

**ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING**  
**October 11, 2005**

A public hearing of the Zoning Board of Adjustment was held on Tuesday, October 11, 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  
Jack Currier  
Jeffrey Anderson

Also present, Carter Falk, Deputy Manager/Zoning

Mr. Jenkins said in hearing tonight's cases the Board would be looking for evidence on the following points of law as established under the City of Nashua Zoning Ordinance and empowered to it under the State of New Hampshire enabling legislation.

For variances in the ordinance the following conditions must be met:

(1) A zoning restriction as applied to your property interferes with reasonable use of the property, considering the unique setting of the property in its environment; (2) no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; and (3) the variance would not injure the public or private rights of others.

(2) The spirit and intent of the ordinance must not be broken by granting the variance.

(3) Granting the variance will not adversely affect other property in the district.

(4) Granting the variance must be of benefit to the general public and not solely the individual.

(5) Not to grant the variance would result in an injustice.

For special exceptions designated by the ordinance, the following must be met:

(1) The use requested must be listed in the Table of Use Regulations as a special exception in the district for which the application is made or is an existing non-conforming use for which a request to expand is being in accordance with Subchapter 13 of the Nashua Revised Ordinances.

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

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

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

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

He said the order of receiving testimony will be in the following manner: Testimony will be heard from the applicant seeking the adjustment. The applicant will have fifteen minutes to address the five points of law just described. The Board will not consider in their decision any information that 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 said three affirmative votes are needed for the granting of a variance or special exception. He advised the audience right now only three members were present. He said if

anyone wished to have their case as a later date or they may proceed with only three members. He said they are hopeful that the other two members will arrive shortly.

1. Kenneth J. & Maryann J. Berkins (Owners) 73 and "L" Wellington Street (Sheet 65 Lots 32 & 33) requesting the following variances: 1) minimum lot area, 7,500 square feet required, 6,250 square feet existing, 2) minimum lot frontage, 60 feet required, 50 feet existing, and 3) minimum lot width, 75 feet required, 50 feet existing - to construct a single-family house on a nonconforming contiguous lot. RA Zone. (Postponed from 9/27/05 Meeting)

Withdrawn

5. Steven & Guyleane I. Theriault (Owners) 1 Forest Street (Sheet 60 Lot 63) requesting special exception for a major home occupation for in-home day care for up to 9 children. RA Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Jack Currier

Jeffrey Anderson

Guyleane Theriault, 1 Forest Street. Mrs. Theriault said she would like to have an in home childcare center at her home. She would like to take care of five to six children full time. The zoning announcement went out stating nine children. There would be three children above six that would be part time.

Mr. Duffy asked if this is going to unduly create traffic

congestion or unduly impair the pedestrian safety in the area.

Mrs. Theriault said she didn't think so.

Mr. Duffy asked if this is going to overload public water, drainage, sewer or other municipal systems.

Mrs. Theriault said "no".

Mr. Duffy asked if it was going to impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of the residents.

Mrs. Theriault said "no".

Mr. Duffy asked if there are any other daycare facilities in this area.

Mrs. Theriault said not that she is aware of.

Mr. Duffy asked if Mrs. Theriault would have more than one non-resident employee.

Mrs. Theriault said "no".

Mr. Duffy said no more than 30% or 300 square feet of gross floor area will be used for the daycare. He asked how much space Mrs. Theriault will be using.

Mrs. Theriault said she is looking at two rooms - the living room area and the spare bedroom next to that. It looks like it will be the 300 square feet. The dwelling unit has 1,166 square feet.

Mr. Duffy asked if the day care would be held strictly inside of the dwelling unit.

Mrs. Theriault said the children would have outdoor playtime.

Mr. Duffy said that there are usually times that the Board

stipulates for outside play.

Mrs. Theriault said that was mentioned to her, although she has not seen anything in writing. She said she thought it was no earlier than 10:00AM and no later than 6:00PM. She said she would not be out at those times and she is planning to end the day about 5:00PM.

Mr. Duffy asked if Mrs. Theriault was going to change the internal or exterior residential character of the home.

Mrs. Theriault said "no". She said in her application she has stated that in the future she may consider it, but she has enough square footage with the area already designated so she won't be doing that.

Mr. Duffy asked if there is exterior storage or display and she agreed that there would be none.

Mr. Duffy said she would not create excess noise, dust, and vibration with a daycare operation.

He asked if she would be selling any goods or services.

Mrs. Theriault said "no".

Mr. Duffy asked if Mrs. Theriault that there is no advertising permitted other than a two square foot sign.

Mrs. Theriault said she found out because she had a sign out before she applied for the special exception.

Mr. Duffy said she is permitted one commercial vehicle.

Mrs. Theriault said she doesn't have one.

Mr. Duffy asked Mrs. Theriault the number of children that are her own.

Mrs. Theriault said that she had only one.

Mr. Jenkins asked Mrs. Theriault if she is licensed by the State.

Mrs. Theriault said she is in the process of obtaining her license. Part of the procedure is to get approval from the City.

Mr. Jenkins asked Mrs. Theriault if her yard is fenced in at this time.

Mrs. Theriault said there are three fences adjacent to her neighbors. She said she understands that according to the State's regulations she doesn't need to fence it because it's not adjacent to a street. She said she had talked to Mr. Falk and he had advised her that the issue with the fence would be up to the State. She said if it's required, than she will erect a fence to close the area in.

Mr. Jenkins asked Mrs. Theriault if she had spoken to her neighbors.

Mrs. Theriault said she had.

Mr. Duffy asked Mrs. Theriault if she was going to operate Monday through Friday.

Mrs. Theriault said "yes". She said she is advertising for children between the ages of one and four years of age.

**SPEAKING IN FAVOR**

No One.

**SPEAKING IN OPPOSITION**

No One.

**MOTION** by Mr. Duffy to grant the special exception for a major home occupation for in-home day care for up to nine children at 1 Forest Street. It is listed in the Table of Uses, Section 16-397. It will not create any undue traffic congestion or unduly

impair pedestrian safety. It will not overload public water, drainage, sewer or other municipal systems. It will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of the residents. They went over the criteria for a major home occupation and these are met. Special Conditions: Hours of operation are Monday through Friday with outdoor play to be between the hours of 10:00AM and 5:00PM. The applicant understands that this requires a license from the State of New Hampshire.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY**

**2. NP Nashua, LLC (Owner) Packard Development (Applicant) 143 Daniel Webster Highway (Sheet A Lot 55) requesting special exception to allow a 20% reduction in required parking spaces, to raze an existing 83,485 square foot shopping center and construct a 168,023 square foot retail use building. GB Zone.**

Voting on This Case:

Tom Jenkins

Sean Duffy

Jack Currier

Jeffrey Anderson

Atty. Gerald Prunier, 20 Trafalgar Sq., Nashua. Atty. Prunier's presentation was hard to hear/understand from the tape(s). He said this used to be Shaw's Plaza.

He referred the Board to the site plan. He said his client's

intent is to remove the building and build a 168,000+ building as well as do the whole parking area over. He said this would be a Lowe's.

He said the Board has a report that outlines the parking requirements Lowe's has to meet. He said the City of Nashua requires four parking spaces per thousand square feet. He said Lowe's has wide aisles and deals in large white goods so it uses a lot of space, but it doesn't get that much more automobile traffic that requires parking. He said an intensive study was done by Vanesse & Associates. It shows that in most instances they are talking about less than two cars per thousand, about half of what Nashua requires. He said they are requesting a 20% reduction in the parking requirement because of this and also because of what has to be done with the lot. It's up on a hill and is bordered by the F.E. Everett Turnpike. There are high walls on two sides of the site. In addition, it has a cross access easement with the parking lot at BJ's. BJ's has a different type of business. Lowe's is busy in the summertime and BJ's isn't so busy. At Christmas time BJ's is very busy and Lowe's isn't necessarily that busy.

He said even if that wasn't the case, if you take the required parking as spelled out in the report you will find that they don't need all of the parking required by the ordinance.

He said the site will be served by water, public sewerage, and drainage. It will not affect any traffic or pedestrian safety in the area. It is being redesigned.

He said this has been discussed with the Planning Department and they have made certain suggestions that have been incorporated into their site plan. It is not out of character with the general area as the area is retail and not surrounded by any residences.

Mr. Jenkins said they have a chart that shows the parking spaces for the various other Lowe's in the Northeast and the maximum peak hours. He said during the peak hours in the Nashua store they are anticipating a need for 300 parking spaces and they are

providing a total of 560 spaces.

Atty. Prunier said he believes its 539 spaces.

Mr. Jenkins said 673 spaces are required per the ordinance.

Atty. Prunier said that is correct.

Mr. Jenkins said he believes this is a good site for this store. It has been vacant for a long time. He indicated he didn't have a problem with it.

Mr. Duffy said if the Board approves the variance it goes with the land. Even if Lowe's may have low volume vehicle traffic and a different type of operation for the square footage that they use in their building, the 20% reduction would pass on to the next owner.

Atty. Prunier said this is a special exception. It's not like a variance. If there were to be a change of use it would have to come back to the Board.

Mr. Duffy said he didn't see that there was anything unique about Lowe's. He said they have Home Depot. They have BJ's.

Atty. Prunier said Mr. Duffy hasn't been in a Lowe's.

Mr. Duffy said he has been in a Lowe's store.

Atty. Prunier said Lowe's aisles are much larger than Home Depot's. He said its part of their culture. They like the open space.

Mr. Jenkins said he has been in a Lowe's store also, but he never paid attention to the open space.

Mr. Currier asked where they plan on getting their delivery trucks in and out.

Atty. Prunier's reply could not be understood (away from

microphone ??).

Mr. Currier said a few years ago there was a landslide in the front. He asked if they are planning to do any work in that area.

Atty. Prunier said they are going to take down most of the hill. He referred to the plan to show the area.

Mr. Currier asked if there was going to be a concrete retaining wall.

Atty. Prunier said there will be a wall. He had further testimony about this wall, but it was unintelligible. He indicated that there will be a lot of engineering involved because they only want to build it once.

Mr. Currier said he's never been in a Lowe's so he is accepting the report for what it is.

#### **SPEAKING IN FAVOR**

No One.

