

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
November 12, 2008

A public hearing of the Zoning Board of Adjustment was held on Wednesday, November 12, 2008 at 6:30 PM in the Auditorium at City Hall.

Sean Duffy, Chair, conducted the meeting.

Members present were:

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

Mr. Duffy explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Duffy 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. Duffy also explained procedures involving the timing light.

- 1. Robert V. & Sandra A. Clark (Owners) 58 Amherst Street (Sheet 62 Lot 19) requesting variance to exceed maximum driveway width, 24 feet permitted, 27 feet existing - an additional 27 feet requested. RB Zone, Ward 4. [TABLED FROM THE SEPTEMBER 23, 2008 MEETING] [POSTPONED FROM THE OCTOBER 14, 2008 MEETING]**

Voting on this case:

Sean Duffy
Jack Currier
Rob Shaw
Kathy Vitale
Gerry Reppucci

MOTION by Mr. Currier to remove the item from the Table.

SECONDED by Mr. Reppucci

MOTION CARRIED UNANIMOUSLY.

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Robert Clark, 4 Briand Drive, Nashua. Mr. Clark stated that he was asked by the Board to revise his plan, as it looked as if it was not going to be supported when he came in September. He said he's asked for an additional ten feet, but said he'd really like an additional twelve feet for safety purposes. He said the extra pavement would go from the edge of the house to the sidewalk.

Mr. Reppucci asked where the telephone pole is located in relation to the existing and proposed pavement.

Mr. Clark said the pole is on the street, but said it is roughly where the existing and proposed pavement is located.

Mr. Reppucci asked if he is proposing to change the curb-cut.

Mr. Clark said he's not changing the curb-cut.

Mr. Reppucci asked how many cars will be parked there.

Mr. Clark said six, three for each tenant.

Mr. Currier said it would be inappropriate to park cars on the sidewalk, and wanted it on the record that the tenants wouldn't be parking there.

Mr. Clark said they won't park on the sidewalk, they are not allowed to park there.

Mr. Currier asked about the original curb-cut, and whether it is 27 feet.

Mr. Clark said it is.

Mr. Currier said that the proposal now is to keep it at 27 feet, and adding asphalt.

Mr. Clark said yes, they'll pull in and to off to an angle where the parking will be.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Currier on behalf of the owners to grant the variance, for an additional 12 feet requested, for a width of 39 feet for the driveway. The variance is needed to enable the applicants proposed use of the property, which is accommodation of six cars on the old two-family home. He said the special conditions of the property is that the house is situated a bit close to the street, and on the right side of the property, which results in the request for wider than a 24 foot driveway, and the area is a tight street, with a lot of close houses.

Mr. Currier said it is within the spirit and intent of the ordinance to allow this, there's been no testimony one way or the other, but it will not adversely affect property values of surrounding parcels, it is not contrary to the public interest, and substantial justice will be served.

Mr. Currier said the curb-cut remains at 27 feet, and the driveway will be 39 feet wide.

Mr. Duffy said the applicant understands that there is no parking in the sidewalk area.

Mr. Currier said it was clear in the testimony that occupants will not park in the sidewalk.

SECONDED by Mr. Reppucci.

MOTION APPROVED UNANIMOUSLY 5-0.

2. **Mark & Rachel Davis (Owners) 32 Marie Avenue (Sheet 138 Lot 179) requesting variance to encroach 5 feet into the 30 foot required rear yard setback to construct a single-story 13' x 30' addition. R9 Zone, Ward 1. [POSTPONED UNTIL THE NOVEMBER 12, 2008 MEETING]**

Voting on this Case:

Sean Duffy
Jack Currier
Kathy Vitale
Rob Shaw
Gerry Reppucci

Rachel Davis, 32 Marie Avenue, Nashua, NH. Ms. Davis said they are asking for a 5 foot variance over 30 linear feet in order to build a first floor bedroom with privacy for her mother. She said it is the only reasonable place on the lot to remain attached to the house. She said that they will still have 22 linear feet that will have a 37 foot setback and 12 linear feet that will have a 47 foot setback.

