

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
June 13, 2006

A public hearing of the Zoning Board of Adjustment was held on Tuesday, June 13, 2006 at 6:30PM in the Auditorium at City Hall.

Sean Duffy conducted the hearing.

Members present were: Sean Duffy, Chair
Jack Currier, Acting Clerk
Norm Tremblay
Robert Shaw
Jeffrey 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.

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. He said there are five members voting tonight.

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 tonight's meeting is scheduled to end at 11:00PM and, if needed, they may poll the Board about 10:15PM or 10:30PM to see where they are at that point and whether or not they will continue or hear the remaining cases on a future date.

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.

Mr. Shaw said he would have to recuse himself from hearing Case #7, Nashua Pastoral Care Center as he is a member of the Board. The person representing Case #7 said they would proceed with a four member Board.

1. **Joel C. & Stacie A. Sanborn (Owners) 48 Sawyer Street (Sheet 93 Lot 32) requesting the following two variances: Proposed Lot "A" 1) minimum lot width, 60 feet required, 51.40 feet proposed, and 2) Proposed new Lot 32: minimum**

lot width, 60 feet required, 51.65 feet proposed - both requests to subdivide one lot into two lots. RB Zone.

Atty. Andy Prolman, Prunier & Prolman, 20 Trafalgar Square, Nashua. Atty. Prolman handed out some material to the Board for them to reference. He said the top page of the handout shows the two lots that are proposed. They meet all dimensional requirements in the RB Zone, except the width requirement. The plan by Maynard & Paquette shows that the existing garage is going to be razed.

He said the next few items in the handout are different plans that have been developed over the years - one of them going back to 1884.

He said there is a GIS map in the handout that shows the site and a little bit of the neighborhood. There is a deed that is written up as two tracts of property, but at the end of Tract #1 the deed into the Sanborn's references Lot 31 & 32 as shown on the plan back to 1884.

Atty. Prolman referenced a letter from a realtor speaking to the valuation if a new house were going to be installed at this site. He said it's the broker's opinion that there wouldn't be any impact upon property values.

He said the last two items go hand in hand. He referred to the plan on display. He said there is a copy in their packet. He said it shows the neighborhood - Sawyer Street, Balcolm Street, Gilman Street & Lake Street. He said there is a mix of units and densities in this neighborhood. The number circled on each lot represents the number of dwelling units on each lot. The proposed lots are going to be a little over 7,000 square feet each and will have less density than 63% of the neighborhood. He said eleven of the single-family homes are on lots of less than 7,000 square feet.

Atty. Prolman said these are older City lots. They pre-date the zoning that created the width requirement and do not meet that requirement, but they meet the frontage requirement. He said the applicant has the option of constructing a duplex, which can be done by right, but the preference is to construct a single-family home.

Mr. Duffy asked if there is going to be a garage or driveway.

Atty. Prolman said there would be a driveway and there might be a garage built into the house. He said there's really not enough room to do a house plus a garage on the side. The constraints of the lot don't allow for a large structure.

He said in order to enable this proposed request they need the area variance. They have 51+' on each lot and have no alternative but to seek the area variance. There is no alternative.

He said the spirit of the ordinance is being observed. They are going to look like most of the other lots in the area. At 7,000 square feet, these lots are going to be a little bit larger than many of the lots in the area. They aren't going to be overcrowding the site. The garage is coming down and there's going to be space between the homes. All the setbacks are going to be observed.

He said there's going to be a new home in the area. He referred to the letter from Keller/Williams speaking to that.

He said this is a residential use in a residential zone. Recent case law tells them that this is a reasonable use and the addition of one house to match the rest of the neighborhood is not contrary to the public interest.

He said it allows substantial justice to be done. It allows the reasonable use of the property and allows a moderately priced home to come on the market.

Mr. Currier asked where the driveway for the existing house is located.

Mr. Shaw asked if there was any consideration to find a way to create one conforming and one non-conforming lot.

Atty. Prolman said he would have Mr. Maynard address these questions.

SPEAKING IN FAVOR

Richard Maynard, Professional Engineer, Maynard & Paquette. Mr. Maynard said there are forty-eight properties shown on the map on display. He said there are eleven single-family lots that are smaller in size than what they are proposing. The majority of the lots have 50' frontage and 50' width. He said they would

like to have their lots be in character with the neighborhood. If they chose to make one of the lots conform to the lot width requirement of 60', it would make one lot 8,000 square feet and the other 6,000 square feet and one lot would be 40' wide. The smaller lot would not be in character with the neighborhood.

He said many of the multi-family lots are very small, even smaller than what the proposal is calling for. He said their proposal is for one unit per 7,000 square feet and many of the multi-families are one unit per 3,000 square feet or one unit per 4,000 square feet.

He said the driveway will probably straddle either side of the center property line. They do not have a particular house picked out yet. There is an existing curb cut for the existing house. Should someone want a garage it can be incorporated into the house itself or it may be detached and sit to the rear.

Mr. Currier said proposed new Lot A looks like it's down a bit in topography. He asked if that was going to cause a problem when it rains heavily.

Mr. Maynard said he hadn't fully examined this. He said this has to go to the Planning Board if it's approved by the Zoning Board. They are required to take care of storm water control, which is typically leaching catch basins.

SPEAKING IN OPPOSITION OR WITH CONCERNS

Tony Russo, 49 Sawyer Street. Mr. Russo said he has owned his property for 43 years. He said approximately three weeks ago Mr. Sanborn came to see him and told him about what he wanted to do. He said he (Mr. Russo) had asked for a variance to build on his lot directly across the street and was denied. He said a neighbor at 61 Sawyer Street has 150' frontage and she was denied a variance to build a house on her lot. He said he didn't think this proposal is any different.

He said there is no hardship involved. He said it's only for a profit and he didn't think it was right. He said it's like putting a house on a postage stamp and it wouldn't look right. He said if the owner wanted to make his house larger for his family he wouldn't have a problem with it.

Mr. Duffy asked how long ago Mr. Russo had requested a variance and Mr. Russo said about twelve years ago.

Mr. Duffy asked Mr. Russo if he had one of the largest lots in the area and Mr. Russo said that he did.

Mr. Duffy said the testimony of the applicant is that there are many other lots like the 50' ones in the area. Some of them have houses right out in the setback areas.

Mr. Russo said sometimes the City of Nashua doesn't do the proper thing. He said it all depended on whom you know.

Mr. Duffy asked if Mr. Russo felt there were more houses on his street and in his neighborhood that looked a little more non-conforming than what the proposed lot is.

Mr. Russo agreed.

Mr. Duffy said the character of the neighborhood is conforming and non-conforming, single and multi-families, and structures built in setback areas and outside of setback areas.

Mr. Russo said there's only one house on Sawyer Street where the house is in the setback area. He said the way the neighborhood is right now everyone has enough land where you don't have to shake hands with the neighbors. If they keep building houses on 50'X100' lots, it's going to change the neighborhood.

Mr. Shaw asked Mr. Russo if he would prefer a two-family dwelling or two single-family homes, as proposed.

Mr. Russo said he didn't want either. He said he wouldn't mind if the owner were to enlarge his house for his family. If he had enough land he wouldn't be asking for a variance he would just apply for a permit.