#### **SPEAKING IN OPPOSITION**

Vincent Tulley, Tulley-Buick-Pontiac Company. Mr. Tulley said they are located to the south of the site. He said they welcome the new project as presented. He said the only reservation they have regarding the request concerns what happens when the store is open and it functions differently from historical data presented this evening. He said they want to be on record that if the project functions significantly different than the historical data that's been presented there will be overflow parking demands, changing the impact on the area. He said they can't accept overflow parking on their property should it occur.

Mr. Duffy asked what would happen if that were to occur.

Mr. Tulley said they operate a retail business as well. They are concerned about the traffic that might negatively impact

their business. He said on a weekend, for example, they have people who are at Friendly's who are using their lot.

Mr. Jenkins said personally he thinks if there were going to be any overflow parking it would occur on the BJ's site.

Mr. Tulley said between Thanksgiving and Christmas there's a lot of traffic going up and down that road.

Mr. Jenkins asked Mr. Tulley if he saw any impact with the proposed re-development of the wall.

Mr. Tulley said they have talked with Packard about this and they are fine with it.

Mr. Duffy asked about the lighting.

Mr. Tulley said that this will probably be covered at the Planning Board.

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

Atty. Prunier said he appreciates Mr. Tulley's concerns. He said if the topography was the same he may have more concern, but he said he didn't think anyone would want to walk down the hill or walk up the hill to get to the site. The general public likes to park as close as they can to the store they are visiting.

Mr. Currier asked Mr. Falk if it's possible to word a motion that if there's a change of owner that a special exception does not apply and that they would need to re-apply.

Mr. Falk said that they are a retail use, whether it's Home Depot, Lowe's, Costco or any "big box" development. He said that they've made allegations in their studies that they have wider aisles and that there are more display items inside. That's enough for them. He said other retail stores have narrower aisles. He said this zone permits retail uses. It's going to be the same parking requirements for that 168,000

square feet, whatever the retail store is.

Discussion ensued.

Mr. Anderson questioned whether they could be a stipulation concerning the parking for retail use.

Mr. Falk said he didn't see how that could be done. This is a 168,000 square foot retail building that requires parking at a 1 to 250 ratio.

**MOTION** by Mr. Currier to approve the request for a special exception to allow a 20% reduction in the required parking spaces to raze an existing 83,485 square foot shopping center and construct a 168,023 square foot retail use building at 143 Webster Highway. It is listed in the Table of Uses, Section 16-274. Per testimony provided by the applicant, it will not create undue traffic congestion or unduly impair pedestrian safety. It will not overload public water, drainage, sewer or other municipal systems. Special regulations are fulfilled. It will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of the residents.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY**

**3. Pauline Ducharme & Lisa Hagemann (Owners) 66 Charlotte Street (Sheet 115 Lot 52) requesting special exception to allow an accessory (in-law) dwelling unit. RA Zone.**

Voting on This Case:

Tom Jenkins

Sean Duffy

Jack Currier

Jeffrey Anderson

Lisa Hagemann. Ms. Hagemann said she is requesting a special exception in order to have an accessory dwelling unit (in-law apartment).

She said the dwelling unit meets all the requirements in the City's ordinance. It has 300 square feet in a home that has 2400 square feet. She said there are no other accessory dwelling units in the house. It will be incorporated into the existing structure. This is listed in the Table of Uses as a special exception.

She said they don't expect the accessory unit to create any undue traffic congestion. Her mother is 75 years old and doesn't drive so there will be no additional vehicle in the neighborhood because of this unit.

Mr. Jenkins said if he recalls correctly the house has three front doors and already has a two-family appearance, but that she really couldn't do anything about that.

Mrs. Hagemann agreed.

Mr. Jenkins asked if this unit is to be used by other persons not related other than by blood or marriage.

Ms. Hagemann said this is correct.

Mr. Jenkins said the owner must occupy the structure and provide documentation of relationship and provide a covenant to the City for filing with the Registry of Deeds.

Ms. Hagemann agreed.

Mr. Jenkins said he didn't have a problem with the request.

Mr. Duffy said this is not a rental unit so if or when the home is sold it can't be something rented out to just anyone.

## **SPEAKING IN FAVOR**

No One.

**SPEAKING IN OPPOSITION**

No One.

**MOTION** by Anderson to grant the special exception for an accessory in-law dwelling unit at 66 Charlotte Street. It is listed in the Table of Uses, Section 16-162. It will not create undue traffic congestion or unduly impair pedestrian safety. It will not overload public water, drainage, or sewer or other municipal systems. The special criteria for the in-law apartment are fulfilled. It will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals, or welfare of the residents.

**SECONDED** by Mr. Duffy.

**MOTION CARRIED UNANIMOUSLY**

4. Neighborhood Housing Services of Greater Nashua, Inc. (Owner) 2 Shattuck Street (Sheet 44 Lot 86) requesting the following: 1) special exception to allow 6 multi-family dwelling units (4 units approved at 7-12-05 ZBA meeting); and 2) variance for minimum lot area, 21,000 square feet required, 20,288 square feet existing. RB Zone.

Voting on This Case:

Tom Jenkins

Jack Currier

Jeffrey Anderson

Mr. Duffy recused from hearing this case.

Atty. Gerald Prunier. Atty. Prunier said in July this site came to the Zoning Board for approval of four dwelling units and for office use. He said the Board granted the variance for the four units as well as the use for office space, but there were

conditions placed on the approval. He said the owner felt they could not operate their "school" out of this site due to the conditions. Instead of trying to change the conditions they have decided to ask for a building that would have all dwelling units instead and move their operations someplace else.

He asked that the minutes of the meeting and the testimony given at the meeting in July be incorporated into tonight's meeting.

He said at that time they gave the Board a book regarding the apartments and outlined the apartments with the number of apartments in the area and their density. He said the Board has already granted a special exception to allow apartments. They are a little short of the requirement for land area for five units.

He said this is a special property. He said it's a unique piece of property in a unique location. The proposed use is a reasonable use, as the Board has already found at their previous meeting.

Atty. Prunier said both water and sewer serve the building. The traffic in the area is substantially less than what the building was used for in the past. It was a day care center that had a lot of traffic.

He said he thought that the hardship test was met in that it's a special piece of property and a unique situation and a unique building as well. The Board previously found this to be so at the previous meeting in July.

Mr. Jenkins asked if the site plan that was submitted in July remains the same with regard to the amount of parking spaces, curb cuts, and same outside design and the only change is that there will be no office use and the building would strictly be residential dwelling units.

Atty. Prunier said this is correct.

Mr. Carrier asked about the makeup of the units.

Atty. Prunier said four units would be two bedrooms and two units would be three bedrooms.

Mr. Carrier said he thought that there were no curb cuts.

Atty. Prunier said it's the same as the plan they submitted before. The number of parking places is the same.

### **SPEAKING IN FAVOR**

Richard Maynard. Mr. Maynard said there was a question about pressure in the area. He said he had the hydrants measured and they exceeded the minimum requirements.

### **SPEAKING IN OPPOSITION**

Karen Duchesne, 17 Raymond Street, Nashua, NH. Mrs. Duchesne said she just wanted to make sure that the request is to allow a six-unit multi-family dwelling that does not conform to the neighborhood in the "RB" Zone.

Mr. Jenkins said this is correct.

Mrs. Duchesne said Question 17 on the application asks if they anticipate the need for additional on-site parking space as a result of the proposal and they checked "yes", but she doesn't see any explanation for that answer.

Mr. Jenkins said according to the staff they need eleven spaces per City ordinance and they are showing eleven spaces on their plan. He said they will be creating two more spaces.

Mrs. Duchesne said they will be taking away some of the open space.

Mr. Jenkins said this is correct. He referred her to the plan on display and said that the spaces could be counted. He said it's the same site plan that they submitted when they came to the Board previously in July.

Mrs. Duchesne said the testimony she heard indicated that there would be reduced traffic. She said she agrees that this would be true during specific hours, but there would be increased traffic in the evening hours, particularly when families are out in the neighborhood and on the weekends.

She said there is a traffic and parking issue already existing in the neighborhood, which he believes is being addressed by the Aldermen. They don't have parking on both sides of the streets, particularly on Raymond and Laton Street.

She said there was a comment on the multi-family units that already exist in the area. She asked what area was considered. She said she knows there are multi-family dwellings to the south of this building, but to the north there are single-family homes.

Mr. Jenkins said he understands what Mrs. Duchesne is saying, but this building is unique so the question becomes what can an owner do with it. It was a school. He said the Board looks at issues such as whether this is a better use for the area and the neighborhood and whether the impact is less. He said he personally feels this has much less impact to the neighbors. He said he didn't think the previous plan for a mixed-use building was the best thing in the world, but the Board thought it would work. They also put conditions on the approval, which made it impossible for the organization to use the building in the manner that they wanted to.

Mrs. Duchesne said that being a homeowner and living in the neighborhood they've seen different variances and exceptions granted in the past and it's not the same neighborhood that they bought into ten years ago. She said she doesn't think that six units conform to the neighborhood.

Mr. Jenkins said that Mrs. Duchesne mentioned two variances, but he sees that there is only one variance.

Mrs. Duchesne said the first variance is to allow the six units.

Mr. Jenkins said this is a special exception. He said a special exception is actually easier to obtain than a variance.

Mrs. Duchesne said she still doesn't see how this conforms to the neighborhood. She said she read information on the City's web site and in looking at the 2000 Master Plan it states the housing goal as to protect the character of existing neighborhoods. She doesn't see how the proposed six units is conforming to this neighborhood in an already congested area.

Mr. Jenkins said he would agree with her if they were constructing a new building, but they aren't doing any constructing. The building already exists and they are going to clean up the site. He said he believes this building was constructed in the early 1900s. He asked what Mrs. Duchesne foresaw should happen at the site.

Mrs. Duchesne said whatever is conforming to the zoning ordinances and what is in the spirit of the ordinance and what's conforming to the neighborhood. She said it would be nice to see the building put to use, but she doesn't see a six unit building conforming or adding to the character of the neighborhood.

Mr. Jenkins asked if she believes that when the fascia is changed and remodeled that anyone would be able to tell that it was a six unit building from looking at it on the outside.

Mrs. Duchesne said she believes that you would be able to tell just by looking at the parking and the traffic that it would bring into the neighborhood.

Mr. Jenkins said if they utilized it as a school as in the past and they did the fascia over and utilized the parking spaces ....

