

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
September 13, 2005

A public hearing of the Zoning Board of Adjustment was held on Tuesday, September 13, 2005 at 6:30PM 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
Jack Currier

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 nonconforming use for which a request to expand is being in accordance with Subchapter 13 of the Nashua Revised Ordinances.

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

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

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

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

He said the order of receiving testimony will be in the following manner: Testimony will be heard from the applicant seeking the adjustment. The applicant will have fifteen minutes to address the five points of law just described. The Board will not consider in their decision any information which does not address those points.

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

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

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

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

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

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

Mr. Jenkins said at the present time they have three members

present. He asked if there was anyone in the audience who wanted to postpone their case. Nobody came forward.

1. David W. & Susan F. Boots (Owners) 20 Durham Street (Sheet F Lot 740) requesting variance to encroach 4 feet into the 30 foot required rear yard setback to construct an 18'x26' three-season porch. R9 Zone.

Voting on This Case:

Thomas Jenkins

Sean Duffy

Jeffrey Anderson

David & Susan Boots, 20 Durham Street, Nashua, NH.

Mr. Jenkins gave Mr. & Mrs. Boots a letter that spoke in opposition to the request and asked them to read it and address it in their testimony.

Mrs. Boots said they will encroach 4' into the setback in only part of the corner - it's not the entire width of the screened in porch. She said that they feel that they abut common land and they use their back yard all the time. She said they think this will benefit their home.

Mr. Jenkins asked what they have in the back right now.

Mrs. Boots said they have a deck and that will be removed and a screened in three season room will be built to replace it.

Mr. Jenkins asked if it is in the common land area.

Mrs. Boots said it is not - that it is on their own land. She said they are trying to beautify their back yard. They've planted trees and flowers.

Mr. Jenkins said the lot is an odd shape and it's on a cul-de-sac and the placement of the house on the lot creates a

hardship. There are easements on three sides because of the common land, which creates another hardship.

Mr. Jenkins said there will be a stipulation that there be no heat or water in this room.

Mr. Boots said this is correct.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

Mr. Jenkins said they will place the letter from 17 Durham Street that is in opposition on file.

MOTION by Mr. Anderson to grant the variance to encroach 4' into the 30' rear yard setback to construct a 18'X26' three season porch at 20 Durham Street. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property, which is the placement of the house on the lot at the corner of a cul-de-sac with common land on three sides. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible to the applicant. It is within the spirit and intent of the ordinance. It will not adversely affect the property values of surrounding parcels. It is not contrary to the public interest. Substantial justice is served.

SECONDED by Mr. Jenkins.

MOTION CARRIED UNANIMOUSLY

2. Five N Associates (Owner) Fright Fest NH (Applicant) 12 Simon Street (Sheet 87 Lot 252) requesting use variance to allow a temporary indoor Halloween-themed amusement attraction. PI

Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas

Jeffrey Anderson

Tim Dunne, 38 Lincoln Avenue, Nashua. Mr. Dunne said this proposal is for a temporary seasonal amusement located at 12 Simon Street. It will occupy about 5,000 square feet to about 6,000 square feet. He said it will run during the month of October. It will be constructed in such a way that it can be easily broken down at the end of the month and will be removed at the end of October.

Mr. Jenkins asked the period of time that is being proposed.

Mr. Dunne said the month of October - October 1 through October 31.

Mr. Jenkins said that Mr. Falk indicated that the applicant would have the Police Department and the Fire Department on hand and Mr. Dunne indicated that this is correct.

Mr. Jenkins asked for the hours of operation.

Mr. Dunne said 5:00PM to midnight on the evenings they are open - Thursday through Sunday. He said in the last week of October they are going to be open Tuesday through Sunday.

Mr. Jenkins asked where the entrance is going to be.

Mr. Dunne presented a plan to the Board and showed them the area they will be using. He said their walk-through attraction is going to be about 5,000 square feet, although the entire square footage of the building is 17,000 square feet, which will be used as a queue line to get them inside of the area where the actual attraction will be.

Mr. Jenkins asked Mr. Dunne to tell them what he is doing for safety.

Mr. Dunne said they have contacted the Nashua Police Department for a detail. They are going to provide them with a Police Officer for every evening they operate. In addition to that the attraction will have their own security staff with radio communications throughout.

Mr. Jenkins asked where the parking will be.

Mr. Dunne said they will be parking on the lot.

Mr. Jenkins asked if the same owner owns both premises.

Mr. Dunne said there will only be parking around the perimeter of the building they are occupying. They will not be occupying any of the spaces for the other businesses nearby.

Mr. Duffy asked how long it will take to take all of this out when they are done.

Mr. Dunne said at the present time the building is completely empty except for the lolly columns in the center of the space. He said their construction can be taken out within a two-week process.

Mr. Duffy asked if the building is sprinklered.

Mr. Dunne said it is. He said they are adding to it. He said the Fire Marshall, Mike Vacarro, has been out to the site and he is going to be working with them on all their fire-proofing that they are installing into the attraction.