Ms. Davis said the expansion is single floor only, and they have a petition signed by the neighbors, who are all very supportive.

Mr. Duffy said this is an intermittent incursion, not a full, all the way across variance.

Ms. Davis said she has a GIS map of the neighborhood, in which there are many capes, ranches, raised ranches and colonials. She said what we are proposing is well within the neighboring properties have nearby.

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 is needed to enable the applicant's proposed use of the property, given conditions of the property, the position of the house on the lot, the benefit sought cannot be achieved by some other method reasonable feasible method for the applicant to pursue, as the incursion is not along the whole setback area, but is an intermittent incursion, and therefore, is minimal and reasonable for this addition, it will have a dormered rear component of the building, and will not change the roofline on the front or side of the house.

Mr. Duffy said the request is within the spirit and intent of the ordinance that the essential character of the neighborhood continue to be maintained, this is a reasonable modification.

Mr. Duffy said the request should not affect the property values of surrounding parcels, even though there was no expert testimony.

Mr. Duffy stated that the request is not contrary to the public interest, and substantial justice is served with reasonable development rights.

Mr. Duffy said the special conditions are that, per testimony, this is a one-floor single-story addition to the building.

SECONDED by Mr. Currier.

MOTION APPROVED UNANIMOUSLY 5-0.

- 3. Wilfred J. Piekarski Rev. Trust (Owner) 4 Blackstone Drive (Sheet H Lot 520) requesting use variance to allow 100% of the lot to be used for auto sales. PI Zone, Ward 2.**

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw
Kathy Vitale
Gerry Reppucci

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier said this plan has already gone to the Planning Board, and has already received approval for the use. He said that under the new ordinance, there is a "superscript" number 1, for auto sales, but you can only use 25% of the floor area for that use, and the rest must be from permitted uses in the manufacturing and industrial uses.

This request is for 100% of the floor area to be used for auto sales. The existing building on site used to be used for the Flowerama site. Atty. Prunier listed some of the uses allowed in the PI Zone.

Mr. Currier asked if the Park Industrial zone makes sense, probably because companies like Nimcor are nearby, so the zone makes sense. He said the 75% rule makes even more sense, because it preserves the PI Zone, yet it lets businesses have additional opportunity on the side, for car repair businesses, or boat manufacturers that sell boats on the side. He said

Amherst Street is a retail street, because car sales are right nearby.

Atty. Prunier said if you look at the Table of Uses, of which uses could go here by right, you wouldn't want them on this street. He said the zoning ordinance allows for the sale of used cars, but only 25% of the area can be used for the sale of used cars. He said they could use 75% for a junkyard or any other use in the industrial zone.

Mr. Currier asked if the previous uses on this lot and the proposed use of an auto use, if it would be a more intensive use of the lot than in the past.

Atty. Prunier said it could be.

Mr. Reppucci asked if the Planning Board was aware of this coming to the Zoning Board afterwards, as it already received Planning Board approval.

Atty. Prunier said it was an oversight, we have worked with staff, the issue was recognized, and now the case is before the Zoning Board, and would have to go before the Planning Board again.

Mr. Shaw said that he's hearing that the Board should approve it because the ordinance isn't well written or well conceived and because it's stated as a conditional use with the 75% restriction to remain a true PI type of use that the argument seems to be that's not good ordinance or a good law.

Atty. Prunier said under the Zoning ordinance, if it was just a conditional use, we wouldn't have to come back here. He said right now they could use 25% of the lot for selling used cars. Other uses, permitted by right, would be auto storage, towing, baking plants, bookbinding, contractor shops, concrete plants. There is a long list of uses that wouldn't be good for Amherst Street.

Further discussion ensued.

