart if she would address the points about this case it would be more helpful.

Some discussion ensued.

Mrs. Urquhart said some variances and special exceptions were passed and some within the same concepts are not. She asked if it matters what zone you live in and whether the Board listens to the neighbors or do they listen to the lawyers and engineers who come and go after they get what they want and the neighbors are stuck with the decisions to support the developers. She said she has spoken to other Zoning Board of Adjustment members from other towns and they are astounded at how Nashua passes these requests.

She said the last time she was here for 189 Kinsley Street someone on the Board was quoted as saying the surrounding areas are changing....so in other words its okay to pass it. She said the Board is the one allowing the change. It seems like the majority of the Board can't say "no."

She said she is present tonight to support the neighbors on East Dunstable Road and Catherine Street for all the reasons stated by the neighbors.

She asked that the Board make the right decision. She asked the Board to take a look at how the Board's decisions affect the quality of life for all the citizens of Nashua. She asked that they not diminish the property values as theirs has been in her neighborhood.

She said she is not opposed to development, but they need to stay within the character of the surroundings and zones.

Mike Siciliano, 95 Taylor Street, Nashua. Mr. Siciliano said he has been a native of Nashua for 41 years. He said he is supporting the neighbors and citizens who oppose the proposed Oakland Avenue development.

He said properly planned developments that are tastefully completed and adhere to all State and local legal guidelines are a benefit to the City of Nashua and its neighborhoods. These non-conforming, special exception type of developments are having a major impact to the most modest neighborhoods throughout the City. Neighborhoods in Crown Hill, along Lake Street, Kinsley Street, West Hollis Street, and even some sections in the historic north end are feeling the impact of over-development, resulting in over-crowding, traffic concerns, and life/safety issues that these projects create. He said, in contrast, this same type of development does not deliver these concerns to more affluent, wealthy neighborhoods such as Adella Drive, Bowers Pond, Crestwood Lane, Gilboa Drive, (and others). They do not feel this impact because aggressive developers are not seeking opportunity there. The real estate speculators are focusing on the older, more modest lower income neighborhoods in the City where the citizens sometimes cannot oppose or have minimal resources to defend their neighborhood's concerns.

He said it is his belief, and that of many people, that if the Zoning Board of Adjustment grants approval to this particular project the Board will be sending a crystal clear message to the citizens of all Nashua neighborhoods that the Zoning Board of Adjustment does not necessarily care or share the same concerns as the people of Nashua.

Mr. Siciliano said as more and more paper roads, back lot, and non-conforming lot developments are proposed and presented to the Zoning Board and receive approval, he believes they will be intensive opposition by the neighborhoods that are impacted. He said the current sentiment of opposition has been initiated by the past decisions of the Zoning Board of Adjustment.

He said he is asking this Zoning Board of Adjustment and future Board members to really review the City's neighborhoods and

honestly consider and respect the harmony and quality of life that the citizens enjoy before approving another non-conforming project. He said the Board's decision tonight on this Oakland Avenue project will set precedence as to how much opposition is brought forth in the future.

Brian Fox, 7 Delta Drive. Mr. Fox asked what would happen if this proposed house was on fire. Somebody calls 911 and the Fire Department requests the address. He asked what they would give for an address. There's no way to know where the house is.

He said that Mr. Maynard said there are going to be cisterns and roof drains. If this were a City street the drainage would be maintained by the City of Nashua. This is going to be a private lot with private drainage with nobody to maintain it. It's a very wooded area and in the fall the leaves will plug the gutters. This is an approximate 2,000 square foot driveway and approximately 1,000 square feet of roof, combining to 3,000 square feet of impervious area. He said this shouldn't happen.

Virginia Lizzie, 58 Lawndale Avenue. Mrs. Lizzie said she is one of the abutters to the "Trottier" property. She said she bought her property in 1971 from Mrs. Trottier.

She said that there have always been sewer problems in this area. When there are large rains the sewers back up in these houses on a consistent basis. She said they all have to have back valves and shutoff valves. She said she has to have two shutoff valves in her house - one for her washing machine and one for her regular sewer.

She said at one time the State of New Hampshire put a moratorium of no building in that area. She said if the Zoning Board is inclined to grant the request the Zoning Board should consider having a septic system for the house and not have them connect to City sewer. She said she has called the City many times to ask when they are going to have a two pipe system and she has always been told "at some point."

She said she talked with an insurance man just the other day

because they own a business in the City and he told her the City has had tons of problems with back ups and he has had many claims for the problem. She said they all know that in the inner City where they live there are sewer problems.

She said she hasn't heard anything about accommodations for her land that abuts this land. She said she doesn't want her trees cut down. If her trees are cut she wants to be compensated for them. She said if the Board is inclined to grant the request, she would like to see something in writing that the applicant has to stay a certain distance from her land, even though it may be more than what the City says it must be. She said she wants granite markers on where the house is going to be placed.

Mrs. Lizzie said there are health issues when these sewers back up. She said there is a gentlemen sitting in this room that lives on Lawndale who had a health issue when his sewer backed up. She said that if this is granted she wants to have a stipulation that it be placed on a septic system, and not add to the inconvenience of all the people in that area.

John Koutsos, 3 East Dunstable Road. Mr. Koutsos said at the last meeting the applicant was not willing to go forward with four members and tonight they are willing to go forward with three members. He wants this noted in the minutes of the meeting.

He said in February Dick Raisanen came to see him, he gave him a plan. He pointed out Exhibit #4 which is right after the petitions. He said the Board can see that there are two single-family homes or one duplex and that is what was presented to him. He said they sited the house on purpose so that they could also leave room for a home. He said he was told that after he lived there for three years he was going to build another house, cross over the driveway and build that or build a duplex.

He said there is a potential for even higher density that six single-family homes because this is located within a RA Zone, which permits two-family dwellings.

Mr. Koutsos said there is no practical way to develop six homes, all claiming private sewer connections, private gas connections, and private water connections on a 40' strip of land. That's why there was a road built. The right they have and the easement that they need is called a road.

He said the rights of his land are not being recognized. He said he and his wife have 25,000 square feet in lots on Oakland Avenue. He said his separate lot is not subject to Section 16-302 of the zoning code. It was not in common ownership with his house on that date in 1976. He bought that lot in 1992. He pointed out the lot in question. He said the other lots are separate lots of record that have never been consolidated. He receives one tax bill for them, but he never filed for a lot consolidation.

He said from all practical standpoints his land is far superior to the "Trottier's" land. His land is beautiful flat land. He said they graveled the "Trottier" lot and that's why there is severe topography. It drops 20' over 100'. They removed all the gravel in order to create the lots that sit on Lawndale Avenue. The lot was a wasteland and they couldn't do anything with it. Now it's thirty-five years later. He asked if price appreciation makes everything okay. He said its time to stick with what's right and wrong. He said the problem with non-conforming requests is that you have to be very creative when you look at the abutting parcels around these requests.

He said if there is an implied easement, than it is for all the lot owners on Oakland Avenue. It's not an exclusive easement just for their lot. He said nobody is going to grant any utility easements. Nobody is running power lines over anybody's land with an implied easement. It's never been done.

He said if you look at 1C Verdun Street a subdivision was allowed and what they ended up with was a non-conforming lot on a paper street, in violation of Section 16-302. He said the Planning Board minutes show that Mr. Maynard specifically said he couldn't run power lines over anybody else's land because the neighbor on the other side didn't want it on their 20'.

Mr. Duffy said they have a certified communication from a licensed appraiser who indicated that there would be a potential \$100,000 detriment to his property. He said the property at 3 East Dunstable Road is valued at three quarters of a million dollars and the assessed value of just the land is shown as \$97,700. He asked if they were just looking at that one piece and not the other piece, Sheet 126 Lot 39.

Mr. Koutsos said he put a substantial renovation into his house last year. He said the appraiser only looked at the one piece, not Lot 39.

Mr. Duffy said the other communication from ?????? didn't look like a certified appraisal.

Mr. Koutsos said it is more of an opinion letter. He said it isn't a certified appraisal.

Mr. Duffy asked about a street built to City standards.

Mr. Koutsos said it can still be created. He said just because a municipality has lost their right to develop the road after a certain period of time doesn't mean the people can't step forward and still apply to the City to have that done. It just means that the City lost it's right to do it, but the people claiming these private easements still have the right to do that. That's where some people are getting confused. It isn't the fact that the road can never be built.

Mr. Duffy asked Mr. Koutsos asked if there was any other use that would be reasonably feasible.

Mr. Koutsos said he believes there is. He said in the packet the Board will see that the applicant was offered \$50,000 for the land. It is assessed at \$24,200. The offer was rebuffed.

Mr. Duffy said the other appraised land values are in the \$87,000 - 92,000 range.

Mr. Koutsos said there is a 75'X100' lot on the corner of Oakland Avenue & Burnett Street. The land is assessed for \$80,000 because it's sitting on an approved street and it has different rights.