Mr. Duffy said he can see three emergency exits to the outside of the building on the plan.

Mr. Dunne said this is correct. He said one of those exits is a double door. He said according to the Fire Department these

exits are sufficient.

Mr. Duffy asked about signs.

He said they will have nothing special and nothing permanent for signage.

Mr. Duffy asked if they are bonded for insurance and if Mr. Dunne had run some type of similar operation in some other place.

Mr. Dunne said this is his first time running such an operation. He said he is working closely with a team of consultants that do these internationally.

Mr. Duffy asked if it would be appropriate to ask Mr. Dunne to provide proof that he has insurance as a special condition.

Mr. Falk said Mr. Dunne has to apply for a building permit. It would seem like he would have to have insurance and the owner of the building should also have insurance.

Mr. Duffy asked if Mr. Dunne could estimate how many people might queue through this attraction.

Mr. Dunne said 600-800 people a week. He said in the event it turns out to be more they will upgrade their police detail and if they need to count people coming in to make sure that they're not exceeding their capacity then that's what they'll do.

Mr. Duffy asked what their capacity of the queue and the space.

Mr. Dunne said 800 people.

Mr. Jenkins said the application indicates there are fifteen employees per shift. He asked if this is from 5:00PM to midnight.

Mr. Dunne said this is correct.

Mr. Jenkins said it shows that there are 98 parking spaces.

Mr. Dunne said this is correct.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

Mr. Jenkins said this sounds like a good public benefit. He said last year there was an attraction over at the old Soucy's Market site.

MOTION by Mr. Duffy to grant the use variance to allow a temporary indoor Halloween-themed amusement attraction at 12 Simon Street. This use is temporary in nature. It may not have been covered by the original Planning & Zoning Ordinances for the City of Nashua. It's a holiday-based festival. The parameters have been set up by the applicant. It will comply with existing and prior control requirements that the Police Department and Fire Department will provide. It is within the spirit and intent of the ordinance that a temporary use is reasonable. The property values should not be adversely affected by this temporary event. It is not contrary to the public interest. Substantial justice is served. Special Conditions: The hours of operation 5:00PM to midnight Thursday through Sunday during the month of October and Tuesday through Sunday during the last week of October from 5:00PM through midnight.

SECONDED by Mr. Anderson.

MOTION CARRIED UNANIMOUSLY

3. 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. [Rehearing]

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas

Jeffrey Anderson

Homer L & Claire L. Grooms, 1 Glen Drive, Nashua. Mr. Grooms said Public Service of New Hampshire has a 50' right-of-way over their property so they are losing the use of 5,000 square feet of their property. He said they want to build a two-car garage and in order to do that they need to build one that is 40' long so the vehicles will be parked behind each other. It will be 17' wide. This is as wide as they can go. The right-of-way is presently right on the edge of the driveway. He said the Engineering Department from PSNH has come down and staked out where the boundary is on the 50' right-of-way.

He said the only way that they can build this garage is to encroach into the 30' setback.

Mr. Jenkins said he can't say that he's ever seen a garage that is 40' long and 17' wide.

Mr. Grooms said he said this is the only way they can do this. He said he wants both cars in the garage. He said this will only add value to the property. There will still be 20' to the rear yard. If they ask for 24' wide they will have to ask for a larger encroachment.

Mr. Jenkins said they might be able to kitty-corner the garage.

Mr. Grooms said they talked to the contractor about this and

they would have to cut down all their trees in the back yard.

Mr. Jenkins said if they did a detached garage they would only have to be 6' from the property line.

Mr. Grooms said they can only come into the yard one way and they don't want to go out on Northeastern Boulevard. They have erected a fence there anyway. He said even getting out onto Glen Drive is a problem at times.

Mr. Jenkins asked how long they have lived at this residence.

Mr. Grooms said the house started construction in 1962 and they moved in July 1963.

Mr. Jenkins said they have lived here for forty years without a 40' garage.

Mr. Grooms said he is getting to the point where he is getting old and doesn't want to have to go out and clean the cars off. Also, his wife is handicapped so they would like to be able to walk into the garage without going outside. If they put the garage in the back yard they would have to block all the windows to get into the garage.

Mr. Jenkins said he believes this 17' wide and 40' long garage is a safety hazard. He said 17' isn't very wide.

Mr. Grooms said this will allow them to put in a 12' overhead door and there will be 2' on each side. He said the contracted has indicated this should work fine. He said there will be engineered trusses for the roof.

Mr. Jenkins asked if Mr. Grooms had talked to the neighbors at all.

Mr. Grooms said they are in favor of the request.

Mr. Duffy asked if this is a single-story garage.

Mr. Grooms confirmed it will be a single-story garage. He said there won't be a room upstairs, not even for storage because of the engineered truss.

Mr. Duffy asked if they have to build a peak bigger than their current peak.