Mr. Duffy said all the setbacks will stay the same, and there will be no incursions into the setback buffer areas.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Frances Michaud, 70 Cox Street. Ms. Michaud didn't want to see this turn into another MacMulkin Chevrolet.

SPEAKING IN FAVOR - REBUTTAL:

Attorney Gerald Prunier. Atty. Prunier said the person speaking against this case knows nothing about the MacMulkin case.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

None.

Mr. Reppucci said it is helpful that this went to the Planning Board, as we have learned a lot about this case. He said that no one manipulated the process, it was an earlier error.

Mr. Currier said it is very telling that there was no opposition at the Planning Board. He said the PI is a buffer between the commercial and the residential. He said by the case going to the Planning Board first was an honest mistake.

Mr. Shaw agreed, that the PI is more of a buffer here. He said a lot of uses could go here that would impose on the residential.

Ms. Vitale asked what abutters were notified, especially with the condos.

Mr. Falk said that the City notifies the Condo association, and it's up to them to notify all the individual owners.

Ms. Vitale said that a lot of the permitted PI uses would not be good located here, and she said the plan will allow good buffers, lighting and landscaping for the abutters.

MOTION by Mr. Duffy to grant the use variance on behalf of the applicant. Mr. Duffy stated that considering the unique property setting in this smaller PI zone that is sitting next to

a region and a district in transition with GB and HB zones very close by.

Mr. Duffy said the spirit and intent of the ordinance is that the resource of the PI zone try to be maintained, but since this is a minor and incidental resource to meet that end, even though the current uses are PI zone, it's the applicants testimony that they are going to try to maintain the spirit and intent of the buffer area in this use, and not to use a dramatically significant change to the site or the building on the property, even though there have been some substantial changes to the GB and HB properties in this area.

Mr. Duffy said the use should not adversely affect the property values of surrounding parcels, there was no expert testimony towards that, but certainly there are other uses in this area that could be more significantly impacting property values, therefore, it is not contrary to public interest, and substantial justice for a use variance for the general purposes of this area are granted.

Mr. Duffy said there are three special conditions. He said that one is that the applicants testimony will be maintained that all setback areas remain in the back and rear of the property, and there will be no additional accessory uses or incursions into the front, side or rear yard setback areas. He said there will be no accessory use or storage outside of automotive parts or inventory, boxes and such, we know there will be vehicles and such, and the third special condition is that per the applicant's testimony, the 1-story building to the front of the property will be used and not expanded, this keeps to the point of trying to conditionally maintain and retain a buffer area to these other RC zoned areas, but still allow the use as requested by the applicant.

SECONDED by Mr. Shaw.

Ms. Vitale mentioned that the Board did not hear anything about signage for this use.

Mr. Duffy stated that any additional lighting or signage that does not meet the criteria must come back before this Board.

MOTION APPROVED UNANIMOUSLY 4-1 (Mr. Currier).

4. **Dan Bergeron Building & Development, Inc. (Owner) 78 Cox Street (Sheet 190 Lot 137) requesting the following variances: 1) minimum lot frontage, 60 feet required, 35.62 feet proposed, and 2) minimum lot width, 75 feet required, 35.62 feet proposed - both requests to subdivide one lot into two lots. RA Zone, Ward 2. [POSTPONED FROM THE OCTOBER 28, 2008 MEETING]**

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw
Kathy Vitale
Gerry Reppucci

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that the property is large, a conforming lot. He stated that they are requesting to subdivide the lot into two lots, one would have 7,500 square feet, a conforming lot. He said the other lot would have one single family house on 27,150 square feet, which is three times the minimum lot size in this area.

Atty. Prunier stated that even though the lot is over three times the minimum size, the proposal is to build one home. He said that Mr. Bergeron has built many homes in this neighborhood and city-wide. He said the proposal would have a new legal lot in the front, and the other lot would have a driveway on a 35.6 foot wide lot, and the house would be built in the back.