Mr. Duffy said there is a letter dated July 28, 2005 from Lisa St. Dennis in opposition because of issues with safety and emergency access issues.

### **SPEAKING IN OPPOSITION - REBUTTAL**

Atty. Westgate said they don't maintain that they have an exclusive right of access over Oakland Avenue. They have a right in common with others who abut Oakland Avenue. If they have an opportunity to build a driveway they recognize that they don't even have the exclusive use of the driveway if others wanted access. The same applies to utility systems and installations.

He said there was some talk about Section 16-302 of the ordinance and what it means. He said he brought it up for a couple of reasons. First, it's reflective of the concept of protecting non-conforming lots - protecting lots in a vested subdivision, whether they have frontage or not on an accepted street. Section 16-302 just sets the stage for the variance analysis tonight. It's not the foundation for it. He said it demonstrates that if properties are owned on or after October 14, 1976 in common ownership, they are merged by ordinance. He mentioned some of the abutting property owners and their lots. He indicated all of those lots would have to be subdivided to be developed; theirs does not.

He said no one has come before the Board and said they don't have the right to access this property. What the Board needs to analyze are for the five criteria for the variance.

Atty. Westgate said there are some people who are asking that a street be built here, not a driveway, because that's the better way to develop. Supposedly all the abutters on Oakland Avenue would agree and even contribute towards that construction. Mrs.

Craft's daughter didn't approve of either approach. Mrs. Lizzie did not make a statement about wanting to contribute to or participate in the establishment of Oakland Avenue. The street argument is merely to create an economic impossibility for the applicant when that is unnecessary. He said decades have gone by without people coming to the Board seeking to develop Oakland Avenue. Suddenly because one lot is sought to be developed by a driveway, the best thing to do is develop Oakland Avenue. It isn't logical. It's a red herring. In addition, it's contradicted by the quality of life comments that other people have made. Somehow it's okay to build a street and theoretically build six houses on it, but on the other hand drainage issues, access issues for fire, sewer concerns are better when there are six houses on a road, but not so good when there is one off a driveway. He said this doesn't make sense.

He said they only want to build one house. He said if the Board feels the placement of the house a bit further into the lot and the creation of a small buffer makes sense they understand the logic for that. Placement of the house only a matter of a few feet would put it in a position such that further subdivision of this property would be impossible.

Mr. Duffy asked Atty. Westgate to address the appraisal or the consultant's opinion.

Atty. Westgate said he hadn't had the chance to read them. He said that he had requested that any information that was going to be submitted tonight be given to him, but that didn't occur. He said he wasn't in a position to analyze this in detail. He said that it defies logic to think that a normal customary house built off a driveway that is not of unusual length is detrimental to other property values, whereas the establishment of multiple houses on a street that has been built out is not.

He said the applicant submitted a letter from Robert Bramley who is also a certified appraiser at the April meeting indicating that he did not believe this would be detrimental to neighboring property values. He said he submitted a copy of it for this meeting as well.

Mr. Duffy said this is an opinion letter, not a certified appraisal.

Atty. Westgate said appraisals are taking what is the value of a particular property. This analysis is what the impact is that something will have on a property. It has to be by letter or by analysis rather than the formality of appraisal.

He took a quick look at the appraisal from the opposing side. He said that it appears it is an appraisal or analysis of Mr. Koutsos' property. He said he gathers it is also stating that there's a potential economic decline in value of a certain number. He said he fails to see how this makes sense. They are proposing the creation of a driveway and building one house on 17,500 square feet and this is supposedly going to knock down the value of Mr. Koutsos' property by \$100,000. Mr. Koutsos favors the establishment of a road that will put several houses, in theory, on Oakland Avenue much closer to his house. He said if someone can square that for him his or her powers of analysis are greater than his.

#### **SPEAKING IN OPPOSITION - REBUTTAL**

Mr. Koutsos said he's sure that 99% of the homes in Nashua sit on streets. He said their neighborhood doesn't want to see houses unless they are sitting on a street.

He said his house was referred to from the appraisers as an "inner city" estate. He said he has put a lot of time, effort, and money into his house. He said to have a home with the front of their house looking into his back yard without a street being in between them is a weird feeling. He said they don't want to turn the neighborhood into a campground and this is kind of what it's going to look like.

He said he doesn't see how back lot development is logical versus having a street there. He said he's not sure that helping to build the cost of a road is even relevant. He said they are the ones that want to build the house. He said he

might want to share it and he might not. He said just because he's not looking to build today and they are, he's not certain that's a criteria to base a judgment on.

He said if they were to build a street, it really isn't that much of an economic hardship because if they did, they could build two homes. The value of a City lot today is \$100,000. He said he had an estimate to build a road and it was \$150,000. He said it doesn't defy logic to ask for a road to be built.

He said his attorney, Atty. Alfano, said that neither Section 16-23 of the zoning ordinance nor RSA 674:41 was included in the notice of the meeting. Although Section 16-23 was addressed by Atty. Alfano they did so with the reservation of all rights to object to Section 16-23 and RSA 674:41 being addressed at this hearing.

Mr. Koutsos said that he knows that they said everybody can pass over the driveway, but we all know how that works. It's their driveway going to their house. All of a sudden if people start passing over it, there's going to be war. If they put a road in, everybody's okay. The neighbors on Catherine Street don't have to be burdened with trashcans and mailboxes. Once this is allowed to happen, the train has left the station and it's not going to stop. It will cause a deterioration of the neighborhood.

Mr. Anderson said there are opposing opinions on the valuation of the properties. There is the question of whether a driveway is more detrimental to the neighborhood than building a street and building more units. If this is passed tonight he believes there should be stipulations concerning cisterns, a vegetative buffer, the relocation of the house, and that the lot not be further subdivided.

Mrs. Douglas agrees with the approach that the house be placed more central to the lot so that it precludes any future subdivision. She said she would also like to see some kind of a buffer between this property and the property on Catherine Street.

She said she is "iffy" about septic versus sewer. She doesn't have enough expertise to make any special conditions with respect to that.

Mr. Duffy said at this point he is leaning toward not approving the application because he thinks there are too many conflicts - issues of access, egress, exclusive or implied rights for utilities, etc.

He said that over the last three or four weeks he has looked at a lot of case law and spent a lot of time trying to look all over the State of New Hampshire about paper streets and the dissolution of access lots. He couldn't find any. He said there are too many issues for him to vote in the affirmative. Even though this is a reasonable request for a single-family home the access issues are too complex.

Mrs. Douglas said she didn't see how they would be able to deny it and if it's granted there should be some numerous stipulations.

Mr. Anderson said it's going to be up to the property developer to address easement issues and if that's insurmountable he won't be able to build.

Mr. Duffy said if this were a 40' city street it would be like most city streets in Nashua with a pipe in the middle that carries a sewer pipe. One person lays that sewer line and uses a certain amount of square feet.

Mrs. Douglas said they might stipulation that the pipe is of an adequate size for future connection of other properties. She then asked if this is within the purview of the Zoning Board.

Mr. Falk's reply could not be heard.

Discussion ensued.

Mr. Anderson said it boils down to that if the Board denies the request do they have a solid legal basis.

Mr. Duffy asked Mr. Falk if there have been paper streets like this in Nashua that have multiple lots with these kind of accesses granted.

Mr. Falk said "no." He said they don't get too many of these to begin with and in his experience the ones they have had have been at the end of streets where it's one house. He said he hasn't seen anything where there's a paper street between a block. It's a little unique in that respect.

Mr. Duffy said one of the tests for an area variance is that it's not supposed to be contrary to the public interest so it's the general benefit and not solely the applicant. He sees this as solely benefiting the applicant and not the public interest of the other people. There are a lot of conflicting State and city ordinances.

Mr. Falk said any single-family homeowner that's going for a variance for a garage, a deck, etc. is really going for themselves. The City gains by having additional tax revenue for the improvements.

Mr. Duffy said it changes the rights of the property owners in the back because this landowner has the major abutting access, whether it's exclusive, whether it's rights in common or whether it's a cross easement.

Mr. Falk said the applicant will benefit the most because the driveway will go just to his house. If anyone else wants to build a house on their vacant lot they could also use that driveway.

Mr. Duffy said this has been sitting there for twenty years and only now the City is changing the tax bills.

**MOTION** by Mrs. Douglas to grant the request for 1) minimum lot frontage, 60' required, 0' proposed, and 2) minimum lot width, 75' required - 0' proposed at Oakland Street, Sheet 126 Lots 59-65. She said the variance is needed to enable the applicant's

proposed use of the property and that it cannot be achieved by any other method. It is within the spirit and intent of the ordinance. She said she does not believe it will adversely affect the property values of surrounding parcels. She said she didn't think it was contrary to the public interest and substantial justice will be served. Special Conditions: The home shall be located more central to the buildable area on the lot to preclude any future subdivision. An adequate tree buffer is to be installed (10' - 20') between this property and 8 Catherine Street and construction impacts to that same property shall be minimized.

