

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
January 24, 2006

A public hearing of the Zoning Board of Adjustment was held on Tuesday, January 24, 2006 at 6:30PM in the Auditorium at City Hall.

Sean Duffy conducted the hearing.

Members present were: Sean Duffy, Vice Chair
Susan Douglas
Norm Tremblay

Also present, Carter Falk, Deputy Manager/Zoning

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

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

- (1) A zoning restriction as applied to your property interferes with reasonable use of the property, considering the unique setting of the property in its environment; (2) no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; and (3) the variance would not injure the public or private rights of others.
- (2) The spirit and intent of the ordinance must not be broken by granting the variance.
- (3) Granting the variance will not adversely affect other property in the district.
- (4) Granting the variance must be of benefit to the general public and not solely the individual.

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

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

- (1) The use requested must be listed in the Table of Use Regulations as a special exception in the district for which the application is made or is an existing nonconforming use for which a request to expand is being in accordance with Subchapter 13 of the Nashua Revised Ordinances.
- (2) The requested use will not create undue traffic congestion or unduly impair pedestrian safety.
- (3) The requested use will not overload any public water, drainage or sewer system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the City will be unduly subjected to hazards affecting health, safety, or the general welfare.
- (4) Any special regulations for the use set forth in other sections of the zoning ordinance are fulfilled.
- (5) The requested use will not impair the integrity or character of the district or adjoining zones nor be detrimental to the health, morals or welfare of the residents of Nashua.

He said the Board will not consider in their decision any information which does not address these points of law or those directly relative to the case being presented. This is not a forum for public opinion unrelated to the discussion at hand.

The Zoning Board cannot change the zoning laws nor make changes to the zoning map as developed by the Planning Board or the Board of Alderman.

He said the Board would receive testimony as follows: Testimony will be first heard from the applicant. The applicant will have fifteen minutes to address the points of law just described. The applicant's formal request and other information will have been presented to the Board in advance in support of the application and testimony.

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. He said each speaker will be allowed five minutes to address the Board and to present additional written or formal information for consideration. 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. The Board may then ask questions of the person testifying.

The Board will then hear testimony from those in opposition or with questions or concerns. Each of these presenters will be allowed five minutes. The timing light process will be applied as previously explained.

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 three affirmative votes are needed for granting a variance or special exception. There are only three members present tonight. Since there are only three members the applicants will need all three votes to approve the application.

Should the applicant or any of the public 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 they may appeal the case to the New Hampshire Superior Court.

He said all testimony given this evening is understood to be given under oath as in a court of law. Anyone who is out of order during this proceeding as deemed by the Chair will be asked to desist from any further interruptive or disruptive actions and if necessary will be directed to leave the proceedings.

Each speaker should come forward and state their name and address for the record and speak clearly into the microphone so their testimony can be recorded.

Mr. Duffy said if anyone does not want to be heard tonight because there are only three members present they should advise the Board so that the case can be re-scheduled. If there is one of the three dissented, it would mean the case was not approved. No one stepped forward.

- 1. Shelly Johnson (Owner) 1 LaFrance Avenue (Sheet 48 Lot 128) requesting special exception for major home occupation for in-home hair salon. RA Zone.**

Shelly Johnson, 1 LaFrance Avenue, Nashua, NH. Mrs. Johnson said she said she would like to put a salon in her home. She would be the sole operator. She said she would be open three days a week. She said she has talked with all the neighbors that about her property to let them know what her intentions are and got signatures from almost all of them.

Mr. Duffy asked Mrs. Johnson about undue traffic congestion and pedestrian safety.

Mrs. Johnson said she is expecting most of her customers to be from within the neighborhood.

Mr. Duffy asked if this is going to overload public water, drainage, sewer, or other municipal systems. He asked if she already had plumbing in that area.

Mrs. Johnson said "yes."

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

Mrs. Johnson said it would not. She said she told all her neighbors that if they had any issues at any point in time to come to her so they could work them out, whatever they might be.

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

Mrs. Johnson said it was just herself.

Mr. Duffy asked if the square footage of the operation was no more than 30% or 300 square feet of the gross floor area was going to be used. He asked how large the family room is.

Mrs. Johnson said 16'X24'.