Atty. Prunier said that he's submitted an appraisal opinion of value of the surrounding properties, and there would be no diminution of value.

Mr. Reppucci mentioned that the plan shows Hooker Street, and asked it was intended to go through?

Atty. Prunier said it was planned to go to Henry Burque Highway, it was established before Henry Burque Highway was considered. He said the next door neighbor was planning on taking the other half of the right-of-way for a similar development.

Mr. Currier said there is quite a topography change going uphill, and questioned where the driveway will be located.

SPEAKING IN FAVOR:

Dan Bergeron, Bergeron Building & Development. Mr. Bergeron said the house will be a one-story ranch style house, the foundation sill will be similar to the house at 80 Cox Street and 54 Sherri-Ann Street. He said they already have the sewer. He said he's talked to most of the abutters, and most all of them have known what the intent is.

Mr. Duffy asked what the topography change is, from the lowest to the highest point.

Mr. Bergeron said the lot in the front is about a 4 foot slope, and the driveway will slope down and level off, and would be about an 8 foot change. From the driveway, it would be another 5 or 6 feet. He said everything slopes down to the back.

Mr. Duffy asked about the possibility of having another house in back of the one proposed.

Mr. Bergeron said no, they want to leave this buffer there, and there will not be another house planned for this area, the lot will not be further subdivided.

Mr. Reppucci asked when the houses were built on Sherri-Ann Avenue, and if there were any variances required.

Mr. Bergeron said two years ago, and no variances were needed.

Mr. Currier said a one-story house would be more in concert with the rest of the area.

Mr. Bergeron said the house will be built to fit into the neighborhood. The front house will most likely be a colonial, and the one in back will be a ranch.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Frances Michaud, 70 Cox Street. Ms. Michaud said she is opposed to having a flag lot. She said Mr. Bergeron went to the Planning Board in January 2006 to subdivide Lot 40 into six lots, with five new homes to be constructed, and now he's asking for an additional home in the back. She said this is not what we need in this neighborhood. She said she didn't think it's in

the character of the neighborhood.

Mr. Reppucci asked about Lot 40.

Ms. Michaud said it's the houses on Sherri-Ann. She said they would be going to seven houses.

Mr. Reppucci said they built four, and now they're asking to build two more.

Mr. Currier asked about the Planning Board stipulation about adding only one driveway on Cox Street.

Ms. Michaud said yes, the house that was 82 Cox Street became 52 Sherri-Ann, had the driveway moved to the side, so it's on Sherri-Ann instead of Cox. She said with the 35 foot frontage that will also change the look of the neighborhood.

SPEAKING IN FAVOR - REBUTTAL:

Attorney Gerald Prunier. Atty. Prunier said as far as being out of character with the neighborhood, the Board has asked Mr. Bergeron what type of house he'll build, and that house fits into the neighborhood, it'll be single-story ranch style. He said the driveway will be a little bit longer, but the lot will be three times the size. He said it will blend in with the neighborhood, and leave a majority of that back lot open. He said the lot is currently out of character, because it is so much larger than the other lots in the neighborhood.

Mr. Duffy asked about Hastings Lane, when you look at the site map, the extension would technically go to where Henry Burque is, but it was split between the two property owners. If Henry Burque had never been built, this may be a special condition, because there is more space.

Atty. Prunier said it is a special condition, because it's larger due to the 35 feet, and they got half of a street, and if it did continue, you could have at least two more houses back there.

Mr. Currier asked about the history of this lot, and if this was originally one farm lot, or one site plan from the past.

Mr. Bergeron said at one time, this property went all the way

down to Amherst Street. He said that Sherri-Ann was an existing street, and there was an existing farm house on the corner, and there wasn't a cul-de-sac there, we made that. He stated that they kept it as one big lot, and then went to the Planning Board to have one driveway on one side, and when they went to develop it, they'd have to go back to the Planning Board, so it was done as a whole group.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Frances Michaud, 70 Cox Street, Nashua, NH. Ms. Michaud said she has the paperwork from the Planning Board, with the maps and the project description, talking about the one driveway, and that it only was going to have Lot 40 going to be subdivided into six lots, with five new homes to be constructed. She said only one additional driveway was going to be added.