**SECONDED** by Mr. Anderson.

**MOTION FAILS 2 - 1, Mr. Duffy opposed.**

Atty. Westgate said that procedurally he thinks there should be a motion to deny. If it gets a 3-0 to deny that will be the final decision, but if it doesn't get three votes he believes there would be no final action and the Board will have to deal with it on another occasion.

Mr. Duffy said he felt uncomfortable about making a motion because people have left the meeting. He said he believes he was pretty clear about the issues on the case.

After some brief remarks, Mr. Duffy re-opened the public meeting on Oakland Street to make another motion.

**MOTION** by Mr. Duffy to deny the variance requests 1( minimum lot frontage, 60' required, 0' proposed and 2) minimum lot width, 75' required - 0' proposed for Oakland Avenue, Sheet 126 Lots 59-65. The variance may be needed to ensure the reasonable use of a single-family home on the property. However, there are other methods reasonably feasible to the applicant to pursue. It is within the spirit and intent of the ordinance that the essential character of the neighborhood, which is single-family homes that front on approved paper streets would possibly affect the surrounding property values. It is not within the public's general interest. The proposal is solely for the benefit of the

applicant, without taking into account the needs, requirements, and access rights of the other property owners.

**SECONDED** by Mrs. Douglas.

Mr. Anderson asked Mr. Duffy to explain his feelings on why this is contrary to the public interest.

Mr. Duffy said when there is any development, whether it's a cluster development, a subdivision, a single-family home or multi-family home, a commercial development without buffer zones right up against a residential zone, there is a general interest that the neighborhoods should be able to grow and develop naturally based on the Master Plan and ordinances. The general interest is that everybody's interest is served. In this case there is one piece of property and there are five or six other properties touching a discontinued street. All of them should be able to have some kind of access and egress through some kind of system or process. He asked what are those rights and what are those realities.

**MOTION FAILS - 2-1, Mr. Anderson opposed.**

**2. Therese G. Trottier (Owner) Richard C. Raisanen (Applicant) L Catherine Street (Sheet 126 Lots 148, 152, 155 & 158) appealing decision of the administrative officer that a building permit should be granted to allow two single-family homes on a paper street. RA Zone.**

Atty. Brad Westgate, Winer & Bennett, 111 Concord Street, Nashua. Atty. Westgate said he is representing Richard Raisanen, the applicant. He said the applicant, the property owner and Richard Maynard, the project engineer were also present.

He said this is an appeal of the administrative decision made by Mr. Falk to deny building permits for two single-family homes on this property off Lawndale and a part of Catherine Street that was never developed in full, and is, in effect, a paper street.

He pointed out the exhibits on display, some of which were used in the prior case. They include a GIS map, Plan 517 from the Registry of Deeds and recorded in 1923 (prior to the enactment of zoning in the City of Nashua), and a detailed map for the development of the property.

He said the GIS map shows this lot as four separate parcels, Map 126 - Lots 148, 152, 155, and 158. He pointed out the existing Catherine Street and its extension. He said the proposal was to build a single-family dwelling on the combination of the three lots on the northerly side and another one on the lot on the southerly side.

He said they are proposing access by separate driveways. He said the lots in question are large relative to the neighborhood. He said the northerly lot (referred to as 148) is 30,000 square feet, has 300' of frontage on the paper street portion of Catherine Street. The southerly lot has a bit over 20,000 square feet and has 150' of frontage on that portion of Catherine Street. The minimum lot size required is 7,500 square feet.

He said in effect Mr. Falk's ruling is the same as he ruled on the Oakland Avenue property. Despite the fact that Section 16-302 of the zoning ordinance exists and deals with the protection of non-conforming lots, he ruled that approval by the Zoning Board of Adjustment would be needed, whether in the form of a variance or a building permit issued under RSA 674:41(2).

He said they believe there are three independent basis by which the Board can find building permits can be issued administratively and that a variance is not necessary. He said the first is Section 16-302 itself. This section states any non-conforming lot legally established by recorded deed or plan may be built upon and occupied for any permitted use if it complies with the minimum dimensional requirements of the zoning ordinance in effect, if any, at the time of the recording of the deed or plan and if the lot was in separate ownership from all contiguous lots at the time of the original passage of this

section on October 14, 1976.

He said when this plan was recorded in 1923 there was no zoning ordinance in the City of Nashua. Consequently, there were no minimal dimensional requirements at the time. Therefore, the strict reading of Section 16-302 indicates that since there was no dimensional requirements it had to be in compliance with them since none existed in the first place, and therefore may be built upon.

He pointed out the lots that Mrs. Trottier owns. He said she will have to consolidate the lots by the rule of Section 16-302 and they can't be broken up into separate lots unless they were subdivided. They are not proposing to subdivide. They are proposing a private driveway off of Lawndale and through the paper street section of Catherine Street. The same applies to both parcels they plan to put a house on. He said they believe Section 16-302 supports a determination that no variance is needed for a building permit to be issued for either of these proposed houses.

He said they talked about common law vesting in the prior case (Oakland Avenue). He said it is discussed in some detail in the memorandum he submitted to Mr. Falk before tonight's meeting and he referred the Board to that memorandum. He said in a developed subdivision lots that have not yet been developed, may be developed and are vested and therefore insulated from zoning provisions that precludes their development such as frontage and lot size requirements if they find themselves in a developed subdivision. He said the age of this neighborhood indicates its long-standing developed status. Just because sections of the street were not built does not mean that the lots off those streets aren't vested.

Atty. Westgate said the third reason that they believe supports a finding in favor of their appeal and allowance of an issue of the building permits without a variance is based on RSA 674:41 (II). He said RSA 674:41(I) basically is the law that says that in essence building permits are to be issued on lots that have frontage on an accepted road. There are some variations to that

theme as well. There's a "failsafe" to that in RSA 674:41(II). This indicates that if enforcement of the basic provision (frontage on a public road) entails practical difficulty or unnecessary hardship and if the circumstances of the case don't require the building or structure to be related to existing or proposed streets, an applicant can appeal to the Zoning Board and seek approval to allow the issuance of a building permit.

He said in this particular case that's effectively what they have. There's no point in building the paper street portion of Catherine Street. It goes to Salmon Brook. It services nobody to the west of it. The City would not want the street built and, in fact, in the 1994 case that involved this property, it was clear that the driveway approach makes more sense for this section of a paper street than a build out of the road. The abutting properties on Lawndale are already built and accessed off Lawndale. There is practical difficulty in creating a public street to service two lots. You would also be creating a dead-end situation with turn around issues. With a private driveway you are no different than any other private driveway servicing a particular house.

He said there are three other components to this analysis under RSA 674:41(II). One is that the issuance of the building permits will not tend to distort the official map. The driveway means of access aren't doing violence to the official map of the City. The map will look no different than it does today.

Atty. Westgate said the second criteria is that there be no increase in carrying out the purpose of the Master Plan. Permitting two single-family homes in a single-family neighborhood on an over-sized lot for that zone does no violence to the Master Plan is not contrary to it.

He said the third criteria is that this action permitting these building permits administratively not cause hardship for a future purchaser or undue financial impact on the City. Future purchasers go into anything with their eyes open. They have a driveway access to their houses. He asked what could be more normal.

He said there is no undue financial impact imposed on the City by this development. There would be unnecessary financial impact if a built street were imposed, but not with a private driveway.

Atty. Westgate said in 1994 the "Trottier's" came before the Zoning Board. They were not seeking a variance at that time, but they sought, in effect, the same appeal that is sought today. The only case they presented to the Board was under Section RSA 674:41(II). In that 1994 case the Board upheld the appeal and made certain conditions and granted it. The Trottier's never sought the building permit based on that 1994 approval.

### **SPEAKING IN FAVOR**

Richard Maynard, Professional Engineer, Maynard & Paquette. Mr. Maynard said that he passed out a plan on a variance that was granted a few years ago on Warsaw Avenue. He said it was very similar to this. It's two lots located on either side of a paper street with driveways down the middle of the paper street.

He said for those who read the 1994 minutes, the layout of the driveway is somewhat different. In 1994 the driveway was being laid out to slope towards Lawndale Avenue. He doesn't know the reason why it was done that way. He said the proper way to design the driveway is to let it fall with the slope of the land that runs from Lawndale Avenue to the back part of the property where it eventually falls off to Salmon Brook. All the drainage from this property drains to the rear into the wetlands associated with Salmon Brook. They can still put cisterns in to recharge the groundwater. There is a City drain system down this particular paper street running from Lawndale Avenue to Salmon Brook. He believes in 1994 there were only two catch basins and since then there are more.

### **SPEAKING IN OPPOSITION**

Carter Falk, Deputy Planning Manager, City of Nashua Planning

Department. Mr. Falk said Atty. Westgate has given a very detailed background of the lots in question so he would not go into that.

