

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
April 11, 2006

A public hearing of the Zoning Board of Adjustment was held on Tuesday, April 11, 2006 at 6:30PM in the Auditorium at City Hall.

Sean Duffy conducted the hearing.

Members present were: Sean Duffy, Vice Chair  
Norm Tremblay  
Robert Shaw

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:

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- (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 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.

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

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

He said three affirmative votes are needed for granting a variance or special exception. There are only three members present tonight. Since there are only three members the applicants will need all three votes to approve the application. Mr. Duffy said if anyone does not want to be heard tonight because there are only three members present they should advise the Board so that the case can be re-scheduled. If there is one of the three dissented, it would mean the case was not approved.

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

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

**Postponed to 4/25/06**

4. **Paul E. & Karen Kerouac & Nashua Four, LLC (Owners) 605, 607, 611 & 613½ Amherst Street (Sheet H Lots 104, 105, 123 & 152) requesting variance to encroach into the 150-foot water supply protection district to allow parking spaces and asphalt. GB Zone.**

**Withdrawn**

8. Green Ridge Ventures, Inc. (Owner) City of Nashua, Division of Public Works (Applicant) 235 Daniel Webster Highway (Sheet A Lot 211) requesting the following two variances: 1) minimum open space, 20% required, 20.8% existing - 18.1% proposed; and 2) to allow an existing nonconforming ground sign to encroach an additional 9.7 feet into the 20 foot setback, 15 feet existing - due to acquisition of additional right-of-way for roadway and traffic signal improvements. HB Zone.

Postponed to 5/9/06

14. Thomas L. Jenkins Jr. & Andrea J. Harding (Owners) Ferson-Lake, LLC (Applicant) William & Diane Urquhart (Appellants) 333 Lake Street & 3 Ferson Drive (Sheet 88 Lots 7 & 27) appealing the decision of the administrative officer that an elderly housing use in multi-family dwelling is a permitted use. RA Zone.

Postponed to 4/25/06

15. 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.

Mr. Duffy asked anyone who wished to postpone due to the lack of a full Board to come forward. No one did so.

He said that Cases #6, #7, #9, #10, #11, #12, & #13 as one presentation. They generally deal with the same development process and the same project.

1. Marvin Fry (Owner) 50 Cox Street (Sheet 137A Lot 5) requesting variance to encroach 1 foot into the 10 foot right side yard setback to construct a 12'x20' carport. RA Zone.

Marvin Fry, 50 Cox Street. Mr. Fry said he wishes to construct a carport on the side of his house. The carport is

approximately 12' wide and will encroach into the side setback by approximately 1'.

He said he did not feel that this would constitute a substantial or significant impediment to any of his neighbors. He said it is not radically at odds in any way with the intended use of the property.

He said he is making this request because he wishes to avoid parking his car on the street. The driveway in front of his existing garage provides space for a car, but it's a sloped driveway and it slopes into the street. He said he feels this presents somewhat of a safety problem as well as being inconvenient.

Mr. Fry said he did not believe this will significantly diminish the property values of his adjoining neighbors.

Mr. Duffy asked Mr. Fry if he had talked with his direct abutters to the left and right and to the neighbor across the street.

Mr. Fray said he has talked to his immediately adjacent neighbor. He said he has not addressed this particular issue with his other neighbors because he didn't get around to it and also because he didn't think it would be an issue.

Mr. Duffy asked if Mr. Fry spoke to the neighbor at #52.

Mr. Fry said he had and he said they were present at the meeting.

Mr. Duffy asked Mr. Fry how long he has lived at this address.

Mr. Fry said approximately 18 months.

Mr. Duffy asked if this is going to be on a slab.

Mr. Fry said it will have a concrete foundation - the same as if it were going to be an addition to the house. The surface of the carport will either be poured concrete or paved to match the driveway. The reason for the concrete foundation is because the land is sloped and will have to be filled in slightly to provide a level surface. He provided a picture showing this to the Board.

Mr. Duffy asked if the carport is going to be fully enclosed.

Mr. Fry said "no". He said it will have a roof and supporting posts. There will be no storage above.

Mr. Tremblay asked if the driveway was going to be re-finished. He said he noticed that there was dirt poured there and that a car was parked on it.

Mr. Fry said it will all be blended in. He said the access from the street will continue to be a single driveway wide. He will spread it out to gain access to the proposed carport addition. He said he would use some interlocking landscaping blocks to retain the sloped area.