Mrs. Duchesne said this would be Monday through Friday from 9:00AM - 5:00PM. There wouldn't be evening traffic and there wouldn't be the increased traffic on the weekend.

Mr. Currier said she has been to this site several times since

the first application in July. The way he's looking at this is that it could be a six unit dwelling unit or it could be a school or a day care center. He said the proposed use is the least intensive use for the area. He doesn't deny that he saw a lot of cars parked there a lot when he visited at various times, however, he believes the six unit building is a better use.

Linda Huske, 9 Shattuck Street. Mrs. Huske said she is not in opposition of housing at this location. She is in favor of removing the commercial entity. She said the only thing she is worried about is six units. She said six families have a lot of possessions. She said she doesn't know how much of the green space will be removed to accommodate parking. She said right now there's a small play area, beautiful mature trees, some sloping green area and a paved parking lot. She said if some of this is removed she wonders where six families are going to put their possessions - bikes, grills, lawn chairs, etc.

Mr. Jenkins said they are required to have 35% open space and they are providing 46% open space.

She said the neighborhood would like to see this building have some sort of use because it's been empty and there are some things that are going on there where they would like to see someone do something. She said they would not want to see things on the sidewalk or in front of the building. They wouldn't want to see the new tenants taking over the park.

She asked if a fence is going to be erected. She said the lot is open on three sides and can be seen from Shattuck, Laton, and Norton. This would provide a sense of privacy for anyone who lives in the building as well.

Mr. Jenkins said it doesn't show this on the plan. He said Atty. Prunier may be able to answer the question when he gets up to speak again.

Mrs. Huske said six families is a bit much. She said she would be okay with four or five.

Mr. Jenkins said he's never been inside the building. He said he's only seen it from the outside. He said it's a pretty big building.

Dan Richardson, 70 Berkeley Street. Mr. Richardson said he is not an abutter to this property. He asked what this is going to do in terms of setting precedent by allowing a multi-family dwelling in this neighborhood.

Mr. Jenkins said if Mr. Richardson has ever been to a Zoning Board Meeting he would know that they take every case individually. He said they never say precedence has been set for this or that. They look at every case as unique. He said in this instance this is a unique building.

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

Atty. Prunier said they are adding five parking spaces to make the total of eleven parking spaces.

He said if you look at the surrounding area, 50% is single-family and 50% are multi-family homes.

Mr. Jenkins asked the size of the larges multi-family in the area.

Atty. Prunier said seven units. He said he doesn't know the address, but it's located on Cross Street.

He said if this request is approved by the Zoning Board it has to go to the Planning Board for approval. He said the Planning Board will take care of some of the concerns that an abutter had regarding fencing and landscaping, etc. He said they will have to comply with their requirements as well.

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

No One.

Mr. Carrier said this isn't a precedent-setting case to him. He

said this is a unique building. He said they recently had cases right nearby on Granite Street, which kind of touched on Davis Court which was denied. He said they had another case that was the end of Paige Avenue that was denied twice.

Mr. Jenkins said there was another one that was off of Tolles Street that was denied as well.

He said that he thought this was a good use for the building. He said it's much better than a commercial use.

Mr. Currier said the track record of Neighborhood Housing Services is a good one. If this building is fixed up as they have committed to it's going to help out the neighborhood.

Mr. Anderson said this is a less intense use than their original plan. He said he couldn't think of a better use for this building.

**MOTION** by Mr. Currier to grant the special exception to allow a six unit multi-family dwelling unit where four is currently approved at 2 Shattuck Street. He said the special exception is listed in the Table of Uses, Section 16-227. This building used to be a school and a day care center. The Board does not believe the proposed use will create undue traffic congestion or unduly impair pedestrian safety. It will not overload public water, drainage, sewer, or other municipal systems. Special regulations are fulfilled. The building as it sits here is a bit out of character with the neighborhood, but the use that's planned is more in character with the neighborhood. It will not be detrimental to the health, morals or welfare of the residents.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY**

**MOTION** by Mr. Currier to grant the variance from the minimum lot area, 21,000 square feet required, 20,288 square feet proposed at 2 Shattuck Street. This is a minimum request for the size of the lot. The variance is needed to enable the applicant's

proposed use of the property given the special conditions of the property. It is within the spirit and intent of the ordinance. He said he did not believe it would adversely affect the property values of surrounding parcels. With the planned upgrade he thought it would improve the surrounding property values. It's not contrary to the public interest. Substantial justice is served by granting the variance.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY**

6. Mohan & Sumalatha V. Yechoori (Owners) 2 Brinton Drive (Sheet 49 Lot 219) requesting variance to encroach 15 feet into the 25 foot required front yard setback (on Concord Street) to construct an attached 8'x12' breezeway and 24'x24' garage. RA Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Jack Currier

Jeffrey Anderson

Mohan Yechoori, 2 Brinton Drive. Mr. Yechoori said he and his wife wish to build a garage and breezeway onto their home.

Mr. Jenkins said they will be encroaching 15' into the 25' setback towards Concord Street.

Mr. Yechoori said this is correct.

Mr. Jenkins asked if Mr. Yechoori is going to have to clear cut the trees in order to do this.

Mr. Yechoori said he thinks they will only have to cut two trees.

Mr. Jenkins said the tree line on Concord Street to this neighborhood is a good sound barrier. He said it protects the neighborhood from the noise coming from Concord Street. He said Mr. Yechoori's lot is the oddest shaped lot he's ever seen. He said where the existing foundation is, it's almost hard to put up a garage. He asked Mr. Yechoori if he considered eliminating the breezeway and just adding the garage so they wouldn't encroach so far into the setback.

Mr. Yechoori said they did consider this, but if they put the foundation for the garage in next to the house, it's going to come up against the wooden structure of the house, i.e., it will be higher than the foundation of the house. He said that's why they need the breezeway.

Mr. Duffy asked if the breezeway had to be as large as 8'X12'.

Mr. Yechoori said this wasn't his idea. He said this is what was suggested to him,

Mr. Duffy said that a breezeway is usually a walkway and not that large.

Mr. Jenkins asked if the breezeway would be enclosed.

Mr. Yechoori said it would be.

Mr. Duffy asked if the garage is a one-story or two-story garage.

Mr. Yechoori said it will be two stories. He said they plan to build a bedroom in the future.

Mr. Duffy asked if the breezeway is one story.

Mr. Yechoori said it will be two stories.

Mr. Duffy asked if they park their cars out on the driveway right now.

Mr. Yechoori said "yes".

Mr. Currier said when he looked at this he had a concern. He said there's quite a greenway there near Pennichuck Brook. He said it seemed to him that the corner of the garage would be sticking out beyond the trees. This is quite a large addition.

Mr. Yechoori said the whole thing will be in line with the front of the house. He said it wouldn't stick out.

Mr. Currier said he's uncomfortable with it. He said maybe if it were staked out, especially the corner, he might be more comfortable with it.

Mr. Anderson said this is a big garage and it's hard to stand in front of your house and visualize how far into to wooded area it's going to go.

Mr. Currier said there's nothing there to mark where the minimum setback line is. It could be in front of the tree line. It could be behind the tree line.

Mr. Currier asked Mr. Yechoori if he had talked with his neighbors and if they had concerns with the request.

Mr. Yechoori said he did speak to one of his neighbors, but he didn't say anything.

Mr. Currier asked if it's feasible if the breezeway would be on the other side of the house.

Mr. Yechoori said the breezeway is in this location because it takes care of the foundation. He said the contractor he spoke to said that the wooden structure and the cement structure touch each other, the wooden structure will start rotting. That's when the contractor suggested a breezeway so the two foundations can be separate.

Mr. Currier asked if he had thought about putting a garage on the other side of the house.

Mr. Yechoori said he would have a problem there because it would be very close to his neighbor and it would be very close to his lot line. He said he doesn't have much space from the corner of his house to the lot line.

Mr. Anderson asked Mr. Yechoori what caused him to ask for a 24'X24' garage.

Mr. Yechoori said he has two cars.

Mr. Duffy asked if Mr. Yechoori knows of any other two-story garages in his neighborhood. He said he drove around in the neighborhood and didn't see any.

Mr. Yechoori said most of the garages are inside (part of the basement) and there are some detached garages. He said in the future he would like to have a bedroom on top of the garage.

Mr. Duffy said he looked at the essential character of the neighborhood. He said the house is 24'X34' and he wants to add a 24'X24' garage which is almost as big as the house. In addition it is two stories.

Mr. Jenkins said the breezeway in between makes it 32'.

Mr. Duffy said even though the position of the house on the property is kind of unique, to put such a large addition there looks a little different than the essential character of the neighborhood.

Mr. Yechoori said the main idea is to have a garage.

Mr. Jenkins said they are having a problem with the encroachment into the setback. A 15' encroachment is a major encroachment into a 25' setback, especially onto Concord Street because of the buffer zone. He said if they wanted to widen Concord Street in the future this could be right up to the buffer line.

He said Mr. Yechoori wants to add a two-story breezeway and a

two-story garage where they find it isn't in character with the neighborhood when they drove by and looked around.

Mr. Duffy asked Mr. Yechoori if he would be amenable to something smaller or reduced.

Mr. Yechoori questioned if he meant the breezeway.

Mr. Currier said he doesn't see the issue of needing to have the breezeway to attach a garage to a house.

Mr. Jenkins said with the angle of the foundation and the angle of the breezeway, even if you took off the breezeway you're only gaining about 2' because of the angle.

Mr. Falk demonstrated how this happens.

#### **SPEAKING IN FAVOR**

No One.

#### **SPEAKING IN OPPOSITION**

No One.

Mr. Duffy said he would feel more comfortable with a one-story garage and no breezeway. He said it would make it more within the essential character of the neighborhood. He said he still doesn't like the encroachment into the very trafficked area.

Mr. Currier said he understands the passion for wanting to have a garage, but the encroachment here is huge and he's a little uncomfortable suggesting what a smaller design might be. He said it might be better that this be denied and the applicant come back with another design.

Mr. Jenkins said the topography of the lot is tough and the house is placed where it is because of the topography. He said Concord Street really isn't where you would want an encroachment into the setback.

Mr. Anderson's comments were unintelligible.

Mr. Jenkins asked Mr. Yechoori if he would want the Board to table their decision or if he wanted the Board to go ahead and vote on the request. He said tabling this would give him time to re-design his request and come back to the Board with something that might be less intrusive.