Mr. Duffy said this is Planning Board and subdivision language, issues the Zoning Board doesn't really address.

Further discussion ensued by the Board.

MOTION by Mr. Duffy to grant the variance on behalf of the applicant. Mr. Duffy stated that the special conditions are that a discontinued street that was split between 74 and 78 Cox Street created a condition that doesn't exist in most conforming or nonconforming lots, to request what is referenced as a flag lot situation. Mr. Duffy said the second special condition is that the existing sanitary sewer easements behind Sherri-Ann Avenue behind the houses that also impact the proposed lot and the subject proposed lot in the rear, but the other condition of the Henry Burque Highway that went in a long time ago that created an interesting rear yard to the property.

Mr. Duffy said the special conditions are reasonable that this applicant try to attain a reasonable development plan for the property, the area variance is dimensional for frontage and width, but the lot of 27,150 square feet is two to three times the size of any of the existing lots of record in this area, except for a couple, like 72 and 74. He stated that the general essential character of the neighborhood is smaller sized lots.

Mr. Duffy said the request is within the spirit and intent of the ordinance to try and minimize the rear setback area.

Mr. Duffy said it should not negatively impact property values of surrounding parcels, the Board did have an appraisal document that presented some information. He said it is not contrary to the public interest, because of the topography, the house will be placed more towards the front of the lot instead of the rear, and substantial justice is served with reasonable development rights.

Mr. Duffy stated that the special conditions are that the single story home on the front lot be required, and that the applicant knows that for both of these lots, that no garages, accessory uses, or side incursions, front side or rear will be allowed, in fact it is their testimony that they will stay within the building area

SECONDED by Ms. Vitale.

Ms. Vitale asked if both 76 and 78 will be single story.

Mr. Duffy said per the testimony, any future garages or accessory uses will not be allowed to go into the setback areas.

Mr. Reppucci said he thought the back house, the flag lot, would be single story.

AMENDED MOTION by Ms. Vitale to have the rear lot be restricted to a single story home.

SECONDED by Mr. Duffy.

MOTION APPROVED 5-0 FOR AMENDMENT TO MOTION.

MOTION APPROVED 3-2 (Mr. Shaw and Mr. Reppucci).

5. Estate of Patricia Gilbert (Owner) Albert Gilbert (Applicant) 4 Patten Court (Sheet 85 Lot 95) requesting variance to encroach 6 feet into the 6 foot rear yard setback to construct a 10'x13 shed. RC Zone, Ward 4.

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw
Kathy Vitale
Gerry Reppucci

Albert Gilbert, 4 Patten Court, Nashua, NH. Mr. Gilbert said he wanted to construct this shed to store motorcycles, lawn equipment and snowblower, right now, they are scattered all over the yard. He showed the Board some pictures. He said his back neighbor is in support. He said this request will make the yard look neater. He said it would go right against the chain link fence. He said there isn't much room, and didn't see the need to place it a foot or two from the fence. He said this shed will allow all the backyard items to be stored in the shed, it will be much neater, plus, animals won't go behind there.

Mr. Currier said the homes are very close to the street, and the street is narrow, and many other accessory structures are very close to, or right on, the property lines.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Kathryn Martin, 26 Forest Park Drive, Nashua. Ms. Martin said she recently put up a fence, and has it right behind their shed, but did the maintenance on the shed so they wouldn't need to later.

SPEAKING IN FAVOR - REBUTTAL:

None.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

None.