Erik Tornow, 32 Sawyer Street. Mr. Tornow said he abuts the property at 48 Sawyer Street. He said if this were a two-unit structure he would be fine with it. His concern is that splitting it up and making two single-family homes might reduce the value of his home. He said he is talking to realtors right now and he's been told that this would reduce the value of his home.

He said he has a garage set in the back of his lot. He said he couldn't see where a garage could be attached to the house. He is concerned about how close a garage would be and how close the new home would be to his home.

Mr. Duffy asked Mr. Tornow if he had brought any information from these realtors.

Mr. Tornow said he didn't have anything in writing. He's in discussion and he was told this would bring down the value of his home.

Mr. Currier asked Mr. Falk what the side yard setback in this zone is.

Mr. Falk said its 7'. Accessory uses such as a detached garage or a shed would be 6'.

Mr. Currier said it looked like on the right side of Mr. Tornow's property there is a garage and looks like it is sitting right on the property line. He said there has been testimony that the proposed structure would meet the requirements in the ordinance.

He asked Mr. Tornow if it ever "ponds up" in the yard next to his property.

Mr. Tornow said he couldn't tell. He said this is another question, depending on how it's going to be graded. He said he doesn't want anything to be coming into his yard. He said he had to throw his snow onto his (Mr. Sanborn's) property because he doesn't have any place to put it as his driveway is right next to his house and he can't put it up against his house. It slopes down to the back and if it does get wet it's moving into the back of the yard.

Mr. Currier said it's against the law for the applicant to push water onto his property so if this is approved he is confident that this wouldn't happen.

Barbara Belanger, 53 Sawyer Street. Mrs. Belanger said her lot is 100'X60'. She said she is diagonally across from 48 Sawyer Street and has been there for twenty-two years.

She said the neighbors who had lived there before had been there for fifty years before Mr. Sanborn moved into the house. She said they did have problems with drainage.

She said she is opposed to this request because she thinks it will change the character. She said the lots they are talking about as far as the 50' is concerned seem to be further down at

the other end of the street and the multi-family homes go up, not side-by-side.

She said her lot is 100' across, the "Russo's" is 100' across and there are at least three or four other properties at that end of the street that could turn around and want to do the same thing as Mr. Sanborn is asking to do. That would drastically change the whole character of where they live.

She said they already have problems with parking and adding another dwelling here is going to make it difficult also. There is a fire hydrant there and when people are parking on the street on both sides that is also a concern.

She said there is no hardship. From what she understands the owner wants to build another house and then sell both homes and live somewhere else. The neighbors staying will be stuck with people living on top of each other, even though that's more toward the other end of their street and they don't really have that where they are.

Mr. Shaw asked if she would rather see a two-family dwelling unit or two single-family homes.

Mrs. Belanger said she would personally rather see it be a single-family home, but if he wanted to raise the roof and make it a multi-family it would be more in character to what's going on around them and it doesn't crowd the property lines either.

SPEAKING IN FAVOR-REBUTTAL

Atty. Prolman said he is unfamiliar with Mr. Russo's case for a variance. He said the law has changed with respect to hardship. He said the Supreme Court has lowered the hurdle with respect to hardship. Today they are focused on reasonable use of the property, not the old hardship standard.

He said with respect to a duplex, duplexes today - for better or worse - are two homes stuck together and attached. They aren't a two-floor or triple-decker type of building. If his client pursues the two-family, it's likely to be an attachment onto the existing house. That, more than anything, would be out of character with the neighborhood than the type of lots they are proposing.

SPEAKING IN OPPOSITION - REBUTTAL

Erik Tornow, 32 Sawyer Street. Mr. Tornow said he thinks a duplex would be more in character versus two single-family homes.

Atty. Prolman said during the break he asked Mr. Sanborn whether there's been any ponding in the back and his answer was "No".

Mr. Tremblay said he grew up a few blocks away from this neighborhood. He said he tends to be opposed to this split. He said he does not see the hardship. He said it would change the character of the neighborhood. The two adjacent driveways is not the way the neighborhood was built. It is already a congested neighborhood and to stuff another house in here doesn't seem to be the right thing to do. It sounds like there is an alternative. If a multi-family meets the rules and regulations for that property, this is what should be explored before they create two non-conforming lots.

Mr. Shaw said he shares some of the same concerns as Mr. Tremblay. When you look at the nature of the homes that are in the immediate area of this part of the street, many of them have 100' of frontage and they are more spread out than at the other end of Sawyer Street.

Mr. Anderson said there are three abutting lots with 50' frontages right behind this one and right next to Mrs. Belanger's lot is another lot with 50'. The character of the neighborhood can't just be the three houses on either side and across the street.

Mr. Currier said he is leaning toward being favorable to this application. Sawyer Street is kind of split where everything to the west of it is 50'. He said he thought the only lot bigger than #48 Sawyer is #61. The house at #61 is kind of right in the middle of the lot.

Mr. Duffy said he tends to lean towards Mr. Anderson's point given the "Boccia" area variance.

Mr. Tremblay some of these lots have 50'. When they were built it was the way City's were planned and laid out. Today, that's not the way they would do it, so why would the Board provide a variance to do something they wouldn't allow. He said if the owner could build two houses, they would build them and the Board would have no say. He hasn't heard a good reason why they would approve this.

Discussion ensued.

MOTION by Mr. Tremblay to deny variances: Lot A: minimum lot width of 60' required, 51.4' proposed & Proposed New Lot #32: Minimum lot width 60' required, 51.65' proposed at 48 Sawyer Street. The request does not meet the standards required to meet the threshold to pass. The hardship has not been proven. It is not within the spirit or intent of the ordinance to place buildings into lots that are nearly compliant, but not within compliance. His opinion is that property values would be adversely affected. It is contrary to the public interest. Substantial justice will not be served by granting the variance.

SECONDED by Mr. Shaw.

MOTION FAILS - 2-3, Mr. Anderson, Mr. Currier & Mr. Duffy opposed.

MOTION by Mr. Currier to grant the variances - Lot A: minimum lot width of 60' required, 51.4' proposed & Proposed New Lot #32: Minimum lot width 60' required, 51.65' proposed at 48 Sawyer Street to subdivide one lot into two lots. The variances are needed to enable the applicant's proposed use of the property. Two single-family homes is more appropriate than a two-family home. It is within the spirit and intent of the ordinance. They have data that says that a new home on this lot would not adversely affect the property values of surrounding parcels.

SECONDED by Mr. Anderson.

MOTION CARRIES - 3-2, Mr. Shaw & Mr. Tremblay opposed.

2. Christopher Dunn (Owner) L Kinsley Street (Sheet 87 Lot 196) requesting the following: 1) special exception to construct a two-family dwelling, and 2) variance for minimum lot area, 14,520 square feet required - 11,121 square feet proposed. RA Zone.

Atty. Bob Shepard, Nashua. Atty. Shepard said this is one of the few vacant lots remaining in this area. He said Mr. Dunn is proposing a duplex on the property and in order to do this he needs a special exception first. Each unit would have two bedrooms.

He referred the Board to the map prepared by Mr. Maynard. He said the site is bordered on one side by Kinsley Street and on the other side by New Dunstable Road. It is located right next to an eight-unit medical condominium.