He said that in the past there have been numerous cases that the Board has seen for paper streets that have been similar to cases like this - Brigham Street, Verdun Avenue, Warsaw Avenue, etc. All applied for a variance, including the recent Oakland Avenue case. He said the position of staff is still the same. The applicant should apply for variances and that's why the building permit was not supported.

Atty. Paul Alfano, Alfano, Baroff & Kasten, Bedford. Atty. Alfano said he is appearing on behalf of Shirley Craft who lives just down the street from this proposal.

He said RSA 674:41 speaks very strongly about how it's inappropriate for building permits to be issued in situations like this. He said Atty. Westgate did mention there is an exception under paragraph two, but he questioned whether or not that's even appropriate because you can apply for an exception under Section II, but it pretty much mirrors Section 16-23 of the City of Nashua zoning ordinance.

He said the only part you can apply for an exception is if the circumstances of the case do not require that the building be related to existing or proposed streets. If this is an existing or proposed street than there is no power to ask for the exception under RSA 674:41 or Section 16-23 of the City's zoning ordinance.

He said in the first case the Board heard tonight a letter did go out from the City in January stating that the street was no longer a public street. He is not aware of a similar letter going out in this instance, not that one does, and he is just making a statement.

He said if that statute does apply there are some serious hurdles that have to be met, none of which have been done in this case. First, they have to show that the issuance of a

building permit would not tend to distort the official map. He said this does distort the official map. There is an original plan that was prepared years ago that showed a street with houses along it. This is very different from that original plan.

He said even if they show it does not distort the map, the applicant must show, with evidence and arguments, that the granting of the permit is required by considerations of justice and equity, which he said are not present in this case.

Atty. Alfano said at the April meeting Mr. Maynard testified on the Oakland Avenue case that there are a lot of these paper street parcels in the City. In the minutes of that meeting Mr. Maynard stated that as people run out of places to build they are going to start coming in with these types of requests and that the Board would be seeing a lot more.

He said if the Board approves these kinds of requests they are creating some precedent for the future. If Mr. Maynard is correct there's a lot of lots like this, he doesn't think that's the kind of zoning the Board wants to encourage.

He said this is contrary to the spirit of the ordinance. He referred to Section 16-161 that states the purposes of the zoning ordinance. One of the items is to encourage the most appropriate use of land throughout the City. He said this is a haphazard development, not an orderly subdivision. When there is haphazard development, there are issues like putting out the trash. Instead of putting it out in front of your house, which is an orderly development, which is what most subdivision plans are, there is something like this where it's going to go in front of someone else's house.

#### **SPEAKING IN FAVOR - REBUTTAL**

Atty. Westgate said this is not merely a RSA 674:41 case. He said Mr. Falk administratively denied a building permit and they have appealed. He said he set forth in his memorandum and in his testimony that there are three independent reasons why the Board could allow the issuance of the building permit without a

variance, in effect, over-turning Mr. Falk's decision.

One of those reasons is analyzing Section 16-302 of the zoning ordinance protecting non-conforming lots. The second reason is the notion of common law vesting and the third is RSA 674:41 approach. He said this is not a case involving the spirit of the ordinance. This applies to the variance request.

He said they acknowledge that this is a paper street. It has drainage that carries runoff from Lawndale down through the paper street to Salmon Brook. The street was never fully developed.

Atty. Westgate said there are landlocked parcels, but this is not one of them. They have the right of access over the extension of Catherine Street to access these parcels. The question is whether administratively the permit should have been issued or if it should go the variance route.

#### **SPEAKING IN OPPOSITION - REBUTTAL**

Atty. Alfano said Atty. Westgate mentioned Section 16-302, that ordinance deals with dimensional issues only. He said he believes Mr. Falk was correct in his interpretation of Section 16-302. Merely because a lot is grandfathered in size is a much too broad interpretation of the ordinance. You have to take into consideration other provisions of the ordinance as well, such as access and frontage.

He said with respect to the cases that were cited "Morgenstern" & "Henry", in the "Morgenstern" case the lots in question fronted a Class 5 road, the highest kind of road - the only issue was the size of the lot. He said the lots under discussion aren't on a Class 5 road. In the "Henry" case the frontage and access were not an issue - just the size of the lot.

Mr. Duffy said he thinks this is pretty straightforward. He said he understands the arguments and points brought up by both sides, but Nashua has a review process that deals with the dimensional requirements and they have been consistent.

**MOTION** by Mrs. Douglas to deny the appeal of the administrative officer's decision that a building permit should be granted to allow two single-family homes on a paper street - Catherine Street. Administrative Officer's decision is upheld.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED**

**3. Therese G. Trottier (Owner) Richard C. Raisanen (Applicant) L Catherine Street (Sheet 126 Lots 148, 152, 155 & 158) 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, to construct two single family homes on a paper street. RA Zone.**

Mr. Duffy said he would like to stipulation that all the testimony that was given in the appeal of the administrative officer's decision for Catherine Street be carried over into the testimony for the variance case so that all that testimony won't have to be repeated. Atty. Westgate agreed with this.

Atty. Brad Westgate. Atty. Westgate said he would supplement the testimony since the testimony on the Catherine Street case on the administrative appeal has been brought into this record.

He said this is request for a variance. There is a combination of lots originally laid out on Plan 517 in 1923 on the northerly side of the paper street portion of Catherine Street. Lots 148 - 157 have 30,000 square feet. There's a lot on the southerly side of Catherine Street with approximately 20,500 square feet in size, for which they propose a second single-family dwelling. Private driveways will service the lots over the paper street portion of Catherine Street, by way of easement rights that are granted in this situation.

He said the RA provisions are 7,500 square feet for minimum lot

size. He referred to the GIS map that give a sense of the size of the lots. They are generally larger than most of the neighboring parcels, especially those heading towards.

He said this is different from the 1994 case. He said the 1994 case that involved this property was not a variance case. It was an appeal of an administrative decision for one single-family building permit. He said the "Trottier's" have never appeared before the Zoning Board for a variance on this particular property.

Atty. Westgate said as in the Oakland Avenue case and other non-conforming cases generally, although the variance proposal does not rest on the idea of vested lots or Section 16-302 protecting non-conforming lots in the zoning ordinance, the philosophy of that ordinance and that concept in the law can't be ignored. If it is ignored, effectively what happens is no use is permitted for this type of property.

He said this is not a landlocked parcel. It has access. It appears on a subdivision plan that's over eighty years on record. It's in an area that's appropriate for residential development. It's in a neighborhood of essentially single-family homes. It's zoned for that purpose. It can be developed quite easily in a manner that properly accommodates abutting properties and won't burden them with drainage issues or other concerns.

He said he submitted a memorandum to the Board that supports this application. In the memorandum he discussed the notion of applied easement and right of access to this property. He referred the Board to the memorandum for any further detail they may want to read in that regard.

He said that this is an area variance so it's governed by the "Boccia" case. The first criterion is that the variance is needed to enable the applicant's proposed use, given the special conditions of the property.

Atty. Westgate said the variance is necessary for the proposed

use because the Board has just denied the request appealing the administrative officer's determination concerning the issuance of a building permit. They are left with the recourse of seeking a variance.

It is located off a paper street in a developed subdivision. The lot size is significantly greater than the neighboring properties and more than what the zoning district requires. A modest use of a single-family home for each lot is being sought.

He said the benefit sought by the applicant can't be achieved by some other method reasonably feasible for the applicant to pursue. That other method would be, in the first instance, administrative issuance of the permit. This is not going to happen, given the Board's prior ruling.

He said in addition, building a street here is not a sensible alternative, nor is it an alternative that would topographically favor the area. Building an accepted street on this section of Catherine Street leads to nowhere. They would only be accessing the two lots that can be accessed by private driveway.

He said they don't have the unilateral right to create a City street. A City street only becomes one when accepted by the City. This is a function of the Board of Alderman and it can't be forced upon them or anybody nor can they force the abutting property owners effectively acquiesce to that approach. The ability to dedicate this as a city street expired with the passage of the twenty years from 1923. It remains available for private rights of access.

He said this does not violate the spirit and intent of the zoning ordinance. The proposed use of two single-family dwellings on oversized lots simply accessed by common driveways doesn't violate the spirit and intent of the zoning ordinance which contemplates single-family homes in this zone compatible with this neighborhood.

Atty. Westgate said driveways are not an uncommon concept. They are legion throughout the City. Some driveways of some length

exist in the neighborhood. He acknowledged that they come off a street not directly from their frontage, but insert a bit from the location of these parcels. They do so with the right of access established by the easements created by the laying out of the plan from 1923. They are not forcing easements upon anybody. They have these rights. They are not excessively long to get to the land that they seek to develop. Precluding development when they have the right of access would be, in essence, a confiscatory application of the regulations.

He said the third criterion is that the proposal not diminish the value of surrounding properties. He said Mr. Bramley has submitted a report to that effect, which the Board has in their files. His conclusion is that the creation of these two homes would not adversely impact the surrounding property values. He referred the Board to the GIS map. He said they can see the lot sizes in the area. He said they can draw a house on each of these lots and in three months later the map will look the same. He said this does not affect the property values.

