

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
February 14, 2006

A public hearing of the Zoning Board of Adjustment was held on Tuesday, February 14, 2006 at 6:30PM in the Auditorium at City Hall.

Sean Duffy conducted the hearing.

Members present were: Sean Duffy, Chair  
Norm Tremblay  
Jeff Anderson  
Jack Currier  
Susan Douglas, Clerk

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 asked the people who are going to testify to eliminate redundancy in order to optimize the use of the meeting time.

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.

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.

He said before each segment he may ask for a show of hands for all those wishing to testify either in favor or in opposition to that case.

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 the speakers should come forward, speak into the microphone, and state their name and address clearly for the record so that their testimony may be recorded.

He said three affirmative votes are needed for granting a variance or special exception. There are five members present.

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.

Mr. Duffy said tonight's meeting is scheduled to end by 11:00PM and, if needed, he will take a poll of the Board around 10:15PM to see if they will hear any further cases. Any cases not heard this evening would probably be heard in a copy of weeks.

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.

- 1. Louis J. Jr. & Sharon A. Coco (Owners) 56 Dublin Avenue (Sheet 53B Lot 26) requesting variance to encroach 7 feet into the 20 foot front yard setback to construct a 7'x9' front entry addition. R9 Zone.**

Peter Howling, Vesta Construction Services, Amherst, NH.  
Mr. Howling presented some photos and a small plan of the project.

Mr. Duffy asked Mr. Howling if he was aware of a compliance letter that was sent to the owners of the property and he said that he was.

Mr. Duffy said they have two choices. He said they could wait for the resolution of the notice of violation or if they are willing to stipulate that all the points addressed in the violation will be taken care of if the Board is in agreement.

Mr. Howling said that Mr. Coco has indicated that he would take care of those items addressed in the letter of violation. He said he believes the letter indicates that they have to be done by April. He said he would go forward with the understanding that there would be a stipulation that all items addressed in the letter would be taken care of.

He said subsequent to this application the zoning setback regulations were changed on Dublin Avenue. The original intent was to deal with a 25' setback, but that has been changed to a 20' setback. They will be encroaching 6 ½' into the required 20' front yard setback to construct a 9'X8' covered entry addition.

He said this is a single-family ranch house and it was built in the late 50s. The house is constructed forward on a sloping ½ acre lot. This, combined with the widening of Dublin Avenue over the years, resulted in a front yard setback in violation of the current setback regulations. He said this condition creates a hardship.

Mr. Howling said it is within the spirit and intent of the ordinance that the owners have reasonable use of their property. He said they are seeking this addition to provide safe access to the house during harsh weather and provide a buffer with a new entry door turned to face the existing walkway instead of Dublin Avenue. The addition will be used as the easiest and most direct access to the top of the driveway drop off point. It will not extend any further than the existing walkway. The only other access into the house is in the rear, down a slope and up a flight

of stairs or a substantial distance away from the parking area and detached garage. These are unique features for this property.

He said the existing front access does not allow for protection from ice and snow build up that enters directly into a living room. The new entry will provide a landing area for boots, coats, etc. in an air lock entry for which space is not available in the existing structure. He said this entry is the shortest route to the area where cars can be parked during inclement weather and will be the safest means into the house. He said the Coco's parents are living, but have medical issues including the use of a walker and portable oxygen that makes it impossible for them to use the rear access.

He said the improvement would enhance the front entry of the house with a design that will manage roof runoff more effectively. It will be in accordance with the housing in the neighborhood. It will allow for safer access for the owners as well as visitors. He said he believes it will also help increase the value of the home and be an overall benefit to the general public.

He said allowing the owners to provide for a safer access for themselves and their family as they age will do substantial justice.

Mr. Duffy asked if Mr. Howling agreed that the position of the house on the land to the front of the property line instead of the center might be a hardship.

Mr. Howling said "yes."

Mr. Duffy asked the size of the lot.

Mr. Howling said it is a half-acre lot - around 22,000 square feet.

Mr. Currier said there's a pretty good eave on the existing house. In fact, the eave on the addition that is being proposed looks smaller than what exists. He said the houses to the left and right of this house are positioned pretty much identically in regards to setback. He said it would appear it would make this house look different from the ones that are to the left and right of the house.

Mr. Howling said it would protrude a little further. He said he understands that the houses to the left and right of this house have issues with their setback as well.

**SPEAKING IN FAVOR**

No One.

**SPEAKING IN OPPOSITION**

No One.

Mrs. Douglas said as long as the enforcement issues are satisfied she didn't have a problem with this.

Mr. Currier said he thinks it will look a little different, but there's nobody objecting to it, so he doesn't have a big issue with it. He said he would be more comfortable approving it, but saying that a permit would only be issued after the violations are resolved.

Mrs. Douglas said that she thinks that if they put something on the order of prior to construction that the violations shall be taken care of should motivate the owner to take care of those violations.

**MOTION** by Mr. Currier to grant variance to encroach 7' into the 20' front yard setback to construct a 7'X9' front entry addition at 56 Dublin Avenue. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. It is set very far forward closer to the front property line. The request is within the spirit and intent of the ordinance. It will not adversely affect surrounding property values. There has been testimony that it could enhance surrounding property values. It is not contrary to the public interest. Substantial justice will be served. Special Condition: Prior to construction, all violations as indicated on the 2/9/06 letter from Laura Games shall be satisfied.

**SECONDED** by Mr. Tremblay.

**MOTION CARRIED UNANIMOUSLY**

2. **Lois & Richard F. Braun (Owner) 22 Learned Street (Sheet 110 Lot 160) requesting variance to encroach 4 feet into the 10 foot required right side yard setback to construct a second story dormer. RA Zone.**

Lois Braun. Ms. Braun asked for some help, as she did not know how to proceed.

Mr. Duffy asked Ms. Braun if she would agree that her request was reasonable and that it was a minor incursion into the required right side yard setback.

Ms. Braun said "yes." She said it's not going to go out any further than it is. It's going to go up a couple of feet higher. She said it's considered a two-family home, but it's all family. She said her son and his family live on the second floor and she needs to make bedrooms on the third floor for the children. She said she also needs a new roof so her contractor advised her to take the whole thing off and go up two feet. She said the way that this is being done it's going to look 100% better.

Mr. Duffy asked how much higher the new roof line would be.

Mrs. Braun said between 2' - 4'. She said this house was built before she was born.