Mr. Yechoori asked that the Board table their decision.

Mr. Jenkins said they will table this to the November 9<sup>th</sup> meeting. He said that if Mr. Yechoori can't come up with anything he can withdraw the application if he wishes.

Mr. Yechoori said he will still encroach into the setback if he eliminated the breezeway and there is no way he can put a garage on the other side.

Mr. Duffy said there is the alternative of perhaps doing a detached garage.

**MOTION** by Mr. Duffy to table the request for encroachment of 15' into the 25' required front yard setback (on Concord Street) to construct an attached 8'X12' breezeway and a 24'X24' garage at 2 Brinton Drive until November 9<sup>th</sup> in order for the applicant to evaluate other options.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY**

**7. Manuel & Maria Gutierrez (Owners) 4 Hamilton Street (Sheet 100 Lot 145) requesting variance for minimum lot area, 10,500 square feet required, 7,575 square feet existing - to convert a two-family dwelling into a three-family dwelling. RC Zone.**

Voting on This Case:

Tom Jenkins

Sean Duffy

Jack Currier

Jeff Anderson

Manuel Gutierrez, 4 Hamilton Street. Mr. Gutierrez said he wishes to convert a two-family house into a three-family house. The lot does not have enough land area.

He said the sole purpose of this conversion is to be used solely by him and his wife. He said they come from New York and it's a little hard for him to come and spend a couple of days when he comes to New Hampshire without having a place to stay. He said he travels here to work on the house on weekends.

Mr. Jenkins asked how many parking spaces are on the site.

Mr. Gutierrez said there is room to accommodate six to eight vehicles. There is also a two-car garage on the property. He said when he comes to New Hampshire he has a garage to put his car inside. There are only going to be four vehicles using the parking area.

Mr. Jenkins said they have a letter in opposition to this request from 38 Chestnut Street. He said this letter states they are opposed to having another apartment there because there are other multi-families next to them. It stated the number of cars that were parked at these buildings and said that the property at 4 Hamilton had six cars in the driveway. It stated that having another family living here will bring more people and more traffic. The letter goes on to say that Hamilton Street is narrow and has a lot of traffic.

Mr. Guttierrez said if there are more vehicles than should be there it might be from the tenant on the second floor. He said they are moving this month.

Mr. Jenkins said he was there the other morning and there were about four or five cars in the driveway.

Mr. Gutierrez said that tenant owns three vehicles.

Mr. Jenkins said one car had New York plates on it.

Mr. Gutierrez said it could have been his car.

He said that the tenant that has three vehicles is moving. He said he told them that there was only enough space for two vehicles per unit so they decided to move. He said whoever moves in is going to be allowed only two cars. The garage is going to be empty.

He said he doesn't know how often he will be traveling to New Hampshire, but it probably won't be often so in the future there will only be four vehicles parked on the site.

Mr. Jenkins said that's four cars with two units. If there's a third unit there would be additional vehicles.

Mr. Gutierrez said that will be himself and he has the garage. There is parking for two vehicles in the garage. There will still be more space than what is actually needed because the lot itself can accommodate at least five cars. He said he will have the garage.

Mr. Jenkins said basically the driveway is two cars wide so basically they are stacking the vehicles one behind the other and you have to move a car to get another one out.

Mr. Gutierrez said in the event that he may not be driving his vehicle there will be no need to do that because everybody will be using his or her own space. Even if there are four cars

parked, there's a vacant space to maneuver around so it shouldn't be an inconvenience.

Mr. Jenkins said when he looked at the building his biggest concern was parking, especially seeing the car parked against the fence to the right. There was a gentleman pulling out of the driveway when he pulled up. He said he knows that the site is tough already and that's without the third unit.

Mr. Jenkins asked if the third unit is already constructed.

Mr. Gutierrez said some work has been done.

Mr. Jenkins asked if Mr. Gutierrez is before the Board because of a violation or by request.

Mr. Gutierrez didn't give a clear answer, saying that there's been sheetrock added.

Mr. Jenkins said that he's just been given a letter from the Building Department concerning an anonymous complaint that was made that the third floor attic was being converted into living space without having obtained the required building permit.

Mr. Gutierrez said he wasn't aware of what permit(s) he needed to do any work in the house.

Mr. Jenkins asked if the first floor is all one unit and how many bedrooms it has.

Mr. Gutierrez said each apartment has three bedrooms and two baths, one on each floor. The attic will likely be a one-bedroom unit.

Mr. Currier said he noticed that there is a wood stove flue sticking up from the garage. He asked what was going on in the garage.

Mr. Gutierrez said this was left over from the previous owner and for the most part has been cleaned out. He said when he

buys property he adds value to it, not decrease the value. If any work has been done in any of the apartments, it's been to improve them.

He said that the sole purpose of asking for the third unit is for him to come here and relax. When you live in New York you need a little place to hide from time to time.

Mr. Currier said he's looked at this property twice and both times he thought there was an issue and that was before he got the application when there was a person writing in opposition because of the parking issue. He said when he was there the parking lot was full and there was a car up on the grass against the side. His impression that the site was overloaded with two units and how could there be another unit without creating more of a parking problem.

Mr. Gutierrez said he has to admit that perhaps some of the tenants had family visiting and they stayed overnight, but he's not aware of it and it's not something that he appreciated happening to his property. He said if he has an extra unit in the attic, his car is hardly going to be used because he gets lost easily in New Hampshire. For the most part nobody is going to be disturbed to move his or her vehicles. His will be locked up. The rest of the spaces will be used for the first and second floor.

Mr. Jenkins said that when the letter in opposition came it indicated there were eight vehicles across the street. He asked if there is a lot across the street and what those cars are.

Mr. Currier said the houses across the street are set back and it's almost like their driveway is the front lawn.

Mr. Gutierrez said what's across the street from his house is the neighbor's back yard which is the parking for their building.

Mr. Duffy asked if there is a parking restriction on one side of Hamilton Street.

Mr. Gutierrez said he thinks there is some restriction on parking, but he isn't sure what it is - he thinks that it might be that you can't park on the street after 6:00PM.

Mr. Duffy said this is already telling him that it's a congested area.

He said this use is what Mr. Gutierrez would like to have, but when a variance is granted it gets passed down to the next owner. He said that he might be there with one vehicle, but he won't be there forever and there could be many more vehicles there. He said he saw this as too intense of a use because of the parking and the neighborhood.

Mr. Gutierrez said he couldn't predict what's going to happen in the future, however, he is hoping to retire in five to ten years, leave New York, and make New Hampshire his home. He said he has no intention of making money on this unit and he has no intention of selling the house.

Mr. Jenkins asked how long Mr. Gutierrez has owned the property.

Mr. Gutierrez said about six months.

Mr. Anderson asked what the attic was used for before he started working on it.

Mr. Gutierrez said he doesn't know. He said there had been some work done in it before he bought it.

Mr. Anderson asked if there was plumbing in the attic space.

Mr. Gutierrez said there was water and electricity up to the attic level.

### **SPEAKING IN FAVOR**

Kevin Lemieux. Mr. Lemieux said he is an abutter who owns two units behind Mr. Gutierrez' unit. He said not all tenants have two vehicles. He said he has tenants that have one vehicle and

others that have no vehicles. They are close to the bus pickup/drop off. They are two blocks from Shaw's. They can walk to City Hall within five minutes. A lot of people are moving into the area because they can walk to do their shopping or errands.

He said they have more of a problem with vehicles in their neighborhood from the functions that happen at Elm Street Junior High than they do from the people that reside in the neighborhoods.

He said he has lived here going on five years. There is a three family dwelling unit across from Mr. Gutierrez' property and their parking is behind the building so it looks like it's Mr. Gutierrez' parking, but it has nothing to do with him.

He said the individual who complained is next to the old fire station so all she sees when she looks out her window is cars.

Mr. Jenkins said that by Mr. Gutierrez' own testimony he asked a tenant to move out because the tenant had too many cars.

Mr. Lemieux said it's the landlord's responsibility to restrict the tenants to having one or two vehicles conducive to fit the space. He said Burke Street has owner-occupied units, as well as most of Hamilton. The far end of Hamilton Street is all rentals.

Mr. Jenkins asked Mr. Lemieux if he lives in his building.

Mr. Lemieux said he does.

Mr. Jenkins asked the square footage of his building.

Mr. Lemieux said it's about 2600 square feet for the two living spaces. He said the lots are small - 50'X100'. They predate zoning.

He asked why this couldn't be an in-law apartment.

Mr. Jenkins said this would be different criteria. Mr. Gutierrez is asking for a third unit. He said if he wanted to

ask for an in-law apartment he could ask for that.

**SPEAKING IN OPPOSITION**

No One.

Mr. Jenkins said is a neighborhood that's already overcrowded.

Mr. Duffy said they will be taking a conforming lot and making non-conforming because 7,000 square feet is needed in an RC Zone for a two-family, which is what he has. Given the parking in the area and the density he is not pre-disposed to grant this request. He mentioned the possibility of an in-law apartment.

Mr. Currier said when he did his site walk it was crowded. The letter on file states that the parking is crowded. He said all owners probably aren't as conscientious as Mr. Gutierrez is and as time goes on and he sells it people may get in there and exacerbate the parking problem.

Mr. Anderson said the fact that a variance is passed along to the next owners bothers him because it may not necessarily have adequate parking.

**MOTION** by Mr. Currier to deny the request for variance of minimum lot area, 10,500 square feet required - 7,575 square feet proposed to convert a two-family dwelling into a three-family dwelling at 4 Hamilton Street. This has been a two-family for many years. The variance is not needed to enable the applicant's proposed use of the property. He bought it recently as a two-family. There's evidence that the parking has been overcrowded for some time. It is not within the spirit and intent of the ordinance. With the parking data that the Board has, he feels that increasing that will adversely affect the property values of surrounding parcels.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY**

8. Dean Walter & Ariela Pia Torgersen (Owners) 6 Ashland Street (Sheet 64 Lots 143, 156 & 3) requesting the following variances: 1) minimum lot frontage, 60 feet required, 25 feet proposed; and 2) minimum lot width, 75 feet required, 25 feet proposed - to subdivide one lot into two lots. RA Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Jack Currier

Jeffrey Anderson

Ariela Torgerson, 6 Ashland Street. Mrs. Torgerson said their intent is to subdivide their existing property and variances are needed for the frontage and width of one lot in order to do this.