He said the fourth criterion is that the variance not be contrary to the public interest. Allowing the appropriate use of land in a manner harmonious with the zoning requirements is not contrary to the public interest. One of the purposes of the zoning ordinance is to allow for appropriate use of land. This is an appropriate use of the land. It's zoned for this purpose.

He said the final criterion is that substantial justice be done. When all the elements that he has stated are taken together does substantial justice when the alternative is no use or development and the preclusion of any use of these parcels.

Mr. Duffy asked if Sheet 126 Lots 164 and 145 on Lawndale Avenue were given a little extra property from the discontinued street and their tax bills changed in 2005 to reflect that.

Atty. Westgate said he looked at the GIS map at City Hall today and the map hasn't changed. He said he is not aware that the dissolution of the street has been allocated among the people who had rights to the dissolution. He said he doesn't think it

has occurred because the GIS map doesn't show the street as disappearing.

He said that the issue of the Assessors making the street disappear and adding the land to the lots that front it doesn't have any bearing on the rights of access that the abutting parcels have to that paper street. The ownership of streets is, unless otherwise determined by deed, to be the centerline to begin with. If the assessor adds the streets to the lots, he's not doing anything that has a legal affect on the access rights. He might be changing his assessment data, but he's not affecting access.

### **SPEAKING IN FAVOR**

Richard Maynard, Professional Engineer, Maynard & Paquette, Nashua. Mr. Maynard said all the cluster developments and several of the multi-families are on private driveways. The fact that they are going to have one house on a private driveway and another house on another private driveway is not necessarily unusual in this community.

He said the wetlands have been mapped and they are shown on the plan. There is a 75' buffer that is shown. There is more than sufficient buildable area on both lots. The flood plain elevation is at 146/147, which is off the property.

He said some of the neighbors are concerned about sewer backups and will talk to the Board about backup valves. They will complain about backups of sewer. He said the backups in the sewer are because there is storm drainage in the sanitary sewer. The sanitary sewer is small pipes and is not sized to handle storm drainage. Sanitary sewer is 8" in size. Storm drains are 24" and 48" in size. The problem here is storm drainage connections that are causing backups in the neighborhood. It's not because two houses will be connected. He said in the 1994 materials there is documentation that the City Engineer will grant permits to connect to the sanitary sewer for this particular project.

He said there is an existing city drain down the paper street that runs from Lawndale to the Salmon Brook wetlands so there is drainage provided for already. He said these properties will be graded and the driveways will be graded and drained away from everybody. There will be no drainage impacts to anybody on Lawndale Avenue or the existing homes from this proposed project.

He said because of the City Ordinance they are also required to recharge the groundwater. Therefore, they have the roof ???? unintelligible cistern systems. They don't have any downstream abutters to affect.

He said they have a choice of putting in one common driveway or two separate driveways. The two driveways are both 12' wide. The road is wide open and there is more than enough room for any emergency vehicle to come down.

He said snow plowing would be done by the owner. They would bring their trash barrels out to the entrance. The length of the driveway is not unusual in the City. He said there are dozens, maybe hundreds, of driveways this length or longer throughout the City.

He said these lots are huge relative to this neighborhood. One lot has 30,000+ square feet and the other has 20,000+ square feet and only 7,500 square feet are required for a single-family home. He said they agree to a stipulation that there be no further subdivision.

Mr. Duffy asked about the one common driveway.

Mr. Maynard said they can do a common driveway, but whenever possible it's better if you can do two separate ones so there's no argument about who shares what.

Mrs. Douglas asked if all the construction is outside of the 75' wetland buffer.

Mr. Maynard said it is. He referred the Board to the line on the map that shows where the wetland buffer is.

Mr. Duffy asked about accessory uses.

Mr. Maynard said there is more than enough room for these lots to have decks, sheds, garages, etc.

### **SPEAKING IN OPPOSITION**

Jean Dunfey, 57 Lawndale Avenue. Ms. Dunfey said her father has presented some letters from the State and some pictures. She said the letters are in reference to the existing combination sewer system on the street. They are dated back to the early 1980s when the sewerage issues on Lawndale Avenue and Catherine Street were first addressed by the State. She said as the Board reads these letters they can clearly see that until the sewerage is replaced with a modern sewer separation system, allowing permits to build homes in this area will add to the further potential unhealthy status and will not enhance the area whatsoever, but worsen it severely.

She said the pictures she presented are of her shutoff water valve and her neighbor's. She said hers (the speaker's) is located in her basement closet. They are old units that were installed over twenty years ago. She said she isn't sure what the life expectancy on the system is or the expense to have one replaced. When it rains these systems have to be turned on manually. She says if they are away when it rains they hope they are not flooded with unhealthy sewerage. She said these valves continue to be used and she fears that the additional homes will add more stress to the existing sewerage combination system that is now in place.

She said she is opposed to any new development in the Lawndale Avenue and Catherine Street area until a system has been installed and operating for a lengthy period of time so it can be analyzed for adequate performance. She said she doesn't want to be used as a guinea pig by the City if they install a separation system only to have it fail or to discover that it has created additional problems along with the pre-existing issues. She said for those neighbors who still continue to have

sewerage issues she doesn't even want to imagine what's in store for them if these homes are built. For those that haven't had an issue for while she is sure they will be re-visited by an old nightmare.

Ms. Dunfey said that if the Board feels inclined to grant the proposal even after the issues she has addressed, she is requesting that each new home built in the Lawndale Avenue and Catherine Street area have it's own individual septic system, which would be maintained by the individual owners.

Mr. Duffy asked if there are other homeowners with the type of valve system depicted in the pictures Ms. Dunfey presented.

Ms. Dunfey said not everyone on the street has these. She said only people who have basement plumbing have these. She said the house next door to hers is built on a slab so they don't have anything like this. She said this valve actually shuts off the water in the house so when it's pouring they can't use any water.

Paul Gerstner, 9 Catherine Street. Mr. Gerstner said they are opposed to granting the variance for a number of reasons. There are constant concerns about sewer backup in this area and adding two more homes will only make matters worse considering the low elevations of the site created entirely by the owner. First, gravel was hauled out on some lots sold earlier located on Lawndale Avenue and then filling in these four lots, among others - all with low elevations relative to Lawndale and the sewer lines.

He said the owner applied for a variance in 1994 for one house. It was granted with a number of stipulations. One of them was that there be a gravity feed sewer. He said they don't want a pump to remove sewer from the site, possibly pressurizing their (the neighbor's) sewer lines. If they pump it to a tank, it will practically be above ground because everything is so low there.

Mr. Gerstner said another stipulation in 1994 was that all the lots be consolidated into one lot, never to be subdivided

again. He asked why they were present tonight with four lots and two homes now.

He said these lots have been backfilled into what they now call the buffer to the Salmon Falls wetlands with hundreds of truckloads of construction debris from a number of sites around Nashua. He said he's lived here for forty years and he saw the truckloads come by with cement blocks and other debris. This was during the 1970s. He asked what was in this fill and if it's suitable to build homes there.

He pointed out the catch basin on the plan. He said it accepts all the runoff water that comes down Catherine Street. This is where the driveways are coming out. He said he hopes that area isn't going to be disturbed because that's the main catch basin. Otherwise, the road is going to be flooded.

He asked the Zoning Board to consider the involvement of the Planning Board with any decisions on paper street lots as proposed by the Aldermanic Infrastructure Committee.

Atty. Paul Alfano, Alfano, Baroff & Kasten. Atty. Alfano said he is appearing on behalf of Shirley Kraft. Atty. Alfano said he understands that there was an appeal in 1994 under RSA 674:41. He said they already addressed this case and approved one house with several conditions. One of the conditions was that there be only one lot and only one house. He said he doesn't understand how they can come back eleven years later and open this up again. He said that the Board should give strong consideration to the decision that was made at that time.

He said with respect to RSA 674:41, he believes that statute applies here and that statute would prohibit them from even getting a building permit in the first place. That statute is very similar to Section 16-23 of the zoning ordinance. It basically states that no building shall be erected nor a building permit issued unless the street giving access be either Class 5 or Class 6. This is neither or that it be a private road, but that there would be conditions that would have to be recorded at the Registry of Deeds where the municipality assumes

no responsibility for maintenance and that the applicant shall produce evidence of notice of the limits of municipal responsibility. He said there all sorts of things they have to go through, in part to protect the City.

He said Section #2, referenced by Atty. Westgate, which creates an exception to those requirements, only applies when the circumstances of the case do not require the building structure or part thereof to be related to existing or proposed streets.

Atty. Alfano said he really can't tell them whether this part of Catherine Street is an existing or proposed street. He thinks there's some confusion there. They don't have the right under Section #2 because Catherine Street is still shown as a street on the map of the City and people aren't being taxed for it as they are on other streets. He said even if they do have the right under Section #2, they have failed to meet all the requirements.