Mr. Duffy asked if everything concerning the business was going to be carried on within the principal building - that there was no change to the foundation, entrances, etc.

Mrs. Johnson said there is an entrance that will be put in that will be entered through the back yard. The yard is fenced in. She said it should not be seen from the road. She said that way it doesn't change from the existing look of the house and doesn't look like there's a business there.

Mr. Duffy asked if there would be any exterior storage or display.

Mrs. Johnson said "no."

Mr. Duffy asked if the business would create any undue noise, dust, vibration or odor.

Mrs. Johnson said "no."

Mr. Duffy asked if Mrs. Johnson planned to sell any products out of the house.

Mrs. Johnson said "no." She said she is keeping her existing job as well and the customers have the option of buying product from that salon.

Mr. Duffy asked Mrs. Johnson how long she has been living in the house.

Mrs. Johnson said about five years.

Mr. Duffy asked if she was aware that she could not have a sign greater than two square feet.

Mrs. Johnson said she is aware of this.

Mr. Duffy said that Mrs. Johnson could have no more than one commercial vehicle.

Mrs. Johnson didn't say "yes" or "no", but seemed to indicate she would not have a commercial vehicle.

Mr. Duffy asked if traffic would be any more substantial than what currently exists.

Mrs. Johnson said "not at all."

Mr. Duffy said the square footage of what Mrs. Johnson is proposing works out to be 384 square feet versus the 300 square feet that is permitted under the major home occupation.

Mrs. Johnson asked for a suggestion on what she could do to make this right.

Mr. Falk asked if the whole area was going to be used for the hair salon or only part of it.

Mrs. Johnson said right now about 4'X12' of it is a closet that she uses for storage. She said the remainder of it probably would be used for the salon because it wouldn't be good for anything else.

Mr. Duffy asked the total square footage of the house.

Mrs. Johnson said she thought it was 1700 square feet, not including the basement.

Mr. Duffy said they have a letter dated January 14th in favor of the request. He said it comes from James & Pauline Lamb, 5 Lafayette Avenue. They don't feel that there is going to be traffic.

Mr. Tremblay said he noticed that Mrs. Johnson has a very small driveway. He asked if people are going to be parking along the street.

Mrs. Johnson said she has two existing driveways. She said there's one that's near the addition on her house that she's never actually used as she uses the one on LaFrance Avenue. She referred the Board to pictures that the Board should have in her file.

Mr. Tremblay asked if there would be cars stacking up on the street parked.

Mrs. Johnson said "no." She said a lot of her clients are women. Some of the people who are going to come to her will be from the neighborhood or older women who will be getting perms or colors. She said they'd be there for about 2 ½ hours.

Mrs. Johnson said that when she was being helped with this application in the Department they said there was a deck off the side of her house that she should address as well, but she didn't see it on the agenda. She said she didn't realize that she had to have a permit for it and she was told that she could take care of it at the same time and present it to the Board.

Mr. Duffy asked if this is an existing porch.

Mrs. Johnson said there was an existing porch that was all rotted. She said she had it torn down. She didn't want something up so high because her neighbor has family gatherings and she didn't feel comfortable sitting on it when they are all in the back yard. She said it's more like a platform than it is anything else. She said the neighbor said he didn't have a problem with it so she and

January 24, 2006

Page 8

her father started to build it. Then she found out that a permit was needed.

Mr. Duffy asked if it is less than 4' off the ground.

Mrs. Johnson said it's only about 3" or 4" from the ground. If you're looking at the front of the house this is on the right hand side, right off the bigger driveway.

Mrs. Douglas said it's really more like a patio than it is a deck.

Mrs. Johnson said there are no stairs, no railings, no nothing.

Mr. Duffy said this doesn't need a variance, although it may need a building permit.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

MOTION by Mr. Duffy to grant the special exception for major home occupation for in-home hair salon at 1 LaFrance Avenue. The use is listed in the Table of Uses, Section 16-92(b). It should not create undue traffic congestion or unduly impair pedestrian safety. The number of visits is targeted as anywhere from five to twenty clients a week. It should not overload public water, drainage, sewer or other municipal systems. It should not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of the residents. This is a reasonable use of an existing room in the building. All the special criteria for a major home occupation were testified to by the applicant and are met. The applicant will try to keep the use to the 300 square feet permitted in the ordinance, even though the area is a little larger.