He said a duplex would fit in better on this property than a single-family unit would. A three or four bedroom single-family home could be built on the lot, however it would not be a good location. It's a high traffic area and not a great place to have children where it is bordered by two busy streets. It is more conducive to build a duplex that would be something that would be attractive to a professional or somebody who travels down to Boston and they could jump right on the highway and get there.

He said the proposal is to have the exit onto New Dunstable Road, not Kinsley Street. There's enough room on the lot so the cars can turn around on the lot before exiting, rather than backing out onto New Dunstable Road.

He said the size of the proposed structure will be comparable in size to the duplexes in the area. He said the map provided by Mr. Maynard identifies thirteen properties in the immediate vicinity and out of those eleven of them are duplexes, one is an eight unit commercial condominium, and another is a six-unit multi-family residential unit. He said the lot itself is larger than nine of the lots that contain duplexes.

He said there will be enough parking on-site. The plan calls for a single garage for each unit and there will be room for one car on each of the lots as well.

Atty. Shepard said this lot has been vacant for a considerable period of time and is somewhat of a blight. It's overgrown. The proposal is to build a first class duplex and in the owner's opinion the value will enhance the values of the other properties as well.

He said they are also looking for an area variance. It is their understanding that 12,445 square feet is required. He said looking at the notice he understands that 14,520 square feet is required. He said he doesn't understand why there is a discrepancy, but in any event the lot doesn't meet either requirement.

He said the use that is being proposed is a reasonable one. In this case they could build a single-family home on the lot and it would be about the same size as the duplex. Because of where the lot is located, it's the owner's opinion that the best use of the property is a duplex, which would hopefully attract a new young buyer with no children, although that cannot be guaranteed.

Atty. Shepard said the property owner has a right to put his or her property to a reasonable use. The proposed use, consisting of a duplex, with the granting of a special exception, is a permitted use. It's consistent with the surrounding neighborhood and properties. There is no other property that can be acquired to make the property comply with the zoning ordinance.

He said the applicant is only seeking a deviation from the area requirement of the ordinance. Otherwise, the construction of a duplex will comply with the building code and with the zoning ordinance and all setback requirements.

He said compared to what's on the site now, the construction of a duplex will have a positive impact on property values. He said they do not have an appraisal. If necessary, Mr. Dunn could testify and what he would say is that the construction of a duplex as he is proposing would enhance the area. It would be a brand new high quality structure and not detrimental to property values.

Atty. Shepard said the structure that Mr. Dunn is looking to construct will be moderately priced.

Both tapes become unintelligible at this point and fades in and out.

Atty. Shepard said the duplex that Mr. Dunn is proposing to construct will be a little over 3,000 square feet. A single-family home would have three or four bedrooms and would also be over 3,000 square feet. The lot can hold this duplex. The problem at hand is the neighborhood that it's in. It's a very busy street.

Mr. Tremblay said there are three abutters. One of them is the commercial property. Right behind it is a single-family home and then there is another single-family.

Atty. Shepard said where the "2's" appear on the map are the locations of the two-family homes.

Mr. Currier said the argument that the two-family would be less inclined to have children versus a single-family was stated in the application. He said this didn't set right with him. He said if there is a two-family there is twice as many chance that there will be children running around.

Atty. Shepard said there is no guarantee that there wouldn't be children there. The two factors that would argue for no children would be the price of the unit, which would hopefully be a starter home for a young professional or young couple getting their first home and the size of the units which would only be two bedrooms. It is conveniently located to the highway.

SPEAKING IN FAVOR

Richard Maynard, Professional Engineer, Maynard & Paquette. Mr. Maynard said they would agree to a stipulation that these units be maximum two-bedroom units to further discourage families with kids.

He said this is a very mixed-use neighborhood. It has high-speed roads and isn't conducive to families with kids that a three or four bedroom home might have.

He said Kinsley Street is slowly evolving into non-residential uses, another reason why single-family homes aren't really in character with this particular neighborhood.

He said under the old ordinance you only needed 10,000 square feet in order to have a duplex. Duplexes are a permitted use by special exception. With regard to the area, there are a few lots that are similarly sized, but many of the duplexes are lesser in size. Only 7,500 square feet in lot size is needed for a single-family home. They have 20% less than what is required. He said a two-bedroom duplex (each unit) is a much more appropriate use for this site.

Mr. Maynard said the Supreme Court has changed the definition of what a hardship is. The meaning of hardship is what's reasonable for this neighborhood and what's generally in character with the neighborhood.

Mr. Tremblay asked if they had considered a commercial use for the site.

Mr. Maynard said that is more of an extreme variance to grant because they are located in a residential zone. A duplex is more in character with the RA Zone. It's not quite the right kind of lot for a business use. He guessed that they might be able to put a small office building on it, but there is a glut of small office buildings right now. There are a lot of vacancies for office buildings, which is the reason you don't see many being built these days.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No One.

Mr. Duffy said when he looked at the character of the neighborhood he also tried to look at reasonable use. It was interesting that the applicant didn't address the traffic on Kinsley Street.

Both tapes become unintelligible and the Board's discussion on this case could not be understood.

MOTION by Mr. Currier to deny the special exception to construct a two-family dwelling on L Kinsley Street, Sheet 87 Lot 196. Given the high traffic in this neighborhood and the two streets, adding a two-family on this lot would further add to the traffic congestion and increase the probability of compromising pedestrian safety.

SECONDED by Mr. Anderson.

MOTION CARRIED 3-2, Mr. Shaw & Mr. Tremblay opposed.

MOTION by Mr. Duffy to deny the request for variance ????? at L Kinsley Street, Sheet 87 Lot 196. (Reasons for denial are unintelligible).

SECONDED by Mr. Anderson.

MOTION CARRIED 3-2, Mr. Shaw & Mr. Tremblay opposed.

3. Aranorian Oil Company (Owner) 270 West Hollis Street (Sheet 122 Lot 575) requesting the following: 1) Use variance to relocate existing retail gas pumps and reduce number of

pumps from 6 to 5 and replace existing gas station and 3-bay repair garage with convenience store, and 2) variance to waive the requirement of a 6 foot high solid perimeter fence or wall along the property lines abutting residentially zoned properties. LB Zone.

Atty. Bob Welts, 29 Factory Street, Nashua. Atty. Welts requested a waiver of the fifteen-minute limitation on his presentation of the case as he felt he would not be able to adequately present his case in this time frame.

Tape fades out at this point and becomes unintelligible.

Atty. Welts said Aranco is a New Hampshire owned and operated business that has been operating since 1911. All of its gas stations are located in New Hampshire with three of them in Nashua.

He said the property is the Sunoco Gas Station located on the southerly side of West Hollis Street between New Dunstable Road and Ferson Street. He described its location in reference to other businesses. He said it's located in the Local Business Zone and is bounded by both the General Business District and Local Business Districts on the northerly side of West Hollis Street and Residential "A" District on the opposite side of Pershing Street & Main Dunstable Road.