Mr. Duffy said the spirit and intent of the ordinance is that she has development rights to her property.

Mrs. Braun said she couldn't move the house and what she is doing is not going to make the encroachment more than it already is.

Mr. Duffy said there are other houses in the neighborhood that are very similar - close to lot lines and close to setbacks and of similar sizes.

Mrs. Braun agreed.

Mr. Duffy asked if Mrs. Braun if this would adversely affect the property values of surrounding parcels.

Mrs. Braun said she thought they would make them higher. She said she has spoken to all her neighbors and they don't have any problems with this request.

Mr. Duffy asked if the essential characteristics of the neighborhood are going to remain the same.

Mrs. Braun said "yes."

Mr. Duffy said substantial justice is served because she has reasonable development rights.

Mr. Tremblay asked if this is a two-family house with separate entrances to both units.

Mrs. Braun said it's zoned for two-family. There is a front door and separate entrances to the front and back.

Mr. Tremblay asked if this was going to be a part of the second unit on the second floor and that there is no intention to make a third unit.

Mrs. Braun indicated there would not be a third unit.

Mr. Duffy asked when the house was built.

Mrs. Braun said around 1947.

**SPEAKING IN FAVOR**

No One.

**SPEAKING IN OPPOSITION**

No One.

Mr. Duffy said there is one letter of support received February 6<sup>th</sup> from 48 Learned Street.

**MOTION** by Mr. Currier to grant the request for variance to encroach 4' into the 10' required right side yard setback at to construct a second story dormer at 22 Learned Street. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. The house is currently located 4' within the 10' setback. The house pre-dates zoning and the dormer will not further encroach into the setback. It is within the spirit and intent of the ordinance. It will not adversely affect the property values of surrounding parcels. It is

not contrary to the public interest. Substantial justice will be served.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY**

3. **Louis C. Juris (Owner) 54 Haines Street (Sheet 57 Lot 13) requesting variance for minimum lot area, 18,669 square feet required, 9,296 square feet proposed, to subdivide one lot into two lots. [Originally scheduled for 12-13-05 ZBA meeting for the following variances: 1) lot width, 90 feet required - 87.9 feet proposed, and 2) lot area, 10,500 square feet required - 9,296 square feet proposed]. RB Zone.**

Atty. Bob Welts, 29 Factory Street. Atty. Welts said he is representing the owner, who is also present as well as their engineer, Richard Maynard.

He said this property is located on the southerly side of Haines Street - the second lot west of Arlington Street. He said the existing conditions plan (Exhibit A) shows the site as having frontage of 147.9', a depth of 106' and an area of 15,656'. A three-family house with an attached carport is located on the far westerly side of the lot with a two-car garage abutting the carport.

He said when Mr. Juris purchased the property in 1992 his deed (Exhibit B) described and conveyed to him three tracts with frontage on Haines Street of 50', 40', & 60' respectively. This was not unusual as the entire Haines Street neighborhood was originally laid out with 50' wide lots and many of the present lots in the area are still 50' wide or close to that width. He said the prior Assessor Sheet 13 (Exhibit C) shows the Haines Street neighborhood as predominantly 50' wide lots and Mr. Juris' property as three separate lots.

He said the lot boundaries in Mr. Juris' deed and Exhibit C are shown as dashed lines on Exhibit A. He said in the 1970s a prior owner of the property, who owned all three of the lots, decided to construct an in-ground swimming pool on the property and filed a consolidated plan at that time, although the deed description continued to refer to three

lots. In 1999 Mr. Juris removed the swimming pool, although it still continues to be shown in some plans.

He said Mr. & Mrs. Juris live in one of the apartments in the three-family house. In November Mrs. Juris gave birth to their second child. He said the Juris' would like to remain on the premises, but the existing apartment is too small. They are proposing to subdivide the property into two lots as shown on Exhibit D. They would erect a 26'X40' single-family, two-story house on Lot A. Lot A is the same as Tract 3 in the deed to Mr. Juris.

Atty. Welts said Mr. Juris started planning for the new house last spring. He hired Richard Tasse, an architectural designer and Richard Maynard as his engineer. He said Mr. Juris was concerned about his neighbors' input so he met with all of his neighbors to review Mr. Tasse's first set of drawings. As a result of these meetings changes were made to the plans, such as moving the carport from the easterly to the westerly side of the house. He said Mr. Juris had a second round of meetings with the neighbors relative to the revised plans. As far as he knows everybody is in agreement so an application was filed in November to appear before the Board at its December 13<sup>th</sup> meeting. He said when he spoke to Mr. Falk on December 13<sup>th</sup> he was informed that there was a probability that only three Board members would be present for that meeting. Based on this information they continued until the next meeting in January. He said as they neared the January meeting Mr. Falk informed them that a ruling had been made that variance applications, even though filed and scheduled to be heard in 2005, if actually heard in 2006 had to comply with the new ordinance dimensional requirements.

He said although they disagreed with that ruling, they decided to proceed and amended their original application by adding a variance request relative to the minimum lot area under the new ordinance.

Atty. Welts referred the Board to Exhibit D. He said proposed Lot A meets or exceeds all the dimensional requirements for a single-family house in a RB District. It meets or exceeds all of the setback requirements. It will have open space of 69%, which is 97% more than what is required. He said there is a garage on Lot A, which is only used for storage. It will be removed. There is also

a shed, which will be moved to the other lot. There is a fence that will be removed.

He said proposed Lot 57, on which the existing three-family house is located, is the same as Tracts 1 & 2 in the deed to Mr. Juris, with one minor exception. He said it does not meet the minimum lot area. He said proposed Lot 57 has frontage of 87.9' and is 37.9' more than required. The lot width of 87.9' is 27.9' more than required. Its depth is 106' and that is 26' more than required.

Atty. Welts said the existing house was built in 1912, long before Nashua had a zoning ordinance; therefore, the setbacks are grandfathered. No additions to the house are proposed. The floor area of the house is 500 square feet less or smaller than the maximum floor area allowed under the new ordinance. The proposed open space is 50%, or 43% more than the 35% open space required.

He said the house was fully conforming under the 2005 ordinance as the lot had an area of 15,650 square feet and only 10,500 square feet was required for a three-family. As part of the applicant's plan to subdivide the lot, the 2005 request for minimum area with 9,296 square feet proposed was only 1200 square feet less than the 10,500 square feet required. Under the 2006 ordinance the area requirement for three units has been increased to 18,669 square feet.

