

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
March 28, 2006

A public hearing of the Zoning Board of Adjustment was held on Tuesday, March 28, 2006 at 6:30PM in the Auditorium at City Hall.

Sean Duffy conducted the hearing.

Members present were: Sean Duffy, Chair
Susan Douglas, Clerk
Norman Tremblay
Jeff Anderson

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.

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

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

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

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

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

He said each speaker will be allowed five minutes to address the Board. The timing light will show a green light until one

minute is remaining. The amber light will be on during the last minute and the speaker must stop when the light turns red.

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

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

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

He said a full Board is not present tonight and anyone who wished to have their case postponed until there was a full Board should state that they would wait until a full Board was available. He said it would take three affirmative votes to grant a request.

Nobody came forward to indicate they wished to wait for a full Board.

5. **Kenneth J. & Maryann J. Berkins (Owners) Paul Alfano-Alfano, Baroff & Kasten, P.A. and James W. Donchess-Donchess & Notinger, P.C. (Appellants) appealing the decision of the administrative officer and the Nashua Planning Board regarding the acceptance of an application for lot line relocation and consolidation of land at 73 Wellington Street (Sheet 65 Lots 31, 32 & 33) to create two conforming lots where the appellant believes only one conforming lot may be created due to insufficient lot depth on a corner lot. RA Zone.**

Postponed to April 11, 2006

1. **Milligan Investments, LLC (Owner) 38 East Hollis Street (Sheet 35 Lot 91) requesting the following variances: 1) to allow a three-line electronic changing wall sign; and 2) to exceed maximum number of wall signs per street frontage, 1 allowed, 2 existing, 1 additional wall sign proposed. D-1/MU Zone.**

Don Reed, Barlo Signs, Hudson, NH. Mr. Reed said Kevin Milligan, the owner of Downtown Lincoln Mercury, is also present.

He said the proposal is for a single-faced electronic reader board with three lines of LED copy. At this time there are three signs on the lot. There's a freestanding sign allowed by right. There is a directional sign for service entrance and some existing individual letters. He presented pictures to the Board.

He said the picture in the upper left hand corner shows the wall on the side of the building where they wish to place the sign. He said the existing wall signs amount to 22.04 square feet for the letters and 18 square feet for the directional service entrance sign. The message center they are proposing would be 3'X10', a total of 70.04 square feet. The zoning district allows for 100 square feet maximum. The building has a frontage of 125' and 50' on the other side so the existing signage on the building is not overwhelming and the addition of the informational sign is appropriate and fits within the character of the zone.

Mr. Reed said this is a unique use in this area. Most of the car dealerships are located in another part of town. He said that the owner feels that it's vital for him to be able to utilize this type of a message sign in order to maintain the level of competition in the outlying areas where they are allowed a lot more square footage and a lot more flexibility in terms of the number and sizes of signs. He said they feel they are asking for a minimal amount of relief.

He said in the zoning ordinance there seems to be a little confusion about what's allowed and what's not allowed. He said he and Mr. Falk looked at the ordinance in terms of how many wall signs are allowed and couldn't come up with a good answer. He said if they're allowed 100 square feet and they are asking for 70 square feet, they are within what's allowed.

He said in terms of the type of sign (electronic), the new land use code doesn't have a chart showing what's allowed and what's not allowed so they couldn't tell whether or not they were allowed an electronic sign here or not. There are other electronic signs in the zone.

Mr. Duffy asked if Mr. Reed was aware of the ordinance being specific in terms of the duration of time the messages that come in and stay, the scrolling, etc.

Mr. Reed said he is. He said Mr. Milligan would operate the sign in accordance with what is mandated in the ordinance.

Mr. Falk said the previous zoning ordinance allowed one wall sign per frontage in the Central Business zone with 100 square feet maximum. This site has three street frontages - Quincy, Mason & East Hollis Street. He said under the current ordinance there isn't a provision for up to three wall signs per frontage in commercial zones. In reviewing this afterwards, he believes they can have the three wall signs, but there is still a requirement for a variance for the electronic message center.

Mr. Tremblay asked if this site wasn't in the downtown zone.

Mr. Falk said it's called a "D-1" Zone. He said it's not a General Business or Highway Business zone. He said it's a mixed-use zone because the uses are retail stores, professional offices, restaurants, multi-family, churches, schools, etc.

Mr. Tremblay asked if there were separate regulations for that zone.

Mr. Falk said it does.

Mr. Anderson asked if this is a single-color sign.

Mr. Reed said it is. He said it's a monochrome message unit.

Mr. Falk said under the ordinance they can only have three lines of text - no graphics or symbols.

SPEAKING IN FAVOR

Kevin Milligan, 15 Reservoir Street. Mr. Milligan said he owns Downtown Lincoln Mercury & Milligan Investments. He said

Milligan Investments owns the land and Downtown Lincoln Mercury is the applicant. He said this is a small local business. He employs 46 people; over half of them live within 1-½ miles of the business.

Mr. Milligan said he's always tried to keep a clean appearance, even though they are in an old building. He said he is going to have the sign done by a professional.

He said he doesn't know when the letters on the side of the building were put up. He said when he started there in 1984 they were on the roof. Then they were moved onto the building, cleaned them up and made them look better.

He said there are actually only two abutters. The next property up is his used car department and that's a separate piece of property. Between the two of them combined he has 450' of frontage and he doesn't have a sign on the other side of the building. The abutter behind is a railroad bed and Downtown Lincoln Mercury owns that. Across the street is a pizza place and another railroad bed. Milligan Investment owns that "Headlines" is another of their abutters. He presented letters from the House of Pizza and Headlines to the Board.