He said the gas station repair garage has existed on the site for 42 years as a legal non-conforming use. The Board granted the original variance in 1964. He referred the Board to pictures that he had presented. He said the site has six fuel dispensers, some of them partially covered by an antiquated triangular shaped canopy and an older building with three bays for auto and truck repairs and service. The site is almost completely paved and there are no delineated curb cuts. It contains many vehicles - many waiting to be repaired and U Haul trucks waiting to be rented or sold.

He said the applicant wishes to modernize the site and bring it into the twenty-first century and is proposing to replace the old service repair garage building with a convenience store and a new hip roof styled building, which will be relocated on the site. There will be a new canopy over the entire fueling area for environmental purposes.

Atty. Welts said the zoning restriction prohibiting the use of the site as a gas station/convenience store interferes with the applicant's reasonable use of the property considering the unique setting of the property in its environment. He said the applicant is proposing to modernize its' business, which has legally operated on the site for 42 years. This wish to remain environmentally compliant and be economically viable and competitive. Retail gas stations are no longer built with repair bays. Stations with repair bays have been converting to convenience stores for many years. He provided the reasons this is happening.

He said the applicant's situation is more difficult because of the uniqueness of the site. The property is a long and narrow trapezoid ranging in depth from 150' on the westerly property line on Pershing Street to only 72' on its easterly boundary. It is completely surrounded on all sides by streets, which creates setbacks and other dimensional issues. For this reason, it is necessary to demolish the existing building and rebuild on a different location on the site.

He said no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restrictions on the property. The site is presently a legal non-conforming use that may continue as long as the non-conformity does not increase. He said it's their position that the non-conformity is being significantly decreased by this proposal. There are two main uses taking place at this time. The garage building with the three bays is used for vehicle repair and service. This use is not permitted in the "LB" District. This non-conforming use will be replaced by a 2,794 square foot convenience store. Convenience stores up to 10,000 square feet are a permitted use in the "LB" District. Gas Stations/Service Stations are also not permitted, however, the gas station is a legal non-conforming use and still permitted.

Atty. Welts said the present canopy extends into the front yard setback by approximately nine feet. It is only 1' away from the West Hollis Street right-of-way. The proposed canopy will meet all setback requirements. At the present time there are six fuel dispensers. This proposal will reduce this to five fuel dispensers.

He referred the Board to the attachment with the variance application. He said it listed thirteen additional proposed

changes to make the site more conforming to either zoning, building, or environmental regulations.

He said the variance would not injure the public or private rights of others. The proposed use would make the site less non-conforming, less cluttered, and more attractive. It would add a convenience store to this "LB" District and the neighborhood.

He said granting the variance will not violate the spirit and intent of the ordinance. It is the intent of the ordinance to reduce non-conformities whenever possible. This proposal meets that intent.

He said granting the variance will not result in the diminution of the surrounding property values. There has been a gas station on the site for 42 years. The modernization of the property and the general upgrade with substantial landscaping will enhance its appearance. The removal of the service repair bays, vehicles, and other non-conformities will have a positive impact on property values.

He said Paul Kinney of Aranco has made several trips to the neighborhood attempting to meet with as many neighbors as he could to explain the proposed improvements. He said he had submitted a map showing neighbors that have responded with letters in support.

He said granting the variance will be of benefit to the general public and not solely the applicant. The removal of the many vehicles stored on the site and the general improvement of the site's appearance will be noticed by the general public if they pass by on West Hollis Street. The delineated curb cuts with landscaped curb islands will benefit public safety. The new environmental spill control will benefit public health.

Mr. Duffy said the application is pretty clear and has covered a lot of what he is addressing. He asked if Atty. Welts would address the 6' fence.

Atty. Welts said his understanding of the land use code relative to screening and buffers is that the Planning Board regulates all screening and buffers between non-residential and residential districts in accordance with Section 16-571. The one exception appears to be the gas station/convenience store section of the zoning ordinance - Section 16-84(o) which states

a minimum 6' high solid fence or wall with a minimum 5' landscape strip along the full length of the wall and property line is required when the facility abuts any residentially zoned property. The landscape strip shall comply with Section 16-571 and is in lieu of any buffer required by that section.

He said the applicant is in favor of appropriate screening and buffers and believes that in certain areas landscaping, such as a row of arborvitaes instead of fences may be more appropriate. Section 16-571 allows the Planning Board discretion in determining whether landscaping or fencing is more appropriate on portions of or on the entire property.

He said their request is to waive the requirements of a 6' high solid fence or wall along the property line and allow the Planning Board to decide the appropriate screening or buffer. The applicant is willing to provide the 5' wide landscaped area along the property line, but is concerned that fences or walls along the three streets will block visibility and create a traffic safety problem at entrance/exits as well as the several street intersections.

He said the benefit sought by the applicant cannot be achieved by some other method reasonably feasible. If the variance is granted the applicant will still need to work with the Planning staff and the Planning Board and obtain site plan approval. If the variance is denied, the Planning staff and Planning Board will have no flexibility in working with the applicant.

He said this will not violate the spirit and intent of the ordinance. The purpose of Section 16-84 is to reconcile the interests between residential and commercial districts. There are no residential properties that have common property lines with or immediately adjacent to the gas station/convenience store. There are three letters from abutters that they are opposed to the fences and would prefer landscaping instead. He said the applicant has put a similar fence at a station in Manchester and Aranco has run into serious graffiti problems on the fence.

Mr. Duffy asked if there is any fence at all at the site and Atty. Welts said there is none.

SPEAKING IN FAVOR

Richard Maynard, Professional Engineer, Maynard & Paquette. Mr. Maynard said this is so old that it pre-dates the site plan regulations.

He said it's a wide-open site and has no delineated curb cuts. They will be improving that situation. Installing the landscaped strips along the site will increase the aesthetics.

He said this ordinance states that unless the Board approves a variance, it requires fencing along the property line adjacent to residential. He said he believes this means when there is a directly abutting residential property. Arborvitae discourage the spraying of graffiti on the building. There is a growing graffiti problem in the City. They can't block the vision with fences.

Mr. Duffy asked if the landscaping they are proposing is going to be brown mulch that is 6" tall.

Mr. Maynard said where there are no problems they will have landscaping 4' - 5' in height. They can't do it, for example, where the turning movements are because it creates a substantial safety problem. It ends up doing the same thing a fence would do. He would like to have this delegated to the Planning Board.

Mr. Maynard said they need to rebuild the canopy because all gas dispensers need to be under a canopy so they are out of the rain. Rainfall spills on the concrete next to the gas pumps and washes away the gasoline. With the canopy they can control it and keep the spillage under the canopy and on the concrete.

Mr. Duffy asked if the existing service station size and foundation will be as it is.

Mr. Maynard said everything on the site is being improved - new buildings, new canopies, and new curb cuts. The site is 42 years old and needs to be modernized.

Mr. Duffy asked if the new building is going to be the same size, but in a different location.

Mr. Maynard said he doesn't know the size of the existing service station and he wasn't sure why it was relevant because a convenience store is a permitted use in this zone, as long as it's less than 10,000 square feet.

Mr. Tremblay asked about the lighting and if the store is going to operate 24-hours a day.

Mr. Maynard said the lighting is under the Planning Board's jurisdiction. The store will not be operating 24 hours a day. It will be open until about 10:00PM or 11:00PM. He said there will be recessed lighting below the canopy and some near the convenience store for late at night.

