

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
September 9, 2008

A public hearing of the Zoning Board of Adjustment was held on Tuesday, September 9, 2008 at 6:30 PM in the Auditorium at City Hall.

Sean Duffy, Chair, conducted the meeting.

Members present were:

Sean Duffy, Chair (arrived at 7:15 pm)
Jack Currier, Vice Chair & Secretary
Bob Carlson (arrived at 6:40 pm)
Kathy Vitale (arrived at 6:45 pm)
Gerry Reppucci
Carter Falk, Deputy Planning Manager/Zoning

Mr. Currier explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Currier explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws. Mr. Currier also explained procedures involving the timing light.

- 1. Fleurette D. Duval (Owner) 2 Tufts Drive (Sheet 48 Lot 134) requesting variance to exceed maximum driveway width, 24 feet allowed, 36 feet requested. RA Zone. Ward 4.**

Voting on this Case:

Jack Currier
Kathy Vitale
Bob Carlson
Gerry Reppucci

Fleurette Duval, 2 Tufts Drive. Ms. Duval said she wants to add only 8 feet, not 12 as advertised, so it will be 32 feet. She went over the points of law, and provided the Board with a couple pictures. She said she has two vehicles, and a portion of this driveway will act as a walkway to the rear yard.

Discussion ensued between the Board and the applicant.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Ms. Vitale to grant the area variance on behalf of the applicant. Ms. Vitale stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, and 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, as the applicant has stated that this will help her with her snow removal and use of the property that will be beneficial to her. She stated that the request is within the spirit and intent of the ordinance, per testimony.

Ms. Vitale stated that the request will not adversely affect the property values of surrounding parcels, the Board did not receive any other testimony stating otherwise, it is not contrary to the public interest, and substantial justice will be served, per Section 190-192 C.

SECONDED by Mr. Currier. Mr. Currier stated that an amendment to the request is that it is only for 32 feet, not 36 feet as requested.

MOTION APPROVED UNANIMOUSLY 4-0.

2. **Blackfoot Capitol II, LLC (Owner) 24 West Glenwood Street (Sheet 128 Lot 102) requesting variance to encroach 3 feet into the 10 foot required left side yard setback, to demolish an existing house and construct a new single-family home. RA Zone, Ward 7.**

Voting on this Case:

Jack Currier

Kathy Vitale (Recused from voting on this case)

Bob Carlson

Gerry Reppucci

Jessica Forcier, 32 Williams Street. Ms. Forcier said she is the contractor doing the work at this location. She passed out a packet to the Board, including pictures, a copy of the lot consolidation, and the application. She said the current home

in uninhabitable, and the current home has a 7 foot left side yard setback. She said the prospective owner is looking to keep the same setback with the proposed house. She said the prospective owner lives in Nashua and wants to stay here.

Ms. Forcier said they would have to remove the existing house, and clean up the lot. She went over all the relevant points of law with respect to the variance. She said the proposed house will be about 1,400 square feet in area; also, the existing home is in disrepair and is a danger to the neighborhood.

SPEAKING IN FAVOR:

Martin Genest, 14 Montgomery Avenue. Mr. Genest stated that he will be living in the house, it will not be a rental unit.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Chris Woods, 44 West Glenwood Street. Mr. Woods said he is excited to have a new house and new neighbor here. He said his only concern is that he has a very large tree on his property, on which there is a tree house. He said he was concerned about the branch it sits upon, and whether the construction of the house will necessitate removing the branch and tree house.

Jessica Forcier, 32 Williams Street. Ms. Forcier passed out pictures showing the tree and tree house. She said some of the branches must come down. She said it's hard to say whether the branch will need to come down or not. She stated that this shouldn't be an issue for the variance request.

Mr. Currier said it's somewhat unclear where the branch is in relation to the property line and the proposed house, and the new homeowner is aware of the situation, and this isn't a criteria that the Board can weigh in on, but if this request is approved, hopefully everything can be worked out, but it depends on where the property line is located.

Mr. Currier asked Ms. Forcier if a boundary survey has been done.

Ms. Forcier said not yet, but one may be done.

Mr. Carlson stated that the existing house has safety issues, and the new owner will be constructing a safe, nice home, which

will be better for the neighbors. He said although he wouldn't want to lose the tree fort, but sometimes for the safety of children and the neighbors, a ramshackled building is not a good thing, and you have to weigh what is better overall.