Mr. Grooms said hopefully the peak will be the same height as the house. He said they might have to go a little higher, but they are going to try to keep the profile as low as possible.

Mr. Duffy asked if there is going to be a workshop area or storage area in the back of the garage.

Mr. Grooms said they are going to have a 9' door in the rear so they can open up both ends of the garage.

Mr. Jenkins asked if there are any plans drawn up for the garage.

Mr. Grooms said he did not - the contractor had them.

Mr. Duffy asked if the garage were 20' wide by 30' long, instead of 40' if it would be something they could live with.

Mr. Grooms said they can't go 20' wide because they will be encroaching into the Public Service right-of-way.

Mr. Duffy what they would lose if the depth was cut to 30'.

Mr. Grooms said they wouldn't be able to fit both cars in the garage. He said they measured and came up with 31'. They need room to get around the front and the back of the vehicles as well. It may end up being a little less than 40'.

Mr. Duffy asked if there is a possibility of an encroachment into the easement.

Mr. Grooms said PSNH will not allow any building anything into that easement. He said they can put a temporary building up such as a shed.

Mr. Anderson said he didn't understand the purpose of having a rear door in the garage.

Mr. Grooms said they are looking to be able to open up both doors up in the summertime and they would have a nice place to sit.

Mr. Anderson asked if a regular door wouldn't do that.

Mr. Grooms said he felt a 9' door would give them more airflow through the garage and that they could probably just sit out there and enjoy it. In the wintertime they would have the cars in the garage.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

Mr. Duffy said he wishes they could do a carport instead of this garage. He said it makes it more of a temporary structure.

Mrs. Douglas said there are a lot larger garages in other parts of the City and some of them have second stories. She said this applicant has affectively lost half the use of their property. There is no place else for this to go.

Mr. Anderson said he didn't see any other way for them to put in a two-car garage.

Mr. Jenkins said he would feel more comfortable with a 30' long garage. He said he's never seen a 40' garage anywhere in Nashua.

Mr. Duffy said a 40' garage is not in character with the neighborhood.

Mrs. Douglas said as far as the second door is concerned, that's been done in other garages in the City.

Discussion ensued.

MOTION by Mr. Anderson to grant the request for a variance to encroach 10' into the 30' rear yard setback to construct an attached 17'X40' garage at 1 Glen Drive. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. The 50' Public Service right-of-way and the narrow 17' strip of land between that right-of-way and the existing home leave no other method to build a two-car described. The benefit sought by the applicant cannot be reasonably achieved by some other reasonable method other than the area variance. It is within the spirit and intent of the ordinance. 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 Mrs. Douglas

MOTION CARRIED - 3-1 - Mr. Jenkins opposed.

4. Frank Gilberto & Ana Luisa Campos (Owners) Juan M. Mejia (Applicant) 67 Walnut Street (Sheet 81 Lot 61) requesting the following variances: 1) to allow two driveways 19 feet apart, minimum of 30 feet required, and 2) to exceed maximum driveway width, 24 feet allowed, 33 feet, 9 inches proposed for three separate driveways. RC Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Susan Douglas

Jeffrey Anderson

Juan Mejia, 89 Westwood Drive, Nashua, NH. Mr. Mejia said when he applied for a permit for this new development he was told

everything was up to code and he didn't have to come to the Board. In the middle of construction he was in touch with City Hall to make sure that everything was up to code. All of a sudden he received a call saying that he needed a variance on two garages that are 19' apart where a minimum of 30' is required.

Mr. Jenkins said basically what Mr. Mejia is requesting is to have the driveways 19' apart, which is common for the area. He said there are a lot of driveways in this particular area that are very close together, even less than 19'.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Duffy to grant the request for the following variances: 1) to allow two driveways 19' apart, minimum of 30' required 2) to exceed maximum driveway width, 24' allowed - 33.9" proposed for three separate driveways to be located at 67 Walnut Street. The variances are needed to enable the applicant's proposed use of the property given the special conditions of the property. This is a re-development of a property that was non-conforming use for many years and has been brought up to code. In many instances there are driveways in the neighborhood are very similar and in some cases are a lot more non-conforming. It is within the spirit and intent of the ordinance that these types of reconstruction brought up to code for aesthetics in keeping with the Master Plan. It should not adversely affect the property values of surrounding properties. In fact, the upgrade should improve them. It is not contrary to the public interest. Substantial justice is served as the applicant has reasonable development rights to the property.

SECONDED by Mr. Anderson.

MOTION CARRIED UNANIMOUSLY

5. Palm Street (Sheet 99 Lots 29 & 31) requesting the following: 1) variance for minimum lot area, 7,000 square feet required, 5,000 square feet proposed, to transfer common ownership between contiguous nonconforming lots for an existing two-family structure; and 2) special exception to allow required parking on a lot within 300 feet of subject lot. RC Zone.