SPEAKING IN OPPOSITION OR WITH CONCERNS

Laurie Heskett, 273 West Hollis Street. Mrs. Heskett said she is concerned about traffic. She said West Hollis Street is a very busy street and there are times of the day when there's an entire lane stopped with traffic because of other facilities around it - mainly the Dunkin Donuts. She is concerned that if they permit a convenience store it's just going to build to this traffic and that's a safety concern.

She said the neighborhood doesn't really need another convenience store. Just up the street the Shell Station has a convenience store.

Mr. Duffy asked Mrs. Heskett how long she has lived in her home and she said she's been at 273 W. Hollis Street for nineteen years and she grew up in the house next door.

SPEAKING IN FAVOR - REBUTTAL

Richard Maynard, Professional Engineer, Maynard & Paquette. Mr. Maynard said the convenience store is a permitted use. They do not need a variance for this.

He pointed out the five direct abutters who provided positive letters for their proposal. He said they've also heard from the neighborhood that they don't like the Shell Station convenience store.

He said the fact that Dunkin Donuts ties up traffic on West Hollis Street is not necessarily relevant to their request. He said gas and convenience items are pretty much a dual-purpose trip - not separate trips. There will be one less fuel dispenser and the traffic on the site will be similar to what it is today and with the curb cuts there will be a much safer situation.

SPEAKING IN OPPOSITION - REBUTTAL

No One.

Mr. Currier said he is favorable to the request. It is an improvement to the site. The abutters have stated quite clearly that they don't want the fence - that they don't want to look out their window and see "Fort Apache".

Mr. Anderson said they are proposing to modernize the facility. It is in need of it.

MOTION by Mr. Duffy to grant the use variance to relocate existing retail gas pumps and reduce the number of pumps from six to five and replace the existing gas station and three bay repair garage with a convenience store. The landowner's reasonable use of the site is a use that pre-dates zoning. The site is unique. This has been an automobile commercial site. A convenience store is a reasonable use for the site. The variance should not injure the public or private rights of others. This is a less intrusive, more conforming use. It should allow for better traffic. It is within the spirit and intent of the ordinance that a less intrusive, more conforming use be granted. It should not adversely affect the property values of surrounding parcels. It is not contrary to the public interest. Substantial justice is served. Special Condition: A 5' wide landscaped area be agreed on with abutters.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY

MOTION by Mr. Duffy to grant the use variance to waive the requirements for a 6' high solid fence along the property line abutting residentially zoned properties. The variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. The property is surrounded by streets. There is no reasonably feasible method for the applicant to pursue other than an area variance. It is within the spirit and intent of the ordinance. It should not adversely affect the property values of surrounding parcels. The abutters have expressed that they do not want a wall or fence. It is within the public interest. Substantial justice is served. Special Condition: A 5' wide landscaped area be agreed on with abutters.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY

Announcement made that the following cases are being postponed to 6/27/06

11. Neeraj Associates Realty, LLC. (Owner) 291 Main Street (Sheet 98 Lot 39) requesting variance to encroach 10 feet into the 10-foot required front yard setback (on Otterson Street) to replace an existing 19 square foot ground sign with a 50 square foot ground sign. D-3/MU Zone.
12. Jon E. & Pamela N. O'Donnell (Owners) 45 Broad Street (Sheet 61 Lot 169) requesting the following: 1) use variance to replace an existing hair salon with a mixed commercial and residential use building with hair salon on first floor and residence on second floor, and the following variances: 2) to encroach 5 feet into the 10 foot required left side yard setback, and 3) to encroach 13 feet into the 25 foot rear yard setback. RA Zone.
13. Nashua H Group, LLC (Owner) Proctor Jones Ski, Inc. (Applicant) 15A Spit Brook Road (Sheet A Lot 214) requesting variance to change an existing manually changing reader board sign with a 3-line, 28 square foot electronic message center. GB Zone.
14. Vigilant Properties, LLC (Owner) Mary S. Bellavance Rev. Trust, Maria E. Dube, Mary J. Daly Rev. Trust & Dana P. & Cynthia A. Gaudette (Appellants) L & 22 Edson Street (Sheet 47 Lots 349 & 401) appealing the decision of the Nashua Planning Board regarding approval of a plan where the appellant believes that the lot does not have adequate frontage; approved two lots when the appellant believes there's only one lot; and did not enforce all applicable requirements with respect to road construction, subdivision approval/lot line relocations on Class VI roads. RA Zone.

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4. Kathleen M. Kidd (Owner) 24 Pennichuck Street (Sheet 49 Lot 68) requesting special exception to allow an accessory (in-law) dwelling unit. RA Zone.

Jason Jangentenfl, 9 Farley Street, Nashua, NH. Mr. Jagentenfl said he is the owner of Streamline Builders and he is representing his client, Kathleen Kidd.

He said this project was originally designed to be an addition to add living space to the client's house. It's currently under construction. He referred the Board to the pictures that were available. About mid way through the project Ms. Kidd decided she wanted to add a kitchen to the addition, thereby requiring the special exception.

Mr. Duffy asked who would be living in the "in-law" apartment.

Mr. Jagentenfl said Mrs. Kidd's husband passed away last year and her son, daughter-in-law and their new baby just moved in and they will live in the main part of the house and Mrs. Kidd will be living in the "in-law" apartment.

Mr. Duffy asked the square footage of the addition.

Mr. Jagentenfl said it's 864 square feet, but the "in-law" portion is not that size.

Mr. Duffy went over the other criteria in the ordinance for the "in-law" apartment with Mr. Jagentenfl.

Mr. Jagentenfl agreed with all the conditions as required in the ordinance.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No One.

MOTION by Mr. Anderson to grant the special exception to allow an accessory in law dwelling unit at 24 Pennichuck Street. It is listed in the Table of Uses, Section 16-61. It will not create undue traffic congestion or unduly impair safety. It will not overload public water, drainage or sewer or other municipal systems. The special criteria for an accessory dwelling unit are satisfied. It will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of the residents.

SECONDED by Mr. Tremblay.

MOTION CARRIED UNANIMOUSLY

5. **Merrimack County Savings Bank (Owner) 101 Broad Street (Sheet 133 Lot 38) requesting variance to change an existing manually changing reader board sign with a 4-line, 29 square foot electronic message center. RA Zone.**

Atty. Andy Prolman, Prunier & Prolman. Atty. Prolman referred to the information on the signs that the Board had in their packets. He also passed around an additional copy along with pictures that were recently taken at the site showing the immediate area and the signs in the immediate area.

He said the "RA" Zone does not allow electronic message centers. This "RA" Zone is a massive "RA" Zone. It goes from Brinton Court down to Atherton Avenue and onto Merrimack. It goes across the north end to Concord Street, Manchester Street, over Charlotte Avenue, past the Charlotte Avenue School and then to Broad Street to their area. This is a residential area with the exception of a couple of convenience stores, some churches and schools and the exception of their site.

He said on June 11, 2002 the Zoning Board granted a use variance to allow a bank in this zone. On January 14, 2003 a couple of variances were granted - parking in the front yard setback, open space reduction, and sign variances. He said the top portion of the existing sign is not going to change. The reader board portion is proposed to be converted to an electronic message center.