He said they have to show that the issuance of the permit would not increase the difficulty of carrying out the Master Plan. In one section of the Master Plan it states the purpose of the plan is to protect the character of existing neighborhoods through zoning regulation and enforcement. That's not happening here.

He said there's another Ordinance, 19-31 that states no underground utility service shall be installed in publicly or privately owned land until an easement has been secured. He said they haven't produced any evidence that an easement has been secured. This all goes to the issue of being consistent with the spirit of the ordinance.

Atty. Alfano said one of the purposes of the ordinance set forth in Section 16-161 is to lessen congestion in the streets. He said there's no room for guest parking in the driveways. He showed where guest parking would take place. If this were a conventional subdivision, the way it was intended a hundred years ago, there would be a full street there and that's where people would park. This is not consistent with the spirit of the ordinance.

He said another purpose of the ordinance set forth in Section 16-161 is to encourage the most appropriate use of land throughout the City. He said Mr. Maynard testified in April that the Board was going to be seeing a lot more of these paper street cases. Permitting development on these streets is not encouraging the most appropriate use of land throughout the City. He said that's why there are ordinances that require frontage, easements for utilities, etc.

Mr. Duffy said the ordinances have changed and case law standards have changed since 1994 with the "Simplex" and "Boccia" cases.

Atty. Alfano agreed. He said given all the significant changes he didn't know whether someone could re-apply and come back to the Board. He said his position is that they can't.

Mr. Duffy said he didn't think it was the same thing.

Brian Fox, 7 Delta Drive, Nashua. Mr. Fox said his concern is about the drainage. He said they are proposing two separate driveways. He doesn't know if anybody has done any calculations on the impact of the drainage going to the wetland.

He said he heard Mr. Maynard say that storm drains are 24" to 48". He said the City storm drain that accesses through this lot says that it's a 12" pipe so he is seeing that the storm drain for this area and for Lawndale is too small and should be upgraded.

John Koutsos, 3 East Dunstable Road. Mr. Koutsos said he lives in the neighborhood. He referred the Board to Page 10 of the minutes from the 1994 Zoning Board meeting. He said there was a concern from Mr. Drake, a member of the Zoning Board at that time. He stated that he had a concern about future requests to build more homes there. In 1994 the Board approved one home on all of the consolidated lots. He said Atty. Westgate did not anticipate that other City agencies, including the Engineering Office would think it was a permissible idea. First there would

have to be some type of significant turnaround at the end, which he has not seen on the plan that has been submitted. Secondly, Mr. Drake believed that topographically it is sloping off toward Salmon Brook, which is what they are proposing to do now. There would have to be significant engineering to address this runoff.

He said lastly, if the "Trottier's" wanted to make Catherine Street a public street, all the abutters would have to consent. He said he thought that if there are going to be two houses the abutters would prefer to have a street built. As Atty. Westgate stated, the landowners would have to petition the Board of Alderman to lay it out as a public street and they would have to think it's a sensible idea.

Mr. Koutsos said that Atty. Westgate said that he didn't think they could do this. He said the agreement (in 1994) was for one home and now they are back ten years later like nothing ever happened. He asked the Board to take this into consideration.

He said he doesn't think anyone is saying it's such a bad idea. He thinks what everybody is so opposed to is the way all of this has come about. He has a term for this and calls it "development or zoning through intimidation." There are two neighboring abutters here, Mrs. Wardner and Mr. Duhamel. They are in their 70s and Mr. Duhamel wanted him (Mr. Koutsos) to speak for him. He said they are imposing on these people. He said at this point in their lives they don't have the desire, perhaps, to even defend themselves like someone younger might do.

Mr. Duffy said the Alderman pass the ordinances. The applicants and abutters discuss when there is a conflict in front of the Zoning Board of Adjustment. If there is a disagreement it can go to Superior Court and they make decisions whether the Board is right or wrong.

Mr. Koutsos said he believes the way this should be handled is for the "Trottier's" to go to the neighbors and try to work it out. He said he was trying to work it out with them and got nowhere. He said he thinks there are other ways to work it out and try to settle it.

He said the disagreement is over what these lots on paper streets that don't have access are really worth. You don't have a permit, you don't have access, and you still have to go to court to get your access - yet the owner thinks they are worth a lot of money and that's why they are here tonight. He said the lots on Catherine Street extension are each assessed for about \$24,000. He said he thinks a lot of the neighbors would try to work things out if they could, but there's been no communication from the other side. If this is granted, the neighbors will take this further through the court system.

John Lewis, 6 Davis Court, Nashua. Mr. Lewis said he is concerned about a precedent that may be set if the Board grants this request.

He said the ordinance requires 60' of frontage and requires 75' of width. He said the fact that there is zero feet proposed for both of these requirements violates the spirit and intent of the ordinance.

#### **SPEAKING IN FAVOR - REBUTTAL**

Richard Maynard. Mr. Maynard said that neither of the property owners on either side of the paper street have appeared tonight, nor has anyone represented them before the Board. He is assuming they are neutral in this particular case.

He said one of the earlier speakers gave the Board a folder with a bunch of paperwork. If said if they noticed, they are written by politicians, except for one piece of paper in the back which is an inter-department communication dated December 8, 1981 which recommends that the commission remove the sewer moratorium in the Lawndale Avenue area. This document states that this will be done providing the City separates the storm drainage from the sanitary sewer at the intersection of Lawndale Avenue and Catherine Street. The City did build that 12" storm drain line serving the intersection and other parts of the street to separate the storm drainage from the sanitary sewer in accordance with the request. The City did what the State asked

them to do.

Mr. Duffy asked the size of the sewer line in this area.

Mr. Maynard said it's an 8" sewer line. He said a 12" is an acceptable storm drain in a limited area. If somebody on the Board doesn't feel this is adequate, they can make a stipulation that the drainage be reviewed by the Engineering Department.

He said for the people who have an issue with what happened in 1994 and today, as Mr. Duffy said they now have the "Boccia" case as well as other various case law. In 1994 the Board approved a request under RSA 674:41(II). This is not what's before the Board now. This is no more and no less than numerous other variances in same situation that the Board has granted.

Mr. Maynard said the initial part of the sanitary sewer where they have enough grade will be by gravity. Each of the houses that are 4' - 6' below the street will have a small ejector station to pump into the gravity line which will join the City system.

He said sanitary sewerage is not the problem in this neighborhood. It's storm drainage.

Mr. Duffy referred to the information Ms. Dunfey showed the Board. He said he had never seen anything like it. He asked if two additional homes being built would impact the system she uses because of additional drainage, sewer, water, etc.

Mr. Maynard pointed out the location of Ms. Dunfey's home. He said he's not sure exactly what Ms. Dunfey has, other than the fact that she has stated she has a valve that shuts off her water supply so that when the sewer discharges it is blocked and can't back up into toilets, etc. This is a normal safeguard. This is a response to storm drainage problems in the area that are connected to the sanitary sewer. They are not contributing to that particular problem.

Mrs. Douglas said one of the earlier a condition imposed by the

City on the sewer permit was that no basement plumbing fixtures be allowed and that the first floor be above a certain elevation. She asked if the proposed homes will meet this criteria.

Mr. Maynard said this was done five City Engineers ago.

Mrs. Douglas asked if there is basement plumbing planned for either of these homes.

Mr. Maynard said this is unknown at this time. He said basement plumbing has to do with when there is gravity sewer. Basement plumbing does not contribute to the problem.

He said the stipulation referred to is not relevant to the situation that is being proposed. He said at the time of that stipulation Mr. Hogan wanted the whole street to be built up and flow by gravity (he showed which way). He said this is so against good engineering practice and is not relevant any longer. It's not the right or correct thing to do in this particular situation. He said if the Board wants this further reviewed by City Engineering Department that is fine.

#### **SPEAKING IN OPPOSITON - REBUTTAL**

Atty. Paul Alfano. Atty. Alfano said it's his understanding that Mr. & Mrs. Duhamel at Sheet 126 Lot 145 and "Warner" at Lot 164 are opposed to this request. He said it's inappropriate to infer that they don't support the request.

He said he agrees that RSA 674:41 is not before the Board. He said although he addressed RSA 674:41 and Section 16-23 of the ordinance, he did so with the reservation of all rights to object to that statute and that ordinance being addressed at this hearing.

He said with respect to Mrs. Warner, he assumes she has the right to come in and request a subdivision if she wishes. He said he is mentioning this only in connection with the utilities. They have to get a utility easement, but it should

in no way impact her ability to subdivide her land.

He said with respect to the water and sewer, his understanding is that the storm drain that is there does not take care of the rest of the neighborhood. The rest of the sewer has not been separated from the storm drainage.

Mr. Duffy said he sees this request in a little more favorable light. This type of request has been before the Board before. It's not affecting multiple lots and houses. It's a reasonable request. He doesn't know of another alternative method that's reasonable to get one or two homes on the lots that don't affect a lot of people. There may be some terms and special conditions that they might want to consider if the Board grants the request.