Atty. Welts said a lot area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. He said the lot is very large in comparison to other lots in the neighborhood. The three lots immediately to the west of the Juris' property - 48, 50, & 52 Haines Street - are all only 47' wide and have an average area of 4,991 square feet per lot and a total area of 14,972 square feet. The total area of these three lots is 684 square feet less than the Juris' one lot, even though those lots contain a total of four family units - the same number of living units they are requesting. He said the lot directly across the street from the Juris' property at 53 Haines Street has only 6,798 square feet. Abutting the Juris' property to the east at 65-65 1/2 Arlington Street is a two-family house on 11,000 square feet. To the rear of the Juris' property at 74 King Street is a single-family house on 6,042 square feet,

slightly smaller than the proposed Lot A. Two of the abutting lots are equal or larger in size than the Juris' lot. One is 68-70 King Street, a four-family home and the

other is diagonally across Haines Street and is owned by the Arlington Street United Methodist Church. This lot contains the parsonage and a meeting room/classroom as well as the church.

He said the location of the existing house also causes a hardship. It is immediately up against the boundary line on the westerly side of the property. It's located within the first 40' of their approximately 150' width of the original lot, leaving a large side yard.

He said another special condition of the property is the lot's prior history as three special separate lots and the applicant's proposed subdivision on the old lot lines. In addition, proposed Lot A exceeds or meets all of the density dimensional requirements and Lot 57 meets or exceeds all but one of the density dimensional requirements.

He said the benefit sought by the applicant couldn't be achieved by some other method reasonably feasible for the applicant to pursue other than the variance requested. In order to fully consider his alternatives, the applicant hired Mr. Tassie and a professional engineer. The possibility of expanding or altering the existing house was considered. The portions of the house built in 1912 still have piping for gaslights. The piecemeal additions and alterations that eventually converted the property into a three-family house have resulted in a convoluted floor plan that would be very difficult and expensive to alter. In addition, it could take away open space area for the back yard, violate the maximum floor area ratio and require setback variances or more variances than the single variance they are requesting. For these reasons the expansion or alteration of the existing house was deemed unfeasible. He said a letter from Richard Tassie supporting this argument was supplied to the Board.

Mr. Duffy asked if there was going to be one paved driveway for both lots.

Atty. Welts said "no." He said there would be two separate curb cuts. He said as you look at the garage now there is additional paving to the left of it. He said that paving will be taken away and grass planted. He pointed out the driveways for the houses.

He said the spirit and intent of the ordinance is not violated. The intent of the minimum lot area requirement is to provide sufficient open space and spaces between houses for privacy, noise, and other quality of life issues. He said in this case the applicant's proposed house will be located over 70' from the existing three-family house and 43' from the existing house on the lot immediately to the east.

He said since the dimensional and density requirements only require a 7' side yard setback in a RB District, the proposed new house would be five times the required distance from the existing three-story house and three times the required distance from the existing house to the east.

He said the value of surrounding properties would not be diminished if this variance were approved. He said Mr. Juris hired an architectural designer to prepare his house plans and met with his neighbors on two occasions to obtain their input to make sure his proposal would not affect the value of their properties.

He said there is a letter from Mr. Derego (Exhibit F), the neighbor across the street from Mr. Juris' property. He said Mr. Derego supports the variance request and states that Mr. Juris' proposal should have no significant impact on the value of surrounding houses.

He said Exhibit G is a letter of support from the Hogan's, the applicant's westerly abutters. Exhibit H is a letter of support from the Moody's, the Juris' rear or southerly abutters. Exhibit I is a letter of support from Mr. & Mrs. Corriveau who live at 59 Arlington Street (just beyond the church), but also own a house on Haines Street.

Atty. Welts said granting the variance will be a public benefit. He said Mr. Corriveau's letter states that the infusion of a well-planned single-family residence such as the one proposed would be a great addition and add more

value to the neighborhood and in a small way to the City as a whole.

He said granting the variance will result in substantial justice since the applicant's need additional living space and also wish to maintain a "hand's on" management of their existing property. There is no other reasonably feasible method to achieve their goal. The proposal meets all other requirements for a variance.

Mr. Currier asked if the carport has an open face and back.

Atty. Welts said it's open.

Mr. Currier asked how much parking there is for the existing three-family.

Atty. Welts said there are six spaces and not all the families living there have two cars. They have more than enough spaces.

Mr. Currier asked if they could park in front of the garage and the carport and not be out on the sidewalk.

Atty. Welts said this is correct.

#### **SPEAKING IN FAVOR**

Richard Maynard, Professional Engineer, Maynard & Paquette. Mr. Maynard showed the Board where the pavement on the site is located right now. He showed where the driveway would be relocated and the other new driveway. He indicated where the pavement was going to be removed that they would be planting grass so there would be green space along the common property line.

Mr. Tremblay asked how much space there would be between the two driveways.

Mr. Maynard said at least 14'.

Mr. Tremblay asked about where the snow would go.

Mr. Maynard said the normal setback in this zone is 7' and people are allowed to pave right up to the property line.

With 14' between the two driveways there is plenty of room to pile snow.

**SPEAKING IN OPPOSITION**

No One.

Mr. Currier said they've seen a lot of subdivisions in this neighborhood. This is the first one where they haven't had any opposition. It's probably a good thing that the applicant went to the neighbors and adjusted his plans after discussions with them. He said he didn't have any problems with the request.

Mr. Tremblay concurred. He said initially he thought it might be a bit congested in that neighborhood, but the plan looks good and the neighbors seem to be fine with it.

**MOTION** by Mr. Tremblay to grant the variance of the minimum lot area, 18,669 square feet required, 9,296 square feet proposed to subdivide one lot into two lots at 54 Haines Street. 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 peruse other than an area variance. It is within the spirit and intent of the ordinance. Based on the testimony they have received, it will not adversely affect the property values of surrounding parcels. It is not contrary to the public interest. Substantial justice will be served.

**SECONDED** by Mr. Currier.

**MOTION CARRIED UNANIMOUSLY**

4. Irene F. West & Marcia Poulin, Trustee of the West Revocable Trust (Owners) L Farley Road (Sheet I Lot 13) requesting variance for minimum lot width, 130 feet required, 30 feet proposed, to subdivide one lot into two lots. R30 Zone.

Atty. Susan Manchester, Sheehan/Finney, Manchester. Atty. Manchester said Ken Clinton from Meridian and Mrs. Poulin are present if there are any questions that they may be able to answer.