He said the area is surrounded by all kinds and sizes of signs and they don't believe the electronic message center to the existing sign is going to impact the area at all. There are gas stations around (with all types of signs) and a psychic studio right next to them. The 7-11 is closed, but next to the 7-11 is the car wash which has a great big sign and an electronic message center attached to it. There are other signs along the strip as well.

Atty. Prolman said the sign itself is screened from the residential areas on the back of the property. The bank building itself shelters the freestanding sign and electronic message center from the residential behind them. The sign itself is not going to be bright. It's amber lighting.

Mr. Tremblay asked if there is an electronic sign at the Mobil located across the street.

Atty. Prolman said it is.

Mr. Duffy asked Atty. Prolman if they are aware of the sign ordinance on these types of signs for flashing, scrolling, etc. which have been an issue in Nashua.

Atty. Prolman said this is not the Mortgage Specialists. This is not the kind of sign the bank is looking for. He said his client deserves credibility for the site because it looks great. They will be advertising bank specials, check specials, CD rates, and community events.

He said given the nature of the zone, they believe there is a hardship. The ordinance prevents a fair and reasonable use of the site. The electronic message center is a positive for the site.

He said they aren't violating the spirit and intent of the ordinance, given the site's location. They are a stone's throw to the Highway Business District. There are businesses surrounding them. The sign is going to be shielded from residential areas.

Mr. Duffy asked about three lines versus four lines of text.

Atty. Prolman said it reduces the turnover of the sign. It reduces the changing of the text. If there are four lines out there and they can convey a message, they can keep it up on the sign for a longer period of time than if they have three lines.

Mr. Currier said he believes this use has been a good merge of putting a business in a "RA" Zone. His first thought about the electronic sign is that it's a bit too much versus the signs that are there now.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No One.

Mr. Tremblay said he doesn't have a problem with it. He said the site is well taken care of. The sign is in good taste and not obnoxious. There are other signs across the way.

MOTION by Mr. Tremblay to grant the variance to change an existing manually changing reader board sign with a four-line, 29 square foot electronic message center at 101 Broad Street. The variance is needed in order 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's not contrary to the public interest. Substantial justice will be served.

SECONDED by Mr. Anderson.

Mr. Shaw said he is in opposition to the four lines of text. He is willing to consider three lines. He sees no reason to go beyond the restrictions in place for electronic message centers.

AMENDED MOTION by Mr. Shaw to change the motion to allow three lines of text, not four lines.

SECONDED by Mr. Duffy.

Discussion ensued concerning three versus four lines of text, the traffic along Amherst/Broad Street, and the distraction that could occur with four lines.

AMENDED MOTION CARRIED UNANIMOUSLY

Mr. Falk said by changing the lines of text they will be changing the dynamics of the sign as far as the size of the lettering or it could change the size of the sign.

Mr. Tremblay said his goal is to allow them to have the sign and comply with the rules.

Mr. Duffy said they could say they can have up to three lines of text up to a 29 square foot sign. They can always bring the sign down in size or they could make the lettering larger. He said Mr. Falk is just trying to make sure the Board knows that either can be done.

Mr. Shaw said the intent of his amendment was to ensure that all the standard electronic message center requirements would be implemented.

MOTION CARRIED UNANIMOUSLY 4 - 1, Mr. Currier opposed.

- 6. Mahfuz One Family Trust (Owner) 19 Pell Avenue (Sheet 106 Lot 27) requesting special exception to allow an accessory (in-law) dwelling unit to be constructed over an existing garage. R9 Zone.**

Alec Mahfuz, Trustee/Owner - 19 Pell Avenue. Mr. Mahfuz said he is proposing a 674 square foot "in-law" apartment above his garage with an enclosed staircase. The reason for the enclosed staircase is that if in the future his mother-in-law can no longer climb the stairs, they will be able to put in a stair lift to bring her upstairs.

He said he could build an addition above his garage without coming to the Board if this did not have a kitchen. However, his mother-in-law wishes to have as much independence as possible so he is trying to comply with her wish.

He said his neighbor next to him is selling his home, but if he doesn't sell it he will be adding a garage with a second story and a breezeway. There are large homes on Hasselbrook that can be seen from his area. There is also a home larger than his on Jalbert Avenue. They aren't too far from an area that has a number of duplexes.

He said most of his neighbors have expressed a willingness to accept this request. He said he didn't get letters to that affect.

He said his mother-in-law has one vehicle. He said he doesn't feel that his mother-in-law is going to create any traffic problems in the area. The street is almost like a dead end street. You have to really have a reason to go down the street.

He said there are a number of in-law apartments in the area that have been granted. He believes his request meets the Table of Use Regulations. It's not going to put a strain on the public water, sewer or other utilities. He said he believes all the other special regulations are met or fulfilled. It will not devalue the surrounding properties. In fact, it will bring up the values of the properties.

Mr. Anderson asked if the square footage of the "in-law" dwelling unit is 30% of the gross floor space.

Mr. Mahfuz said 700 square feet is the maximum that can be used for an "in-law" unit. He has 3,100 square feet of floor space in his home and the "in-law" unit will be 674 square feet.

In answer to Mr. Anderson's questions Mr. Mahfuz said that this is the only accessory dwelling unit in the house, that it will not alter the single-family appearance of the house or the neighborhood, it will not be used for rental purposes to persons other than those related by blood or marriage, that he would occupy the structure, and provide a covenant to be registered with the Registry of Deeds.

Mr. Tremblay asked if the staircase is in the back of the garage.

Mr. Mahfuz said it is. He said there is a proposed driveway that goes right alongside his garage and will go all the way back to the walkway so that the staircase can be accessed. He is 10' from the lot line on the other side so he couldn't put it on the other side. It also further enhances the fact that it will not appear to be a separate unit.

Mr. Currier asked if Mr. Mahfuz had talked to his abutter about the driveway. He said it looks like its right on the property line and looks a bit out of character with the side yards everywhere else in the cul-de-sac.

Mr. Mahfuz said there's still going to be an amount of side yard that will still be left. In the front part of the house there will still be a side yard probably about 40' back. He said it becomes a logistic problem of backing out of his garage if his mother-in-law's car is in the driveway.

Mr. Duffy asked if Mr. Mahfuz will exceed the current roofline on the house.

Mr. Mahfuz said he didn't believe it was going to exceed. The plan is to keep it under the roofline now existing. He said they are using floor trusses and they may have to alter the pitch of the roof, but his desire is to have it lower or at the same height.

Mr. Duffy asked if there is going to be storage in the garage between the garage and the "in-law" dwelling.

Mr. Mahfuz said "no".

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS

Don Heaton, 20 Pell Avenue. Mr. Heaton said he lives diagonally across the street from the proposed "in-law" unit. He said he is not necessarily opposed to this request. He said he hasn't seen any of the plans so he doesn't know what this is going to look like. He said he is planning on selling his property sometime in the near future and he doesn't want to see any degradation of property values.

He said the neighborhood is primarily single-family ranches. Both neighbors on either side of 19 Pell are two-story and on the corner of Jalbert there is a house that he thinks has an approved in-law apartment.

Mr. Currier said they have a floor plan that the abutter can look at, but Mr. Duffy said he believes the abutter wants to see what it looks like on the outside - windows, etc.