Mr. Milligan said he would comply with the ordinance. He said he doesn't want something that's going to flash so fast that nobody gets the message. If his message is telling the public that he has an automobile on sale, he wants to make sure they see the whole message. He said he thinks the ordinance with the five seconds is appropriate because people do read these signs.

Mr. Duffy asked Mr. Milligan how long he had worked at Downtown Lincoln Mercury.

Mr. Milligan said since 1984 with one year out.

SPEAKING IN OPPOSITION

No One.

Mr. Anderson said this request seems reasonable for the location and the position on the building. He said he didn't see that it would be detrimental to the street or the traffic.

MOTION by Mr. Duffy to grant the variance to allow a three-line electronic changing wall sign at 38 East Hollis Street. The

variance is needed to enable the applicant's proposed use of the property given the conditions of the property. The benefit sought by the applicant cannot be achieved by other reasonable feasible methods. Any other signage would have to be more significant in size and scope. This is minimal and done tastefully. It's going to be located on a side of the building instead of into the front area of the building. The applicant has testified that they will meet the criteria for the three-line electronic message wall signs. The applicant is significantly below the total square footage of 100 square feet allowed by the ordinance. It is within the spirit and intent of the ordinance that this reasonable request is granted. This should not adversely affect the property values of surrounding parcels. This is an area surrounded by other commercial areas. There is other electronic signage directly across the street and other signage in the district that both pre-date zoning and is significantly more dramatic and intrusive than what is being proposed. It is not contrary to the public interest. Substantial justice is served.

SECONDED by Mr. Anderson.

MOTION CARRIED UNANIMOUSLY

2. **Wayne D. & Marilyn R. Spence (Owners) 87 Concord Street (Sheet 47 Lot 33) requesting variance to encroach 15 feet into the 25 foot rear yard setback to remove an existing 16'x21' garage and replace it with a 35'-6" x 28' garage with storage room above. RA Zone.**

Wayne Spence, 87 Concord Street. Mr. Spence said that he and his wife reviewed this project with their abutters and they have all signed letters of support, which the Board should have.

He showed the Board a 1908 plot plan. He said in 1914 the land was subdivided and the line went through the barn. He said the barn was left there for the use of the owners of the house - with access through the back of the property to drive their horse teams into it. He said the existing foundation is in place. Sometime after 1925 the barn either burned down or was demolished. The deed read that when the property was sold to someone else that the barn would be destroyed.

He said in 1914 there were no setbacks. The subdivision left them with a small back area and a very big front lot. They would like to replace the garage and barn foundation

with a garage that is more suitable for the property. In order to do that they need to encroach 15' into the 25' setback. He said he thought it was less than 15', but he put 15' to make sure he was covered.

He said other homes in the area have attached structures as close as 6' to property lines for their barns and garages. He said they looked at other alternatives and all alternatives to put a garage in would require a variance due to the positioning of the house.

He said the house will remain as a single-family home. There will be no additional impact on City services. It will not impair the abutters right to enjoy light, space, and air. Emergency personnel will still be able to get around and have access to the property.

Mr. Spence said if the variance is granted, this would increase their property values and would also improve the surrounding property values. He said what exists now is a deteriorating structure that is poorly designed and does not fit in with the existing house. He said he didn't know how or when it was built.

Mr. Duffy asked Mr. Spence if there was any expert testimony from a realtor or appraiser to support his testimony.

Mr. Spence said he didn't have any expert testimony, although they did have their house appraised recently and he asked the realtor what he thought this proposal would do for the property. The answer was that the realtor thought it would increase the property value over \$100,000.

Mr. Duffy asked Mr. Spence if he appeared before the Historic District Committee last night.

Mr. Spence said the Historic District gave their approval at last night's meeting. They liked the fact that they are incorporating the same siding and windows into the new structure. They are also taking the existing carriage house door in the back of the existing garage and incorporating it into the new structure.

Mr. Duffy asked Mr. Spence how long they have lived in their home.

Mr. Spence said 19 years.

Mr. Duffy asked if they are changing their driveway or access.

Mr. Spence said there was no change.

Mrs. Douglas asked if the storage area is proposed to be heated or if it's going to be living space.

Mr. Spence said it's not going to be living space.

Mrs. Douglas asked if there was going to be direct access from the house to the storage area.

Mr. Spence said there is an existing door that opens up on the top of the existing garage, evidently as access into the barn at some point in time. They plan on using that existing door for access for storage.

Mrs. Douglas asked if Mr. Spence would have a problem with a condition that there be no plumbing or heat into the storage area.

Mr. Spence said he did not have a problem with that.

Mr. Duffy asked Mr. Spence if he was going to operate a business or rent it out.

Mr. Spence said "no".

Mr. Tremblay asked if they can drive through the current garage.

Mr. Spence said they can. He said he thinks it was a horse and carriage type of thing.

Mr. Tremblay asked if the new structure would have this.

Mr. Spence said "no". He said he wants to incorporate the door into his plans because it's 2 ½" thick and you can't find that any more.

Mr. Tremblay asked if this is going to be a single-car garage.

Mr. Spence said it's going to be a three-car garage.

Mr. Tremblay asked Mr. Spence if their elevation is higher than Berkley Street.

Mr. Spence said it is. He said there is a retaining wall. He said he is going to take some rocks they have from the foundation and finish the retaining wall so the neighbor in the back will have a better view.

SPEAKING IN FAVOR

No One.

Mr. Duffy said there are numerous letters from abutters in support of this request.