She said there are actually three lots and the two back lots have no frontage. She said at the time she believes there was an intent to have another street run through the property. The variance would allow a reasonable use of this large lot. It has 38,795 square feet.

She said the spirit and intent would not be violated because the lot will have plenty of width and depth. The access would be through the narrow driveway for which they are seeking the variance. The house that would be on the subdivided lot would have the appropriate setbacks from all sides of the lot.

She said this will not have any adverse impact on surrounding property values because a single house on a large lot will still be much larger than other lots in the neighborhood.

She said the public benefit is to allow reasonable use of a large lot.

She said substantial justice is also reasonable use of the lot. It does not create loss of value.

She said both of the variances they are applying for actually were approved in 1981 by the original owners of the house, however, they did not act upon their request and they have expired. She said in talking with the neighbors when they told them of their intent they got some background information. She said the original owners intended to subdivide the property to build a house for one of their children. She said the husband passed away and the child that was going to build ended up getting divorced and they ended up just selling the existing house.

Mr. Jenkins asked if Mrs. Torgerson knows if there is anything different about this request and the request that was made in 1981.

Mrs. Torgerson said "no". She said the neighbor at 2 Ashland Street has been there for thirty-five years and they knew the family very well. She said they remembered the family talking about the same thing.

Mr. Currier asked Mrs. Torgerson if she had spoken to her neighbors.

Mrs. Torgerson said she had. She said no one seemed to have a problem with what they are proposing. She said the area has been used in the past and continues to be used for dumping by others. She said she thinks a lot of the neighbors were happy that some trees might come down as there wouldn't be as many leaves on their property and it would clean up the area a little bit.

Mr. Currier said most of the flag lots that they see when they do a site walk, they can see the whole lot, but this one looks like the land drops off.

Mrs. Torgerson said she has a map with the topography on it. She said prior to coming to this meeting they had a civil engineer come to look at the lot to see if it would be possible to put a house back there. She said there have never been any drainage issues. It's very dry. She said the engineer didn't see any

issues. He said they could come up with a grading plan if the Board felt there were any issues.

Mr. Anderson asked if the sketch that was submitted with the application shows the proposed placement of the house.

Mrs. Torgerson said this is where they were thinking of putting the house in that location. After it was drawn, she thought the curve for the driveway was a little too much of a curve and she thinks that the driveway would come kind of straight into the house.

Mr. Anderson asked where the engineer told them the house should be set.

Mrs. Torgerson said the engineer said it shouldn't be set back too far from the road for utility purposes. There would be a deck on the back of the house and then the back of the lot would go into a hill. They said this is the placement they recommended. She isn't sure about the driveway curving as shown in the sketch. She said it just might go straight.

Mr. Jenkins asked how much of the site is actually wooded.

Mrs. Torgerson said there is a dotted line on the plan to show the new lot line. She said this is about it for grass back and the rest of it is wooded.

She had an exhibit that she showed the Board. She showed their back yard and she showed the area where it starts to drop down. She showed the area where there is a strip of grass. She said the existing house will have a flat back yard. She showed where they will have to build a retaining wall.

Mr. Jenkins asked about the rear of the lot.

Mrs. Torgerson said it would be wooded. She said they aren't going to take all the trees down. She said there are some huge pine trees that are going to have to come down to put in the proposed house.

Mr. Jenkins asked Mrs. Torgerson if she would consider a buffer area in the back area that would not be disturbed.

Mrs. Torgerson said they were thinking of possibly planting some shrubs there. She asked if buffering would mean they wouldn't touch it.

Mr. Jenkins said that would be what they were talking about. It would provide privacy for the neighbors.

Mrs. Torgerson said they can consider this. She said they were actually considering adding shrubbery as well. There is a chain link fence and it's not that pleasing to look at. She asked if they would be asking for a certain distance for the buffer.

Mr. Jenkins said they would.

Mr. Duffy said this was originally three lots.

**SPEAKING IN FAVOR**

No One.

**SPEAKING IN OPPOSITION**

No One.

Mr. Currier said he's not generally in favor of flag lots, but this is a very unique and large lot. He said there's obviously no impact to the neighbors. He said he doesn't have a problem with it. He said they might want to have a 20' undisturbed buffer.

Mr. Jenkins said there should be at least a 10' no disturb buffer.

Mr. Duffy suggested a 20' no cut buffer so if they want to add something they will be able to do that.

Discussion ensued.

**MOTION** by Mr. Duffy to grant the request for variances: 1) minimum lot frontage, 60' required - 25' proposed 2) minimum lot width, 75' required - 25' proposed to subdivide one lot into two at 2 Ashland Street. The variance is needed to ensure the applicant's proposed use of the property. This is a reasonable use. It cannot be achieved by any other method that is reasonably feasible. The property is unique in its position to the neighborhood. It is significantly larger than the minimum lot size requirements. It is within the spirit and intent of the ordinance. It should not adversely affect the property values of surrounding parcels. It should not be contrary to the public interest because a single-family use is an approved use in the RA Zone. Substantial justice will be served as the applicant will have reasonable development use of their property. Special Condition: A 20' no cut buffer shall be established at the southerly property line.

**SECONDED** by Mr. Currier.

**MOTION CARRIED UNANIMOUSLY**

Mrs. Torgerson asked if they can replace any shrubs/trees in the 20' no cut buffer. She said there is a bunch of jungle-like stuff in the back.

Reply was not heard, except for Mr. Jenkins stating that they want it to look like natural vegetation.

**9. Mark V. Cadieux (Owner) Jamin Motorsports (Applicant)  
51½ Kinsley Street (Sheet 84 Lot 126) requesting use  
variance to allow retail sales and service of motorcycles.  
RC Zone.**

Voting on This Case:

Tom Jenkins

Sean Duffy

Jack Currier  
Jeff Anderson

Jim Morse, 5 Charles Street, Hudson, NH. Mr. Morse said he is requesting a use variance to allow a motorcycle shop at the address of 51 ½ Kinsley Street. He said Jamin Motor Sports has been struggling to find a permanent home for its business in Nashua, specifically in the downtown area.

He said the last time they were in front of the Board for a use variance at 24 Crown Street there was opposition from an abutter next door to 24 Crown Street. He said they have been at this location for two months and he approached this abutter last week. She told him that they have not disturbed her or her tenants whatsoever as far as parking or noise or anything.

He said Jamin Motor Sports would like to stay in the downtown area because of its clientele. He said they are unsure of their future at 24 Crown Street. The building has been put up for sale so they have decided to pursue other buildings.

He said it seems like the building at 51 ½ Kinsley Street was built for this type of business. It has a showroom and towards the back over towards Ash Street it has what looks like a service department with what used to be an overhead door.

He said he didn't think it would be out of character to have a motorcycle shop at this location. He said the public or private rights of others would not be injured. They would not invade the neighbor's privacy or their peace and quiet. They are open during the day, except for Thursday evenings.

He said Jamin Motor Sports is a respectable family business. The majority of their customers are local people, including business owners, people from the Fire Department and Police Department and City government.

He said no work will be performed on vehicles on the outside of the building. Nothing will be stored outside so they won't create an eyesore in the neighborhood and decrease the property

values.

He said they plan on improving the look of the site on the outside.

He said they will provide the general public with a place to have their means of transportation serviced without having to go across town or go somewhere else or to another town. With gas prices going up everybody's looking for a cheaper way to get around. Motorcycles seem to be one of the ways. He said this will also offer employment opportunities for the local work force.

He said Jamin Motor Sports would not violate the spirit and intent of the ordinance. The store is nothing more than a retail outlet that offers a service to its customers.

He said they wouldn't take up any street parking. The site has its own parking lot with about eight spaces.

He said they would abide by all Fire, Building & Safety Codes.

He said substantial justice will be served because they have proven each condition of the law.

Mr. Jenkins said he looked at this location and he felt that this couldn't see a worse site. He said it's a great location for retail, but not Mr. Morse's type of retail. He said this is a very condensed neighborhood where the homes are on top of each other. He said the building is actually connected to another building, which is utilized as a home as well as a tailor shop.

He said Mr. Morse is working on vehicles with gasoline, oils and other products. The chances of having a fire are a lot higher. He said currently it is a furniture store that is retail, but it doesn't create noise and they aren't working with chemicals, gasoline or other toxic fluids as well as being flammable.

He said he understands why Mr. Morse wants to locate here because it is a nice downtown site, but if there's a fire here

he's going to take down half the neighborhood. There's a house directly to the left and it's attached to the building to the right. It's in a "chamber" between two buildings and the echo alone coming from the motorcycles would be heard a block away.

Mr. Morse said he doesn't run anything outside.

Mr. Jenkins said if someone has a motorcycle they may drive it in to be serviced. They would be driving it there and then driving it away. Not everybody puts their bike in the back of truck and brings it in that way.

He said the building to the left is probably rentals and he thought the noise alone would be disturbing to the tenants. He said he thought the noise coming off those two buildings would echo more because there's no place for the sound to go.

Mr. Morse said at 8:00AM Kinsley Street is bumper to bumper with cars, motorcycles and other vehicles. He said this is more noise than he would have with a customer pulling in with his/her motorcycle to be serviced.

Mr. Jenkins said at the previous meeting Mr. Morse said that he extended his hours of operation because people pick up their bikes in the evening or on a Saturday.

Mr. Morse said he is only open one night.

Mr. Jenkins said he is concerned about fire also. He said at the currently location if there were a fire, it would be contained in that one area. In the previous location they were also in a building that was self-contained. In this particular location the building is attached to a residence.

Mr. Morse asked if this is something the Fire Department could take a look at and pass on advise.

Mr. Jenkins said if the Fire Department could give the Board a letter that they didn't have a problem with it they could consider it, but he wishes to hear any other testimony from

people in the audience.

Mr. Carrier said his initial thoughts were a bit negative. He's looked at it a bit more and he noticed that this is a cinder block building so he didn't think there was much of a fire issue. He looked at this on a Friday afternoon and he was stunned by how loud the traffic noise was on Kinsley Street. He said he did go to the other location because he wanted to speak to the abutter who spoke against Mr. Morse. He said he asked how much noise the shop generated and the feedback was that it was a non-issue.