Mr. Woods said he understands, but just wanted to make the new owner aware of the tree house, and to be sensitive to it.

MOTION by Mr. Reppucci to grant the variance on behalf of the owner. Mr. Reppucci stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method, in fact, the present structure there is in the exact same place as the area variance request. Mr. Reppucci stated that the request is within the spirit and intent of the ordinance per testimony, it will not adversely affect the property values of surrounding parcels, in fact, they should be improved, the request is not contrary to the public interest, and substantial justice would be served to the applicant with the granting of this variance.

SECONDED by Mr. Currier.

MOTION APPROVED UNANIMOUSLY 3-0.

3. **28-34 Railroad Square, LLC (Owner) Riverside Cakery & Coffee House (Applicant) (Sheet 43 Lot 33) requesting variance to exceed maximum number of allowed wall signs, 3 permitted, 3 existing - one additional awning sign proposed. D-1/MU Zone, Ward 3.**

Voting on this Case:

Sean Duffy
Jack Currier
Kathy Vitale
Bob Carlson
Gerry Reppucci

Yalcin Kaya, 3 Windemere Way, Nashua, NH. Mr. Kaya stated his shop is at 35 Railroad Square, and that the awnings have been there for years. He stated that there is text on one side, but not the other, and the new text would balance out the signage. He said he has already received approval from the Historic District Commission for the signage.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Duffy to grant the variance on behalf of the owner. Mr. Duffy stated that the variance request is reasonable, it is a corner property, with awning systems that are existing, it will balance the building aesthetically, and it is a minor and reasonable request.

Mr. Duffy said it is within the spirit and intent of the ordinance that directional and identification can be handled by these two corner signs on a busy corner, it should not negatively affect the property values of surrounding parcels, it is not contrary to the public interest, and substantial justice is served with reasonable identification rights.

SECONDED by Mr. Carlson.

MOTION CARRIED UNANIMOUSLY 5-0.

4. **Spyros C. & Katherine C. Docos (Owners) Lannan Development Group (Applicant) 836 & 844 West Hollis Street (Sheet D Lots 84 & 85) requesting: 1) use variance to allow a gas station/convenience store with coffee shop/drive-thru, food service/retail, and accessory uses; and the following variances: 2) to exceed maximum ground sign area, 10 sq.ft permitted, 100 sq.ft proposed, 3) to exceed maximum ground sign height, 6 feet permitted, 15 feet proposed, 4) to exceed maximum number of wall signs, 1 permitted, 3 proposed, and 5) to exceed maximum wall sign area, 6 sq.ft permitted, 78 sq.ft proposed. R30 Zone, Ward 5. (TABLED FROM THE JULY 8, 2008 MEETING)**

CASE WITHDRAWN.

5. **Ryan & Jill Adams (Owners) The Lannan Company, Inc. (Applicant) 820 & 824 West Hollis Street (Sheet D Lots 59 & 87) requesting: 1) use variance to allow a gas station/convenience store with coffee shop/drive-thru; and**

the following variances: 2) to exceed maximum ground sign area, 10 sq.ft permitted, 100 sq.ft proposed, 3) to exceed maximum ground sign height, 6 feet permitted, 15 feet proposed, 4) to exceed maximum number of wall signs, 1 permitted, 2 proposed, and 5) to exceed maximum wall sign area, 6 sq.ft permitted, 51.6 sq.ft proposed. R30 Zone, Ward 5. [TABLED FROM THE AUGUST 26, 2008 MEETING]

Voting on this Case:

Sean Duffy
Jack Currier
Kathy Vitale
Bob Carlson
Gerry Reppucci

MOTION by Mr. Currier to remove this case from the Table.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 5-0.

Mr. Reppucci stated that the issues before the Board are the five criteria of the variance, and the documentation referred to as the Simplex standard for the use. He stated that he thought this property was very deserving of the variance to develop this property. He mentioned the variables such as the landfill, taking part of their property by eminent domain, traffic, that this property, as zoned, is value-less. He said that granting this application would bring justice to the applicant. He said the concerns raised about traffic are all pre-existing conditions, while some traffic would come to the use, most of the cars are already there on the roadway. He said the traffic increase would be minimal, and would not be an egregious problem. He stated that traffic could be remedied on the roadway, if not improved. He stated that the impact stated by Ald. McCarthy on the impact to other similar uses should not be considered by the Board, the competition amongst businesses should not be considered by the Board.