SPEAKING IN OPPOSITION

No One.

Mr. Tremblay said he didn't have a problem with this request. He said it looks like a good solid plan and that it will blend into the neighborhood. He said he's sure the Historic District Commission did their due diligence to make sure that it conforms and maintains the character.

MOTION by Mr. Tremblay to grant the variance to encroach 15' into the 25' rear yard setback to remove an existing 16'X21' garage and replace with a 35 ½'X28' garage with storage room above at 87 Concord 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 pursue other than an area variance. 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. No heating or plumbing in storage area over the garage as agreed to be the testimony of the applicant.

SECONDED by Mrs. Douglas.

MOTION CARRIED UNANIMOUSLY

3. John F. Slater (Owner) 1128 West Hollis Street (Sheet D Lot 39) requesting the following variances: 1) minimum lot area, 40,000 square feet required for a proposed lot to be

serviced by an individual sewage disposal system - 34,107 square feet proposed; and 2) minimum lot width, 130 feet required, 101 feet proposed - both requests to subdivide one lot into two lots. R30 Zone.

Atty. Brad Westgate, Winer & Bennett, 111 Concord Street, Nashua. Atty. Westgate presented some handouts to the Board. He said the property owner, John Slater, is present as well as Richard Maynard, the project engineer.

He said they are requesting two variances. One is from the minimum lot area requirement of 40,000 square feet to establish a residential lot and the second is from the minimum lot width requirement of 130'. The proposed square footage for the lot they would like to establish is about 34,107 square feet and the lot width is about 101'.

He pointed out the location of the lot on a GIS map that he had on display. He said it's right at the Hollis line. He said it isn't actually on the main portion of West Hollis Street, but on the little spur road just before you hit the Hollis town line.

He said this is a single-family dwelling on the lot. It's within the R30 Zone. It is serviced by City water, but not by City sewer. The lot has about 74,500 square feet overall. They are asking for the two variances to enable them to subdivide the property into two lots. The new lot, which they are calling 39-1 would contain the 34,107 square feet and have 105' of frontage, but only 101' of lot width where 103' is required. The normal lot area requirement is 30,000 square feet in this zone, but because City sewer does not serve the property it requires 40,000 square feet.

Atty. Westgate said if the variances are granted, the owner would like to construct a relatively modest home of about 1100+ square feet of living area on the newly created lot with frontage on West Hollis Street. It would be set back just beyond the setback line. It would be on a portion of the lot that is topographically different than that of the existing house. He referred the Board to some pictures that he had passed out earlier. He said the first picture is that portion of the property that would be the front area of the new lot. He said just to the right of the last tree they would be able to see some red flags. He said that is the approximate location of the proposed property line. The new house would essentially be built into the hill.

He said the second picture has a different perspective on the area that would be developed. He pointed out that if they looked to the right they would be able to see a few of the red markers that show the proposed location of the property line and further to the right they should be able to see a corner of the existing house.

He said another of the handouts that he gave to the Board is a perspective drawing done by Mr. Slater. He said it was done to give the Board an idea of how the house would be built into the hill area they can see in the pictures.

He said the proposed house will be heated by a geo thermal pump system as well as for cooling. He said the idea is to have an energy efficient house. He said they believe it goes to some of the criteria that the new zoning ordinance is looking for.

He said the first test for a hardship under "Boccia" is that an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. He said in this case there are several special conditions. He said it's more than double the size of the regular R30 zoning requirements as it has 74,500 square feet where the standard R30 requirement is 30,000 square feet. It is also outside of the City sewer service area, putting them into that section of the ordinance requiring 40,000 square feet.

He said it has topographical differences and two logical house sites incorporated in the lot. The only point precluding that is the 40,000 square foot requirement and the lot width requirement.

He said these are relatively modest variances that they are requesting, given the special conditions.

Atty. Westgate referred the Board to an exhibit he displayed. He asked them to look at the nature of the properties near the site. He pointed out the properties that are not on City sewer. He said many of the properties are either smaller than or similar in size to the two proposed lots that would be established by the variances. They would not be creating a lot that is out of character in size, nor is the service by septic out of character.

He said the second criteria under "Boccia" is that the benefit sought by the applicant can't be achieved by some other method reasonably feasible for the applicant to pursue other than an area variance. He said in this case Mr. Falk determined administratively that they would need a variance from the 40,000 square foot requirement and the lot width requirement of 130' in order to establish the second lot.

He said there is no City sewer in this area and is not expected in the near future. There is no other way to pursue obtaining the approvals necessary to build a modest house on the proposed lot.

Atty. Westgate said among the purposes of the ordinance is encouraging the most appropriate use of land throughout the municipality and also achieving smart growth, sound planning and resource protection and encouraging the use of renewable energy systems. He said the lot is compatible with the other lots. It is not serviced by City sewer, but does have the ability to have a second home site on it as the Board can tell from the pictures. He said it goes to the point of encouraging the most appropriate use of land.

He said the third criteria for the granting of the variance is that the proposal does not adversely affect the surrounding property values. They are proposing a single-family house on a lot that, in size, is compatible - in fact bigger, than many of the lots around it. Being a single-family home in this zone makes it a use that is similar and not detrimental to the other properties. It will be serviced by City water and on-site septic similar to the other properties in the area.

He said Mr. Slater talked to his immediate abutters and three of the four have issued letters of support, which the Board should have in their materials. He said this is a testament to not having a concern about the property values relative to those abutters.