MOTION by Mr. Reppucci to grant the request on behalf of the applicant. Mr. Reppucci stated that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the lot, the lot is very restricted, and it is the only place it would fit comfortably. He stated that it is within the spirit and intent of the ordinance, certainly the ordinance is general and not always considerate of small lots, it will not adversely affect surrounding property values, although there was no testimony that it would, it is not contrary to the public interest, it will clean up the lot, and substantial justice is granted to the applicant.

Mr. Duffy said this is for a one-story shed, 10'x13' in size.

Mr. Reppucci agreed.

SECONDED by Mr. Shaw.

MOTION CARRIED 4-1 (Mr. Duffy)

6. **Daniel B. Davis (Owner) 7 Tempo Drive (Sheet B Lot 2732) requesting variance to encroach 6 feet into the 30 foot required rear yard setback to replace a 12'x14' deck with a 16'x16' three-season porch. R9 Zone, Ward 8.**

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw
Kathy Vitale
Gerry Reppucci

Daniel Davis, 7 Tempo Drive, Nashua, NH. Mr. Davis said he is asking for the encroachment to put up a three-season room. He said the deck that was there was rotten, and was removed. He said the deck wasn't used much, and they thought a three-season room would be utilized more. He said the rear yard area has a swamp, and the mosquito's are very prevalent. He said they need to go 16 feet out is so that they can avoid a bulkhead door.

Mr. Currier said the subject house is placed somewhat closer to the front of the yard than the abutting houses.

Ms. Vitale asked how the addition will look.

Mr. Davis said it will be attached to the house, with as many windows and skylights as can fit. He said the roof will be an A-frame, on sono tubes. It will have two or three steps down to the ground.

SPEAKING IN FAVOR:

Steve Russo, 16 Hill Street. Mr. Russo said he's the contractor for the addition. He said the mosquito's back there are unbearable, and this needs to be screened in.

Mr. Duffy said this will have no heating or plumbing.

Mr. Russo agreed.

Mr. Currier asked what the height will be.

Mr. Russo said the addition will be flush with the gable end of the house, it will be about ten feet high. Plus, a two-story couldn't be built on sono tubes.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Shaw to grant the variance on behalf of the applicant. Mr. Shaw stated that this application is a fairly minimal intrusion into the setback, and will allow the property owner reasonable use of the property, and enjoy the yard, even with the prevalence of mosquito's. He said by testimony, this will be a single-story addition for this porch. Mr. Shaw said the house is already situated somewhat slightly closer to the front of the property, versus the adjacent properties, and thus, the intrusion of the three-season porch is not significant from adjacent properties.

Mr. Shaw stated that the request is within the spirit and intent of the ordinance, it is a reasonable use.

Mr. Shaw said it will not adversely affect the property values of surrounding parcels, it is not contrary to the public interest, and substantial justice is served.

SECONDED by Mr. Reppucci.

MOTION CARRIED UNANIMOUSLY 5-0.

7. **O'Glesain Farm, LLC (Owner) Deborah Gleeson (Applicant) 17 Gregg Road (Sheet D Lot 4) requesting use variance to allow a day care facility along with a previously approved proprietary school. R40 Zone, Ward 5.**

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw

Kathy Vitale
Gerry Reppucci

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that the Nature School is under construction right now off of Groton Road, it should be completed soon. He stated that this is part of the old Governor Gregg homestead.

Deborah Gleeson, 17 Gregg Road. Mrs. Gleeson said she's asking permission for an accessory use of child care to go along with the school. She said the first building of the campus is underway, and should be completed in a few weeks, it is a lead-certified green building. She said they also have a working farm on the property, with goats, sheep, chickens, ducks and rabbits.

Mrs. Gleeson said they have a child care facility in Maplewood, with infants through age 4. She said it is a licensed child care center, it's also a licensed nursery school.

She said they are not increasing any of the infrastructure that's already proposed, the buildings and parking will remain the same. She said they are asking for an accessory use of child care, with no more than 40% of the site being used for it. She said there won't be more children at the site, it'll just be different ages. She said they have parents who have children enrolled in both the school and the daycare, so parents are going to both places. She said even though the day care is for pre-school children, she said they are educating them with their nature programs, and consider it as a school.