Mr. Duffy said what he's seen of motorcycle establishments in the City of Nashua is that it's not just the service. It's the outdoor storage of products that are being delivered. It's the boxes of crated motorcycles and parts outside. It's the dumpster storage and pickup with metal and parts. It's all the cardboard crates being left on property areas next to residential areas, instead of being in dumpsters and carted off the property. Sometimes there are lighting issues. There are motorcycles out into the sidewalk or near the street areas for display and demo.

He said this is a wonderful place because a lot of cars go by there, but if people are turning their heads to see what's there it's a safety concern. In addition, signage could be a problem.

Mr. Morse said the only thing they would have out front would be a sign. He said there's a sign out here now that says "Mark's Furniture". If he did any outdoor display it would be up against the building right in front of the showroom.

He said he doesn't have a big business. He doesn't have crates or boxes stored outside. They never did and never will. He said he doesn't like that type of eyesore.

Mr. Jenkins said his biggest concern is having gasoline engines in a building connected to an apartment building and a tailor shop. He said he's sure there's tons of fabric in there. If this ignites it could burn for hours.

Mr. Duffy asked how Mr. Morse stores the fuels, solvents, thinning fluids, etc. now.

Mr. Morse said anything that's combustible is kept in metal storage containers. Gasoline has its own gas caddy and has very minimal exposure to the public or a spark.

Mr. Duffy asked if there are one hour or six hour protection systems.

Mr. Morse said the metal container that he has for his flammables is for one hour. He said the gas caddy is just a gas caddy.

### **SPEAKING IN FAVOR**

No One.

### **SPEAKING IN OPPOSITION**

Marie Reed. Ms. Reed said she has the tailor shop next door and the Board itself has expressed exactly what she came to the meeting to say. One was the noise issue and the other was the fire issue.

She said the back of the tailor shop is a hair salon and it's exactly right next to the building and that's made of wood, not concrete.

Mr. Jenkins asked where people access the hair salon.

Ms. Reed said at 51 Kinsley Street - on the other side. She said it's not being used right now. It used to be.

Mr. Jenkins asked if that is also an apartment building.

Ms. Reed said the house next door to the tailor shop is an apartment building and she has tenants. One works at night and sleeps during the daytime so he would be affected by the noise.

Mr. Jenkins asked if there is a second story to the tailor shop building.

Ms. Reed said "no".

Mr. Duffy asked Ms. Reed how long she has been here.

Ms. Reed said thirty years.

Frank Connolly, 5 Cameron Drive, Hollis. Mr. Connolly said he owns an eight-unit apartment building at 53 Kinsley Street. This is the building that is immediately next-door just to the west of the subject property. He said he's owned the building for about eighteen years.

He said about seven years ago he did a major renovation and gutted and completely rebuilt the building. It's been a very successful property since then. They have low vacancy rates and the majority of the building is made up today of tenants who are best described as senior citizens, retired and looking for a convenient location in a residential neighborhood close to downtown.

He said he has had a very good relationship with Mark Cadieux and Mark's Furniture. He said he's never had a problem over the years and he never had a problem with the owner before that who had an electronics store there. He said he also knows Jim Morse very well. He knows his family. He said Mr. Morse is a good, honest person and that he is a very responsible businessman. He said he had no qualms about the way he might run any establishment at this location.

Mr. Connolly said his concern is for the character of the neighborhood and the preservation of his investment in that neighborhood. He said he isn't speaking in favor or opposition necessarily to this project. He's raising the concern he has that the neighborhood, and his building in particular, have it's value preserved.

**SPEAKING IN FAVOR - REBUTTAL**

Mr. Morse thanked Mr. Connolly for his remarks concerning his business savvy. He said he's only been in business for three years and it's tough trying to find a location for a motorcycle shop because over the last fifty years motorcyclists have made a bad impression. That's when motorcycles were dangerous and now they're not. He said everybody uses motorcycles now.

He said as far as people sleeping during the day because they work third shift, there's nothing they can do about that. He said they are not going to make any more noise than the regular traffic on Kinsley Street. They are going to try to do everything in their power to be good neighbors.

Mr. Jenkins asked if the building is sprinkled.

Mr. Morse said he didn't believe it is.

Mr. Duffy asked what the distance is to the closest automotive repair or service area.

Mr. Morse said that West Hollis Street is peppered with automotive repair, but that's a whole different neighborhood.

He said there's Chuck's Auto on Pine Street. He said there isn't anything on Kinsley Street.

**SPEAKING IN OPPOSITION - REBUTTAL**

No One.

Mr. Jenkins said he feels that this building is not the right location for this business for all the reasons he stated earlier.

Mr. Currier said there was never a fire when Best Motorcycle Shop was on Main Street and then Jamin Motor Sports took over and they never had a fire there either. He said when he went to Crown Street it was clean and there weren't any complaints or noise. This site is a concrete building. He doesn't have a

problem with the use of this building for motorcycle sales and repair.

Mr. Anderson said he isn't opposed to the business being in this location. He doesn't like the parking lot layout, but he didn't like it when Mark's Furniture was there either.

Mr. Duffy said he is leaning towards being in opposition of the request. He said fires do happen, for example, Steve King Auto on Main Street. If they had a fire at the proposed site it would end up causing significant damage.

**MOTION** by Mr. Currier to grant the use variance to allow retail sales and service of motorcycles at 51 ½ Kinsley Street. This site has been used for retail for some time. He said the use that's proposed, while typically would be indicative of more noise and a fire hazard, he thinks the owner of the business has demonstrated that is not a significant concern for this site. It is within the spirit and intent of the ordinance. It will not adversely affect the property values of surrounding parcels.

**SECONDED** by Mr. Anderson

**MOTION CARRIED FAILS - 2-2, Mr. Jenkins and Mr. Duffy opposed.**

10. Heena, LLC (Owner) 54 Lock Street (Sheet 44 Lot 159) requesting the following: 1) special exception to expand a nonconforming use by constructing a 400 square foot building addition; and the following variances: 2) maximum building area, 20% allowed - 22.5% proposed, 3) minimum open space, 40% required - 37.5% proposed, and 4) minimum required parking spaces, 10 required - 8 existing. RB Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Jack Currier

Jeff Anderson

Chandrakant Patel, 54 Lock Street. Mr. Patel said he wishes to have a cooler to store beer and frozen foods.

Mr. Jenkins asked the whole purpose of what Mr. Patel is trying to do.

Mr. Patel said so that he could get an additional 400 square feet for a cooler.

Mr. Jenkins asked what the cooler is for.

Mr. Patel said for beer, wine and frozen foods.

Mr. Jenkins asked Mr. Patel if he didn't have enough floor space inside the store for this.

Mr. Patel said "no".

Mr. Jenkins asked Mr. Patel what he has now.

Mr. Patel said he has a cooler for beer and wine, but it's a small space.

Mr. Jenkins said the store is 2,000 square feet. It's a small residential neighborhood market. He asked what he sells mostly.

Mr. Patel said drinks and frozen foods.

Mr. Jenkins asked Mr. Patel if he sells any prepared foods.

Mr. Patel said he sells some sandwiches, but not much. He said he does not have a deli.

Mr. Duffy said the application states the dumpster is going to be moved. He asked where it is going to be place.

Mr. Patel said they have some space on the opposite side - Cross Street.

Mr. Jenkins said this will be next to the sidewalk.

Mr. Duffy asked if there are plans to cover it or enclose it.

Mr. Patel said there were no plans to do this.

Mr. Duffy asked where the vents and cooling systems are going to be blowing for the proposed cooler and how often they are going to be running.

Mr. Patel said they'll be on the roof, probably aimed straight up.

Mr. Duffy asked if Mr. Patel had talked with the person on 50 Lock Street.

Mr. Patel said he had. The neighbor said he didn't mind.

Mr. Duffy asked where the heating and utilities are located on this building.

Mr. Patel said the air conditioning is on the roof near Cross Street.

Mr. Jenkins said they have a letter from 50 Lock Street stating that they have no problem with the application.

He asked Mr. Patel how long he has owned this store.

Mr. Patel said he bought it 1-½ years ago.

Mr. Jenkins said if he recalls correctly, this store was torn down and rebuilt about fifteen years ago.

Mr. Patel agreed.

Mr. Jenkins said Mr. Patel is pretty much maxed out on buildable space for this site. He said he felt that Mr. Patel should reconfigure the store on the inside to make it work. What he is asking for is intrusive to the neighbor. There will be fans

running and there will be noise, whether the person next door realizes it or not. He said 400 square feet is a big addition and a 300-foot cooler is a massive cooler that is going to generate a lot of noise.

Mr. Jenkins asked if this is a walk-in cooler that's pre-fab and attach to the building.

Mr. Patel said this was correct.

Mr. Jenkins asked if it has a cement foundation.

Mr. Patel said "yes".

Mr. Jenkins asked if the back 100 square feet was going to be for storage space.

Mr. Patel agreed.

Mr. Duffy asked if this is a cooler or a freezer.

Mr. Patel said it is both.

Mr. Duffy asked how much of the 300 square feet is freezer and how much is cooler.

Mr. Patel said about 25% is freezer and the rest is a cooler.

Mr. Currier said where the dumpster ends up could end up being an issue.

Mr. Jenkins said it's going to be on the other side of the building on the Cross Street side. It's the only place he has to relocate it.

Mr. Duffy said if the applicant was interested in having a 300 foot cooler in the back area and eliminating the 100 feet extra storage area there would be room for the dumpster.

Mr. Jenkins explained to Mr. Patel that he could eliminate the

100 square feet of dry storage space in the back and take the cooler and move it to the back of the building and leave the dumpster where it is currently located. He asked if Mr. Patel would be amenable to this.

Mr. Patel said he has a 30'-40' wall. He showed the Board the location of the wall.

Mr. Jenkins said that what Mr. Patel is trying to say is that if he moves the cooler back he wouldn't have access to the inside of the store.

Further discussion ensued about the wall, the access to the store and storage.

Mr. Duffy asked if this is a one-story walk-in.

Mr. Patel said it is.

Mr. Duffy asked if he had to put anything around the outside of it.

Mr. Patel's response couldn't be understood.

#### **SPEAKING IN FAVOR**

No One.

#### **SPEAKING IN OPPOSITION**

No One.

Mr. Jenkins said this won't work because inside the store he has a wall up and there is storage for dry goods. The cooler is all open door frontage and he can't ... **unintelligible**.