She said that she thought she would have Mr. Clinton describe what the owners want to do and she (Atty. Manchester) will go through the legal arguments.

Ken Clinton, Meridian Land Services. Mr. Clinton said Mrs. Poulin came to them some time ago in hopes of creating a house lot for a current house that's located primarily in Hollis. There are two parcels involved. There is a parcel in Hollis, which is approximately 19 acres. He said it is outlined in green on the plan. He pointed out the Hollis/Nashua municipal line. He pointed out Lot I-13, the subject of the variance request. He said it is outlined in blue.

He said the existing house is right on the municipal line. The barn crosses from Hollis into Nashua and it's all attached. The lot they are talking about is almost split evenly between Hollis and Nashua.

He said to facilitate giving some properties to her siblings and doing it in an equitable way, Mrs. Poulin approached them and asked if they could create Hollis standard lots with frontage in Hollis and extending into the property located in Nashua. It's a non-building lot in Nashua. He said there is an RSA that allows for this to happen.

He said this creates a small parcel that needs to be subdivided out of the parent I-13. I-13 has a frontage in Nashua of only 31.57', well below Nashua's requirement. This is not going to change.

Atty. Susan Manchester. Atty. Manchester said there would be no diminution in the neighboring property values. She said Mrs. Poulin has talked to the neighbors and she believes one of them sent in a letter. She said the area is rural and it will stay rural. She said this is creating an opportunity in case Mrs. Poulin needs to sell the back land to pay for health care.

She said this is consistent with the spirit of the ordinance in that density requirements are usually designed for overcrowding. In this instance, all that's going to be left is one lot. It is very consistent and won't be overcrowded.

Atty. Manchester said substantial justice will be done because Mrs. Poulin will be able to give this property to her child as well as keeping the back land in case she needs to sell it for health care reasons at a future date.

Mr. Duffy said this isn't something that the Board can consider. He said she should address the hardship and speak to the size of the current lot and the size of the two proposed lots that will result.

Ken Clinton, Meridian Land Services. Mr. Clinton said I-13 is approximately thirty-two acres. Parcel A will be combined with where the house is located and will consist of a one-acre lot. He said there is no new house lot being created in Nashua. They are just having a portion of the lot coming out to be combined with the lot in Hollis. It is not creating a deficiency in the minimum lot width - it's being consistent with it.

Atty. Manchester said the lot left in Nashua would be thirty-one acres.

She said this is a unique property. It straddles a municipal boundary line. It's a previously existing non-conforming lot in the sense that it is already burdened by the 30' frontage in Nashua. She said this is a practical use. There is no alternative way to both retain the development rights and to create a lot other than this request because of the location of the house and the barn, the well, and the septic other than to keep the frontage on the road where it already exists.

Mr. Duffy asked where access or easements be for the remaining thirty-one acres.

Ken Clinton. Mr. Clinton said the frontage exists and will remain. There will be a 31.57' parallel strip that will enter the back area. That, by its reduced frontage now, is only one lot. It's very level and has sand/gravel soil. It's more than enough to handle a driveway.

Mr. Tremblay asked if that strip of land is part of the parcel.

Mr. Clinton said there is no change. It remains with the parcel. He passed out pictures to the Board and said they might help them to understand.

Mr. Currier said that Atty. Manchester mentioned "development rights." He asked what she meant.

Atty. Manchester said she means nothing more than the ability to sell a lot. She said the land won't support anything more than one house because there's no access. It's just a driveway.

Mr. Currier said right now the lot in Nashua has 31' of frontage.

Atty. Manchester said "yes."

Mr. Tremblay asked if the strip of land is a right-of-way or if it's part of the parcel.

Atty. Manchester said its part of the parcel (referring to the plan). She said it's not a part of Parcel A. She said the legal description of the left over land would include the strip. She demonstrated on the plan.

Mr. Tremblay asked if this land could become something else in the future.

Atty. Manchester suggested a stipulation that this just be one lot. This is all that Mrs. Poulin intends.

Mr. Duffy asked what the problem is with having an easement as compared to asking the Board for a variance request.

Atty. Manchester pointed out on the plan what she thought the Board was suggesting. She said they would then create a lot with no access and they would need a variance.

Mr. Duffy said there would be a cross easement certified into the deeds.

Atty. Manchester said with a fee interest they don't need an easement.

Mr. Duffy said this is correct. He said the ordinances say that lot shouldn't be developed if it doesn't have the frontage.

Ken Clinton. Mr. Clinton said he thought there might be some confusion about what this is. He said what's in blue has 31.5' of frontage in total. It already is a back lot or a flag lot as has been indicated. It's non-conforming. They are not making it less conforming. They are taking

the land shaded in blue out of it to fix a situation. The back land will still have its frontage strip. It will have a driveway that can access it. He said he believes right now it is only one residential lot because they have identified the wetlands on the property and he felt that further development potential is very questionable. He said since it's less than 50' they aren't going to bring a road in. From a development standpoint, it's very limited.

Mr. Anderson said if the Board were to grant the request, would they have to come to the Board if they wanted to construct.

Mr. Duffy said he's not concerned about one house. He said he's concerned about more than one.

Mr. Clinton said if they wanted to put a road in they would have to come back to the Zoning Board, but he doesn't think that is feasible. He agreed with the suggestion that there be a stipulation that there be one house lot on the remainder lot of I-13.

Mr. Tremblay asked if the "North Fork of Blood's Crossing Road" is an access point to this property.

Mr. Clinton said technically this is discontinued. He showed the section that is still a City right-of-way. He showed the section of the road that was City-owned. He said it accesses conservation land that the City owns. He said the remainder is discontinued and has reverted back to the West Trust. The access point on Farley Road is actually the driveway.

#### **SPEAKING IN FAVOR**

No One.

Mr. Duffy said there is one letter dated February 9<sup>th</sup> from Gary Stearn, Senior Pastor at Nashua Christian Bible Church at 205 Manchester Street. He is the legal representative of the Church and has no objection to the proposal.

**SPEAKING IN OPPOSITION**

No One.

Mr. Currier said at first he was uncomfortable with this request. He was uncomfortable with approving a variance that leaves the door open for something in the future. The applicant has agreed to a stipulation that the remainder of Lot I-13 (31.476 acres) would remain in perpetuity a single-family house lot. He said he has no problem with the request with this stipulation.