6. Theresa Corriveau, Trustee & Palms Edge, LLC (Owners) "L" Palm Street and "L" Pine Street (Sheet 99 Lots 31 & 69) requesting variance for minimum lot area, 42,000 square feet required, 35,523 square feet proposed - to construct a 12-unit multi-family building. RC Zone.

Voting on These Cases:

Tom Jenkins

Sean Duffy

Susan Douglas

Jeffrey Anderson

Atty. Morgan Hollis, Gottesman & Hollis, 39 East Pearl Street, Nashua. Atty. Hollis said he is representing the property owner as well as the applicant. He referred the Board to a packet of material that he passed out to them. He said the first page shows the plan of what they are attempting to do. He said the property is located at the very end of Palm Street and backs up to the Lake Street mill and occupies a portion of the former railroad track, which has been discontinued. If you were to

proceed all the way to the end of Palm Street there are a set of bollards or posts at the end of Palm.

He said the property is a two-family unit and there is a spare triangular lot which his client also owns. There are two houses located diagonally across the street, which his client owns as well. They also own the strip of railroad bed and they are attempting to do something with that in combination with Lot 31, which is the triangular parcel.

He said the second page is an aerial taken from the City's maps. He said he highlighted the lot that they will be talking about. At this time there is a two-family structure located on Lot 29. He said he has talked with the Zoning Administrator and the lot that is highlighted (Lot 31) is considered to be a part of Lot 29. This is under the zoning ordinance that requires undersized lots to be consolidated.

He said the third item in the packet is the deed that describes the two parcels. It is clearly described as two separate parcels. It was purchased as two separate parcels. He said there is information in the packet that shows the deed history and the mortgage information. He said there is also information in the packet that reflects that the City of Nashua assesses these properties as two distinct parcels of land, not as a single merged lot. He said rather than appeal Mr. Falk's decision that these two lots are together and have been merged under the zoning ordinance, he felt that they have a case to proceed forward.

He said the proposal is shown on the plan. They are proposing a single building which will contain twelve units. It will be located at the end of Palm Street on the left after the last structure. It will be on the vacant lot and on the railroad lot. The twelve units will consist of six two-bedroom units and six one-bedroom units. The one-bedroom units will not exceed 800 square feet and the two-bedrooms will not exceed 1,000 square feet. Currently they are designed to be less than that, but they won't exceed these figures. He presented renderings showing the layout of the units as well as the appearance of the

building.

Mrs. Douglas asked if this would be a three-story building.

Atty. Hollis confirmed that it is proposed as a three-story building.

He said the plan is to consolidate the triangular piece with the railroad tract area and make one single lot, which comes to 35,000 square feet. The requirement is 42,000 square feet for twelve units.

He said Mr. Falk considers the triangular piece to be consolidated with the existing two-family structure. Therefore, it needs to be subdivided out to create a remaining lot of the existing building. He said the existing building will remain the same and there will be no change in use. The likelihood is that the parking for that building, which is currently on the triangular piece would remain on that lot. He said there is adequate room for parking, but after talking with Mr. Falk they thought they ought to ask for relief in the event they choose not to park on that site.

He said the application shows that the lot is 4,000 square feet, but in actuality the lot is 4,925 square feet. They are asking for a variance to allow an approximate 5,000 square foot lot where 7,000 square feet is required under the current ordinance and they are asking for a special exception to allow the parking for that lot to be placed along the new parking area which will be created on the railroad tract.

Atty. Hollis said the first variance on Lot 29 (122 Palm Street) has been owned by the Corriveau Family since 1992. It's a two-family. Upstairs there is one bedroom and there is approximately 700 square feet. Downstairs there is a two-bedroom unit with approximately 850 square feet. It is this size that is the model for the new proposed units.

He said directly across the street are properties also owned by his client. Those are, in fact, three-family dwelling units and

they have three bedroom units in them. The aerial shows the size of the buildings in that neighborhood. Also, in the neighborhood, all down this street, there are 50'X100' lots. The majority of those homes are owner-occupied and well maintained.

Atty. Hollis said in 1976 while the ordinance required consolidation, both these lots had been created prior to that.

He said when considering an area variance, the first standard is the unnecessary hardship - whether the area variance is necessary to enable the applicant's proposed use of the property given the special conditions of the property and whether the benefit sought by the applicant can be achieved by some other method reasonably feasible to pursue other than the variance.

He said the variance is necessary to allow the use. He said they have a lot that has excess land and they want to use the lot in the same fashion as everyone else. He said they thought the 50'X100' lot was the standard lot - pre-existing - and didn't require any further action. What they really are creating is a lot size equivalent to everyone else's on that street. The only way to do that is to obtain a variance. If there's no other way to allow the house to remain as a stand-alone lot without going through and subdividing and adding 2,000 square feet from the triangle, which would take away from the shape and structure of the remaining parcel and begins to compromise the remaining parcel site (railroad tract site). The only way to do this to allow the reasonable use and permitted use is to grant the variance.