SECONDED by Mr. Tremblay.

MOTION CARRIED UNANIMOUSLY

2. **Michael S & Gwendolyn W. D'Amico (Owners) 19 Middle Dunstable Road (Sheet B Lot 2026) requesting variance to exceed maximum height of a wall, 6 feet permitted, 14 feet proposed. R18 Zone.**

Todd Hanson, Landscape Solutions, 22 West Road, Hudson.
Mr. Hanson said he is the contractor that the D'Amico's has hired to replace their existing retaining wall that is located in the back of their residence.

He said the existing wall was put in place prior to the D'Amico's purchasing the house. He said upon filing the necessary paperwork with the City they were unable to locate any permits for the wall when it was constructed.

He said the wall has suffered two catastrophic failures - one in the upper tier and one in the lower tier of the wall. He presented pictures to the Board to show the wall.

He said like many of the timber walls that were built in Nashua about twenty years ago, it is suffering the same consequence of failure due to rot and other factors. He said most of what the Board sees in the pictures took place earlier this spring and summer when they had heavy rains.

Mr. Hanson said they are asking for a large change in the height of the wall because when the wall was originally constructed it was approximately thirteen feet from their built-in swimming pool. He said there is considerable evidence that the wall was constructed inappropriately. He said it lacks any kind of drainage whatsoever and it lacks any type of soil reinforcement whatsoever to give stability to the wall.

He said they don't feel replacing it with a tiered wall is feasible because at the current height, even if it's tiered, the soil reinforcement would encroach on the built-in swimming pool and they think this would lead to failure of the pool. He said if they started to excavate that area, they think that the walls to the pool would either implode or they would blow out.

He said they have contracted with Souhegan Valley Engineering who has developed a plan that has been submitted for the construction of the wall with the proper drainage as well as the soil reinforcement. They will

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING & MEETING

January 24, 2006

Page 10

leave some sections of that wall that are still intact in place to give further stability and to move it out a little bit so that they can construct it without getting any closer to the pool.

He said there is a 4' high chain link fence that surrounds the wall as it sits now. It is the D'Amico's intent that upon completion of the wall to have a fence company come in and move it out to the edge to provide a safety buffer. The existing wall poses a significant safety hazard.

Mr. Duffy asked Mr. Hanson if they have done these types of walls before.

Mr. Hanson said "yes."

Mr. Duffy asked if there are any other issues or problems or on abutting properties.

Mr. Hansen said not that they had seen.

Mr. Duffy asked about sight lines and view lines and what the abutters feel about this.

Mr. Hanson said the wall is out in the woods, at the edge of the wood line. He said it's probably 99% only visible from the abutter on the backside of the house, which is at least several hundred yards away. He said he didn't think there would be an issue aesthetically with the abutters to the side. It's not visible from the front of the house.

Mrs. Douglas asked what the new construction is going to be.

Mr. Hanson said it's going to be a segmental concrete block retaining wall.

Mr. Tremblay asked what street was behind the house's location.

Michael D'Amico, 19 Middle Dunstable Road. Mr. D'Amico said they have driven down Rainbow Drive and looked up the hill. He said when the leaves are off the trees you can just barely make out the pool house that is adjacent to the pool. He said you couldn't see the wall at all from Rainbow Drive or the other side street that's down there (he couldn't think of it's name).

Mr. Tremblay asked if there are any setback issues.

Mr. Falk said there are no setbacks for fences and walls. He said the issue is the height.

Mr. Duffy asked the height of the chain link fence and if the new fence would be higher or lower.

Mr. Hanson said that there was a significant slide when the failure took place so the pictures don't reflect the finished site. He said the intent is to go back to the original height.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

Oliver LaPointe, 29 Monica Drive, Nashua. Mr. LaPointe said he is the rear abutter. He said his concern is the height of the wall itself. He also asked if it was going to be built in two sections. He asked if the water from the drainage was going to flow onto his land.

Mr. Duffy asked Mr. LaPointe how long he had lived in his home.

Mr. LaPointe said he's been here for twenty-five years.

Mr. Duffy asked Mr. LaPointe if he knew how long the wall had been there and if the owner had checked with him before they put the wall up.