Ms. Vitale said one of the items the applicant mentioned was that this would benefit the surrounding area. She said the abutters in opposition would prefer to go down the road to the existing stores, and that they're happy with what is already there, and don't see how it would benefit them.

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Mr. Carlson stated that one of the points of law is the public interest. He said about fifty people came to the last meeting, with about twenty-five coming to this meeting tonight, all opposed, he stated that the Board should view this as contrary to the public interest. He stated that for property values, the property is value-less, they are in a bad situation, as who would want to be across the street from a convenience store or the town dump. He said the Board should look at what the people in the area feel, and they are vigorously opposed, secondly, with respect to traffic, when the representative from Tedeschi's was asked how many cars were going to pass through the site, he believed his response was that he didn't know, which is problematic. He said the other problematic issue is that if you take a 3,000 gallon gas tanker coming off of Route 3, it has to turn around, and where do you turn it around, probably at the site, and with all the other trucks and deliveries to the site, it will create a big traffic concern, so he said the public interest, as expressed by those individuals who came forward, is significant. He said the Board cannot regulate business, but it's the public interest, as expressed by individuals who take time out of their busy day and family time to come to a Zoning Board meeting, and a lot of people have shown up twice now against this case, and the people have said they don't want this use here.

Mr. Currier said he looked at this from the five points of law. He said for the hardship, is there a restriction on the property about the unique setting of the property. He said the applicant stated that they have the landfill entrance. He said the uniqueness that this Board should consider is being in close proximity to the town landfill, and being in close proximity to it, all the properties on West Hollis Street, Skyline Drive included, Trestle Brook, Pacific Boulevard, are impacted. He said the roar of diesel engines pushing trash, and the banging of tailgates were major impacts, along with the downwinds from the west bringing odors.

Mr. Currier gave some first-hand examples of his experience living nearby, and stated that this property is not unique in that they're the only one that is burdened by the issues that have been discussed relative to the dump, it applies to all the properties nearby. He said that with the eminent domain, they took 15 acres of the 17, so they were fairly compensated for the loss of the property and its value, and that no zoning favors should be applied, and therefore, is not unique with respect to

hardship. He stated that the proposed use is much more intense and a major change to the mom & pop store that has been there for so long, so it doesn't meet the spirit and intent of the ordinance. He said for property values, there was no testimony one way or another, but a lot of the neighbors spoke and said it would be a distraction for a high volume use. He said for the public interest, he agreed with Mr. Carlson's statements that this part of town is a country setting, and it's not like a busier roadway, and is contrary to the public interest, and therefore, substantial justice is not served.

Mr. Reppucci stated that the applicant's view of uniqueness wasn't that they are next to the landfill, he said he's harmed by the flow of traffic that is excessive going by his property.

Mr. Currier said other nearby properties all experience the same amount of traffic.

Mr. Reppucci said multiple properties can be similarly impacted, it doesn't have to be just one.

Mr. Currier said even if the subject property has heavy traffic volumes, is it worthy of granting a use variance for granting something even more intense, in an R30 zone? He said the uniqueness is that it's on the corner with increased traffic, but being near the landfill does not necessarily make this site unique.

Mr. Duffy said there are some wonderful homes and properties in this area. He questioned whether it's value-less for putting a single-family house there.

Mr. Reppucci said he couldn't see how anyone could want to live at this location. He didn't think the presentation to the Board was one of everyone's views on this topic, he said the people that came here were very organized, and there was a lot of good feedback in the editorials from *The Nashua Telegraph*, and he said when he went to look at the site, the person who lives directly across the street from the site thought it was a great idea. He said everywhere he's lived, it's a huge convenience and an asset living near a use like this, and the property will be worth more. He said the world has changed in the last 15 years, these uses are part of life, and neighborhoods, now. He said he wasn't swayed by the public interest shown by the neighbors.

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Mr. Currier described where he grew up, and liked the subway and stores nearby, but said this isn't what West Hollis Street is. It is an R30 zone, and doesn't think its worthy of the use variance.