**SPEAKING IN FAVOR**

No One.

**SPEAKING IN OPPOSITION**

No One.

**MOTION** by Mr. Duffy to grant the variance to encroach 1' into the 10' right side yard setback to construct a 12'X20' carport at 50 Cox Street. The area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property - the slope and topography of the land. It is reasonable for the applicant to put in a reasonable and less intrusive structure of a carport instead of a garage. There are other different structures and accessory uses in the district and in the neighborhood. It is within the spirit and intent of the ordinance that the applicant have development use of the property. It should not adversely affect the property values of surrounding parcels. It is not contrary to the public interest. Substantial justice will be served. This is a minimal request of 1' into a 10' setback area.

**SECONDED** by Mr. Tremblay.

**MOTION CARRIED UNANIMOUSLY**

2. **Manuel J. & Sally A. Raposa (Owners) 6 Countryside Drive (Sheet D Lot 189) requesting variance to encroach 11 feet into the 25 foot required front yard setback to construct a**

**6'x32' farmers porch on a nonconforming structure. R30 Zone.**

Manny Raposa, 6 Countryside Drive. Mr. Raposa said this is a project that they have been thinking about doing for four or five years. He said they have a landing in front of the house that would be removed. A farmer's porch will be constructed and will be handicapped accessible.

He said he has talked to all of the abutters and all the neighbors. He said everyone agreed that there was no problem.

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

Mr. Raposa said since 1983.

Mr. Duffy asked Mr. Raposa to comment on other structures in the area.

Mr. Raposa said most of the homes are capes and ranches. He said there are some large houses down the street that do have farmer's porches.

Mr. Duffy commented that this is on a corner lot. He asked if this is only one story.

Mr. Raposa said it's one story.

**SPEAKING IN FAVOR**

No One.

**SPEAKING IN OPPOSITION**

No One.

The Board discussed this request. None saw any problem with it.

**MOTION** by Mr. Tremblay to grant the request for a variance to encroach 11' into the 25' front yard setback to construct a 6'X32' farmer's porch at 6 Countryside Drive. The area 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 any other method reasonably other than the 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.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY**

3. **Lloyd H. & Shameeka Lorraine (Owners) 4 Tenth Street (Sheet 87 Lot 273) requesting special exception for a major home occupation for a business providing personal care to elderly and handicapped persons. RB Zone.**

Shameeka Lorraine, 4 Tenth Street. Mrs. Lorraine introduced Deanna Williams who lives at 6 Tenth Street.

Mrs. Lorraine said the services that she and Mrs. Williams want to provide are not going to be done in her home. She said they will be going to the clients' homes. There would be no additional traffic to her property. There will be no construction.

She said she has a computer desk and a computer off of her kitchen area and her telephone. She said she was told they would need to file for a major home occupation because Mrs. Williams is a non-relative.

Mr. Duffy said there will be one employee.

Mr. Duffy asked Mrs. Lorraine how long she has lived in her home.

Mrs. Lorraine said six years.

Mr. Duffy asked how long Mrs. Lorraine has been operating this service.

Mrs. Lorraine said she was a CNA, but that was when she worked at the hospital. She has never run a business from her home.

Mr. Duffy asked if this was going to create any undue traffic congestion or pedestrian safety.

Mrs. Lorraine said there wouldn't be anyone working with them at the moment. They don't envision anyone coming to the house. They will be mailing out checks. She said they have had their

Alderman put up "no parking" signs from in front of her house all the way around the corner so there wouldn't be anyone coming at any time to park.

Mr. Duffy asked if this will overload any public water, drainage or sewer or impair the integrity or be out of character with the neighborhood.

Mrs. Lorraine said she does not. She said they are not going to have any services provided in her home.

Mr. Duffy asked if Mrs. Lorraine had talked to any of her abutters or neighbors.

Mrs. Lorraine said she had not. She said one of her neighbors is present in the audience tonight and her neighbor to the right is her partner (in the business).

Mr. Duffy asked Mrs. Lorraine if she is aware of the major home occupation criteria.

Mrs. Lorraine said "yes".

Mr. Duffy asked if there is no more than one non-resident employee.

Mrs. Lorraine said "yes".

Mr. Duffy asked the size of the area that is going to be used for the office.

Mrs. Lorraine said she believes she drew a plan. Mrs. Williams said 8'X4'.

Mr. Duffy asked if Mrs. Lorraine is going to change the inside or outside of the residential character of the house.