He said granting the variance to allow a 5,000 square foot lot is not contrary to the spirit and intent of the ordinance. It will keep similar sized lots as exists in the neighborhood. It will keep similar density (two-family). It will protect health, safety, and welfare. It will ensure that new development and redevelopment within the City preserves the character of the existing neighborhoods.

Atty. Hollis said under Section 16-100 of the zoning ordinance, one of the criteria of the intent of the ordinance is to ensure

that new development and re-development within the City preserves the character of existing neighborhoods. What they are requesting is exactly what exists in the neighborhood.

He said granting the variance will not be contrary to the public interest. There will be no change so it's going to preserve the values of the surrounding properties. The aesthetics will not be changed. The safety of spacing, which is an integral part of public interest, will be preserved because the parking can fit on the lot, but they are requesting the special exception, which will allow even more space to remain than on other lots in the neighborhood.

He said granting the variance will not adversely affect values. It's similar to existing uses. The loss of the vacant lot, which exists now for spare parking space, will not adversely affect the values because they are going to create additional parking spaces.

He said substantial justice will be done. It will essentially allow the "Corriveau's" to have what they thought they had - a lot of 5,000 square feet with a house and adequate room for parking.

He said Section 16-272(a) of the ordinance states that parking must be on the same lot as the principal use, except when practical difficulties, as determined by the Zoning Board prevent their establishment upon the same lot, and then they may be established within three hundred feet. He said they don't think there are really practical difficulties as they have room for four cars, however, currently it is lawn and it's side yard. They are hoping to leave it as it is and have the parking be in a parking paved space and not have to pave the side and rear yard. If they don't obtain the special exception, there is room to park the cars on site.

He said granting the special exception will not create undue traffic congestion or pedestrian safety. The entrance to the area where they would park is located off of Ash Street. There would be proposed parking right there. It will have to meet the

Planning Board specifications and requirements. They can walk directly from the most adjacent parking space and probably the owner will have to designate parking spaces. They can walk up the walkway as shown in the first plan and access right to the building.

He said it would not overload any system. It will be new parking lot so drainage design will have to be approved by the Engineering Staff.

He said it will not impair the integrity or be out of character in the neighborhood. The current use of the site as shown by the aerial photograph is parking. The current parking for the property itself is off of the 5,000 square foot lot so what they are proposing already exists. It won't be contrary to the integrity of the neighborhood.

He said they have a request for twelve units where ten units are allowed. He said the ordinance allows ten units, but it can allow ten units of any size. The units could be five bedrooms. Every unit could be 3,000 square feet. They could have ten units of 3,000 square feet each and there might be a huge apartment complex. This is not what they're asking. They are asking for small one bedroom and two bedroom apartments.

He said this is a dead end street. It's a quiet neighborhood. It's owner occupied for the most part. The density is not intense. He pointed out the houses that were two units and those that were three units.

He said his clients would like to protect their investment. They don't want large units or large density. He said they know what they want because they have experience in the leasing of the property. He said they feel the smaller units are appropriate for the neighborhood.

Atty. Hollis said the uniqueness of the situation is that there are two unusual shaped lots at the end of the street. It is a dead end street. It abuts the industrial zone, which is right on the backside. They are proposing to fence in an area (he

showed where on the plan). He said it will be a nice transition. The units are smaller and won't have as much activity as multi-family units of a larger size. Also, the car access is divided so they are really talking about splitting these twelve units. Six of the units can park coming off of Ash Street and six can come directly off of Palm Street. The activity and intensity of use on Palm Street is really six units, not twelve units.

He said the variance is needed to allow the use because of the unique shape, size, and more importantly the specific proposed use of a smaller unit, which allows affordable housing. There is no other way to achieve it on this site.

He said the proposed use is within the spirit and intent of the ordinance. He referred back to Section 16-100 which states that part of the purpose of the ordinance is to ensure new development and redevelopment preserves the character of the existing neighborhoods. They are going to have smaller units, disperse the traffic so it's not all intense in one spot, and provide adequate parking on the site. They are doing these things in keeping with the spirit and intent of the ordinance.

Atty. Hollis said the density proposed is within the range of the density in the neighborhood. He referred the Board to the document that is in the packet he passed out that is after the tax bills. He said there is a table with a list of all of the lots within the area running from Pine Street easterly in the general area - almost as far as Hollis Street.

He said if you look at each of the identifications that identify the lots, it identifies the square footage of the lot, the number of units on the lot and the density or square feet per unit. Out of all these lots, there are two that conform. He said one is 99-25 and the other one is 99-67. He pointed out Lot 99-67, which is on a corner. He said the reason it conforms is that it has added the railroad property to its boundary. He pulled this lot out when he did his calculations in order to come up with an average because it was so unusual. The average, excluding the one single family home was 2,347 square feet per

unit. He said their application is for roughly around 2,900 square feet per unit. It shows that they are within the character of the neighborhood.

Atty. Hollis said if the Board is going to vote for approval of the request, he suggested a stipulation that the one-bedroom units may not exceed 800 square feet and the two-bedroom units may not exceed 1,000 square feet and that the mix be six one-bedroom apartments and six two-bedroom apartments.