He said the fourth criteria for granting the variances is that it not be contrary to the public interest. He said this has some consistency with being akin to being within the spirit and intent of the ordinance being fulfilled. He said in this particular case, he did not believe it was contrary to the public interest to allow another logical house site to be used for a modest size and ultimately modest cost single-family

dwelling in this area on a lot compatible with those surrounding it.

He said the last criterion is that substantial justice be done if the variance is granted. He said when these factors are combined substantial justice is done. He said they are not doing violence to the immediate area. They are making a use that is compatible with those near them. They have a lot that's similar in size or larger than others that are nearby.

He passed in the original letters of support to the variance request, stating that the Board should have copies of these.

Mr. Duffy said these letters are all dated February 2006 (no day). He said they are from Scholange Smith, 1116 West Hollis Street, 1099 West Hollis Street (John Slosek), 119 Gilson Road (Richard A. & Lisa L. Beaton).

Atty. Westgate pointed out the locations of the properties of the abutters on the map. He said when Mr. Slater spoke with his abutters in February he was using a concept plan that's a little different than the one that's before the Board. In their letters they reference a concept plan "C". That concept plan had a slightly different lot configuration and had a little less square footage and a little less lot width. He pointed out concept plan "C" that was on display. He said they came up with concept plan "D" which gave the existing house less land and a little more land to the new lot.

Mr. Duffy said the abutting properties to the east and to the south are greater than the size of this lot. He said he asked if they had City water and sewer.

Atty. Westgate said they don't have City sewer. He assumes that they have City water.

Mr. Duffy said down along West Hollis Street on the north side there are significantly sized properties. He said this is a conforming lot of similar sizes to others in the neighborhood. He said he is looking for a little more of a special condition to take one conforming lot and make one conforming lot and make one conforming lot and one non-conforming lot. He said he needs to be more convinced why this is so unique or different.

Atty. Westgate said the reasonable use need not be simply fixed on the present use under the "Boccia" test or the "Simplex"

test. The reasonable use concept is what can be made of the property, not necessarily an exclusion to what's already there, but in some cases, an addition to what's already there given its special conditions.

He said it is reasonable to make the proposed use of the property by allowing a new lot for several reasons. He said they are bigger than what the zoning lot requirement asks for. As the pictures indicate, there is a natural separation between the two house sites and a difference in topography between the two as well. He said he thinks this fact indicates that it's sensible and appropriate that both house sites be recognized, especially when they are not seeking substantial variances, both in terms of the lot area or the lot width. They aren't creating a back lot or doing something off the frontage. They are doing something that's right on the frontage and, in fact, have sufficient frontage for both lots. They are stuck with the different square footage requirement of 40,000 square feet merely because they don't have City sewer. He said the logic of the 40,000 square feet isn't to change the character of the R30 Zone - otherwise it would be a R40 Zone. They are in compliance with the normal 30,000 square foot lot requirement. He said on-site septic can be accommodated on a lot of 34,000 square feet. It's already accommodated on other lots that are right next to them that are substantially smaller. He agreed that there are some larger lots to the north of them, but the most immediate ones to them are not larger.

Atty. Westgate said they are different from the main portion of West Hollis Street as they are set off on the spur road.

Mr. Tremblay asked about the trees in the pictures that are lying down. He asked if that was one side of the lot line.

Atty. Westgate said it wasn't quite. He said it was a little more over.

Mr. Tremblay asked if the proposed house was going to be built toward the street or front of the lot.

Atty. Westgate said it will be built toward the front. He said that is the reason they gave the Board pictures of the hillside.

SPEAKING IN FAVOR

John Slater, 1128 West Hollis Street. Mr. Slater said he is a professor at Daniel Webster College - Engineering Division. Part of his work is to research alternative fuel for residential applications. It's also part of his work to look at what are called "green building technologies".

He said he is planning to use this house as a teaching tool for the students. He said they have a new four-year engineering program at Daniel Webster College and he's going to bring in some mechanical engineering students to essentially help with the design of the heating and cooling system as well as to track the progress or evolution of the house as it's constructed and, over the years, as it's used. He said he is hoping to use that information to further the advancement of energy sources for residential purposes.

Mr. Duffy asked Mr. Slater how long he has been at this property.

Mr. Slater said he's been here for two years.

Mr. Tremblay asked if somebody will be living in the proposed house.

Mr. Slater said he will live there. He said he would sell the existing house.

Mr. Tremblay asked how long Mr. Slater had been at Daniel Webster College.

Mr. Slater said this is his fourth year.

Richard Maynard, Professional Engineer, Maynard & Paquette. Mr. Maynard said if you add up the total frontage for this site, it is over 260'. They are not crowding the land here. He said there is sufficient land - it's the way the lot is configured which requires the lot width variance.

He said Atty. Westgate indicated the 40,000 square foot requirement for the lot size is not arbitrary. He indicated it is arbitrary. He said they can put septic systems on a lot with only 20,000 square feet of land area. He said they have done test pits and septic designs throughout this area. There are granular sandy soils; excellent soils for septic systems. He said all of the lots in the area are on septic systems. They are all in-ground systems, which indicates the ground water

table is well below the surface. The small lots to the rear, which date back to the 60's and 70's, have no indication of problems and those lots have only 13,000 square feet.

Mr. Maynard said Mr. Duffy mentioned some of the larger lots. He said some of this is a little deceptive. Some of the Nashua River is in the back in some of the deeper lots. Until Alderwood ?? Golf Course in Hollis was put in place, there was no City water in this area either.

Mr. Duffy said they are asking to make one conforming lot into one conforming lot and one non-conforming lot. He asked Mr. Maynard to convince him that this request meets the criteria in the ordinance in order to grant the request.