Mrs. Lorraine said "no" - it's still going to remain her residence.

Mr. Duffy asked if there was going to be anything stored or displayed outside in connection with the business.

Mrs. Lorraine said "no".

Mr. Duffy asked if the business is going to create any noise, dust, vibration, odor or smoke.

Could not hear a reply.

Mr. Duffy asked if they are going to sell any goods from the premises.

Mrs. Lorraine said "no".

Mr. Duffy said that any sign is limited to two square feet. He asked Mrs. Lorraine if she is aware of this.

Mrs. Lorraine said "yes".

Mr. Duffy asked if Mrs. Lorraine is aware that she can have only one commercial vehicle.

Mrs. Lorraine said "yes".

Mrs. Lorraine submitted a list of the services that they will be providing.

**SPEAKING IN FAVOR**

No One.

**SPEAKING IN OPPOSITION**

No One.

Mr. Tremblay said there is no issue with him. He said they probably wouldn't even know if she was doing this.

Mr. Shaw said he had no issue with the request. He said it's clear that they are only using the house for office work.

**MOTION** by Mr. Duffy to grant the special exception for a major home occupation for a business providing personal care for the elderly and handicapped persons for the address at 4 Tenth Street. The use is listed in the Table of Uses 16-92(b). It should not create undue traffic congestion or unduly impair pedestrian safety. There will be one car or vehicle moving in or out of the property. It should not overload public water, drainage, sewer or other municipal systems. The work and services will be provided off site and away from this location.

It will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of the residents. All the major home criteria are met.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY**

5. Wendell B. & Doris M. Harmon (Owners) 12 Ferry Road (Sheet G Lot 109) requesting the following variances: 1) to encroach 33.5 feet into the 40 foot required rear yard setback; and 2) to exceed maximum driveway width, 24 feet allowed, 33 feet requested - both requests to construct a 27'x32' two story addition with a 6'x20.5' deck and an additional 14 foot wide driveway on a nonconforming lot. R18 Zone.

Wendell Harmon, 12 Ferry Road. Mr. Harmon said he has lived in his home for 23 years. He said the proposed addition is for a garage and a kitchen. He said the property slopes down in the rear so it will be 1-½ stories, not to exceed 26'.

He said most of the other properties in the area have garages and there are other properties in the area that have encroached into the setbacks over the years - to a greater extent than what he is requesting.

He said he is located on a corner lot. The existing building and pool that were on the lot when he purchased it actually encroach into the setbacks. He said they have been planning and re-drawing this plan for about ten years and talking to the City about what they can and can't do and have finally come up with the plan that has been presented.

He said they have spoken to all of their abutters and received no objections. He said the project will enhance the neighborhood. Most of the other properties in the neighborhood have garages. Mr. Harmon said his son parks his car and he (Mr. Harmon) parks his truck in this area now. He said they would enhance the area by paving it.

He said they feel that it would be substantial justice to be able to proceed with this project and get the type of home that they've been looking for the last ten years and be able to stay in the neighborhood and have a garage to park their vehicles.

Mr. Tremblay said there's a proposed driveway on Greenfield Street. He asked if that is where the garage is going to be and the deck is above the garage.

Mr. Harmon said this is correct.

Mr. Duffy asked the size of the existing house.

Mr. Harmon said it's 44'X28'. He said it's a ranch with four bedrooms and then a large room that is a living room/ dining room/kitchen area and one bath.

Mr. Duffy said when he looks at non-conforming lots and the neighborhoods, this request seemed significant in size. He said this more than doubles the living space.

Mr. Harmon said he has 1232 square feet in the existing house and the proposal adds 945 square feet.

Mr. Duffy said this is going two stories. He said they are looking at an area variance and the reasonableness of the request. He said they have a single-family home use. This request expands the non-conformity to the other houses in the area. He said he saw some smaller houses and a couple of larger ones.

Mr. Harmon said there are quite a few larger homes. On the house next to him on Greenfield there is a huge garage - probably 35' long. He said it is within 5' of the property line. He said on Bloomingdale there are a couple of very large homes that were remodeled recently that encroach within 10' of the property line, and in one case is probably 35' high.

Mr. Duffy asked Mr. Harmon to speak about the size of the driveway - 33' versus 24'.

Mr. Harmon said the existing driveway is 19' wide and is in front of the house. It sits 1-½ cars and that is why they are parking out back. He said the proposed driveway is 14' wide. The 19' wide existing driveway and the 14' proposed driveway gives the 33' total.