Mr. LaPointe said the wall has been there about twenty years. He said they had not checked with him when the wall was put up.

Mr. Duffy asked if there had been drainage issues or problems coming from this property into his property before they put the wall up.

Mr. LaPointe said he isn't sure where the swimming pool is draining right now, but he has some concerns because he planted some trees that have died over the years. He said a tree can die because there's not enough sun or not enough

water and maybe chemicals. He said he does have wetland on his lower land.

Mr. Duffy asked Mr. LaPointe if he had seen pictures of the failed wall.

He said he had not so the pictures were passed to him to review.

Mr. Tremblay said there's nothing behind there.

Mr. LaPointe said it's all wooded land. He said he would say the wall can be seen. He said he doesn't see the house in the summer, but he does in the winter.

Mr. Duffy said this wall is not going to be out to the edge of their property. It is halfway in from their property line. He said they would ask the applicant about the concern he expressed about drainage.

Mr. LaPointe said there is also a sewer easement that the City has on the lower part of the applicant's land. He said he didn't think it was shown on the drawing.

SPEAKING IN FAVOR - REBUTTAL

Mr. Hanson said the drainage will consist of $\frac{3}{4}$ " clear aggregate rock, which is used as a medium for the water to leach through to reduce the buildup of hydraulic pressures behind the wall, which may cause failure.

He said in addition to that there will be a 4" corrugated perforated drainpipe installed with drain grates at the front of the wall. He said segmental retaining walls are designed to weep as they're constructed anyway so that as the water comes through it has the ability to seep through the spacing between the blocks. He said they've never seen a situation where they had a large amount of water coming through a wall at any one time, even with torrential rains. It weeps out the face of the wall in addition to the pipe, if it makes it that deep before it exits the ground.

Mr. Duffy asked if the water that is going through or around or over will stay on the applicant's property.

January 24, 2006

Page 13

Mr. Hanson said this is correct. Based on the surface area it would have to leach away from the wall, the impact would be minimal.

Mr. Duffy asked if the pool drainage brings the water toward the wall area.

Mr. Hanson said he is not aware of that. He said the owner would have to speak to that.

Mr. Duffy asked Mr. Hanson if he was aware of a sewer easement on the property.

Mr. Hanson said he was not aware of it, but as this wall sits, it's putting a problem on the easement, if there is one. It will continue to worsen as it falls. He said the pictures that the Board is looking at were taken the day before the snow.

Mr. Duffy said it appears from a quick cursory review that there is a sewer easement to the rear of the property. He said he is assuming that they will not be encroaching there.

Mr. Hanson said their intent is to stay very tight to the existing footprint.

Mr. Tremblay asked the color of the wall.

Mr. Hanson said it's going to be gray.

Mr. Duffy said the City will be looking closer at the easement in relation to the wall, assuming that this request was granted and a building permit is applied for.

Mr. Hanson said the space that is between the pool and the cabana is where the wall sits.

SPEAKING IN OPPOSITION - REBUTTAL

Mr. Duffy called Mr. LaPointe up to show him a document that shows where the easement is based on a cursory review. He also asked if he wanted to testify further.

Mr. Lapointe said he knows exactly where the easement is located because it crosses his land as well. He did not have anything else to testify to.

MOTION by Mr. Duffy to grant the request for a variance to exceed maximum height of a wall, 6 feet permitted, 14 feet proposed at 19 Middle Dunstable Road. The area variance is needed to enable the applicant's proposed use of the property. It's a reasonable use of the property given the condition that it is an existing use of greater than twenty years that suffered a catastrophic failure even though it was not a use that was created with permit approval. The benefit sought by the applicant is reasonable given the size of the property and the type of topography on the property. There is no other method reasonably feasible to the applicant to pursue other than the area variance given the condition and topography of the pool and the property and the use of the property. It is within the spirit and intent of the ordinance that the future use is reasonable. It should not adversely affect the property values of surrounding properties, even though there was no expert testimony. The retaining wall is halfway into the property and cannot be seen by many of the abutters. It is not contrary to the public interest. Substantial justice is served as the applicant has reasonable maintenance use of their property. Special Condition: The drainage of the pool area shall not be combined with the drainage system of the wall.

SECONDED by Mr. Tremblay.