Mr. Tremblay agreed.

Mr. Anderson said it's no less conforming than it is now.

**MOTION** by Mr. Duffy to grant the variance for minimum lot width, 130' required, 30' proposed to subdivide one lot into two lots at L Farley Road (I-13). The variance is needed to allow the applicant's reasonable use of the property given the rural and unique conditions of the property. The applicant's request cannot be achieved by some other method. This is a request for one single-family lot in the back, even though the area is greater than the R30 zoning requirements. It is within the spirit and intent of the ordinance, especially given land that is affected by municipal boundaries (RSA 674:53). It is reasonable to grant the request. There is an existing non-conforming frontage condition that pre-dates the last zoning ordinances for the City of Nashua. It should not adversely affect the property values of surrounding parcels, even though there is no expert testimony presented by an appraiser or realtor. It is not contrary to the public interest. Substantial justice is served as the applicant will have reasonable development use of an oversized remaining lot. Special Condition: Lot I-13 remaining lot will remain as a one building single-family lot in perpetuity.

Mr. Currier said he wanted to clarify that the remaining lot (I-13) is identified on the November 28, 2005 Meridian

Land Services plan and it identifies the remaining lot as 31.476 acres.

**SECONDED** by Mrs. Anderson.

**MOTION CARRIED UNANIMOUSLY**

5. **Raymond E. & Joan F. Lorden (Owners) 49 Coburn Avenue (Sheet F Lot 120) requesting the following variances: 1) proposed Lot "A": minimum lot width, 120 feet required, 100 feet proposed; and 2) proposed Lot "B": minimum lot width, 120 feet required, 100 feet proposed - both requests to subdivide one lot into two lots. R18 Zone.**

Atty. Morgan Hollis, Gottesman & Hollis, 39 E. Pearl Street, Nashua. Atty. Hollis said Mr. & Mrs. Lorden purchased this property in January 2006. It was previously owned by the Caron family from 1960 - 1999. He handed out some paperwork to the Board.

He said if you have been on Coburn Avenue this property is the one that sticks out on Coburn Avenue and you wonder how the plow can even get by it. He said the house was built in the late 1880s and has existed since that time in that location. He said the lot is approximately 39,000 square feet and is in the R18 zoning district. The property is non-conforming as far as an encroachment into the front yard. The owners wish to do something with the property, but they really can't do anything because they would be increasing the non-conformity. He said the proposal is to remove the house and split the property in two.

He referred the Board to their package of information. He indicated that the front page had the GIS map showing the location and the properties around it. He said the second page shows the exact dimensions of the lot and shows the location of the house on the lot with the existing driveway. He said the third page shows the proposal, which is to subdivide the lot into two lots. It shows the location of the proposed houses, one of them being 50'X48, which would include a garage. It conforms to setbacks. The houses are moved back some distance. He said the plan shows one at 60' and 75' on the other. He indicated his client doesn't want to be bound by that proposal, but would

accept a stipulation of at least 50' back if the Board saw fit to grant the proposal.

Atty. Hollis said the next page after the proposed subdivision sketch is a subdivision plan. He said it shows a history of this property. It was built in the 1880s and was the original house on the farmland. He referred the Board to the first page and said Coburn Avenue splits the original farmland. Across the street is a cluster development and behind it is a subdivision known as Pemberton & Barisano Way. The first subdivision of the

property was creating this approximate one-acre house lot. The subdivision was done in 1959, prior to the zoning ordinance that's in effect today. He said Mr. Dudley purchased all of the farmland from the farmer in 1948 and Mr. Dudley sold it to Ray Lorden, Sr., his client's father. He owned it for a short time and sold it to Mr. & Mrs. Caron.

He said prior to 1960 the only lot the only lot that was subdivided out was the original farmhouse lot. He said the next subdivision plan was a subdivision of lots along Coburn Avenue (he referred the Board to their package). He said this pre-dated the current zoning ordinance so it doesn't comply with today's zoning restrictions. He said the locus lot is highlighted in yellow. He also highlighted the other dimensional sizes, which are 20,000 square feet more or less.

Atty. Hollis said in 1981 the third subdivision occurred. He referred the Board again to their package. He said this is Barisano Way & Pemberton Road. All those lots were created to be 18,000 square feet and to have 100' of frontage and 120' of width.

He said they have an old house located in the right-of-way. The house has essentially three bedrooms and one bath. It needs modernizing, upgrading, and rebuilding. It can't be rebuilt because it's located close to the road/encroaching in the setback. They would have to come to the Board for a variance. He said the special conditions are just that - the age of the house, the unique location, the fact that it existed prior to zoning, the fact that lots have been built around it and it sits like a sore thumb out on Coburn Avenue. He said the solution is to subdivide the property

to allow proper investment to allow two new houses to be built and allow the existing house to be torn down.

He said the new houses will be properly set back. The lots will conform to lot size and be approximately the same size as required under the ordinance.

Atty. Hollis said he has gone over the special conditions on this lot in his presentation. The proposed use is for single-family house lots, which is a permitted use in the zone. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible. He referred the Board to Page #1 in the package that the abutting property to the left as you face the house is located very close to the existing lot line. In fact, the house is approximately 15' from the lot line. There is no room to acquire property. That lot is also an undersized or non-conforming lot so there's no ability to acquire property. He said on the opposite side is 45 Coburn Avenue. There might be the possibility of squeaking a few square feet out of that lot, it barely meets the minimum lot size and it would cause an encroachment into the setback. He said that house is located close to the lot under discussion because there is a wetland swale on the other side of the house.

Mr. Duffy asked Atty. Hollis approximately how many lots had 100' lot widths.

Atty. Hollis said there are several in the Barisano Way/Pemberton that are 120', but there are at least six lots within the immediate neighborhood that have 100' width. He said this proposal is going to be very similar.

Mr. Duffy said that there was mention of the distance the proposed houses would be from the front.

Atty. Hollis said they are not certain that when they get out in the field and do an actual survey how the houses might fit so they are asking for a 50' stipulation rather than 60' or 75'.

Mr. Duffy asked if that measurement is to the lot line or to the street.

Atty. Hollis said it would be to the lot line based on the survey information that they have, which is limited.

Mr. Duffy said he is assuming there are no pipes in the ground. He said that's the thing he is concerned about. He said he feels more comfortable with the 60' and 75'.