Mr. Duffy said there were a couple court cases recently in the state, one was Nine A, LLC vs. Town of Chesterfield, and the other was Malachy Glen and Associates vs. the Town of Chichester, and one of the statements in them, relating to hardship, was that the variance must be an unduly remarked degree in conflict with the ordinance that it violates the ordinances basic zoning objectives, and in Malachy Glen and Associates, it speaks to an alteration to the essential character of the locality, or threaten the public health, safety or welfare.

Mr. Duffy said the Board should look at this in the neighborhood standpoint, of what is there. He said he went there at 5:00 am, 6:10 am, 8:20 pm, and 7:30 pm, and went on a Sunday, and tried to look at what the site would be like with this use there, and said there's a nonconforming use there now, but the proposed use would even make it more nonconforming. He said the two existing convenience stores are already entrenched in the neighborhood, as well as the cemetery and the church. He said the applicant still has reasonable use, which is an R30 zone, and they have the current use, and could also petition for a rezoning from the Planning Board and the Board of Aldermen.

Mr. Currier said in the traffic report, it stated that it wouldn't increase the number of vehicles. He said there is a school bus pickup there, and if this is approved, the Planning Board would be forced to make the site work with traffic. He stated that the testimony from the owners of Fotene's and J-Don's is completely off the table, and the Board should not weigh into the decision. He said regardless of the vote for this case, he said he is not moved by the emotion and tearjerker testimony of others.

Mr. Reppucci said he empathizes with what applicants feel. He said applicants must come before the Board, and we take testimony from one side, the applicant, and we are put into a position where we're voting on an application where people can't get past first base in the City, because they can't get a coordinated effort to get past obstacles that they know exist,

and it's a lot of money. He said for the traffic, it's the City's move, the City and the landfill should work out the traffic, it puts the applicant at a huge disadvantage.

Mr. Duffy said in the City, there are a significant amount of zones that allow for commercial purposes that have high density traffic. He said there are overlay district, too, and this area was not in the Master Plan for a high traffic commercial use. He said it's just like a significant residential project going in the Pheasant Lane Mall area. It's a land use question.

Mr. Reppucci said he's frustrated by the presentation of the traffic problem, clearly, it's an issue that can be addressed. He said unfortunately the ZBA has dozens of people coming before us with traffic problems, and there's nothing we can do about it, and these issues need to be brought up elsewhere. He said that applicants have two strikes against them when they come to the ZBA.

Mr. Duffy said applicants have the right to apply, and it's their decision to come to us and spend their money.

Mr. Currier said an applicant of this sophistication should know that this is an R30 zone that has a variance from the 1950's for a low use, and the applicant should know that they're asking for a lot, and as an example, they should review the Red Barn Store on Broad Street, which was a mom & pop antique store for a very long time, and then it came to the Board for a convenience store, it was zoned residential with a variance for an antique shop. He said the neighborhood was polled, and they all wanted the convenience store.

Mr. Duffy said the name "country store" was used in the name of that store, so it had a residential feel to it.

Ms. Vitale stated that even if no new traffic were to be added to the roadway, the nature of the proposed use will attract people going to the site, which does impact the neighborhood. She stated that there is a substantial increase in the use.

Mr. Currier said the property went from 17 acres to 2 acres many years ago, and has had a viable use on the property for a very long time, but that shouldn't be reason to bend the rules and allow a more intensive use.

MOTION by Mr. Currier to deny the use variance portion of the request. He stated that the zoning restriction, which is an R30 zone, the property currently has a variance for a light use motorcycle shop. He stated that this zoning restriction does not interfere with the landowners reasonable use of the property, the landowner has been using the property in this fashion for decades, and there's other uses that could work just fine in this situation. He stated that he believes that while this property is situated on the entrance to the landfill, it is not unique in that it is burdened by the downside of living near a landfill, which is noise, traffic and odor, many of those issues are confronted by many if not all of the abutters to the landfill, so by granting this variance would injure the public and private rights of others.

Mr. Currier said for the spirit and intent of the ordinance, he said if it were granted, it's not within the spirit and intent of the ordinance, he said he believes it violates the ordinances basic objectives, which is an R30 zone, a residential zone, in this case, a residential zone with light commercial.

Mr. Currier stated that he believes that this use variance will impact the property values of surrounding residential parcels, and per all our discussion, it is contrary to the public interest, and that substantial justice is served by not granting the use variance.

SECONDED by Mr. Carlson.