Mr. Jenkins said he was opposed to the request, but no one spoke in opposition. He said they have a letter from an abutter who is actually in favor of the request. He said Mr. Patel was willing to do what they asked, but he can't.

**MOTION** by Mr. Anderson to grant the request for special exception to expand a non-conforming use by constructing a 400 square foot building addition at 54 Lock Street. It is listed in the Table of Uses, Section 16-208, Section 16-254, and Section 16-278. It will not create undue traffic congestion or unduly impair pedestrian safety. It will not overload public drainage, water, sewer or other municipal systems. No special regulations. It will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals, or welfare of the residents.

**SECONDED** by Mr. Carrier.

**MOTION CARRIED UNANIMOUSLY**

**MOTION** by Mr. Anderson to grant the request for variances: 1) maximum building area 20% allowed, 22.5% proposed 2) minimum open space, 40% required - 37.5% proposed 3) minimum required parking spaces, 10 required - 8 existing at 54 Lock Street. The variances are needed to enable the applicant's proposed use of the property given the special conditions of the property. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue. He said the applicant worked with the Board to try to find another alternative, but it would not work. It is in the spirit and intent of the ordinance. It will not adversely affect the property values of the surrounding parcels, even though there was no expert testimony tonight. It's not contrary to the public interest. Substantial justice will be served.

**SECONDED** by Mr. Duffy.

**MOTION CARRIED UNANIMOUSLY**

11. Gerard Reppucci (Owner) L Kinsley Street (Sheet 86 Lot 74) requesting the following: 1) use variance to allow a two-story building with two residential units on the second story, and the following variances: 2) to encroach 5 feet into the 10 foot required front yard setback (on Kinsley

Street) for parking, 3) to encroach 13 feet into the 20 foot required rear yard setback, 4) minimum required parking spaces, 12 required, 9 proposed; and 5) to allow a driveway 30 feet from an intersecting right-of-way - minimum of 50 feet required. LB Zone.

Voting on This Case:

Tom Jenkins

Sean Duffy

Jack Currier

Jeff Anderson

Richard Maynard, Professional Engineer, Maynard & Paquette, Nashua. Mr. Maynard said the property is a vacant gravel parking lot at the intersection of Kinsley Street and Badger Street. It contains roughly 2/10 of an acre in the "LB" Local Business Zone.

He said Kinsley Street is one way easterly and Badger Street is one-way south towards Kinsley Street. He said the property has three existing curb cuts or driveways - one on Kinsley Street and two on Badger Street.

Mr. Maynard said the applicant would like to construct a two-story building with a Laundromat on the first floor and two small residential apartments on the second floor, each with about 1,000 square feet of living space. They are proposing nine parking spaces, including one handicap space.

He said to the east and north is the RC Multi-Family Zone. To the west is the Woodlawn Cemetery located in the "RB" Zone.

He said there are only five properties within the "LB" Zone. The include a seven unit multi-family building to the left of this lot, a four-unit multi-family building beyond that, a restaurant and variety store (Roland's) across the street on a .14 acre lot, and a four-unit multi-family building on a .25 acre lot.

Mr. Maynard said the Laundromat is a permitted use in the "LB" Zone. The two small second story residential units are not permitted and require a variance. The regulations require that

the Laundromat and the residential units must have twelve parking spaces. They are proposing nine spaces, including one handicapped. He said the majority of their business clientele will likely be walk-in traffic and that only half of the spaces required in the ordinance will be needed for this proposal. He said they also think that the residential parking would not conflict in its use with the people using the Laundromat. On-street parking is allowed both on Kinsley Street, Badger Street, and some of the other side streets in the area. The nine on-site spaces should serve the property adequately.

Mr. Maynard said due to the layout of the parking lot and the site and the one-way street patterns they need to keep the Kinsley Street driveway as a one-way entrance in only. The Badger Street entrance will be a two-way in and out of the property. The third existing curb cut further to the north on Badger Street would be discontinued.

He said the regulations require a 35' separation from the Kinsley Street curb line to the Badger Street driveway, but they are only able to provide 30'.

He said the parking lot and pavement along Kinsley Street is proposed to be 5' behind the front property line, which would also make it 5' behind the sidewalk. In this zone (LB) 10' of pavement setback or building setback is required. The existing building setbacks for the four other properties in this zone range from 0' to 5' to 6'. What they are proposing for their pavement setback is very much in character with the neighborhood. It still allows a sidewalk and still allows green space.

He said the rear of the building is defined as the north side opposite Kinsley Street. He said they are proposing a 7' setback because this might be considered a side yard if the building were viewed from Badger Street.

He said the nearest abutting structure, not including the shed to the rear, is 40' away. He said his client has spoken to that property owner and they have stated they have no problems with

this request. The remainder of the building is abutted by Woodlawn Cemetery on the south and west corner.

Mr. Maynard said the proposed use of a Laundromat and two small residential units is very much in character with this "LB" zone and much of the Kinsley Street neighborhood. He said the residential use of two small units for which a variance is requested is very reasonable considering some of the high-density multi-unit properties in this area.

He said the request would be in the spirit of the ordinance because the dimensional variances are better than what already exists in this "LB" Zone.

He said a walk-in Laundromat facility will be a significant public benefit and service to this densely populated residential area. There are no laundry facilities anywhere in this area for numerous blocks. New residential construction of some small affordable residential units is also a significant public benefit.

He said the vacant gravel lot will be replaced by a new building and residential construction demonstrating an investment in a neighborhood, thus enhancing existing property values.

He said substantial justice will be done as it will allow his client a reasonable economic use for this vacant lot. The construction of a new building and paved parking lot, with appropriate landscaping and green space on this corner lot would be a substantial and positive benefit to the City in general and for this immediate neighborhood.

Mr. Maynard said he had letters from the abutters to this property. One is from 19 Pierce Street. This is the house with the pool in the front. This is the "Leonard" family and is in favor of the request. He said they have a letter from Mr. Tremblay who owns the seven unit building to the west of the site. This letter states that he didn't see any problem with the request. He said the third letter comes from Ald. Mark Plamondin endorsing and supporting this request.

Mr. Jenkins asked the square footage of the first floor in the building.

Mr. Maynard said it's 2068 square feet. He said the second floor is a little bit bigger because it has an overhang in the front. He said they don't have the plans developed to show what the building looks like.

Mr. Jenkins said the site is short the required number of parking spaces.

Mr. Maynard said the ordinance suggests that twelve parking spaces are required, but it also assumes that the Laundromat is a drive-in facility. They expect a lot of walk-in traffic. It's really a neighborhood facility. He said all the side streets also allow on-street parking. Also, the residential parking use and the Laundromat parking use tend to be a little bit compatible. They don't tend to conflict with each other. He said for these reasons he doesn't believe they need the full twelve spaces.

Mr. Jenkins asked the hours of operation for the Laundromat.

Mr. Maynard said these are stated in the application and Mr. Jenkins read the answer as seven days a week as 7:00AM - 10:00PM.

Mr. Maynard said it's a new operation and they aren't sure how it will work out so they might be closing at 8:00PM if they don't have anyone showing up during the later hours.

Mr. Currier said he thinks that even if people live only a couple of blocks away if they have a car they are going to drive to the site.

Mr. Maynard said he didn't think this would happen. He said they'll use carts and wheel their laundry down or they'll carry it in.

Mr. Anderson said there are cars parked on this site right now.

Mr. Maynard said they are cars from the neighborhood. They will have to park elsewhere if this site is approved and developed. He said the lot has been vacant for 20 - 30 years and his client has owned it for about 4 - 5 years and he has struggled to find a reasonably compatible use that fit in the neighborhood and this is what he came up with.

### **SPEAKING IN FAVOR**

Gerard Reppuci, Owner. Mr. Reppuci said he has lived in this neighborhood for ten years. He said he was at 88 Kinsley Street, directly across from this site, until this year. He owns the house on the corner of Kinsley & Badger, directly opposite the lot. He lives on the first floor.

He said he's spent a long time thinking about what he could use the land for that would be good for the area. He said he has a good neighbor in "Roland's" and he doesn't want to compete with him so a restaurant or convenience store would not be what he'd want to do.

He said if he doesn't stay in the house that he lives in right now he is considering living on the second floor of the Laundromat. He said the intent is to make these two-bedroom apartments. The apartments will be about 1,000 feet each. He said he's been a landlord for eleven years now and two bedroom apartments are the most desirable for him to have.

### **SPEAKING IN OPPOSITION**

No One.

Mr. Jenkins said the Laundromat is a permitted use.

Mr. Currier agreed. He said he thought it was a fine idea, although the owner is asking for a lot. He said all the variances, except for the parking make sense for this site. He said the parking is a sticking issue, but he could probably go either way in voting.

Mr. Anderson said he thought it was a good use. He said it would be a nice facility. They have more parking than most of the adjacent buildings.

Mr. Duffy said he felt more comfortable in terms of one residential unit. He said they're talking about taking a piece of property and turning it into something that's non-conforming. He said there are no mixed uses of residential and commercial in this neighborhood. He said 2/10 of an acre isn't a lot of land. If there is a 2,000 square foot building with two stories and 60'+ in the length of the parking, that's why they are into the setback area so they are pushing the traffic out to the edges.

Mr. Currier said Ald. Mark Plamondon has testified for many of the tree street areas saying that there's not enough parking, but he has remitted a statement that he is in favor of this request.

**MOTION** by Mr. Currier to grant the use variance to allow a two-story building with two residential units on the second story at L Kinsley Street (corner of Kinsley Street & Badger Avenue). He said the variance restriction as applied interferes with the landowner's reasonable use of the property considering the unique property in its environment. He said it's a small area of local business surrounded by residential zoning. It is within the spirit and intent of the ordinance. The upgrade of this property could improve the property values of surrounding parcels.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY**

**MOTION** by Mr. Currier to grant the area variances: 1) to encroach 5' into the 10' required front yard setback (on Kinsley Street) for parking 2) to encroach 13' into the 20' required rear yard setback at L Kinsley Street (corner of Kinsley Street & Badger Avenue). These variances are needed to enable the

applicant's proposed use of the property (a combination of two residences and a Laundromat). The current use of the land has encroachments and it's been that way for many years. The improvement with the landscaped areas will not affect the property values of surrounding parcels. It's not contrary to the public interest. Substantial justice will be served.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY**

**MOTION** by Mr. Currier to grant variances: 3) minimum parking spaces - 12 required, 9 proposed 4): to allow a driveway 10' from an intersecting right-of-way where 50' is required at L Kinsley Street (Corner of Kinsley Street & Badger Avenue). He said the variances are needed to enable the applicant's proposed use of the property. The driveway is currently not being re-aligned. It's within the right-of-way and it's on a one-way street, which minimizes the impact. It's within the spirit and intent of the ordinance and 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. Anderson.