MOTION CARRIED UNANIMOUSLY

3. **Alice E. Cote (Owner) 1 Maxham Avenue (Sheet 69 Lot 6) requesting variance to encroach 15 feet into the 20 foot required rear yard setback to construct a 10'x16' enclosed porch on an existing deck. RC Zone.**

Alice Cote, Maxham Avenue. Ms. Cote said the porch already exists. She said she did not have a permit for it at the time. She said she closed in what was a deck. She said her husband was ill and she thought he would use it more than the deck.

She said the way the request is worded she understands that it states that there is only 5' to the property line. She said there is 13' or 14' to the property line. She said she and Pat Clancy measured it.

She said she is going to sell the property and she wants this issue cleared up.

Mr. Duffy asked what year the porch was constructed.

Mrs. Cote said around six years ago.

Mr. Duffy asked if the neighbors or abutters had any problems when this was done.

Mrs. Cote said "no." She said this is in the back and you don't even see it. She said that she spoke to her neighbors about the fact of this meeting coming up and nobody seemed to care that the porch is there.

Mr. Tremblay asked what the distance is from the outside wall of the porch to the lot line.

Mrs. Cote said from the porch to the lot line there is 13' to 14'.

Discussion ensued.

SPEAKING IN FAVOR

No One.

MOTION by Mr. Tremblay to grant the variance to encroach 15 feet into the 20 foot required rear yard setback to construct a 10'x16' enclosed porch on an existing deck at 1 Maxham Avenue. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue other than through the area variance. It is within the spirit and intent of the ordinance. It will not affect the property values of surrounding parcels. It's not contrary to the public interest. Substantial justice is served.

SECONDED by Mrs. Douglas.

MOTION CARRIED UNANIMOUSLY

4. Security Homes Inc. & Q. Peter Nash (Owners) Bennett-Prescott LLC (Applicant) L Bennett Street and 58 Prescott Street (Sheet 62 Lots 61, 170 & 232)

requesting variance from the maximum density requirement of 7 multi-family dwelling units per acre to allow up to 12.5 multi-family units per acre proposed - to construct a multi-family development of up to 41 units [Special Exception approved at 12-13-05 ZBA meeting based upon 3,500 square feet per dwelling unit]. RB Zone.

Mr. Duffy said the Board just heard these cases recently as applied for under the old zoning ordinances. He asked if the testimony from that meeting, minutes and motions are acceptable and should be incorporated into tonight's meeting. He also indicated that the Board was aware of the new land use code being proposed at that time that there was going to be a minor increase or decrease in zoning density.

Atty. Brad Westgate, Winer & Bennett, 111 Concord Street, Nashua. Atty. Westgate said that he would stipulate to everything that Mr. Duffy just addressed.

Atty. Westgate said there are several other people present tonight who probably will not speak. He said hopefully it will only be him speaking and making the presentation. He said Richard Maynard has handed out some documents to the Board on this case. He said Tim Golde, Traffic Engineer from Steve Pernow's office is also present. Kevin Slattery & Bernie Plante, who are the developers are also present as is Gregg Kemp of Gannett - Fleming, an environmental engineering firm.

He referred the Board to the three plans that are shown on the board. He pointed out the plan that was submitted originally with the special exception application last month. He said there is a drainage flow plan and also a colored up version of a component of the GIS map that the City produces. It shows some of the zoning districts and they have superimposed the proposed site and the proposed building locations. They colored all the non-residential properties in pink and they highlighted all the properties that are either two-family or multi-family properties in green.

Mr. Duffy said that as long as there haven't been any substantive changes in the proposal, the Board is very aware of what the requirements were. He asked Atty. Westgate to just cover essentials. (The testimony from the

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING & MEETING

January 24, 2006

Page 17

previous meeting has been incorporated into tonight's meeting)

Atty. Westgate said there have been no changes to this proposed plan from what the Board saw at the December meeting. He said previous to that meeting they had submitted pamphlets, which they also have tonight in the event they didn't have one. He said Mrs. Douglas was not at the previous meeting, but he's sure that she has had the opportunity to see the prior file.

He said the properties in question are located in the RB District. They contain approximately 3.35 acres with frontage on both Bennett Street & Prescott Street.