Mr. Duffy stated that this is a nonconforming use being made more nonconforming and intensive, but if this were in a different zone with more intensities, and like uses, maybe it could be supported. He said the essential character of the neighborhood is very residential.

MOTION CARRIED 4-1 (Mr. Reppucci).

Mr. Duffy said the Board should talk about the sign variance requests, numbers two through five of the request.

Mr. Currier said the amount of signage would be like a beacon in the night. He said the signs for Gate City Cycle were not illuminated. He said the lit signage, and being larger, would be out of character with the neighborhood.

Mr. Falk said if the use variance is denied, it basically becomes a moot point to discuss the signs, because if the use of the land is denied, they would not be able to put up the signage they are requesting anyways.

Mr. Carlson said the signs should be a moot point.

MOTION by Mr. Carlson to deny the variance for signage, they are irrelevant because the use was denied, and the lit signs would be a detriment to the community.

SECONDED by Ms. Vitale.

MOTION CARRIED 4-0-1 (Mr. Reppucci abstained).

REHEARING REQUESTS:

1. Rita Uberti (Owner) 21 & 23 Edwards Street (Sheet 122 Lots 94 & 97) requesting the following variances: Lot 94: 1) minimum lot area, 7,500 sq.ft required, 6,006 sq.ft proposed, 2) minimum lot width, 75 feet required, 60 feet proposed; Lot 97: 3) minimum lot area, 7,500 sq.ft required, 6,006 sq.ft feet proposed, and 4) minimum lot width, 75 feet required, 60 feet proposed; also, requesting Equitable Waiver to allow an existing detached garage to remain over a lot line - all requests to transfer common ownership between contiguous lots to create two nonconforming lots. RA Zone.

Mr. Reppucci suggested making a Motion, but the Board wanted to discuss the case further. He said there were only three members voting on the case, and it's not fair to the applicant to not have a full board.

Mr. Duffy said there were three members voting, and the State laws allow for five members to vote on cases, and there was an ordinance passed in the City about a year ago.

Mr. Currier said there were three votes, and it was a unanimous decision, even if there were five voting, it still would not have passed, because three affirmative votes are necessary to pass. He said the Alderman have chosen to settle a law, which is if there's three or four, you have to hear it, if the Board chooses to rehear based upon that, we're not abiding by their law. If the Board continues to do that, we are violating the

law that the Aldermen have set for us to do. He said he didn't feel that that law is defensible in court, when it goes to court, he asked if the ZBA here contesting the Aldermen upstairs to arrive at the best answer, or, a client that has their interests best served. He said he didn't feel that is a reason to rehear the case because there were less than five voting.

Mr. Reppucci said he didn't feel they would be doing anything contrary that the Board of Aldermen said. He said the only way we would be contrary is if we refuse to hear a case with three.

Mr. Duffy said this is a very thorough attorney. He said the fact that this attorney did not raise the issue that there were three members hearing the case, versus five, they didn't feel it was important enough, because they understood Mr. Currier's point.

Mr. Duffy said for point number three, and asked if anyone feel that the request contains any new information not presented or available to the Board at the original Public Hearing. He said she went over a lot of details.

Mr. Falk said the vote was 2-1, so the motion failed, as it didn't get three votes.

Mr. Duffy asked if there was any new information.

Mr. Currier said there's a lot of new information in the rehearing request, it's essentially a smattering of zoning issues that don't meet the current criteria in this neighborhood, many of those setback violations in the surrounding neighborhood were not articulated that night, and he thought it was irrelevant, he stated what he thought was being presented in the rehearing request is that there are all these other violations, but what's the big deal about this one, but what is done very poorly is there's zoning laws have changed and morphed, which they always do, so there's various infractions in the neighborhood, which predate zoning, but that is not cause to grant this request.

Ms. Vitale said she agreed with Mr. Currier's statements, and asked why we would increase the number of violations if we don't have to.

Mr. Duffy said their argument was that there's so many

nonconforming uses in the neighborhood, and the ordinance states that you're allowed to have these exceptions within a certain distance, isn't that more clarified in this argument made that evening. He asked if this were to be a more intensive use.

Ms. Vitale said it was very well presented, that there were many other properties such as this one, and to subdivide this one into two lots with two more houses was actually not going to be like what is out there, they weren't unique.