He said this is not contrary to the public interest. The variance allows one and two-bedroom units in an area of the City which is residential. It's a fairly dense area of the City and they are consistent with that. It will allow affordable housing in the City. These one and two-bedroom units aren't being built any more. They are converting old houses into one and two-bedroom apartments. Unless you have some unusual relief they just can't be done. This is the perfect example of how you make affordable housing.

He said the proposed use will not devalue the neighborhood. Essentially they are putting six units off of Ash Street and six units off of Palm Street. He said his clients own the property at the end of the street. They want to keep the value of this property and what better standard for determining whether the surrounding property is devalued than putting up something in your own back yard. He said these properties have been held by his client for years.

He said substantial justice will be granted in allowing a reasonable use of the acquired railroad tract. It will allow relief for a particular use and will afford the City an opportunity for housing units that don't exist today - the supply is short.

Mr. Jenkins said this is a very ingenious plan. He said he understands the request for the first variance to separate the two lots and combining the vacant lot with the third lot for the parking and turn around.

Atty. Hollis said he neglected to mention that they will be creating a turn around, which is in the public interest.

Mr. Jenkins said that he still has to be convinced about the need for the twelve units where ten would be allowed.

Atty. Hollis said when he met with his client he told them one of the things the Board was going to want to know is why they are asking for this number of units. The answer is that they have these smaller units. They are not asking for large units. They don't want the activity that larger units bring. In order to build them at a reasonable market cost and have them on the market, they need to increase the density from what the City code allows. He said because the ordinance doesn't differentiate there is a reasonable argument to show that when you want to have this kind of a unique use of small one-bedroom and two-bedroom apartments, the density factor has to be looked at.

He said that they have a unique property and when you are trying to fit it all in and build the right size unit, the twelve units fit.

Mr. Jenkins said he has looked at the sheet that Atty. Hollis drafted for the Palm Street vicinity that shows the number of units in the area and the largest that he can see is a five unit building. The square footage of the units comes out as 784 so he is assuming that these are one-bedroom apartments.

Atty. Hollis said he didn't know the answer to that, but there are two-bedrooms that are 750 square feet over there according to his client. He said he only used that sheet to reference that they are asking for more than what the ordinance permits, but they're not asking for more than what exists in the neighborhood.

Mr. Duffy said he's having a problem with five two-families, a three family, and then a twelve unit building. He said he sees this as being a ten-unit piece instead of twelve. He said he disagrees with the presentation. Ten is allowed and if they want to build the units smaller that is fine and if they want to

build them larger that is fine too. The character of this neighborhood according to Atty. Hollis' testimony is that there are two-family and three-family units. When you put a two-family or three-family next to a twelve unit building in that neighborhood, even though it might be okay, he didn't see it at three stories.

Atty. Hollis said if they put a ten unit building on the lot they would still have the same issue. If they put in ten units with three bedrooms each there is a whole different set of issues.

Mr. Duffy said that is up to the applicant, but the ordinance allows that. He asked if the property is so unique that says that twelve units are okay instead of ten.

Atty. Hollis said that under the standard for area variances, which is different from use variances, they don't have to prove that the piece is unique and they don't have to prove that there is no reasonable use. You have to prove that what you want to do is reasonable given the circumstances in the neighborhood and the setting of the lot and that there is no other way to do it. He said he is arguing that there is no other way to do it. There has to be a higher density. That's shown in this neighborhood.

Mr. Duffy said he is arguing a two family unit or three family unit versus a twelve family unit. He said there's an essential character of that neighborhood that is two-family and three-family homes by Atty. Hollis' own testimony. This is an area variance, but the area variance for the density is supposed to preserve the character and density of the neighborhood. He said that there are accessory uses around that piece of property that are impacted by the density calculation.

Atty. Hollis said the Board has to look at the ordinance to see if it imposes some restriction. He said it isn't reasonable to what's trying to be regulated by the ordinance. A density regulation is there to not put too many people in too much space - give them enough square footage. The Nashua ordinance doesn't consider issues that it should. It doesn't consider that you

could put twelve people in a single unit if it was large enough and therefore you have 3500 square feet minimum for that unit and you have 3500 square feet for a 700 square foot unit as well. When the ordinance doesn't consider those terms, it's just like a use.

Mr. Duffy asked what the density calculation would be if there were ten units.

Atty. Hollis said it would be 3500 square feet. He said if they have ten units and they had three bedrooms or four bedrooms there would be kids playing outside and there isn't enough room for that.

SPEAKING IN FAVOR

Richard Maynard, Professional Engineer, Maynard & Paquette. Mr. Maynard said they are proposing something less dense than what is in the existing neighborhood. The neighborhood is a higher density neighborhood than what the zoning ordinance states. It's a 2400 square foot per unit density neighborhood. What they are proposing exceeds that. The zoning district is "RC" and is zoned for multi-family units. Three units in the Nashua zoning ordinance are not multi-family. They are proposing a multi-family project and all the others are non-conforming in respect to the number of units.