Mark VanTassel. Mr. VanTassel said he is going to build the structure. He said the roofline will be the same as the house. It will be on the same level or below.

Mr. Duffy asked if it is going to extend out to the front, the rear or the side of the garage.

Mr. VanTassel said "no".

SPEAKING IN FAVOR - REBUTTAL

Mr. Mahfuz said he has a nice-looking house and he is not going to jeopardize it by making it look like rental property up above. The contract calls for the same siding and everything to be the same as the existing home.

SPEAKING IN OPPOSITION OR WITH CONCERNS - REBUTTAL

Mr. Heaton said he trusts Mr. Mahfuz. His concerns have been addressed.

MOTION by Mr. Tremblay to grant the special exception to allow an accessory in law dwelling unit over an existing garage at 19

Pell Avenue. It is listed in the Table of Uses, Section 16-61. It will not create undue traffic congestion or unduly impair safety. It will not overload public water, drainage or sewer or other municipal systems. The special regulations are fulfilled. It will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of the residents.

SECONDED by Mr. Anderson.

MOTION CARRIED UNANIMOUSLY

7. **Nashua Pastoral Care Center, Inc. (Owner) 12-14 C Street (Sheet 40 Lot 9) requesting special exception to expand a non-conforming use by adding a 727 square foot single-story addition to an existing 4-unit multi-family building [request has expired - ZBA approved on 2-22-05]. GI Zone.**

Mr. Shaw recused from hearing this case.

Gordon Leedy, Planner, Vanesse, Hagen & Breslin. Mr. Leedy said the special exception was granted by the ZBA in February 2005. He said there is an existing 4-unit building within the "GI" Zone and the proposal is to add no new units, but 727 square feet of additional living space that would essentially change the existing mix of units from one three-bedroom, two one-bedroom, and one two-bedrooms to two three-bedrooms and two two-bedroom uses, which satisfies the needs of the program that owns the property.

He said there will be no additional traffic created if the special exception were to be granted. There is no undue demand placed on water, sewer or drainage systems. A site plan was approved in connection with the prior approval that included drainage attenuation. It is not out of character with the neighborhood, which is an existing mixed-use neighborhood with a variety of multi-family uses, some single-family and some commercial uses. He said the addition will be largely invisible from C Street.

Mr. Duffy asked if Mr. Leedy had been on the original case that came to the Board. He also asked if there had been any change to the dimensions or size or the site plan at all.

Mr. Leedy said he was on the original case and there are no changes at all.

Mr. Duffy asked if there had been any substantive change to the neighborhood or a change in the nature of traffic or of the uses or of building in the area.

Mr. Leedy said not that he is aware of.

Mr. Duffy said he is assuming that they didn't pull their building permit at the correct time.

Mr. Leedy said there was a changeover in City staff that delayed the application as well as some complications with financing. It's being done in cooperation in some respects with the City. The applicant's intent is to move forward with construction.

Mr. Duffy asked Mr. Leedy if he is stipulating that any and all other testimony and evidence at the last hearing be part of the record for this case.

Mr. Leedy said "yes".

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No One.

MOTION by Mr. Anderson to grant the special exception to expand a non-conforming use by adding 727 square foot single-story addition to an existing four unit multi-family building at 12 - 14 C Street. The special exception is listed in the Table of Uses, Section 16-302(a)(4). It will not create undue traffic congestion or unduly impair pedestrian safety. It will not overload public water, drainage or sewer or other municipal systems. The special regulations are fulfilled. It will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals, or welfare of the residents.

SECONDED by Mr. Duffy.

MOTION CARRIED UNANIMOUSLY

8. **BAE Systems Information & Electronic Systems Integration, Inc. (Owner) L Canal Street (Sheet 41 Lot 77) requesting**

special exception to work within the 75 foot prime wetland buffer of the Nashua River to repave a portion of the south parking lot. GI Zone.

Chris Ford, BAE Systems. Mr. Ford said this project involves paving and re-grading their parking lot at 95 Canal Street. This is being done for the safety of their employees and the patrons of Marguerite's Restaurant, which abuts the lot.

He said they have been before the Conservation Commission and received their approval for the project.

Mr. Duffy asked if there is any plan for dredging or for anything to be taken out from underneath.

Mr. Ford said the plan is to re-grade it by scarifying the surface and grinding it in place, compacting it and then capping it with a layer of asphalt.

Mr. Duffy asked what they are going to do underneath the parking lot in terms of storm water management or any other systems that are not there.

Mr. Ford said the project will result in an improvement in both the drainage characteristics and the grit quantity that's sent to the river. They will be installing a Vorsentry unit to remove the grit. They currently don't have a grit removal system. There will be an additional manhole. That will contain the Vorsentry Unit, which is a vortex unit to separate the grit from the water that will be discharged. The water will travel to the existing manhole and the existing discharge point on the property.

Mr. Duffy said with the recent storms the Nashua River approached flood stage. He asked how the current system handled the rain.

Mr. Leedy said the current discharge system was able to handle the rain as far as the parking lot was concerned. The grading will improve some of the ponding and other issues that occur at the lot right now.

Mr. Duffy asked if this was really maintenance of what is already there as there is no increase in square footage.

Mr. Leedy said this is correct.

Mr. Duffy went through some criteria with Mr. Leedy, but his questions were unintelligible on the tape. Mr. Leedy could be heard stating affirmative answers.

Mr. Currier asked a question (partly unintelligible) if the runoff (??) will all go into the storm drain versus going over the top.

Mr. Leedy said it will. Part of the plan is to repair the banks and re-vegetate it as well. They are only going to be working at the top of the bank. Anything on the other side of the bank is City property and the Conservation Commission decided that wouldn't be part of the project.

Mr. Currier asked if there would be one outfall now.

Mr. Leedy said "yes". He said it's the existing black 12" pipe.

Mr. Duffy asked the duration of the project.

Mr. Leedy said they are still waiting for the permit to come back from the State. They don't expect this until August. They would like to have the project done within a month of receiving the final approval.

Mr. Duffy asked about snow removal.

Mr. Leedy said snow is removed from the site. Some of it is allowed to stay on the site when it gets too much to take it off site.

Tape becomes unintelligible.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No One.

MOTION by Mr. Currier to grant the special exception to work within the 75' prime wetland buffer of the Nashua River at L Canal Street, Sheet 41 Lot 77. The use is listed in the Table of Uses, Section 16-271. It will not create any undue traffic congestion. It will probably increase pedestrian safety. It will

not overload public drainage, sewer, or other municipal systems. There will be no change to the character of the neighborhood. Becomes unintelligible. Stipulations of the Conservation Commission are incorporated.

SECONDED by Mr. Anderson.

MOTION CARRIED UNANIMOUSLY

9. **BAE Systems Information & Electronic Systems Integration, Inc. (Owner) 65 Spit Brook Road (Sheet A Lot 12) requesting the following variances: 1) to exceed maximum number of roof signs, 1 permitted - 4 proposed, and 2) to exceed maximum sign area, 150 square feet allowed, 520 square feet proposed per sign. PI Zone.**

Chris Rath, Principal Engineer, BAE Systems. Mr. Rath said the signs actually still exist (becomes unintelligible). There has always been signage since the building was erected in the late 60s and it was just since the last transition from Lockheed Sanders to BAE Systems (becomes unintelligible).