**MOTION CARRIED UNANIMOUSLY**

**Request for Rehearing**

**Sandy Fabre & Olga Gombins (Owners) 2 Daniels Street (Sheet 122 Lot 507) requesting use variance to allow an in-home day care for 12 children. GB Zone.**

Voting on This Case:

Tom Jenkins

Sean Duffy

Jack Currier

Jeffrey Anderson

Mr. Jenkins asked the Board members if they all had read the request for rehearing.

Mr. Jenkins asked Mr. Falk if he thought Mrs. Gombins was trying to change her request.

Mr. Falk said he thought it was the same request - in home day care.

Mr. Jenkins said the Board tried to make it clear the evening Mrs. Gombins appeared that this was a request for in home day care occupation for twelve children. He said the problem that they had was that the location was within a GB Zone and it was located between two businesses. He said the denial was due to heavy truck traffic, that it was contrary to the public interest and a concern for the safety for the children. He said they also talked about the square footage of what Mrs. Gombins was asking for the operation and they made it clear to her that 300 square feet is what is allowed under the ordinance.

He said she doesn't see that there was any procedural error denying someone the right to be heard or improper notices and anything else. He asked the Board if any of them saw any procedural errors.

The Board did not feel that there was any procedural error.

Mr. Jenkins asked if there was an illegal decision, that is, did the Board fail to completely address each point of law required for a special exception or variance.

Mr. Duffy said he doesn't think that this happened. He said he thinks the applicant may be confused, even though the Board was

clear and the staff of the Planning Department was clear. He said what Mrs. Gombins wanted was a lot larger than what the ordinance allows and fit more into a stand alone business rather than an in-home occupation.

Mr. Jenkins said they made it very clear that Mrs. Gombins could utilize this particular location as a business, but not as an in-home business.

Mr. Duffy said he doesn't think there is any new information in the request that they didn't have the night of the hearing.

Mr. Jenkins asked if the request contains any new information that present or available to the Board at the original hearing.

Mr. Currier said there is mention of an additional parking area. That was not the primary issue with the Board. It was the amount of square footage involved.

Mr. Jenkins said it was the 300 square feet, it was the traffic, and it was the public safety concerns.

He said if Mrs. Gombins wants to rip up the whole front yard and do a circular driveway to drop off children and run this as a business operation that would be a new application and she has the right to do that. They voted on what was in front of them, which was an in-home day care occupation.

Mr. Jenkins asked if there's any new information that could cause the Board to make a different decision.

The Board did not feel that this was the case.

**MOTION** by Mr. Duffy to deny the request for rehearing for 2 Daniels Street. There was no procedural error and no illegal decision. The Board did not fail to address any of the points of law as required. The applicant requested the Board to listen to her use variance request for an in-home day care. The request for rehearing did not contain any new or additional information that was not available to the Board at the original hearing.

There's nothing that would cause the Board to make a different decision.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY**

**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.**

Voting on These Cases:

Sean Duffy

Jack Currier

Jeffrey Anderson

Mr. Jenkins recused.

Mr. Duffy asked if Mr. Curry had reviewed the minutes of the meeting(s), read the rehearing request and viewed the property so that they could hear the request for rehearing.

Mr. Currier said he had.

Mr. Duffy asked if there was any procedural error, including improper notice denying someone the right to be heard.

The Board did not feel this was the case.

Mr. Duffy asked if there was an illegal decision - in other words - did the Board fail to completely address each of the points of law required for the appeal of the administrative appeal.

Mr. Currier said in the rehearing request the major premise is that these streets were laid out and permitted back in 1923 and therefore they should be permitted now. He said the issue he has with that statement is that streets weren't built since then. It was a conceptual build-out plan. He said he agrees with the Administrative Officer's decision that it needed to come for a variance.

He said he doesn't think the Board made an illegal decision. The Board addressed everything that was in front of them and came to a legal decision that the Administrative Officer was correct.

Mr. Duffy concurred.

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

The Board did not feel that this was the case.

Mr. Duffy agreed. He referred to #16, #23, #27, & #30. He said he understands the logic, but these are all things that the Board heard that evening and completely covered in their deliberations.

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

The Board did not feel that this was the case.

**MOTION** by Mr. Currier to deny the request for rehearing on Catherine Street (Sheet 126 Lots 148, 152, 155 & 158). This is a request for a rehearing on the appeal from the decision of the Administrative Officer. He said there was no procedural error, it was a legal decision, there's no new information, there is no new information, and there is nothing in the request that would cause the Board to make a different decision.

**SECONDED** by Mr. Duffy.

**MOTION CARRIED UNANIMOUSLY**

**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.**

Voting on This Case:

Sean Duffy  
Jack Currier  
Jeffrey Anderson

Mr. Jenkins recused.

Mr. Duffy asked if there was any procedural error, including improper notice denying someone the right to be heard or anything the Board did not consider in the testimony.

Mr. Currier said he didn't believe this is the case. He said an applicant needs three affirmative votes in order to have his/her request approved. If three affirmative votes are not received the request does not pass. When the vote was taken and there was no third vote to pass the request the issue was dead. He said he thinks the Board did extra work in trying to vote the other way and it probably created some confusion to some of the witnesses, but the law is that it needs three positive votes and it didn't get them.

Mr. Duffy said the Board's by-laws require how they are to operate. That's why they ask at the beginning of the meeting they ask if the applicant wants to proceed with the case when there is a short Board. He said in this instance the attorney for the applicant had postponed at least once or twice and possibly three times, but decided to go ahead that night to have the case voted on.

Mr. Currier said he didn't believe there were any procedural

errors.

Mr. Duffy asked if there were any illegal decisions, i.e., did the Board fail to completely address each of the points of law required for the special exception and/or variance.

The Board did not feel that this was the case.

Mr. Duffy said the applicant is aware that a minimum of three votes is needed. They had the reasonable option of not having the case heard.

Mr. Currier said he disagreed, particularly with Paragraph #20. He said the Board found it necessary to take a motion to deny, but that doesn't invalidate the motion to approve, which didn't pass.

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

The Board did not feel this was the case.

Mr. Duffy asked if there is anything contained in the request for rehearing that would cause the Board to make a different decision.

The Board did not feel this was the case.

**MOTION** by Mr. Currier to deny the request for rehearing for L Oakland Street, Sheet 126 Lots 59-65. There was no procedural error, no illegal decision, no new information presented, and nothing in the rehearing request that would cause the Board to make a different decision.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY**

At this point Mr. Koutsos asked if the Board would confirm the

lot numbers. He thought that they were mixed up with Catherine Street.

Discussion followed.

Mr. Duffy said the agenda that was provided to the audience has information that is incorrect (with reference to the cases for rehearing and their lot numbers).

Mr. Falk said the amended agenda is something that is done just before the meeting. No notices go out, nor is it published.

**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 asked if there was any procedural error, including improper notice denying someone the right to be heard.

The Board did not feel this was the case.

Mr. Duffy asked if there was an illegal decision, in other words, did the Board fail to completely address each of the points of law required for a special exception/variances.

Mr. Currier referred to Paragraph #4. He questioned whether the Board weighed the information that the lots could be consolidated.

Mr. Duffy said he believes each of the members listened to the testimony, made a site visit and discussed it that night and he believes each one of them asked different questions at different times. He asked Mr. Currier if there was anything that stood out in his mind that either objectively or subjectively he would have seen as weighing more that was omitted.

Mr. Falk said that the 1994 case was a little bit different because they were going to put one house back there. Lots can be consolidated administratively. You don't have to go to any Boards to do this.

Mr. Duffy said they heard the testimony.

Mr. Currier said there is a bit of a difference between being at the meeting and reading the minutes.

Mr. Anderson said there were many pieces of testimony and he thinks each one of the members weighed it to what they thought was the appropriate level.

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

The Board did not feel that this is the case.

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

The Board did not feel that this was the case.

**MOTION** by Mr. Anderson to deny the request for rehearing of above variances made by Robert G. Duhamel and Rita Wardner. There was no procedural error, no illegal decision, no new information presented, and nothing in the request that would cause the Board to make a different decision.

**SECONDED** by Mr. Duffy.

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

**MINUTES**

**None**

## **MOTION CARRIED UNANIMOUSLY**

### **Regional Impact**

The Board discussed the agenda for the next meeting, which includes Wal-Mart. They discussed whether they should reserve the following night so they could hear Wal-Mart on Wednesday.

Mr. Falk thought the Board could make it through the other twelve cases and have time left to hear the Wal-Mart case. One of the cases has been before the Board before and it has a change so they are familiar with it and there are three cases with the same owner with basically the same issues so that should go fairly quickly.

There was some discussion that not all members will be present at the Board's next meeting so some of the cases may not proceed because the applicant(s) may want a full Board to hear their case.

Mr. Currier said that the Conservation Commission has recently come under fire for not letting the abutters have their full say in reference to Wal Mart. He said he thinks the Zoning Board should prepare for a lot of testimony.

Mr. Falk said that the last time Wal Mart came to the Board it was a 3-½ hour public hearing just with them. They were asking for a use variance and a variance to go into the conservation zone. This time it's only a special exception to work within the wetland buffer. He said the requests have been minimized.

He said the Master's Report that went to Court basically allowed retail use on this site. There has been retail here all along. He said the staff decided that they did not have to go back for a use variance because the last time this went in for an expansion of a non-conforming use it was approved by the Board. They had approval for up to 157,000 square feet and this request is coming in for less than that.

Mr. Currier asked what this was going to be for.

Mr. Falk said it was Kealy Farms and there was going to be an addition on Builders Square.

The Board decided there was no regional impact.

**ADJOURNMENT**

Mr. Jenkins called the meeting closed at 10:42PM.

Sean Duffy  
Acting Clerk

lt  
Taped