Mr. Duffy asked what the hours of operation of the school are.

Mrs. Gleeson said the school is from 7 am to 6 pm, five days per week. She said the daycare is from 6:30 am to 6 pm., five days per week.

Mr. Duffy asked what the total enrollment capacity of the current program, and what is the potential for the daycare.

Mrs. Gleeson said they are allowed for 180 in their current building, but the enrollment for full time child care is about 100 child care. Total capacity of that building is 10,000 square feet, and capacity depends upon square feet, for elementary school, the average classroom size is 36 square feet

per child, but we won't fill every square feet of the building. She said at least 100 children will be moving over from the current facility.

Mr. Currier asked why the child care wasn't thought of in the original plan.

Mrs. Gleeson said as time went on, the parents wanted their kids to go to the new building instead of the old one, because it is a green building, plus logistically it makes sense to have them all at one location, and it's easier from a business standpoint. She said the amount of information they've learned about green buildings is significant.

She said that there will be less noise with the child care, because a lot of the children are infants, and spend their time indoors.

Mr. Currier asked if they are going to come back to the Board with other requests.

Mrs. Gleeson said no, there would be nothing else, no more expansions.

Mr. Reppucci asked what the maximum number of students will be at the school.

Mrs. Gleeson said there was no maximum number, there was no numerical limit, but it is limited by the Fire Department.

Mr. Reppucci asked how many kids are purely day care.

Mrs. Gleeson said about 80 of the 100 kids are independent, with no other sibling enrolled in the school.

SPEAKING IN FAVOR:

Denis Gleeson, 17 Gregg Road. Mr. Gleeson stated that there is a feed barn for the animals that will be built on the property. He stated that it is over 10% of the building increase, and it will go to the Planning Board. He showed the Board a plan where the barn will go.

Mr. Reppucci asked what the maximum number of students that the school can have, and what's the maximum number of kids in day

care.

Mr. Gleeson said the maximum in the second building, is hard to answer, because there are different State requirements, if they're infants, you can have less infants than if you have seven year olds, so it depends on who is there.

Mr. Reppucci asked when you develop a business plan for this type of development, you have to have a number, a target, of what this business will max out at.

Mr. Gleeson said about 250 in total, combined. He said it could vary up or down, depending on the mix of kids/students there.

David Tully, 1070 Main Street, Dunstable, Dunstable Rural Land Trust. Mr. Tully said they are a main abutter, and the Gregg's would be very pleased with how this development is turning out, and is a great asset.

Amy Corriveau, 6 Blackfoot Drive, Nashua, NH. Ms. Corriveau stated that she's one of the parents that have siblings at both places. She said she was one of the parents who complained about the drop-offs being in multiple locations, taking two small children out, and going to two different places so close, is a burden logistically. She said it's a burden to have two different locations, and their new location has a wonderful opportunity for children.

Kathryn Martin, 26 Forest Park Drive, Nashua, NH. Ms. Martin said the children are in a wonderfully structured environment, and is in support of this request.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

Discussion ensued by the Board members.

MOTION by Mr. Shaw to grant the use variance on behalf of the owner. Mr. Shaw stated that this property, as discussed through testimony, has gone through the original process of approvals for the school, and now, through review of this situation that the applicant finds themselves in, propose daycare as an accessory use, not a primary use, be incorporated into the school without changing the total scope, either through any

additional construction of buildings, and only using the facilities as already approved previously, with the only changes being that the population of children will move from just elementary school through essentially the daycare preschool ages, so this preschool will have no impact regarding the actual use of the structure, associated traffic, and there will be some potential reduction in traffic, because you're talking about a population that expands approximately eleven years in age, so families that have multiple siblings, regardless of what age they are in the care of this provider, would potentially reduce some traffic associated therewith.