Mr. Anderson said this isn't a shoehorn type of lot.

Discussion ensued.

**MOTION** by Mr. Duffy to grant the variances: 1) minimum lot frontage 60' required, 0' proposed, 2) minimum lot width, 75' required, 0' proposed to construct two single-family homes on a paper street - L Catherine Street, Sheet 126 Lots 148, 152, 155 & 158). The variance is needed to enable the applicant's proposed use of the property given the conditions of the property. For a substantial period of time this paper street has been abandoned by the City and by the State of New Hampshire RSA statute. The benefit by the applicant to reasonably develop two single-family homes in this area is a condition allowed for the area variance to be granted. It is within the spirit of the ordinance that these lots as these lots are significantly larger than any of the lots within the RA Zone or in this abutting neighborhood. There was no testimony about adversely affecting property values of surrounding parcels, but since this is all one lot at a dead end street owned by one common owner with no apparent impact to abutters, it should not adversely affect property values. It is, therefore, not contrary to the public interest. Those in opposition referenced RSA 674:41 and Section 16-23. He said that these are covered when the official notice is sent out about the public hearing. Substantial justice will

be served. Conditions: Protection of the prime wetland buffer and buffer area during construction. Sewer and drainage plan and profile be reviewed and approved by City staff for sewerage and storm water. Consolidation of lots into one lot, specifically Sheet 126 Lots 148-157 and the other house to be on Sheet 126 Lots 158-163. One common driveway with easement for right of access be placed on file with the deed. One curb cut on Lawndale Avenue. Any existing easements required by the City for existing utility poles or wire and electricity also be approved by the City staff.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY**

Mr. Jenkins now chairing.

**4. Donald & Cecile Boucher (Owners) 11 Gendron Street (Sheet E Lot 409) requesting variance to encroach 10 feet into the 30 foot rear yard setback to construct a second story dormer on the back of an existing house. R9 Zone.**

Jeff Gordon, Campbell Hill Road, Francistown, NH. Mr. Gordon said he prepared the plans for this project and the application.

He said the property is located on a corner lot that begins the circle of Gendron Street. All the properties are residential in nature and the homes were built at various times over the last thirty years.

He said the upstairs of this home is accessible by an existing staircase and is unfinished. The proposal is to change the rear roof pitch from 12/12 to 4/12 in order to provide a bedroom, bath, and living space. When the house was located on the lot, it was placed over the rear setback line, creating a wedge approximately 1'-10' over the length of the house so it is not in compliance with the ordinance.

Mr. Jenkins basically repeated back that it's the placement of the house on the lot that creates the hardship, otherwise they would not be here.

Mr. Gordon agreed.

Mr. Jenkins asked if this is only for a dormer and the footprint is not being changed.

Mr. Gordon said there is no change in the footprint.

### **SPEAKING IN FAVOR**

No One.

### **SPEAKING IN OPPOSITION**

Brian Racine, 45 Gendron Street. Mr. Racine said he lives directly behind this house. He said his issue of concern is for privacy. He said any windows or sliders will overlook directly into their back yard.

He said when he bought his home five years ago there was an existing fence and last year they were able to encase the whole back yard.

Mr. Jenkins said to have a second story on your home is nothing unusual. He said in this instance there is a hardship because it is a corner lot and also the placement of the house on the lot presents a hardship. He said if the home had been placed correctly in the first place they wouldn't even be here asking for this variance.

Mr. Racine asked how close to the property this will be to his property.

Mr. Jenkins said at the furthest distance it is 10' and at one point it is only 1'.

Mr. Racine said at the closest point of the dormer if it would

be 20' to the property line.

Mr. Jenkins said the footprint of the house isn't changing at all.

Mr. Duffy asked if Mr. Racine's home is a single story home and he confirmed that it is.

**SPEAKING IN FAVOR - REBUTTAL**

No One.

**MOTION** by Mr. Duffy to grant the variance to encroach 10' into the 30' rear yard setback to construct a second story dormer on the back of an existing home at 11 Gendron Street. The variance is needed to enable the applicant's proposed use of the property. The benefit sought by the applicant cannot be achieved by some other method. The position of the building on the property and the fact that it's on a corner lot create a hardship. It is within the spirit and intent of the ordinance. It will not adversely affect the property values of surrounding parcels. It's a minor change with no change in the footprint. It is not contrary to the public interest. Substantial justice is served.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY**

**5. Harry W. & Kathleen A. Converse (Owners) 115 Gilson Road (Sheet D Lot 197) requesting variance to encroach 13 feet into the 35 foot front yard setback to construct an 8'x29' farmers porch. R30 Zone.**

Harry Converse, 115 Gilson Road. Mr. Converse asked what the Board needs from him.

Mr. Jenkins asked if this is already built.

Mr. Converse said the porch is built, but the roof is not. He said he understands that you may encroach half way into the setback as long as the height of the deck is 4' or less. He needs the variance to put on the roof.

Mr. Jenkins asked how long Mr. Converse has lived here and when the porch was built.

Mr. Converse said for twelve years. He said he built the porch last fall.

Mr. Duffy asked the size of the porch.

Mr. Converse said 8' out by 29' long.

Mr. Jenkins said he has seen it. He said it seems to be a considerable distance from the street.

Mr. Duffy asked if there is a deck anywhere on the house.

Mr. Converse said he has a deck in the rear of the house.

#### **SPEAKING IN FAVOR**

No One.

#### **SPEAKING IN OPPOSITION**

No One.

**MOTION** by Mr. Anderson to grant the variance to encroach 13' into the 35' front yard setback to construct an 8'X29' farmers porch at 115 Gilson Road. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. It's a corner lot. It is within the spirit and intent of the ordinance. It adds to the attractiveness of the home. 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**

**6. 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 [REHEARING].**

Lisa Cimeno, 120 Ridge Road. Ms. Cimeno said the zoning of her property is R40, but she believes when the house was built it was located in the R30 zone. She believes her house is only 30' from the street.

Mr. Jenkins said according to the drawing this is a corner lot. It is 30' to the front according to what the Board has been presented.

Mr. Jenkins asked about the sidewalk.

Ms. Cimeno said it is on her property. She said it must have been added at least twenty years ago. She said it's pretty old.

Mr. Jenkins said he believes the sidewalk was mandated in the subdivision and the developer put it in.

He said according to Mr. Falk's calculations it looks like the farmer's porch would be 21' from the sidewalk. There is about another 10' from the sidewalk to the right-of-way.

Ms. Cimeno agreed.

Mr. Duffy asked the age of the house.

Ms. Cimeno said she thought it was built in 1959.

Mr. Duffy asked if the house was built in this footprint or if

the garage was added on.

Ms. Cimeno said she believes the garage was built in 1973. She said she is not adding to the footprint of the house, other than the farmer's porch. She said she is remodeling the entire house. She said she has a building permit to re-do the sunroom and the master bath. She said they have six kids and they are always on the sidewalk.

Mr. Duffy said when he drove around he didn't see a lot of farmer's porches. He did see a lot of big decks.

Mrs. Cimeno said they do not have a deck at their house.

The Board discussed the new development going in behind this house, the sidewalks in the area, other houses and their locations.

#### **SPEAKING IN FAVOR**

No One.

#### **SPEAKING IN OPPOSITION**

No One.

**MOTION** by Mr. Duffy to grant the variance to encroach 19' into the 40' required front yard setback to construct a 6'X32' one story farmers porch at 120 Ridge Road. The variance is needed in order to enable the applicant's proposed use of the property given the conditions of the property. This is on a corner lot and the position of the house on the property originally was set up in a R30 Zone instead of the current R40 Zone. It is within the spirit and intent of the ordinance that a farmer's porch is a reasonable addition to this piece of property. It should not affect the property values of surrounding parcels. Some of the houses in this area are closer and further away. The positioning of the houses are unique. It is not contrary to the public interest. Substantial justice is served in the continued use and development for a single-family home in this zone.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY**

**7. Patrick B. & Cynthia E. Justvig (Owners) 420 Main Dunstable Road (Sheet C Lot 60) requesting variance to exceed maximum accessory use area of proposed detached 24'x35' garage, 40% allowed - 56% requested. R9 & R30 Zones.**

Tom Landry, Tom Landry Construction & Contracting. Mr. Landry said he is representing the homeowners. He said the existing garage is dilapidated and falling down. It has a cinder block foundation with a slab. It is technically unsafe. The proposal is to demolish the existing garage and erecting a larger garage in its place. It is proposed as a three-car garage with a second floor for storage.

He said he didn't feel this would interfere with the property values because right now they have an eyesore.

Mr. Jenkins said the Board members have seen this. He said the only thing he couldn't figure out was why the need for a 24'X35' garage. It is a massive garage.