Mr. Maynard said he's not sure about what Mr. Duffy meant when he talked about accessory uses. He said they have more open space and more excess land than any other property on this street because of the smaller size of their units and the less density of their particular proposal. They have more parking than is required - 27 spaces versus 21 spaces.

He said most new construction for multi-family these days far exceeds 800 to 1,000 square feet per unit. It's in the neighborhood of 1,500 square feet and greater. People who need a smaller unit or a less expensive unit can't find places in Nashua.

He said they are less dense than the neighborhood. It serves no purpose to try to chop this up into multiple lots so that they can put three-plexes all over the place. It eats up green space. It ends up requiring more parking and more asphalt, more services, etc. He said this type of project for the inner City is a tremendous benefit to this neighborhood.

SPEAKING IN OPPOSITION

Nicholas Dion, 120 Palm Street. Mr. Dion has lived on and off Palm Street for forty years. He said to tie up the end of the street this way with a ten or twelve unit and a two-family isn't feasible. This is a family orientated street with low traffic. The only access they have to Lake Street is going through the parking lot at the mill on Lake Street. There is a jersey barrier at the end of Palm Street that is a walking path that allows pedestrians access to Lake Street without having to go around the block to access it. This is not for automobiles.

He said there's not much of a play area for kids unless they go off the block. It gives the neighbors a chance to watch their kids and they can play without the constant flow of traffic.

Mr. Jenkins asked Mr. Dion if he had seen the plans that have been proposed.

Mr. Dion said he had not.

Mr. Jenkins said Mr. Maynard could supply the plan. He said that half of the parking would be off of Ash Street and half of it would be off of Palm Street.

Mr. Dion said he heard that testimony.

Mr. Jenkins said there would have to be some type of pedestrian access to get to the parking lot that is proposed off of Ash Street. They are providing a turn around at the end of Palm Street that isn't there today.

Mr. Dion said there is limited place for parking. As it is the

address at 133 shares parking at 122.

Mr. Jenkins said they aren't here for a parking variance because they meet the requirement for the number of parking spaces.

Mr. Dion asked about resale value. He said most of the homes in the area have parking within their boundaries.

Jerry Goodman, 123 Palm Street. Mr. Goodman said he has a single-family home. He said he is worried about parking and traffic on the street. He said there are a lot of kids playing in the street because it is a dead end street. If there are two cars parked on either side of the street right now there is barely enough room for one vehicle at a time to come down the street.

He said he moved into his house in February 1999 because it was a dead end street in a quiet area. He said he feels that adding twenty-four more cars to the area will be excessive and unsafe.

Ron Turcotte, 125 Palm Street. Mr. Turcotte said this is a two-family home. He said he has lived here since 1974. He said his number one concern is that this is going to be a lot of units and it's going to affect the character of the neighborhood.

Leo Parent, 127 Palm Street. Mr. Parent said his property abuts Mr. Corriveau's property. He said he does not want to see this proposal approved. Right now there are some nice trees at the end of the street.

Mr. Jenkins said the property belongs to Mr. Corriveau and he has the right to cut trees whether he would want to build there or not.

Mr. Parent agreed. He asked if the property values in the area are going to go down.

Mr. Jenkins said it was up to the abutter, if there is an objection to the project, to bring information to the Board on how it affects property values. He said unless they see

something in writing they can only make a judgment based on testimony. He asked if it was Mr. Parent's opinion that it would decrease property values by having this apartment complex at the end of Palm Street.

Mr. Parent agreed. He said the neighborhood doesn't want to see the north end of Palm Street come to the south end.

Mr. Jenkins said he visited the site. He said if this building would be a buffer zone between the big commercial parking lot and the big commercial building behind he would think it would be more attractive than looking at what they currently looking at.

Mr. Parent said there would be traffic going up and down the street.

Mr. Jenkins said they are providing fifteen parking spaces off of Palm Street and twelve parking spaces off of Ash Street so about half of the residents who would live in the building wouldn't be coming down Palm Street. They would go down Ash Street to get to their parking space.

SPEAKING IN FAVOR - REBUTTAL

Atty. Hollis said it's unfortunate that the abutters may not have taken a look at the plan. He said they are going to try to designate spaces so they are going to have six units, which require two spaces per unit, off of Ash Street. They don't need to come down Palm Street. Then there are six units on the other side. They are really only talking about an impact of six. There could be an impact of ten and all ten could come down Palm Street to park.

He said the building will be at the end of the street so aesthetically it's not going to be facing anyone.

He said there was concern that they are cutting off access, but it's really private property. The access won't technically be cut off. One will still be able to walk through the parking lot

and trespass to get to the walkway. People have been trespassing to obtain access now and in the past and if they want to continue to trespass they will still have the ability to do so.