Atty. Hollis said they would agree to 60'. There's a concern that 75' would put them back too far to the neighbors.

He said the variance is not contrary to the public interest. It is a permitted use - a single-family on a permitted sized lot of 18,000 square feet or better and has a similar size to the neighborhood.

He said it would allow for the correction of a current dangerous situation. The resulting house lots have room for homes with more than ample setbacks.

He said there's no threat to the health, safety, or welfare. In fact, it improves the health, safety and welfare.

He said substantial justice would be done. This is an extra large lot. It meets all the criteria, except the width. Creating a second lot will allow an investment into new housing, meeting today's ordinances on setbacks.

He said the values of surrounding parcels would not be diminished. There will be new homes constructed. It will be a safer environment - safer for everyone. He presented a petition to the Board and said it had been signed by nearly all the neighbors. He said his client had spoken to all of them and they don't have objections to the proposal.

He said the request is within the spirit and intent of the ordinance. It will allow for appropriate spacing, including the setback from the roadway.

Mr. Duffy said the petition submitted by Atty. Hollis is signed by fourteen property owners in the area.

**SPEAKING IN FAVOR**

Kathy Vitale, 8 Massasoit Road. Mrs. Vitale said this is definitely a curve in the road that everyone is aware of that lives in this section of the City, although the house is never in danger of being hit because it's on the inside of the curve and you're more likely to go to the outside of the curve. She said she thought it would be a relief to the Street Department as far as plowing and such.

She said it's her understanding that they do not have very much right-of-way in this area. She asked if this could be addressed and if there is anything that could be done to get sidewalks in the future.

Mr. Currier said this is a natural speed reducer. He said if this were to be removed there might be a lot more speeding cars on Coburn Road.

Mrs. Vitale said she believes the speeding will increase on this curve. She said there are a couple of cruisers that sit on the apple orchard across from where this house is located. She said speeding occurs on this road even with the curve. The only thing that slows things down right now is the fact that it's a blind curve. Once the house is removed the blind area won't be there any more.

#### **SPEAKING IN OPPOSITION OR WITH CONCERNS**

Alan Gutzmer, 48 Coburn Avenue. Mr. Gutzmer said he is in the house where all the cars end up - immediately across the street from the subject property. He said his comments might straddle on the side of support and opposition.

He said the subject house doesn't get hit, but every snowstorm an average of three cars ends up in his yard or his driveway. This last weekend he had four.

He said Mr. Currier's point about the house being a natural speed inhibitor is correct. It's the only one right now, especially between 7:00AM-7:40AM and 3:00PM-4:00PM. He said he is referring to the kids at High School arriving and leaving. He said he does feel it's safer without the house, but it may increase speed and more cars may end up going into his property. He said 1 ½ years ago he was 5' away from getting struck by a car coming about 20' into his yard. He has two small children so he's worried about this. He is wondering if the curve could be ameliorated a

little bit by a land donation or purchase by the City and straightening the curve.

Mr. Duffy said this might be a planning issue. He said there would have to be a certified site survey. This will find where the property lines are.

Mr. Gutzmer said other than this he supports the request. He said he probably has the worst safety hazard there is because coming north on Coburn and trying to take a left into his driveway is Russian Roulette. He has to stop and then gun it and hope there's nobody coming around because there's only 5' of visibility. One of his safety concerns

was adding another driveway in this curve as it currently exists. If the curve can be eliminated or stop signs can be used at Hampton Drive to add a speed inhibitor now that the existing house would be removed.

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

Mr. Gutzmer said he purchased the home in August 2000.

Peter Roth, 51 Coburn Avenue. Mr. Roth said this house is immediately adjacent to the subject property. He said the speed factor is a concern that he has. He said at 3:00AM one morning somebody came into his yard and the vehicle was left there.

He is also concerned with the subdivision of the property. He said he felt that this would diminish the property value of his house as the area has a broader aspect. He said he bought his home because of the open area. He said building two houses on this land would give him no more privacy in his back yard. He said he wouldn't have an issue with building one house and setting it further back on the lot and leaving the lot size the way it is.

Mr. Duffy asked Mr. Roth how long he has lived in his home.

Mr. Roth said since 2001.

Mr. Duffy asked Mr. Roth when his house was built.

Mr. Roth said he believed it was in 1972.

Mr. Duffy asked Mr. Roth his lot frontage.

Mr. Roth said he did not - perhaps about 100'.

Mr. Duffy said if the owners decided to put in a single-family or a two-family home, which is allowed here, and whether they put in one curb cut or two curb cuts, it still may be the same number of cars coming out of there.

**SPEAKING IN FAVOR - REBUTTAL**

Atty. Hollis said in response to straightening the curve and whether or not there would be some dedication of right-of-way, he believes that the fact that they are willing to stipulate a 60' setback allows for some degree of flexibility if this subdivision goes forward to the Planning Board. He said he's sure that the Planning staff and the City Engineering staff will look at these issues when and if it comes before the Planning Board. They might ask that there be no trees would be blocking visibility. They might ask for an easement to allow the widening of the pavement if they chose to cut that corner. There are things that the Planning Board might ask for at that level. With a stipulation from the Zoning Board stating that the applicant has agreed to 60', they will assure that there's adequate area from the house to the road to allow full flexibility to the Planning Board and Planning staff.

He said there are two existing driveways. There is a driveway on either side of the house. He said the pictures he presented show the two driveways as well as the sketch that shows the two driveways. He said they will not be creating a situation where there's one driveway and they are going to double the driveways. There are two curb cuts already.

He said in response to Mr. Roth's concerns about values, Mr. Roth's lot has less than 100' of lot frontage and lot width. He said that means that his lot is actually smaller than what's being proposed. The fact that when he looked at the house and saw a lot of open land doesn't mean that this land couldn't be developed. He said if it wasn't his client it might be someone else who could tear down the house, build a much larger one and be 15' away from Mr. Roth's lot line and it would be legal.

Atty. Hollis said they believe that a new house would only add value. The house lots they are proposing would be larger in size than Mr. Roth's lot.

Mr. Duffy asked Atty. Hollis if the applicant is going to try to keep the existing curb cuts.

Atty. Hollis said they don't know that yet.

**SPEAKING IN OPPOSITION - REBUTTAL**

Peter Roth, 51 Coburn Avenue. Mr. Roth said he agreed that there are two driveways existing. He said only one of the driveways is used and that's the one that's further down towards Broad Street. He said the owner hasn't been living there.