Mrs. Duffy said that Mr. Harmon has a lot of uses on this property compared to other houses that don't have as many uses in the area. He said there's an essential character of a neighborhood that he tries to look for.

Mr. Harmon said there's at least fifteen swimming pools and there's only two or three homes without a garage.

Mr. Duffy said these had a lot more land to work with than Mr. Harmon does. He asked what is special about this property that makes it so different from the others.

Mr. Harmon said he didn't think this makes his property generally different than the other properties in the neighborhood. There is a two stall garage directly across the street. There is a two-car garage under also across the street. There is a pool and a huge garage directly behind his house. He said they are remodeling the house across the street. He said he believes this proposed change would enhance the property and enhance the values of the neighbor's homes. It doesn't create any alleys. It doesn't create any darkness or shade on anybody's property. It doesn't create any ill for anyone in the neighborhood.

Mr. Tremblay asked if the swimming pool was on the lot when he purchased it.

Mr. Harmon said "yes".

Mr. Tremblay asked about the driveway situation. He asked if the 24' can be cut up so that they can have two 12' driveways, or one 10' and one 14' or any other combination that totals 24' or if this lot would be entitled to more because it's on a corner.

Mr. Falk said they are entitled to a 24' wide curb cut for a single-family premises. It doesn't matter how it is cut up, i.e., two 12' driveways or a 10' and a 14', for example. In this case they have a 19' driveway and are proposing an additional 14' driveway so this would exceed the 24' rule. He said it is not uncommon to have two driveways on a corner lot as long as each driveway is 50' or more from intersecting right-of-ways. The existing driveway looks like it might be a little closer, but it's grandfathered. The proposed driveway is more than 50' away from the intersecting right-of-ways. He said the width of driveways is measured at the curb cut. After you go past the front yard setback, the driveway can fan out and go a little wider.

Mr. Tremblay asked Mr. Harmon if he is going to be 7 ½' from the lot line to the new structure.

Mr. Harmon said this is correct.

Mr. Tremblay asked how far it is the other side to the other structure.

Mr. Harmon said probably 20' - 25'. He said the proposed addition is set back from the side of that house. It's probably 15' back from the back of their house.

Mr. Duffy said according to his drawings this is going to be a solid wall.

Mr. Harmon said they've had many discussions about what to do there and what was appropriate for the neighbors and what was appropriate for them. He said they thought the appropriate thing would be to put in a solid wall so the neighbor would have privacy.

Mr. Duffy said he's having a problem with going 33.5' into a 40' setback. He said this is pretty significant. He asked if there was any way to come back 10'-15'.

Mr. Harmon said originally they were going to put on a two-stall garage that attached to the house. The problem with that is that the means of egress from the basement is on the back wall. Then he would have a means of egress that opens into a garage that's at a lower level than the garage.

Mr. Duffy asked which was the back of his house on the drawings.

Mr. Harmon pointed out the back of his house and the front door. He also showed the location of the cellar door. He said in order to attach the garage to the house he has to have a break for the barrier for carbon monoxide from the garage going down into the basement. He said they talked about building the kitchen and then putting the two-stall garage after building the spot for the kitchen. He said that would put them into the neighbor's yard. Then they talked about building the kitchen and the bathroom and then put a downsized garage (19') instead of 24' and put a stairway up to the room.

Mr. Duffy said the garage is 27' deep aiming towards the back of the house.

Mr. Harmon said it's 27' deep - demonstrating on the drawing. He said there's a 12' kitchen and a 19' garage.

Mr. Duffy said that Mr. Harmon is going from the back of his current home into the setback area some 32'.

Mr. Tremblay said Mr. Harmon is going 32' out and the garage from Greenfield Street is 27'.

Mr. Harmon said this is correct. He said he is in the setback on both property lines.

Mr. Duffy said when he looks at this it is a pretty significantly sized two-story. He said he didn't see anything special on the property that merits two major sections this long. He said there is the garage, which is 27' deep. This is a long and deep garage for one car. It's also a pretty wide garage. There's also a new kitchen and a new foyer. He said he is looking for a little bit more space in the buffer zone. He said he didn't see anything special that says 33' into the zone versus 15' into the zone.

Mr. Harmon said 15' doesn't allow him a garage. It wouldn't allow a kitchen and it wouldn't allow him to enhance the property as any one of the neighbors would have. He said his house has no garage. He said he is on a small lot and he understands that.