Mr. Landry said they have a twelve-year-old daughter who will be driving in the future and they aren't planning to leave the Nashua area. Right now they have two vehicles they want to house and the third bay will be used for lawn equipment and other items for the yard and "toys."

Mr. Jenkins asked if the front of the garage is going to be the 35' and Mr. Landry agreed.

Mr. Landry said the house is actually smaller than the average sized house. There are future plans to add onto the house later on. He needs the garage more at this point.

Mrs. Douglas asked what would be on the second floor of the garage.

Mr. Landry said it will be used for storage. There will be no plumbing or heating.

Mr. Duffy said he saw this garage as a little bit too big for three cars. He said he has two daughters and a wife and they have no garage. He asked if the driveway is going to stay the same.

Mr. Landry said it is. He said in front of the garage it will be a little larger.

Mr. Duffy asked if the garage will be on a slab.

Mr. Landry said there will be a 4' frost wall.

Mr. Duffy asked if the owner could live with a single-story garage, instead of having a two-story structure. He said he sees the two-stories as a significant change to the character of the neighborhood.

Patrick Justvig, 420 Main Dunstable Road. Mr. Justvig said the house was built in the 1920s and he has no storage at all in the attic. He has no room to get up in it, no stairs, nothing. The basement is all fieldstone and it's leaking. Everything down there gets wet even though he has put 2'X4's down.

He said the existing garage is being held up by two come-a longs trying to hold the walls in and prevent the walls from falling out and the roof from falling in.

Mr. Jenkins asked why he wasn't putting his money into the house instead of a garage.

Mr. Justvig said this is going to happen too. He said he's slowly putting windows in to update the house and keep the heating expenses down.

**SPEAKING IN FAVOR**

No One.

**SPEAKING IN OPPOSITION**

No One.

Mr. Jenkins said the Board may want to consider a special condition that there be no heat and no plumbing if they are inclined to grant the request.

**MOTION** by Mr. Anderson to grant the request to exceed the maximum accessory use area of proposed detached 24'X35' garage, 40% allowed, 56% requested at 420 Main Dunstable Road. The variance is needed to enable the proposed use of the property given the special conditions of the property. The size of the home and the condition of the existing garage lend itself to the proposed larger garage with storage that's not available in the house. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible. It is within the spirit and intent of the ordinance. It will not adversely affect property values of surrounding parcels. It's not contrary to the public interest. Substantial justice will be served. Special Condition: No plumbing or heat in the garage.

**SECONDED** by Mr. Jenkins.

**MOTION CARRIED UNANIMOUSLY**

9. Anthony W. & Karen I. Terilli (Owners) 19 & L New Hampshire Avenue (Sheet 138 Lots 28 & 30) requesting the following variances: Lot 28: 1) minimum lot area, 9,000 square feet required - 7,500 square feet proposed, 2) minimum rear yard setback, 30 feet required, 16 feet proposed - to construct a second story on existing house; Lot 30: 3) minimum lot area, 9,000 square feet required, 7,500 square feet proposed, and 4) minimum rear yard setback, 30 feet required, 20 feet proposed. R9 Zone.

Atty. Andy Prolman, 20 Trafalgar Square, Nashua. Atty. Prolman said Matt Erickson of Menco is also present. This is going to be the builder on the site.

He referred the Board to the plan dated from 1947. He said these are old city lots - 7,500 square foot lots in a R9 Zone. He said he has provided a sketch of the two lots from Mr. Erickson. He said the "Terilli's" live in the existing house, Lot 138-28 (Lot 8 on the 1947 plan). They are proposing to take down the garage and construct a new house on Lot 138-30 (Lot 9 on the 1947 plan).

He referred the Board to a packet of information they had been provided. He said it contains tax bills and assessor's information that show historically there are two lots of record.

He said he has the title history that shows the lots have been conveyed from the original owners up to the "Terilli's" as Lot 8 & 9 in the chain of title if the Board should want a copy of that information.

He said he believes the Board has a copy of the GIS map and the house plans as well.

Atty. Prolman said the area variances are being requested because the lots pre-date the current zoning. The current zoning requires 9,000 square feet and a lot depth of 90' and the rear yard setbacks. The existing house already encroaches into the rear yard setback. They are proposing to line up the new house comparable to the existing house and comparable to the neighborhood.

He said they believe they have a hardship. These are small old city lots, which is a special condition of this property. There is no reasonable alternative. They can't do anything about the lot depth or lot size. They could build a houses within the setback, but they would have strange and unreasonable and unworkable houses. You could chop off the back half of the "Terilli's" existing house, but that's not a reasonable

alternative.

He said Atty. Alfano discussed Section 16-161 at length, which he believes this applicant meets. This use will not offend any of the general purposes of the zoning ordinance. This is a residential use in a residential zone. If you look at New Hampshire Avenue all the lots in the area are 7,500 square feet. Some of the lots are a little bit larger and some are a little bit smaller, but they meet the character of the neighborhood.

He said there isn't going to be any impact to neighboring property values. The improvements to the "Terilli's" house are going to cost approximately \$120,000. They are going to go up a floor and take down the garage. The new house is going to be constructed and marketed in the \$350,000 range.

He said this allows the "Terilli's" a reasonable use of their property and adds additional housing stock to Nashua for middle-income people.

Mr. Duffy asked if the house is going to be used as a rental property or multi unit.

Atty. Prolman said the "Terilli's" are going to live in their house with their children. The other lot will have a house built on it and it will be sold. He said the buyers of the new house could rent it out rather than live in it themselves.

Mr. Duffy said that what he is hearing is that these are single-family homes. He asked if there would be a problem with a special condition that these are single-family homes, not multi-family or multi-unit.

Atty. Prolman said they are single-family homes.

#### **SPEAKING IN FAVOR**

No One.

**SPEAKING IN OPPOSITION**

No One.

**MOTION** by Mr. Duffy to grant the variances: Lot 28: 1) minimum lot area, 9,000 square feet required - 7,500 square feet proposed, 2) minimum rear yard setback, 30' required, 16' proposed - to construct a second story on existing house; Lot 30: 3) minimum lot area, 9,000 square feet required, 7,500 square feet proposed, and 4) minimum rear yard setback, 30' required, 20' proposed. The variance is needed to allow the applicant the proposed use of the property given the "Boccia" and "Simplex" cases and standards. This is very similar in size and shape of the lots. Single-family use is an approved use in the R9 Zone. There are other houses, single-story and two-stories in the neighborhood. There is no other method reasonably feasible for the applicant to pursue other than the variances. It is within the spirit and intent of the ordinance that the applicant have development use of the property. They will be taking down the existing garage. 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**

**Request for Rehearing**

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

Mr. Jenkins asked the Board members if they all had read the request for rehearing. He said basically his understanding of the request is that instead of asking for three lots they are going to ask for two.

The Board questioned whether this should be a new application.

Mr. Falk said they can ask for it as a new application, but the Board would have to look at the "Fisher v. Dover" case to see if it's a substantially different request. He said he thinks it's pretty different because it's going from three lots to two lots.

The Board discussed the advertising and the fact that it would be a new case.

Mr. Jenkins asked if there was a procedural error, such as improper notice.

The Board did not feel this was the case.

Mr. Jenkins asked if the decision was illegal. Did the Board fail to completely address each point of law required for the special exception and/or variance.

Mr. Duffy said "no" and that it's not evident by the information presented by counsel for the applicant. Mr. Jenkins agreed.

Mr. Jenkins asked if the request for rehearing contains new information not presented or available to the Board at the original hearing.

Mr. Jenkins said he recalls asking the applicant that night if he could reduce it down to two lots and they were adamant that they did not want to do that. He said they can come back with a request for two lots with a whole new plan.

Mr. Jenkins asked if there is anything in the request that could cause the Board to make a different decision.

No answer could be heard.

**MOTION** by Mr. Duffy to deny the request for rehearing. He said that there is no procedural error, no illegal decision and the request did not include any new information not presented at the original meeting. However, the applicant has the opportunity to file a new request for a different request.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY**

**Homer L. Jr. & Claire L. Grooms Irr Trust (Owners) 1 Glen Drive (Sheet B Lot 489) requesting variance to encroach 10 feet into the 30 foot rear yard setback to construct an attached 17'x40' garage. R9 Zone.**

Mr. Jenkins said this case was denied because there was nobody present to testify.

Mr. Falk made some comments that could not be understood. He did say the applicant wanted to pay the application fee and start all over again.

**MOTION** by Mr. Jenkins granting the rehearing request.

**SECONDED** by Mr. Duffy.

**MOTION CARRIED UNANIMOUSLY**

**MINUTES**

**7/12/05**

**MOTION** by Mr. Duffy to accept the minutes of the 7/12/05 meeting, waive the reading, and place them on file.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY**

**Regional Impact**

The Board did not see any items of regional impact.

**ADJOURNMENT**

Mr. Jenkins called the meeting closed at 10:52PM.

Susan Douglas  
Clerk

lt  
Taped