Mr. Maynard said there's no logical reason to require 40,000 square feet in this 30,000 square foot zone. He said the lot is more than adequate. It exceeds every requirement with regard to septic design. A lot with this type of soil can be down to as little as 20,000 square feet. He said the hardship is the 40,000 square foot requirement in this particular circumstance. It is arbitrary and not reasonable. If you look at many of the surrounding lots, they are all small. The larger lots probably pre-date the time when there was no water in this area.

Mr. Tremblay asked if there are any plans for the City to bring sewer to the area.

Mr. Maynard said the last area to have sewer is Skyline Drive. That's a pump station where it's pumped up towards the cemetery. The long-range plan to bring sewer to this area, if it happens, will cost two million dollars. He said it's highly unlikely they will ever get sewer in this area. He said there is no need for it as the soil is more than adequate for septic systems.

Mr. Tremblay said once the sewer is brought in, the 40,000 square foot requirement goes away.

Mr. Maynard said this is correct. He said this area is mostly built up and there's nobody to pay for sewer. There are no benefits to it.

Mr. Tremblay asked if there are any other lots to be developed.

Mr. Maynard said there weren't any of consequence that could pay two million dollars. It's too much money to justify a two, three, or four lot subdivision.

He said there was a plan recently approved by the Planning Board on a golf course that's under construction on Groton Road. He said it's something like a hundred unit single-family cluster on septic systems. If there was a project that was going to bring in sewer, that was the one. This is the reason he is saying that it's highly unlikely that sewer will ever come to the area.

SPEAKING IN OPPOSITION

Alan W. LaFreniere, 6 Tammy Circle, Nashua. Mr. LaFreniere said he is an abutter to the site. He said there are a few things he wanted to clear up.

He said the neighbors at 1116 West Hollis Street have no real right to sign a letter of agreement because the mortgage company foreclosed their house a few months ago, so the mortgage company owns that property.

He said when Mr. Slater first came to him to tell him about this proposal, it was to sell the second house. He said maybe that has changed - he didn't know.

He said he bought his house seven years ago because it has great privacy. He said he even came down to City Hall to check that there were no buildable adjacent lots next to the house. There were none. The proposed house would be built about 50' - 60' away from his driveway. He said one of his main concerns is the septic system. The City has a minimum lot size of 40,000 square feet for a reason. He said he is concerned that should a problem exist down the road with the septic system, there would not be enough of a buffer to his property to contain it, especially since it is uphill from his property. He said he is against a house being built on a non-conforming lot next to his property.

He said there is a neighbor from Tammy Circle with him who is not an abutter, but he would also like to see the land stay as it is.

Mr. Duffy asked Mr. LaFreniere the age of his home.

Mr. LaFreniere said his house was built in 1960.

Mr. Duffy asked if he was on sewer.

Mr. LaFreniere said he has a septic system, which he had to replace when he bought the house because the old system failed and a bunch of his neighbors on Tammy Circle had failed septic systems as well.

Mr. Duffy asked where the work was done.

Mr. LaFreniere said the septic system is on the side of the house. When you are looking at the house it would be on the left.

Mr. Duffy asked if Mr. LaFreniere has City water and he said he did.

Mr. Duffy asked Mr. LaFreniere if he had any expert testimony from a realtor or appraiser concerning the value of the surrounding parcels.

Mr. LaFreniere said he did not - that it was just he.

Mr. Tremblay asked what was going to be 60' from him driveway.

Mr. LaFreniere said the house itself. He said his driveway is right at the very end of Tammy Circle. He owns 18' out from his driveway. He said it can't be more than 35' up to where the foundation of the house will be.

Dephis Caron, 4 Tammy Circle. Mr. Caron said he has owned his property for the past twenty-eight years. He said he is concerned about the septic system. He is also concerned about how fire apparatus can get in there.

Mr. Duffy asked Mr. Caron if his septic system had failed.

No reply was heard.

Mr. Caron asked if there will be another home next to the proposed house in the future.

Mr. Duffy said this is something that will have to be answered by the applicant. Anything else would require another appearance before the Board.

Mr. Tremblay asked if septic systems have a "shelf life". He asked if they fail after so many years or if there is something unusual about Tammy Circle.

Mr. Caron said his system has failed a number of times.

SPEAKING IN FAVOR - OPPOSITION

Richard Maynard. Mr. Maynard said the proposed house will be set toward the front of the lot, similar to the existing house. He said the hill that is shown in the pictures is behind the house. These neighbors are unlikely to even see the house. The septic system will be down gradient towards the street. The depth of the lot is 342' and the house and everything else will be accommodated in the first 60' - 70'. They'll be over 250' away from 6 Tammy Circle.

He said all but one of the lots on Tammy Circle is 13,000 square feet in size. They date back to the 60s. The typical useful life of a septic system is assumed to be roughly twenty years plus or minus ten so every twenty years or so you might expect to replace your septic system.

He said there were no regulations in the 60s as far as septic systems are concerned - you built what you built. Over the years the regulations have been strengthened with regard to leach field size, tank size, etc.

He said he doesn't believe that water was in Gilson Road until the Gilson Superfund site came into being. There was no water in that area in the 60s and 70s.

SPEAKING IN OPPOSITION - REBUTTAL

Allen LaFreniere. Mr. LaFreniere acknowledged that the lot is going to be almost 300' long. He said the way his house is positioned to that lot, the lot is going to come from Hollis Street up along his side yard and halfway across his back yard. He said there can't be more than 50' - 75' from his driveway to Hollis Street. He said it's not going to be 250' away from him.