Mr. said the existing house does not meet the zoning setback requirements. It's 39' from the back wall from the neighbor's yard on one side and it's 17' from the neighbor on the other side.

Mr. Duffy said usually in this kind of an area is where an accessory use such as a shed might be located, not a two-story significantly sized structure.

Mr. Harmon said when you look at the plot plan you can see that the addition is in the corner of the lot and really doesn't infringe on the neighborhood.

Mr. Tremblay asked what year the house was built.

Mr. Harmon said 1963, although it might have been 1968.

Mr. Tremblay asked if it was built before zoning was in place.

Mr. Harmon said he thought the zoning was different there.

Mr. Duffy said he thinks the lot size is non-conforming. The back of the current house doesn't go into the setback area.

Mr. Harmon said it did - about  $\frac{1}{2}$  foot.

Mr. Duffy said this is the buffer zone and Mr. Harmon is asking to go into the setback 30' or so. He said he is trying to elicit special conditions of the property.

Mr. Harmon said the size of the lot and the fact that it's on a corner and the change in the zoning ordinances over the last 10 or 15 years are special conditions. He said at one point his neighbor got a permit and built a house 6' off the property line. That is the house directly next door to his.

Mr. Duffy said this is the house/garage at 3 Greenfield and Mr. Harmon agreed.

Mr. Duffy asked if that was a two-story house.

Mr. Harmon said it's a cape. He said the garage is one story and very long. The house at the corner is a very large cape and from the back it's three stories.

Mr. Shaw asked if any consideration had been given to removing the existing driveway once the proposed driveway was in place as a way to rectify or not require a variance for the issue of the driveways.

He also asked if there were any options or evaluation done for the structure such that it wouldn't necessarily have to go quite as close to the rear property line so the 7  $\frac{1}{2}$ ' could be 15' or something where the addition would run more the greater length of the existing home.

Mr. Harmon said they had thought about that. It goes to the garage being abutted against the current dwelling and the problems with the automobile fumes going into the basement, which is at a lower level. The use they are looking for the property didn't lend itself to taking this plan and moving it back another 15'. They'd have a 19' garage that you really couldn't get into because of the slope of the property. He said as far as the front driveway is concerned, they hadn't thought about that at all because he was under the impression that a variance for the 33' was out of courtesy, not out of a

requirement. He said if he is mistaken about that, he is sure that this could be revisited.

Mr. Duffy asked Mr. Harmon is there was any way he would be amenable to reduce the 33' intrusion into the rear yard setback by about 13' - 15'. He asked if it would be something he would be able to work in the plan.

Mr. Harmon said if this plan were modified to make it smaller, he probably would not go ahead with it at all.

Mr. Duffy asked if this should be tabled.

Mr. Falk said that if the Board tables it, it's going to be the same request. He said if the Board has any questions, he suggested that they ask the applicant while they are here tonight. They may want to totally redesign it.

Mr. Harmon said he thought it would be substantial justice for the Board to grant the variance he has requested. When you look at the properties in the neighborhood and the new properties that are going up down the street, some of those places are huge. If you go down Ferry Road some of the new homes are probably 2500 - 3000 square feet and they all have two-stall garages and are 2 ½ stories high. He said he doesn't see that what he is asking for is outside the neighborhood. He said the neighborhood is changing rapidly in this area.

Mr. Duffy said he understands the sizes, but most of them have the perimeter buffer area required in the ordinance.

**SPEAKING IN FAVOR**

No One.

**SPEAKING IN OPPOSITON**

No One.

Mr. Tremblay said he is uncertain about this request. He said one issue that he thinks poses a hardship is that the pool precludes the applicant from going alongside the house. It doesn't make any sense to bury the pool and relocate it. It may or may not allow the plan to exist. The only option the applicant has is to go this path. He said the plan is nice, but he's not comfortable with conceding the entire setback.

Mr. Shaw said he is also struggling. He said there's no doubt that the structure itself, as proposed, will have somewhat of a towering affect over the adjacent property. He said the neighbor at 3 Greenfield has not stated any objection to the request. The fact that there are no windows on that wall of the addition are positive.

He said he agrees that it appears that going anywhere with an addition on this structure that because of either the pool or the side or front setbacks that there's really no way to do anything without having some encroachment. He said he would have liked to have seen something that would have not gone so close to the rear yard setback.

Mr. Duffy said there is a significantly sized house and lot across the street.