He said he still feels that this proposal would affect his quality of life.

Mr. Currier said he has had a past business relationship with Mr. Roth and with his testimony he felt that he should recuse himself from voting on this case. He did not know that this was going to happen at the start of the presentation of the case.

Atty. Hollis said they would proceed with the remaining four members.

Mr. Anderson said he felt it was a reasonable plan. It takes away a big visibility issue. It can be a dangerous curve. Two new single-family homes on two adequately sized lots seems reasonable to him with a stipulation to set them back 60' to maintain the visibility around the curve.

Mr. Tremblay said the plan seems to meet all the requirements and is consistent with the area. He said he didn't have any major objections to the proposal.

Mrs. Douglas said she didn't have any objections.

Mr. Duffy said he understands the neighbors concerns with the speed. The Planning Board will need to address some of their issues.

**MOTION** by Mr. Duffy to grant the variances: Proposed Lot A: minimum lot width, 120' required, 100' proposed & Proposed Lot B: minimum lot width, 120' required, 100' proposed to subdivide one lot into two lots at 49 Coburn Avenue. The purpose of the request is to enable the applicant to build two single-family homes on each lot, an allowed use in the zone. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. The position of the existing building predates zoning. It is unique in nature to the essential character of the neighborhood. There are lots of different sizes and frontages in this area, some smaller and some larger than the 100' proposed. It is reasonable that the applicant could not achieve this by any other means. It is within the spirit and intent of the ordinance that a reasonable use of the property be considered. It will not adversely affect the property values of surrounding parcels, even though there was no expert testimony. There has been a lot of build up in this area and neighborhood of different size and kinds of single-family units. It is not contrary to the public interest. Substantial justice will be served as the applicant will have development rights to their property. Special Condition: The applicant shall maintain a 60' setback to the eventual certified surveyed lot line.

**SECONDED** by Mr. Tremblay.

**MOTION CARRIED UNANIMOUSLY - Mr. Currier recused**

6. MacThompson Realty, Inc (Owner) 140 Daniel Webster Highway (Sheet A Lot 242) requesting the following variances: 1) to exceed maximum number of ground signs per premise, one allowed, two existing - one additional ground sign requested; and 2) to exceed maximum ground sign area, 150 square feet allowed, 211 square feet existing - an additional 100 square feet requested. HB Zone.

Atty. Gerald Prunier, 20 Trafalgar Square, Nashua, NH.  
Atty. Prunier passed out some materials to the Board. He said this whole area is known to most people as McMulkin Chevrolet, even though the property is owned by MacThompson Realty.

He said this is a three-acre lot located on a corner. The building has Mitsubishi in it at the present time. Suzuki is also going to go into the building. The Chevrolet and the Garfield lots are in the back. He said when Automotive Village was developed there was a sign that was erected on the corner. He said this sign was for the general dealers that were located in the automotive village. There were three GM dealers - Garfield, Tully, & McMulkin. This was the sign that served all of them. Tully has moved and Garfield has sold out. Now the only GM dealer/franchise in the area is McMulkin.

He said the Board has seen that where there are multiple dealerships, the franchises want their individual signs.

They want identity. He said when you look at Tully you can see all the various signs for that dealership.

He said the request before the Board is to allow a sign on the corner of Daniel Webster Highway & Veterans Drive. He said they are trying to keep it as far away from Mitsubishi so it doesn't look like there's one sign right after the other.

He said the Highway Business District allows this. The height of the sign is allowed. He said it's because of the multiple signs that they have to come to the Board. This district is highly orientated toward automobile traffic.

Mr. Duffy asked Atty. Prunier if the sign is internally illuminated.

Atty. Prunier said it is.

Mr. Duffy asked if the other signs in the area are of similar size and height.

Atty. Prunier said they are.

Mr. Duffy said that these dealerships seem to continue to grow and grow and so there are more signs and more variance requests. He asked Atty. Prunier to address this.

Atty. Prunier said that he would say on this particular lot they have grown as large as they can, even though it's a large lot. There are a lot of things that would have to be

done to this lot in order to do anything else and it might be too expensive to do.

He said the ordinance does not speak about multiple dealerships or franchises on a lot. They are trying to deal with their franchiser as well as trying to comply with the ordinance. They are trying to keep the sign within the spirit and intent of the ordinance as far as the size and height.

Mr. Duffy said the 150 square feet allowed and 211 existing include the large "S" logo. It's not electronic and flashing. It's logo identification for identity.

Atty. Prunier agreed.

Mr. Tremblay asked if the sign is taller or shorter than the Mitsubishi sign.

Atty. Prunier said it's shorter.

Mr. Tremblay said he is looking at the picture and he sees "Toyota" in the background.

Atty. Prunier said this is on another lot.

Mr. Currier asked if the Suzuki dealership going to be part of or in the same building as the Mitsubishi dealership.

Atty. Prunier said one is Mitsubishi. He pointed out the Suzuki showroom. He said it's one building.

Mr. Currier asked what would happen if the multiple dealership were to go away. He asked if they would be open to a stipulation that stated if Suzuki moved the sign would be removed.

Atty. Prunier said "absolutely."

**SPEAKING IN FAVOR**

No One.

**SPEAKING IN OPPOSITION**

No One.

Mr. Currier said he's uncomfortable with sign proliferation. Dealerships come and go. Multiple dealerships is an argument. If they stick with the stipulation he guesses he'd be okay with it.

**MOTION** by Mr. Currier to grant the request for two variances: 1) to exceed the maximum number of ground signs per premises, one allowed - two existing, a third ground sign proposed 2) to exceed maximum ground sign area, 150 square feet allowed, 211 square feet existing, requesting additional 100 square foot sing at 140 Daniel Webster Highway. The variance is needed to enable the applicant's proposed use of the property - a multiple use dealership, which the zoning ordinance does not address. There is a stipulation that the sign is specific to the Suzuki dealership and should the dealership move or terminate the business, the rights to that third ground sign will be eliminated as well. With this stipulation, the variances are within the spirit and intent of the ordinance. There has been no testimony about affecting the property values of surrounding parcels. He said he did not believe a sign with this stipulation is contrary to the public interest. Substantial justice will be served by granting the variance.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY**

#### **Rehearing Requests**

**Housing Initiatives of New England Corporation (Owner) 27 Will Street (Sheet 87 Lot 284) requesting the following: 1) use variance to erect an additional 24 units to an existing 98-unit elderly housing development; and the following variances: 2) minimum parking spaces, 122 spaces required - 100 spaces proposed, and 3) to encroach 30 feet into the 30 foot required buffer between an industrial zone and a residential zone. PI & RB Zones.**

Mr. Tremblay asked if it is his impression that there is a lot of new evidence in the request that was not presented at the public hearing.