Atty. Westgate said when they received the special exception the density permitted for a special exception at that time was 3,500 square feet per unit. He said the new zoning ordinance has changed that and the requirement is now 7 units per acre, which works out to be about 1 per every 6,228 feet.

He said Mr. Falk rendered an administrative decision to the effect that even though the special exception was granted last December, the new land use code's density requirements would apply to this project. He said they disagreed with Mr. Falk's decision, but decided that the best thing to do would be to come back to the Board and deal with it on a variance basis.

He said 41 units are proposed, 30 townhouse style and 11 flats (one floor living).

He said as he stated at the last meeting this property has some significant environmental issues and has for some years. He said for decades this property was an oil distribution facility and used for a number of other commercial/industrial type uses.

He said in the late 1980s when Security Homes had it the property went into misuse or non use. The three buildings on it, two of which were commercial, became dilapidated. Security Homes filed bankruptcy and the trustee in bankruptcy abandoned the property. Two mortgage holders had no interest. Taxes weren't paid and still haven't been paid for over fifteen years. He said he thought it was due to the environmental conditions.

He said in 1999/2000 the City, with some funding help, removed above ground and underground tanks, but conditions still remain that are environmentally unsound.

He said they have engaged the environmental engineering firm, Gannett - Fleming, who have done environmental studies and even since they met with the Board in December they have produced and submitted just recently their supplemental site report to N.H. Department of Environmental Services and have also filed just recently their applicant for "Brownfields" eligibility.

Atty. Westgate said the idea is that this proposed development will be the economic catalyst for the remediation of this site and putting it back into a productive use.

Mr. Duffy said he believes that they can stipulate that the hardship is there based on the prior testimony the Board has heard in this case. He said it was up to Atty. Westgate if he wanted to go through the reasons for hardship.

Atty. Westgate said that he would be happy to stipulate to that point. He noted that what they presented in the record in the December case sets forth a similar rationale for hardship, even though it wasn't cast in the terms of hardship; the facts are the same.

Mr. Duffy asked if all the remediation, special conditions and the site work all remain the same.

Atty. Westgate said they all remain the same.

He said DES will be imposing a use and activities "protocol" - a set of restrictions. That works much better in this condominium form of ownership where there is one manager of the site rather than a property that's divided into various single-family homes.

He said he believes that they meet the four other criteria for a variance. He said they do not violate the spirit and intent of the ordinance. The ordinance encourages productive use of property and most appropriate use of property. He said this kind of remediation with this project imposed on it is within that spirit.

He said they do not adversely affect surrounding property values. He said he believes they enhance them given that this can be the catalyst to the cleaning up and making this productive.

He said they do not believe this is contrary to the public interest. It's consistent with the public interest, both to remediate the property and to put it to productive use.

He said substantial justice is done. One element of that is that it relieves the uncertainty in the transition from the old zoning code to the new zoning code and it allows for this appropriate project which the Board approved just a few weeks ago.

SPEAKING IN FAVOR

Jim Hall, 11 Baldwin Street. Mr. Hall said he spoke at the last meeting concerning this case and he is still in favor of it, even though it requires a reduced density under the new ordinance. He is happy to see that this property will be remediated and used.

He said there were some others who spoke at the last meeting and there were some concerns expressed about the timing of the light coming out of Bennett Street. He said he spoke to Nick Darchick about this. It was set for 15 seconds and it has been increased to 20 seconds. There may be more room to add a few more seconds.

He said he thinks that the developers are willing to work with the neighborhood to make this a nice project and to clean up the eyesore that is there now.

Mr. Duffy said Atty. Westgate had presented a letter from Kathy Hersh, Director, Community Development Division about this site during his presentation.

SPEAKING IN OPPOSITON

No One.

MOTION by Mr. Duffy to grant the variance from the maximum density requirement of 7 multi-family dwelling units per acre to allow up to 12.5 multi-family units per acre proposed - to construct a multi-family development of up to

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING & MEETING

January 24, 2006

Page 20

41 units at L Bennett Street & 58 Prescott Street (Sheet 62 Lots 61, 170 & 232). A special exception was approved on 12/13/05 based on a 3,500 square foot per dwelling unit. This will enable the applicant's reasonable use of the property given the special conditions of the property. The density requirements of the ordinance changed from 3,500 square feet to 6,228 square feet, which the Board was aware of at the time of the hearing. It is within the spirit and intent of the ordinance that the applicant be granted reasonable development rights - as already approved. The two special conditions from the prior hearing shall be adapted to this decision. They are that the electronic key gate system shall be maintained at both driveway entrances to the development and that the applicant is to satisfy all State of New Hampshire approvals or any mitigation and remediation of the site as required. It should not adversely affect the property values of surrounding parcels. The site is to be put into productive use and remediated. Substantial justice is served.