He asked where the leach field is going to go if the plan is to put a septic system in the front yard. There is no flat area for it. He said he is still concerned about the septic system. The only level part of 50' from his lot line to West Hollis Street, but if he's reading the map right it says 342'.

Mr. LaFreniere said the lot they are speaking of is kind of a cut-through for the whole neighborhood to go to the convenience store across the street. It's not that deep of a lot. At the most it might be 100', but it's not 250'.

Mr. Duffy asked the distance from the back of Mr. LaFreniere's house to the rear lot line.

Mr. LaFreniere said his house is set way back on his lot. He said he has a much larger front yard and side yard than a back yard. He said he might have about 25' from the back of his house to the lot line. He has an odd shaped lot (five sided).

Rules suspended in order to ask Mr. Maynard further questions to clarify some of the testimony.

Mr. Duffy asked Mr. Maynard if he would give an estimate of the distance from the back of 6 Tammy Circle to the lot line.

Mr. Maynard said it looks to him that there is about 20' from the back of the house at 6 Tammy Circle to the rear lot line; maybe 25'.

Mr. Duffy asked if he was talking about the corner.

Mr. Maynard said he was. He said from the back of the house it may be 30'.

Mr. Duffy asked Mr. Maynard if he could estimate the distance from the back corner of that house to where the proposed position on the lot is.

Mr. Maynard said there is a hill on the property. He pointed out the location to the Board. He said the leach field is in the front and that distance is over 250' away. He said the entire septic system, which is the tank and the leach field, is all towards the front - down gradient from the house on the hill.

Mr. Duffy asked where the house will be positioned.

Mr. Maynard said there is going to be approximately 60' from the street to the proposed house. Halfway between the house and the street is where the tank and the leach field are going to go. It's well over 250' away from Tammy Circle.

Mrs. Douglas said that what Mr. Maynard is saying is that because of the elevation there is no chance that it's going to slop over into the back yard.

Mr. Maynard said the hydraulic gradient is to the river.

Mr. Duffy said he understands that the house would be sitting inside all the setback requirements, but he wanted to know the distance from the back of the house and the back corner of Mr. LaFreniere's lot.

Mr. Maynard said they are going to be way in the front of their lot. They are 250' away.

Allen LaFreniere. Mr. LaFreniere presented a map that Mr. Slater first showed him when he approached him about building a house on the lot.

Mr. Duffy asked if that plan is labeled with a "C".

Mr. LaFreniere said it says "D". He pointed out the location of his property and the approximate location of his driveway.

Mr. Duffy invited Mr. LaFreniere up to the Board's area and they went over the map that he had in his possession. There was a remark by Mr. Duffy that there is no error in the map that was presented to the Board this evening. Because there may be some issue with the scale, it may not be exact, but there are estimates on the record.

Mrs. Douglas said if the septic system goes in the front she didn't have as much of a problem with it as she did when she thought the septic system was going to go in the rear.

Mr. Trembaly said he agreed with Mrs. Douglas. With the septic system in the front of the house he can't believe it would have any affect on Tammy Drive because of the topography.

He said given that this is an engineering project for some students he has to believe that they are going to keep this up to spec and take care to do their best due to the experimental nature of the effort. He said he's not really that hung up on the septic system and its workability. He's struggling more with the non-conformity of the lot and the affect it has on the neighborhood.

Mr. Anderson said he is having a hard time with the hardship being that the lot isn't big enough to divide in a conventional way.

Mr. Duffy said he thought there are other lots in this area that might meet the ordinance test and he didn't see this piece of property any differently. He said the character of the neighborhood is that some pre-date zoning and some that pre-date the last ordinance. There are some significantly sized lots. They are asking to take one conforming lot and creating one conforming and one non-conforming lot.

Mr. Tremblay said in the more congested neighborhoods they have okayed these kinds of divisions. This is a rural environment and it wouldn't have any impacts on anything.

Mr. Anderson said in those instances where they had requests for lots that were slightly less than what was required there were several that were almost identical that had pre-dated zoning or had already been approved. Because of so many around the proposed lot, it became reasonable because of what was in the surrounding area. He said the proposal under discussion is different. They are talking about a septic system where the ordinance requires a larger square footage in lot size. Whether it's arbitrary or not, the Board didn't set that square footage.

Mr. Tremblay said he's trying to understand the distinction between flag lots in a more congested area versus this lot. He asked if the issue is the septic system.

Mr. Duffy said he is looking at the essential character of the neighborhood and the look of the neighborhood and whether it is more rural. He said it isn't just the lot size or other dimensional requirements - it's the combination of all the components of the ordinance.

MOTION by Mr. Duffy to deny the request for the variances 1) minimum lot area, 40,000 square feet required for a proposed lot to be serviced by an individual sewage disposal system - 34,107 square feet proposed; and 2) minimum lot width, 130 feet required, 101 feet proposed - both requests to subdivide one lot into two lots at 1128 West Hollis Street. The applicant has reasonable use of his property in a single-family home, which is an allowed use in this zone. It's a conforming lot. There are no special conditions that this property is different than other properties in this neighborhood.

SECONDED by Mr. Anderson.

MOTION CARRIED 3-1, Mrs. Douglas opposed.

- 4. Argiroula & Nicholas Grillakis (Owners) 22 Bridge Street (Sheet 38 Lot 17) requesting use variance to allow automotive sales along with an existing automotive service & repair station. LB Zone.**

Atty. Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier said this property is on Bridge Street, Warren Street, and VanBuren Street. He said most of the members had seen this building many times. He said it's a repair shop that's been there forever. He said they are seeking a variance to be able to sell automobiles within the fenced in area, keep the repair aspect of the garage, but reduce the repair area to only be for the automobiles they are going to sell.