Mr. Tremblay said the applicant's lot is problematic.

Mr. Duffy said the pool area is beautiful and if was there he wouldn't tear it up.

Mr. Tremblay said it constrains the options available. Also, effectively the driveway at Greenfield is there because they are parking cars there now. He is not concerned with formalizing the driveway.

**MOTION** by Mr. Duffy to grant a variance to encroach 25' into the rear yard setback instead of the 33' requested to construct a two-story addition and the driveway be reduced from 12' from the 14' requested at 12 Ferry Road. The variance is granted for applicant's proposed use of the property given the condition of the property. It's a corner lot with an existing very significant, aesthetically developed pool area and existing driveway to the front yard. It's in a neighborhood of several uses. However, there are areas in this district that have significant unused lot area. It's reasonably feasible for the applicant to pursue a reasonable amount incursion into a rear yard setback area. It is within the spirit and intent of the ordinance because the applicant has checked with his neighbors and they understand this incursion. It should not adversely affect the property values of surrounding parcels, although there was no expert testimony. Considering the essential character of the neighborhood, this is a reasonable area variance to grant. It is not contrary to the public interest. Substantial justice will be served as the applicant has a

reasonable use in an area that has different sized lots of different uses.

**SECONDED** by Mr. Shaw.

Mr. Tremblay asked Mr. Duffy if he said the encroachment would be 25'.

Mr. Duffy said that is correct. It gives a little over 15' of an area. He said there are going to be accessory uses such as sheds. He is also looking at the safety issue.

Mr. Tremblay asked about the deck - 6'X20 ½' might be high. He said he doesn't know if there's a relationship between that length and the 14' driveway.

Discussion ensued and the Board looked at the plans.

**AMENDED MOTION** by Mr. Duffy stating that they would need to reduce the 20.5' section by 8'.

**SECONDED** by Mr. Shaw.

**AMENDED MOTION CARRIED UNANIMOUSLY**

**MOTION CARRIED UNANIMOUSLY**

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The following cases were taken together:

6. Hausberger Associates (Owner) City of Nashua, Division of Public Works (Applicant) 314 Daniel Webster Highway (Sheet A Lot 532) requesting variance to allow an existing nonconforming ground sign to encroach an additional 3 feet into the 20 foot required setback, 9 feet existing - due to acquisition of additional right-of-way for sidewalk improvements. HB Zone.
7. Toys R' Us, Inc. (Owner) City of Nashua, Division of Public Works (Applicant) 270-272 Daniel Webster Highway (Sheet A Lot 127) requesting variance to allow an existing ground sign to encroach an additional 10 feet into the 20 foot required setback, 16 feet existing - due to acquisition of additional right-of-way for roadway and traffic signal improvements. HB Zone.

9. GEM Realty, Inc. (Owner) City of Nashua, Division of Public Works (Applicant) 8 Spit Brook Road (Sheet A Lot 259) requesting the following two variances: 1) to encroach 7 feet into the 10 foot required front yard setback for existing parking; and 2) to allow an existing nonconforming ground sign to encroach an additional 7 feet into the 20 foot setback, 10 feet existing - due to acquisition of additional right-of-way for roadway and traffic signal improvements. GB/HB Zones.
10. Nashua H Group, LLC (Owner) City of Nashua, Division of Public Works (Applicant) 15 Spit Brook Road (Sheet A Lot 214) requesting the following two variances: 1) to encroach into 10 foot required front yard setback, 9 feet existing, 6 feet proposed; and 2) to allow an existing nonconforming ground sign to encroach an additional 2.6 feet into the 20 foot front yard setback, 6.4 feet existing - due to acquisition of additional right-of-way for roadway and traffic signal improvements. GB Zone.
11. GMC Group Limited Partnership (Owner) City of Nashua, Division of Public Works (Applicant) 19 Spit Brook Road (Sheet A Lot 227) requesting the following two variances: 1) to encroach into the 10 foot required front yard setback, 4.7 feet existing, 3 feet proposed; and 2) to allow an existing nonconforming ground sign to encroach an additional 1.7 feet into the 20 foot front yard setback, 8.7 feet existing - due to acquisition of additional right-of-way for roadway and traffic signal improvements. GB Zone.
12. Allisan Realty Corp. (Owner) City of Nashua, Division of Public Works (Applicant) 21 Spit Brook Road (Sheet A Lot 188) requesting variance to allow an existing nonconforming ground sign to encroach an additional 2.5 feet into the 10 foot front yard setback, 9 feet existing - due to acquisition of additional right-of-way for roadway and traffic signal improvements. RC Zone.
13. Rubin Nashua, LLC (Owner) City of Nashua, Division of Public Works (Applicant) 243 Daniel Webster Highway (Sheet A Lot 128) requesting variance to allow an existing nonconforming ground sign to encroach an additional 6 feet into the 20 foot front yard setback, 9.4 feet existing - due to acquisition of additional right-of-way for roadway and traffic signal improvements. GB Zone.