Mr. Currier said the spirit and intent of the ordinance was to simplify and streamline the procedure for the residents. He said they showed up, there were three of us, and we rendered a decision, he said what about the next time if there's only four of us here, it could go on in perpetuity.

Mr. Reppucci said he thought the rule was made because frequently the Board didn't have enough members to get the City's business done, and didn't feel that is a reason to penalize applicants. He said the applicant shouldn't suffer because there's only three members present. He said this applicant only had two people voting against it.

Mr. Duffy said in the procedural announcements at the beginning of the meeting, we state that applicant's need three affirmative votes to get approval.

Mr. Currier said the ordinance, sponsored by Alderman Teeboom, was in the paper a lot, was that the applicant was asking not to be heard when they saw a roomful of people against them, they'd keep pushing it out so that people got tired of coming, and cherry-pick the people that were voting.

Mr. Reppucci said applicants are at a huge disadvantage when there's less than five people voting, and it's discouraging for applicants who spend thousands of dollars to come to the Board, and they don't have a full Board.

Mr. Duffy asked if there's any procedural error.

Mr. Currier said he didn't see any procedural error.

Mr. Duffy said the attorney did not refer to any in her request, either.

Mr. Duffy asked if it was an illegal decision, in other words, did the Board fail to address the points of law.

Mr. Duffy asked if the rehearing request contained any new information not presented or available to the Board from the original meeting.

Mr. Currier said there's a lot of debate about how, if you were to subdivide this and build a house, it's certainly more intensive, is it the most intensive two properties on the street, or the second or third-most, because there's a bell curve shifting it from less intensive to more intensive. He said the Board gets a lot of Excel spreadsheets about the density of a neighborhood. He said sometimes in rehearing requests, the Board gets more information about the density of a neighborhood, but it's still not clear. He said we couldn't compare anything at the original meeting, and we can't compare it with the rehearing request, but it's still not the information we need to actually grant a rehearing. He said they've done more work, but it's an incomplete and an unthorough job of providing the information the Board needs to determine whether it's a worthy variance to give, he said the information given is new, but not substantial.

Mr. Reppucci said in the report, it said the Board mis-applied Section 190-121, Nonconforming Lots, and summarizes that by saying the property should not be subject to the merger clause, and she suggests the voting members did subject it to the merger clause. He asked if this was presented at the original meeting.

Mr. Duffy said his read of it was that it wasn't.

Mr. Currier said it wasn't presented.

Mr. Currier said what's highlighted on Attachment "A", is that this subsection does not apply to a nonconforming lot if the majority of the developed lots located on either side of the street where such lot is located and within 500 feet of such lot are also nonconforming, that is the crux of the rehearing request. This element was not presented to the Board that night, however, the first sentence of Section 190-121 (B)(3) says, if the owner of two or more contiguous undeveloped lots. He said his position is that this argument does not apply at all, because these are not two or more undeveloped lots, it's a developed lot and an undeveloped lot, and this language

specifically says two or more undeveloped lots, so the attorney never mentions this first sentence.

MOTION by Mr. Reppucci to grant the rehearing request, based upon his earlier discussions, in that there were only three voting members present, and only two voting members voted against the request.

NO SECOND.

MOTION FAILS.

MOTION by Mr. Currier, to deny the rehearing request, based upon the discussion of the Board, he said he didn't believe there was a procedural error, or it was an illegal decision rendered. He said while there was some new information presented this evening, the new information is not persuasive that it's worthy enough of a rehearing request, it's additional information about zoning violations within a 500 foot area, however, the statute that the rehearing request refers to doesn't apply to this lot, because it's already developed, so, with this information, he stated that there's no new information submitted to the Board tonight, and there's no information that would cause the Board to make a different decision.

SECONDED by Mr. Carlson.

MOTION CARRIED 4-1 (Mr. Reppucci)

REGIONAL IMPACT:

The Board did not see any items of Regional Impact on the next agenda.

MINUTES:

August 26, 2008:

Mr. Falk said he received some changes from Mr. Reppucci, he stated that he will make the changes.

MOTION by Mr. Reppucci to approve the minutes with the changes that were submitted to Mr. Falk.

SECONDED by Ms. Vitale.

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MOTION CARRIED UNANIMOUSLY 5-0.

ADJOURNMENT:

Mr. Duffy called the meeting closed at 9:12 p.m.

Jack Currier
Acting Clerk

CF
Taped Hearing