He said there are four faces to the square tower that sits on top of the hill at this campus. The lighting is still there (becomes unintelligible).

He said he has provided pictures for the Board to show the transitions from Sanders to Sanders Associates to Lockheed Sanders and now BAE Systems. Everything is in place, but the lettering is gone.

Mr. Duffy asked a question relative to the size of the sign.

Mr. Rath said the windscreen is 8' high and it runs all the way around the building. (Becomes unintelligible) The proposal is to surface light from the bottom.

Tapes unintelligible.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No One.

MOTION by Mr. Shaw to grant the variance at 65 Spit Brook Road. Tapes are unintelligible.

SECONDED by Mr. Duffy.

Some discussion ensued, but it was unintelligible.

MOTION CARRIED UNANIMOUSLY

10. Louis J. Jr. & Sharon A. Coco (Owners) 56 Dublin Avenue (Sheet 53B Lot 26) requesting variance to encroach 7 feet into the 20 foot front yard setback to construct a 15'x9' roofed walkway addition next to the 7'x9' addition approved by the ZBA on 2-14-06. R9 Zone.

Peter Howling, Vesta Construction Services, Amherst, NH. Mr. Howling said an area variance was granted on February 14, 2006 to encroach 7' into the required 20' setback to construct a 9'X7' addition. Subsequent design work confirmed the need to improve the access by extending the roof area over the entry addition to allow for the protection of the walkway. The roof structure would extend 15' along the front of the house. They are seeking an additional variance to allow the design change.

He said this is a single-family ranch house built in the late 1950s. It is constructed forward on a sloping half-acre lot. This, along with the widening of Dublin Avenue over the years has resulted in a front yard setback that is in violation of the regulations. This condition creates a hardship.

It is within the spirit and intent of the ordinance that the owners have reasonable use of their property. They are seeking this modification to provide for safe access to the house during harsh weather. It is the easiest and most direct access to the drop-off point at the top of the driveway. The only other access into the house is in the rear, down a slope, and up a flight of stairs or a substantial distance away from the parking area and detached garage. These are unique features for this property.

He said the existing front access does not allow for protection from ice and snow buildup. This entry is the shortest route to an area where cars can be parked during inclement weather and will be the safest means into the house.

He said the Coco's are fortunate enough to have their parents living. They have medical issues, including the use of a walker

and portable oxygen equipment that makes it impossible them to access the house using the rear access.

He said the improvement will enhance the front entry of the house with a design that will manage roof runoff more effectively. It will be in accordance with the housing in the neighborhood. It will allow for safer access for the owners as well as visitors. It will increase the value of the home. It will add to the safety and comfort of the home, which would be an overall benefit to the general public. It will result in substantial justice to the owners.

Mr. Duffy said he hasn't seen any 22' long attachments like this in driving around the neighborhood or anywhere else in Nashua.

Mr. Howling said the house is forward on the lot. The lot itself is fairly large for this zone. They feel it is a safety issue and that it's appropriate to provide for provide for the safety and comfort of the elderly residents. He said what they are asking for is unique.

Mr. Duffy said he's trying to look for some reasonable reason to have something so significantly large that's out of character with anything on this street.

Mr. Howling said they don't have any other choice. He said the walkway extends that particular length along the house and they want to protect it the entire distance to the car drop-off point. Taking it the partial distance is not fully protecting those people who access that walkway.

Mr. Currier said the house to the left and right sit right up to the road and he thinks that the attachment that they first came to the Board for sticks out, although none of the abutters showed up or had an objection to it. Even though he thought it was unusual he voted in favor of the request.

Mr. Howling said it's their opinion that the roofed structure now is more in line with the long hip roof house. The extended roof provides a more pleasing architectural appearance.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

Discussion ensued about the location of the attachment and what it basically is going to look like.

MOTION by Mr. Anderson to grant the variance to encroach 7' into the 20' front yard setback to construct a 9'15' roofed walkway addition next to the 7'X9' addition approved by the ZBA on 1/14/06 at 56 Dublin Avenue. The variance is needed to enable the applicant's proposed use of the property given the special conditions. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue other than the area variance. It is within the spirit and intent of the ordinance. There was no testimony either way that it would adversely affect the property values of surrounding parcels, but it doesn't seem that it would adversely affect the values. It is not contrary to the public interest. Substantial justice will be served.

SECONDED by Mr. Shaw.

MOTION CARRIED 4-0-1 Mr. Duffy abstained.

Motion for Rehearing

73 Wellington Street - Berkins

Mr. Duffy asked if the request for rehearing indicated there was a procedural error, such as improper notice or denying someone the right to be heard.

The Board did not feel that this was the case.

Mr. Duffy asked if there was an illegal decision. Did the Board fail to completely address each of the points of law required for a special exception, variance, or appealing a decision of the administrative officer.

The Board did not feel that this was the case.

Mr. Duffy said in the request for rehearing there are some notes about restrictive interpretation (Item #2) and also speaking to the ZBA's (Point #3) changing the zoning without having the authority to do so. He said he believes the Board deliberated and listened to the testimony and weighed the testimony on both sides and looked at the ordinance and reviewed the law. He said

even though these points are raised, he didn't find them compelling to say there was an illegal decision made.

The Board members agreed.

Mr. Duffy asked if the Board completely addressed all the points of law as required. Mr. Duffy said they talked about administrative gloss, the history of the property, reasonable use, character of the neighborhoods, etc. and based on everything he believes they went through a significant number of points of law in the case that evening.

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

Mr. Currier said he didn't think so. The rehearing request talks about issues the Board has already heard and discussed that evening. The other members agreed.

Mr. Currier said Point #2 in the rehearing request focuses a lot on lot depths and they did discuss that. He said to him the prime topic was lot frontages. He said there was nothing new in the rehearing request.

Mr. Anderson said he thinks the Board referenced the land use code more on this case than on any other case since he has been on the Board.

Mr. Duffy said the Board heard a lot of very compelling, very sincere, very informative heartfelt communication on both sides.

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

The Board did not feel this was the case.

MOTION by Mr. Duffy to deny the request for rehearing for 73 Wellington Street on the appeal of the administrative officer's decision. There is no procedural error, including improper notice denying someone the right to be heard. All the information and testimony was substantive and significant covering a myriad of history and information about this site and the new land use ordinance and the interpretation by the Planning Board. It was not an illegal decision. The Board completely addressed all the testimony and information and did

due diligence in their deliberation and review. There is no new information provided to the Board. The request is more of a presentation of some finite issues that were presented that evening and included in their deliberations. There is nothing in the request that would cause the Board to make a different decision.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY

Minutes

MOTION by Mr. Duffy to approve the minutes of 5/9/06 & 5/23/06, waive the reading and place them on file.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY

Regional Impact

The Board did not find any regional impact on the agenda for the June 27, 2006 meeting.

Other

Mr. Falk gave a clean copy of the by-laws to the Board for the Chair's signature.

ADJOURNMENT

Mr. Duffy called the meeting closed at 10:20PM.

Jack Currier
Acting Clerk

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Taped Meeting