Ted Sears, Deputy Manager, Engineering Division, Public Works. He said the consultant for the project, Ed Gardner of Rizzo Associates was also present as well as Shannon McCanty.

Ed Gardner, Rizzo Associates. Mr. Gardner said the project is for the roadway and traffic signal improvements on Daniel Webster Highway and Spit Brook Road. It is about a one-mile project. About 4000 feet of it is on Daniel Webster Highway from the Massachusetts State Line going up past the Spit Brook Road intersection. There's another 700' or so going from Spit Brook Road to the west up past the 7-11 Store in that area.

He said the project primarily includes lane improvements on Spit Brook Road. It includes widening the median to a standard 6' width so it's more visible and a safer condition. It includes upgrades at three different locations - down at the Costco & Zimmerman's area intersection, also substantial improvements at the Spit Brook Road intersection and the intersection where Toys R Us plaza is located. There are also substantial sidewalk improvements - improvements to the sidewalk along the south side of Spit Brook Road and a new sidewalk along the north side of Spit Brook Road to connect the pedestrian areas down at Daniel Webster Highway and to the other end of Spit Brook Road.

He said there are seven different parcels that require variances - primarily for sign setbacks. In one case it's parking in a front setback. These, in almost all areas, are required where the existing sidewalk, in many cases, does not meet the current accessibility requirements. Also, in many cases the sidewalk is not entirely within the City's right-of-way today. He said under this proposed design any adverse conditions with respect to accessibility will be repaired and the sidewalks will be fully within the City's layout in those areas.

Mr. Gardner said this is a reasonable use of the area. It is an area between the roadway and the adjacent parcels where there is the sidewalk and then typically the signs and then the parking.

He said it meets the spirit of the ordinance because it provides a safer condition for both the users and the abutters in the corridor.

He said it does not adversely affect any of the abutters in the corridor. The City has worked hard with the abutters to reach a consensus on the benefits. There's a benefit to the general

public in that the pedestrian accessibility will be improved and the visibility of the medians will be improved for safety.

He said justice will be served on this project because of the increased capacity and the reduced congestion of the traffic on Spit Brook Road and Daniel Webster Highway.

Mr. Duffy said he didn't know about the reduced congestion in that area, but he said it will assist in the traffic flow.

Mr. Shaw said if the traffic flow is better, the congestion may not be as much so it may help reduce congestion in a certain way.

Mr. Gardner said it may reduce the amount of time that the congestion occurs.

Mr. Duffy asked if there were any differences in the plan that he has presented dated April 11<sup>th</sup> to what the Board has that is dated September 22, 2004.

Shannon McCanty, Rizzo Associates. Ms. McCanty said the plans are generally the same. She said she did an auto cad drawing and she just turned on a couple of layers and revised some text. The lanes and everything else are exactly the same.

Mr. Duffy asked if there are other reasonable alternatives.

Mr. Gardner said in each of the areas where the variances are being sought there were a series of alternatives that were looked at. They tried to minimize any impacts to the abutters, but at the same time provide the appropriate safety improvements, particularly on Spit Brook Road. He said there were many attempts and many meetings and coordination with the abutters and the City to try to develop a plan that was a reasonable compromise.

Mr. Duffy asked what significant traffic signal improvements will occur.

Mr. Gardner said there are a total of 19 traffic signals in this immediate corridor and outside of the area where the physical roadway improvements are. These will be upgraded and there will be a new traffic control system implemented in the area as part of the plan.

Mr. Tremblay asked if this means that the cameras are going to work on Spit Brook Road.

Mr. Gardner said this is correct.

Mr. Tremblay asked if the green that he is seeing on the map is all sidewalks or if it's space that's going to be used in this project.

Mr. Gardner said the green delineates where the back of the sidewalk meets the landscaped areas.

Mr. Shaw asked if the green is meant to indicate the sidewalk itself.