He said the property will be used closely to what it is presently being used for. The repair aspect will be cut down substantially. They feel this will have less disturbance, if any, in the area.

Atty. Prunier said there are no exterior changes being proposed. The only change is the marquee for the parking that is required.

Atty. Prunier said this is a reasonable re-use of the property. There will be no changes that would affect the neighborhood in any way.

He said this property has been in the same configuration with maybe a little bit of work on the exterior of the building for more than forty years.

He said the use would be almost indistinguishable from what they now have.

He said there are many zones in this particular area. He pointed out that BAE, the gas company, some little retail stores in the area.

Mrs. Douglas asked if there were any plans for long-term storage or junk vehicles.

Atty. Prunier said "no". It is for used automobiles.

Mr. Anderson said the application reads like they are adding automobile sales to a repair shop. He asked if the applicant would be amenable to a stipulation that says they wouldn't work on cars that they didn't intend to sell on the lot.

Atty. Prunier said that is their intent. The repair work will be limited to the automobiles that are being sold.

Mr. Tremblay said it was unclear to him whether it was a repair shop that sold cars or selling cars that they would service. He asked if they would service the cars for their clients.

Atty. Prunier said what they are finding is that on a lot of the small repair shops, because of the complexity of the repairs, the mechanics that are getting the training are the ones that are working for the franchisers or a bigger repair shop that can send someone out. The smaller ones are going by the wayside. A stipulation to the effect that the repairs be done only on the automobiles that they will sell is fine with them. There will be no storage of junk vehicles.

Mr. Duffy asked about the on-street parking.

Atty. Prunier said there is on-street parking on the side streets, but none on Bridge Street.

Mr. Duffy asked about lighting and signage. He said he assumed that there were no major changes.

Atty. Prunier said the sign will remain the same, except they will change the name. The lighting will stay the same.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

Ray Roberts, 12 Bell Street, Nashua, NH. Mr. Roberts said he is the property manager for Linbar Property Management, which owns and manages the following properties in this immediate area:

- 3-12 Warren Street, which is everything on Warren Street, except for a single-family house (17 Warren Street)

He said they have a total of 5 buildings/17 apartments on that street. They abut the back of the property requesting the variance. He said Warren Street is a small dead-end street with limited space. Anyone turning around on the street has to pull into one of his or her private parking lots to do so.

- 36 Bridge Street

He said this is an eight-unit rental building on the corner of Jackson Street.

- 1-4 Jackson Street

He said this is a four-unit apartment rental building.

He said they are well established in the immediate area around 22 Bridge Street with twenty-nine residential units.

He said some of their concerns are pedestrian traffic and safety. He said people park along the Warren Street side of 22 Bridge Street up over the curb beside the building. They don't leave enough space on the sidewalk for pedestrians or tenants to get through to Bridge Street. They have to walk around the vehicles and go in the middle of Warren Street. This is a safety concern because anybody coming off of Bridge Street onto Warren Street could possibly hit a pedestrian.

He said historically there is only two-car customer parking directly in front of 22 Bridge Street. That parking is on the front left corner of the property. More times than not during business hours the sidewalk area is blocked by customers parking. The sidewalk area he was talking about was on Bridge Street. There is a sidewalk along the fence and it's paved out to Bridge Street. A lot of times it's blocked by customer parking, tow trucks or parts suppliers, which forces pedestrians around these vehicles into Bridge Street, which is a heavily traveled road.

Mr. Roberts said this area in Nashua is extremely heavy in vehicle and pedestrian traffic. There have been several accidents in recent years with cars hitting bicyclists and pedestrians. Vehicles tend to speed up coming into Nashua on Bridge Street after the railroad tracks to beat the traffic light at Amory Bridge and Canal Street.

He said a couple of years ago one of their tenant's children was hit crossing the street from Bridge Street going to the City park. They were coming down Warren Street. The City park is right across the street from the site. There was a lot of traffic in front of Accurate Collision Center at the time and no one saw the child. He was hit crossing the street. He said the City reacted and painted the sidewalk across from Warren Street to the City park with a sign that said to stop for pedestrians. He said that went away the following year when Bridge Street was re-paved and no one followed through on the crosswalk.

He said there are several businesses across the street and the City park, but the only crosswalk is down at the lights at Amory, Bridge, & Canal. Pedestrians are going to continue to cross where they want to and take their chances. They don't want to increase more blind spots by adding more traffic.

He said with increased vehicle traffic, where are the customers going to park. There are only two spaces in the front so they are going to park on Warren Street or VanBuren Street and turn around in the private lots.

He said the hours of operation are also a concern. It is going to be for used car sales. Typically people buy cars in the evening or on weekends, whether they are used or new. At the present time the business operates 8:00AM - 5:00PM Monday through Friday. This proposed business will have expanded hours, which will expand traffic, etc. in the neighborhood.

Mr. Tremblay said he recognized that Bridge Street is a congested area. He asked what the difference is between what's there now and what is being proposed.

Mr. Roberts said he thinks the proposed business will be worse. There are only two customer spaces out front and those, over the years, have been for estimates. Traffic spills over to Warren Street, VanBuren Street or people park on the opposite side of Bridge Street where they are allowed to park. This is going to increase because now people are there to see the used cars. He said he thought the increased traffic would be noticeable because people aren't just dropping their car off at 8:00AM and then picking it up at 5:00PM. It's people coming and going to view or test-drive or look at used cars.