He said they believe this project will fix up the area. They are going to put up a fence so it will keep the Lake Street industrial traffic and the impact of the headlights and the cars and the people that might come from that side over off of this quiet neighborhood street.

Mr. Jenkins asked if the large mill building is being used for manufacturing any more.

Atty. Hollis said that he has two clients who do manufacturing in this building. He said there are a variety of tenants in the building.

SPEAKING IN OPPOSITION - REBUTTAL

No One.

Mrs. Douglas said she didn't have a problem with the first request for the lot area for the existing two-family and the off site parking. She said on the other lot they can build ten units by right and she said she believes that's the way they should go.

Mr. Anderson said he feels the same way.

Mr. Jenkins said that this is a very dense neighborhood. They don't want to add to the density factor. By law they have the right to build ten units. He said he felt more comfortable with ten. He said he liked the way they incorporated the parking. This is a railroad bed so there isn't a lot that can be done with it. It's an inner city project and unique for inner City development.

Mr. Duffy said they are discussing area variance issues and density, which is an important component. They are affecting the essential character of the neighborhood.

He said there is an existing two-family that is in a mixed neighborhood.

Mr. Jenkins said it also abuts an industrial zone.

Mr. Duffy said he understands this. He said it's true that they are exceeding the local density, but the ordinance allows reasonable development of ten. Whether it's twelve smaller units or ten units with some smaller and some bigger, there's still going to be "X" number of people that are going to live there.

He said when he drove around in the neighborhood he didn't find any huge multi-unit buildings.

Mr. Jenkins said he saw a big brown building on Ash Street that looked like a multi-unit building.

MOTION by Mr. Duffy to grant the variance for minimum lot area, 7,000 square feet required - 5,000 square feet proposed to transfer common ownership between the contiguous non-conforming lots for on existing two-family structure at 122 Palm Street & L Palm Street. The applicant's testimony that the variance is needed to ensure the applicant's proposed use of the property given the subject neighborhood and the essential character of the neighborhood is lot sizes 50'X92', very similar in size and structure. The existing two-family dwelling is similar to other uses in size and dimensional proportion along the street. The applicant stated that there are both two-family and three-family units on the street. It is within the spirit and intent of the ordinance that the applicant has redevelopment and development use of the property given the existing and pre-existing conditions in the neighborhood. There was no expert testimony presented about the affect on property values of the surrounding parcels. There should be none considering the similar sizes of surrounding properties. It is not contrary to the public interest. Substantial justice is served.

SECONDED by Mr. Jenkins.

MOTION CARRIED UNANIMOUSLY

MOTION by Mr. Duffy to grant the special exception to allow required parking on a lot within 300' of the subject lot. It is listed in the Table of Uses, Section 16-302 and Section 16-272 (a). It should not unduly affect traffic congestion or unduly impair pedestrian safety. It will not overload public water, drainage, sewer, or other municipal systems. There are no special regulations. It should not impair the integrity or be out of character with the neighborhood or be detrimental to health, morals, or welfare of the residents.

SECONDED by Mr. Anderson.

MOTION CARRIED UNANIMOUSLY

MOTION by Mr. Duffy to deny the request for minimum lot area, 42,000 square feet required - 35,523 square feet proposed to construct a 12-unit multi-family building at "L Palm Street & "L" Pine Street. There are other reasonable methods feasible for the applicant to pursue other than this area variance. They may construct a ten unit building by right. It is within the spirit and intent of the ordinance that the applicant has use of the property. There was no expert testimony about the property values of surrounding parcels. The essential character of the neighborhood is not met with a twelve unit building.

SECONDED by Mr. Anderson.

MOTION CARRIED UNANIMOUSLY

Request for Rehearing

Jeffrey M. & Karen M. Morse (Owners) 31 Gordon Street (Sheet 64 Lot 7) requesting variance to encroach 7 feet into the 10 foot required right side yard setback to construct an attached two-story 20'x24' garage addition. RA Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy
Susan Douglas
Jeffrey Anderson
Jack Currier

Mr. Jenkins asked if everyone had a chance to read the request for rehearing.

Mrs. Douglas said they are modifying the size of their request.

Mr. Currier said this is substantially different. He called Mr. Falk during the week to ask if this should be a new application. There was no testimony by abutters.

Mrs. Douglas asked if they didn't figure out that the applicant could build a single-car garage without coming back to the Board.

Mr. Falk said this is going to be a little bit bigger.

Mr. Jenkins said he didn't have a problem granting a rehearing.

MOTION by Mr. Jenkins to grant the request for rehearing for 31 Gordon Street. The request contains new information that was not available to the Board at the original hearing.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY

MINUTES

August 9, 2005

MOTION by Mr. Duffy to approve the minutes of the August 9, 2005 meeting, waive the reading and place on file.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY

Regional Impact

The Board commented on the number of cases on the next agenda, but did not see any regional impact to any of them.

ADJOURNMENT

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

Susan Douglas
Clerk

lt
Taped Meeting