Mr. Gardner said the gray line represents the sidewalk and the green represents the landscaped area behind the sidewalk.

Mr. Shaw said that he had seen some of this presented at the Board of Alderman Infrastructure Committee sometime in the last year or so. He said one of the changes is also some of the lane usage, as far as the turning lanes, is also being improved to help bring some of the traffic flow moving better, especially into the malls.

Mr. Duffy asked if the applicant would accept a special condition that even though they are taking the cases together for expediency, they would not exclude any appeals or requests by an individual on a certain piece of property or together in some combination.

Mr. Gardner said this is correct. He said that they are still negotiating with some of the property owners on a few things.

Mr. Shaw said since most of the requests deal with the right-of-way and in a lot of the cases where the sign would be encroaching, he is assuming that they are not changing the visibility issues or barrier issues that might exist with some of the signs.

Mr. Gardner said there are no visibility issues. This was all checked in the field.

Mr. Duffy asked if there is going to be any change in the signage such as in the size or type.

Mr. Gardner confirmed that there would be no changes in advertising signage.

Mr. Falk said that if one of the property owners should decide to go for a sign variance or sign permit on their own to expand the size of their sign or change the configuration, they can do so. It wouldn't have anything to do with this project.

**SPEAKING IN FAVOR**

No One.

**SPEAKING IN OPPOSITION**

No One.

Mr. Tremblay asked if the variances would give those sign requests in the future rights that they aren't consciously doing now because they are allowing them to be within some variation of what they should be.

Mr. Falk said a lot of the signs are already non-conforming to begin with because they are in the setback. They are still going to be within a setback anyway so their status really stays the same. It's not like they are getting anything out of this as far as signage goes. All it really means is that they're a little bit closer to the right-of-way.

Mr. Tremblay asked if they want to come in a year from now and change their sign, would the Board be able to tell them they would have to be in compliance - or do they have rights to be out of conformity.

Mr. Falk said on one hand these signs are already non-conforming. They are being made more non-conforming. If they want to change the face of their sign they can do that. He gave an example of a typical large sign in this zone being 150 square feet and assuming that it's within the front yard setback. He said if they wanted to expand the size of their sign they would still need a variance, whether the sign is in the setbacks or out of the setbacks.

Rules Suspended

Mr. Duffy said he is proposing that one motion be made for all the above cases that were taken together.

**MOTION** by Mr. Duffy to grant the area variances for Cases #6, #7, #9, #10, #11, #12 & #13. The area variance is needed to insure the applicant's proposed use of the property given the special conditions of the property. This area and the uses are existing conditions since 1986 or before. This is in a retail and multiple service use area. These are all approved uses in the HB Zone. He said this project speaks to traffic and pedestrian safety, access, egress, and trying to relieve some of the congestion in an extremely well traveled section and corridor in the City of Nashua. It is within the spirit and intent of the ordinance that the right of way adjustments are reasonable and minimal in nature and cannot be achieved by some other method reasonably feasible for the applicant to pursue other than through the area variance. It should not adversely affect the property values of the surrounding parcels. There are no additional requests for incursions into the setback areas or additional signage requests. The acquisition and development of these right-of-way areas and roadways and signalization adjustments are not contrary to the public interest. Substantial justice is served to the owners and applicant in that improvements of a reasonable nature that are consistent with the essential character of the neighborhood be allowed. Special Condition: These motions were taken together for expediency and will not preclude or exclude any rehearing case/appeal case rights or any judgments or investigations, either individually or taken together.

**SECONDED** by Mr. Tremblay.

Mr. Shaw asked the relevance of the date (1986) had to do with this project.

Mr. Duffy said it's not a recently developed area. It's not a piece of property that was empty and now has a new use to it. It's an existing and pre-existing use of greater than twenty years. This is what he was trying to say in his motion.

**MOTION CARRIED UNANIMOUSLY**

**Minutes**

None

**Regional Impact**

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING & MEETING

April 11, 2006

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Mr. Falk said there is no agenda for the meeting of April 25<sup>th</sup> because no applications were submitted. The only case the Board will be considering on April 25<sup>th</sup> are the hold overs from tonight's meeting - Case #4 - Paul & Karen Kerouac and the "Berkins" case - 73 Wellington Street. The Board should keep whatever was sent out on these cases and bring it to their next meeting.

**ADJOURNMENT**

Mr. Duffy called the meeting closed at 8:20PM.

Sean Duffy  
Acting Clerk

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Taped Meeting