Mr. Duffy asked how Warren Street and VanBuren Street are posted. He asked if there was parking only on one side of the street.

Mr. Roberts said parking is only allowed on the right side of these streets, including Jackson. If someone is parked on the street, you can't get two cars to pass each other in the street - only one car can go at a time.

Mr. Duffy said there's only a certain amount of space on the lot, whether there are six cars sitting there needing repair or six cars on the lot that are for sale.

Mr. Roberts said when vehicles come in for repair they go into the fenced in area. They are not sitting in front of the property. This is the same lot that the used cars are going to be sitting. Now people drop off their car and leave. Now they are talking about more traffic coming in to the site with a lot more vehicle traffic on the streets. They are going to park on the streets. The repairs go straight into the lot or straight into the bays. Now they are talking about more people coming to test drive and look at and buy used cars.

SPEAKING IN FAVOR - REBUTTAL

Atty. Prunier said they have provided five parking spaces on the site. They are not there at the present time. There will still be the two in the front so there is a total of seven spaces.

He said he has been told that some of the tenants living in the area and some of their visitors are the ones who use the parking. He said it may be that the prior business owner had problems - he didn't know and his clients don't know.

He said there will be less traffic involved than there was previously. By providing additional parking they will be pulling their customers off the street.

Mrs. Douglas asked the hours of operation.

Atty. Prunier said from 8:00AM - 9:00PM Monday through Friday, 8:00AM - 5:00PM on Saturday and on Sunday from Noon - 5:00PM.

Mr. Tremblay said if the repair service is only for the cars to be sold he didn't imagine there would be a lot of traffic in and out of the service bays.

Atty. Prunier said this is correct.

Mr. Tremblay asked why they couldn't put a couple of parking spaces in front of a couple of those. He said the customers won't be parked there all day if they are shopping for a car.

Atty. Prunier said they could do this, but they are trying to keep that area open. If they did park in front of one, it wouldn't interfere with the business because they aren't pulling cars in and out of the bays. They would like to have customers pull into the areas they are providing.

Mr. Tremblay asked how many automobiles would be on the lot for sale.

Atty. Prunier said they will have about fifteen.

Mr. Tremblay confirmed that there would be fifteen cars for sale and seven parking spaces.

Atty. Prunier said they have the front open, but they don't want to mark it for parking spaces. They will not use it for display.

SPEAKING IN OPPOSITION - REBUTTAL

Roy Roberts. Mr. Roberts said he knows that there are two spots for parking in the front right now. Part of the problem with having the parking there is the pedestrians on the sidewalk. He said it is human nature that when you're pulling up to a building, you're not going to pull up that close. There's 12' - 13' from the front of the building to the road. People generally like to leave 4' or 5'. That leaves the end of the car on the pavement on Bridge Street. The pedestrian has to walk around it into Bridge Street and get hit.

He said as far as five parking spaces inside this lot, it didn't seem feasible to him economically to have five vacant spaces waiting for customers with only fifteen vehicles to sell. He said he didn't buy it.

Mr. Duffy said he looked at other places that were comparable. Some people parked up in front of the bays, even when there were repairs. He said this appears to him as a better use.

Mr. Tremblay said he agreed. He said he didn't see any difference in terms of the impact on the neighborhood. He said it may even be less of an impact because the traffic will be more spread out.

Mr. Anderson said he can't imagine a car lot that has 15 - 18 cars on it having more than four or five customers at a time. He said he thought for this size operation, provided they follow the stipulations, it's a reasonable use.

Mrs. Douglas said she didn't have a problem with the request. She said she thought with the additional on-site parking would be an improvement.

Mr. Duffy said he thought the applicant was trying to consider the local abutters for lighting and signage. He said even if this were all car sales he didn't think there would be a lot of people going through the area to pull over. He said this isn't a big piece of property to put a lot of cars on.

MOTION by Mr. Anderson to grant use variance to allow automotive sales along with existing automotive service and repair station at 22 Bridge Street. The zoning restriction as applied interferes with the landowner's reasonable use of the property considering the unique setting of the property and its environment in a mixed-use zone. No fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction on the property. The variance will not interfere with the public or private rights of others, given the additional parking spaces and the conditions that will be placed on it. It is within the spirit and intent of the ordinance. There has been no testimony as to whether it will affect the property values of surrounding parcels. It is not contrary to the public interest.

Substantial justice will be served. Special Conditions: Only repairs of cars to be sold on the lot will be undertaken in the repair shop and no junk cars will be stored on the property.

SECONDED by Mr. Tremblay.

Mr. Duffy said since this is a change of use it will go before the Planning Board

MOTION CARRIED UNANIMOUSLY

Request for Rehearing

None

MINUTES

3/14/06

MOTION by Mr. Duffy to approve the minutes of the March 14, 2006 meeting, waive the reading and place them on file.

SECONDED by Mr. Tremblay.

MOTION CARRIED UNANIMOUSLY

Regional Impact

None of the members saw any issues of regional impact on the upcoming agenda.

Mrs. Douglas asked if they could ask that all the highway projects could be presented together so that they don't have to hear the same thing over and over again. She said they can briefly describe each of the projects and cover the criteria once for everything.

Mr. Falk said it is all for the same reason. He said he would try to find out who was going to make the presentation so they know to present the cases in this manner.

Other

Mr. Duffy said a new Zoning Board member, Bob Shaw, has been appointed tonight.

ADJOURNMENT

Mr. Duffy called the meeting closed at 8:35PM

Susan Douglas
Clerk

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Taped Meeting