Mr. Duffy said they will go through the steps and can discuss each as they proceed.

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

The Board did not think 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 and/or a variance.

The Board did not feel this was the case.

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

Mr. Tremblay said he thought there was a lot of new evidence in the request for rehearing that was not presented. He said he does not recall seeing the design on Exhibit A and also the proposals to add new landscaping between the street and the building.

Mr. Currier said he sees some new information. He said it states "We are more than willing to augment this screening." He said to him this is very soft. Exhibit E shows some tall mature trees that in Exhibit E do a nice job of perhaps satisfying the abutters concerns about the lack of privacy. There is also the proposed headlight screen that is new to him, which he thinks is potentially significant. He said the proposed landscape buffer right near the fences would really address the concerns, but its very soft versus being specific in terms of a certain quantity of trees with a certain height and a stipulation that the buffer be maintained if any should die. He said if the Board decides to rehear this they should be looking for a specific plan.

Mrs. Douglas said she didn't see anything that significant that would tell her to make a motion to rehear the case.

Mr. Anderson said they've presented information in their request that tried to address the abutters concerns and to convince the Board why they couldn't put the building on the other side, which was a suggestion of the abutters. He said it's basically the same plan with some generic screening.

Mr. Duffy said this is his impression as well. He said he felt that they saw a lot of this information when they heard this case and they talked about them and they were considered at that time.

Mr. Currier said he's made it clear that it's soft. He's wondering if this is because the applicant may not be aware that what this Board deserves to see is a specific plan versus an idea. He said if the Board were to rehear the request it might give the applicants a chance to be specific. He said he's on the fence as to whether this is new or not.

Mr. Tremblay said he feels there might be some possibilities, but it's not concrete enough to act on other than a chance to come back and offer a more concrete plan.

Mr. Anderson said Point #4 asks if there is anything in the request that would cause the Board to make a different decision. He said there's nothing in the request that would make him change his mind. He said the information should be there in order for the Board to grant a rehearing.

Mr. Duffy said the information in the request was available and was discussed. It may not have been to this depth or breadth, but it was talked about.

Mrs. Douglas said they had the opportunity that evening to address these issues in rebuttal, but they did not.

Mr. Duffy said there were concerns that they did raise and they all talked about. He asked if there is substantive new information in the request.

Mrs. Douglas said the type of housing they are proposing is needed, but it has to fit into the neighborhood and not infringe on other property owner's rights. She said she didn't see anything in the request for rehearing that was not available to them to present originally.

Mr. Duffy said one of the concerns of the abutters had wasn't only the fencing, but the actual visual of the building. He said that isn't addressed in the request for rehearing.

Mr. Currier said he is sliding toward rehearing the request. If it comes back to them and it's specific concrete information than they have done a service by allowing them to be reheard. He said as far as Point #3 is concerned, he is saying that there is some new information different from the original hearing.

Mr. Duffy said if there was something really substantive he wouldn't hesitate at all - for example a two-story building versus a four-story building. That would be new. This is which he thinks was alluded to and talked about when the case was originally heard.

A poll of the members was taken to see who thought there was new information and that they should grant the rehearing based on meeting that criteria. Mr. Currier and Mr. Tremblay thought there was new information. Mrs. Douglas, Mr. Anderson, and Mr. Duffy did not believe that to be the case.

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

Mr. Currier said his thought is that this falls in with Point #3.

Mr. Tremblay said given the fact that he felt there's new information he would say the same.

Mr. Anderson said one thing that would convince him would be if they had submitted letters from the abutters that had disagreed with the plan that any suggestions that they had would now be supported. Something like that might change his vote.

**MOTION** by Mr. Duffy to deny the request for a rehearing for a use variance to erect an additional 24 units to an existing 98 unit elderly housing development and two variances: minimum parking spaces, 122 spaces required - 100 spaces proposed, and to encroach 30 feet into the 30 foot required buffer between an industrial zone and a residential zone at 27 Will Street. The Board does not feel there was a procedural error, nor that it was an illegal decision. The Board completely addressed all the points of law required for the special exception/variance

request. There is no substantive new information in the rehearing request that was not available to the Board during its deliberations and testimony that evening. The configuration of the building remains at four stories on a site line that was addressed during testimony. There is nothing in the rehearing request that would cause the Board to make a different decision.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED -3-2 Mr. Currier & Mr. Tremblay opposed.**

#### **MINUTES**

**January 10, 2006**

**MOTION** by Mr. Duffy approve the minutes of the January 10, 2006, waive the reading and place them on file.

**SECONDED** by Mr. Tremblay.

**MOTION CARRIED UNANIMOUSLY**

#### **Regional Impact**

Mr. Falk said there are no applications for the Board's next schedule meeting on February 28, 2006. He said he is going to be out of town. He said he had provided a copy of the by-laws to the Board and in his opinion they should be updated. He said he had provided them with a draft with some changes. He said the Board may want to have a workshop or get together amongst themselves or they may just want to have the night off and worry about it at the first meeting in March.

The consensus of the Board was to have the night off.

Mr. Falk asked the Board to take a look at the by-laws over the next month and to Email him with any changes so they can update them.

Mr. Duffy said assuming that they have a reasonable agenda at their first meeting in March he'd like to propose that they have a ratification of any suggested amendments.

#### **Other**

Mr. Currier said that they have a notice on the Planning & Zoning Conference. He said this was very beneficial to him when he attended. Some of the new people might want to consider attending. Track 2 is probably the single biggest one because it talks about the different applications the Zoning Board does and the role-play in the afternoon consists of a five person Board that you are a part of and there is a case. There's a lawyer who presents for either one and there's a couple of planning professionals who

elicit your response. He said he is planning on attending this one as well.

Mr. Duffy said it's in Manchester and he will be attending. He said he would drive anyone who is interested.

Further discussion about this conference ensued covering how many people attend, who attends, how long they may have been on Zoning Boards, etc.

#### **ADJOURNMENT**

Mr. Duffy called the meeting closed at 8:39PM.

Susan Douglas  
Clerk

lt  
Taped Meeting