SECONDED by Mr. Tremblay.

SECONDED by Mrs. Douglas.

MOTION CARRIED UNANIMOUSLY

5. One Parke Place, LLC (Owner) 120 Coliseum Avenue (Sheet E Lot 1548) requesting a variance from the maximum density requirement of 40 units of elderly housing per acre to allow 21 units of elderly housing (based on a density of 75 units per acre) in the RC zone - to construct a 21-unit elderly housing building on a site with an existing 36 unit multi-family building [Special Exception approved for 21-unit elderly housing building at 11-22-05 ZBA meeting based on 75 units of elderly housing per acre]. RC Zone.

Atty. Brad Westgate, Winer & Bennett, 111 Concord Street, Nashua. Atty. Westgate said Mr. Maynard would be passing out a document to the Board.

Mr. Duffy said he assumed that Atty. Westgate would stipulate to the minutes and the findings and motion of the prior meeting for the special exception that was approved. He said the Board was aware that the new ordinance was in the works at the time.

Atty. Westgate said he would stipulate and request that the record for this case have that information included.

Mr. Duffy asked if there had been any substantial changes in the presentation.

Atty. Westgate said there are none. He said it is the exact same proposal that came to the Board on 11/22/05.

He said the letter that Mr. Maynard passed out to the Board is a letter from Mr. Slattery, principal of One Parke Place, LLC (the owner and applicant) to Toni Ledger, the President of the Condominium Association at Mine Falls Condominium. He said the Board may recall that Ms. Ledger submitted a letter for the last meeting indicating no opposition to the request. He said Mr. Slattery spoke with her recently, sent the letter, and she re-affirmed that they still have no opposition because it is the same exact proposal.

He said they are here tonight as a housekeeping technicality. The new zoning code has a lower density maximum for housing for the elderly projects than the prior code did. Mr. Falk made an administrative decision to the effect that the new density requirements would apply. Although they disagree, they have come to the Board to seek a variance to get through the transitional period from the old ordinance to the new ordinance applicability.

Atty. Westgate said what they presented to the Board in the prior case sets forth the same factual foundation that would not only have supported the special exception it did last November, but also supports the granting of the variance for the density requirements in this particular case.

He referred the Board to the plans shown on the Board. He said one is the plan they submitted for the original special exception application, which is a part of this application. The other is a blow up of a vicinity map showing the proposed location of the building at the very end of Coliseum Avenue adjacent to Lincoln Park and just beyond the 36-unit multi-family building that exists on the property. The Board is well aware of the shopping, medical facilities and the other amenities that are located right on Coliseum Avenue.

MOTION by Mr. Duffy to grant the variance from the maximum density requirement of 40 units of elderly housing per acre to allow 21 units of elderly housing (based on a density of 75 units per acre) in the RC zone - to construct a 21-unit elderly housing building on a site with an existing 36 unit multi-family building [Special Exception approved for 21-unit elderly housing building at 11-22-05 ZBA meeting based on 75 units of elderly housing per acre]. He said the conditions in the motion from the previous approval are similar with respect to the five criteria. No special conditions.

SECONDED by Mr. Tremblay.

MOTION CARRIED UNANIMOUSLY

Minutes

12/13/05

MOTION by Mr. Duffy to accept the minutes of 12/13/05, waive the reading and place on file.

SECONDED by Mr. Tremblay.

MOTION CARRIED UNANIMOUSLY

Regional Impact

Mr. Falk said there is no agenda for the next meeting. This is the time where there is an extra week in between meetings. He said he didn't see anything of regional impact on the applications that he has seen.

ADJOURNMENT

Mr. Duffy called the meeting closed at 7:40PM.

Susan Douglas
Acting Clerk

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Taped Meeting