Mr. Shaw said as far as usage, and intensity of use on the site, he stated that he doesn't see where it would add to any impact on the facility, and granting this would be within the spirit and intent of the use of the property, and with no significant change on the actual property usage.

Mr. Shaw stated that there has been no testimony regarding any impact on property values, and judging by the general appearance and lack of changes to structures, it does not appear that there would be any, further, this request is within the public interest, and substantial justice is served.

Mr. Duffy asked if there should be a special condition that no more than 40% of the building be used for day care, per testimony.

Mr. Shaw said that would be appropriate.

SECONDED by Ms. Vitale

MOTION APPROVED 3-2 (Mr. Duffy and Mr. Reppucci).

8. **Five Seven Nine Amherst Street Realty Trust (Owner) Best Ford, Inc. (Applicant) 581 Amherst Street (Sheet H Lot 627) requesting the following variances: 1) to exceed maximum number of wall signs, 3 permitted, 8 existing (from 2/26/02 ZBA approval), 3 additional wall signs proposed; and 2) to exceed maximum wall sign area, 150 sq.ft permitted, 315 sq.ft existing (from 2/26/02 ZBA approval), an additional 12.5 sq.ft requested. GB Zone, Ward 2.**

CASE POSTPONED TO THE NOVEMBER 25, 2008 MEETING.

- 9. Kavyashree Mallanna & P. Nagabhushanaradbya (Owners) 103 Cherrywood Drive (Sheet C Lot 2855) requesting variance to encroach 9.5 feet into the 10 foot right side yard setback to construct a 15'x28' family room. FUOD Zone, Ward 9.**

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw
Kathy Vitale
Gerry Reppucci

K. Mallanna, 103 Cherrywood Drive, Nashua, NH. Ms. Mallanna stated that they want to expand their family, and need the addition on this side, and it will be very helpful.

Mr. Duffy asked why they chose this side, instead of going to the back.

Ms. Mallanna said there is a bulkhead in the rear yard, and it is a required exit.

Mr. Duffy said in his drive-by's, he didn't see any additions on the side that encroached by this much, he didn't see this as essential in the neighborhood.

Ms. Mallanna said the lot is trapezoidal, there is more room in the front, also, the neighbors garage will be facing the addition, not their living space.

Mr. Currier asked if the applicant has any familiarity with the FUOD zone.

Ms. Mallana said no.

Mr. Currier said this property was a very large tract, with acre-sized zoning, but it was changed to a flexible use zone, which allows smaller lots, and extra common open space for all the homeowners. So, the lot sizes and setbacks are smaller. He said he's not comfortable granting variances in this zone, because the lots and setbacks are already reduced greatly. He said whether it's front, side, or rear, he said he's struggling with this request.

Ms. Mallanna said the neighbors garage will be facing the

addition, and the road is not straight, so the other houses nearby will not be affected.

Mr. Currier said the next door house isn't built yet, and it won't be like the rooms will be right next to each other, she said they have seen the plans.

Mr. Duffy said there is room in the back, and it could fit there, without going into the side yard setback, so there wouldn't be the need for a variance.

Ms. Mallanna said there is a hill and a bulkhead in the rear, and the bulkhead is a walkout. She said it would be better on the side rather than in the rear. She said the bulkhead is towards the right side of the back of the house. The bulkhead is to the right of the deck.

Mr. Duffy said there is a lot of space in the rear of the house, it goes about 54 feet to the back property line.

Ms. Mallanna said there is a huge hill back there.

Ms. Vitale asked if the house next door will be meeting the minimum side yard setback.

Mr. Reppucci said it probably will be only a foot or two from the minimum side yard setback.

Ms. Vitale asked about fences, and if this addition were here, there would be no space available for emergency access, and the Fire Department would not be supportive, especially if the neighbor had a fence. She said the FUOD zone doesn't allow for a lot of space between houses. She asked if the bulkhead could be changed.

Ms. Mallanna said if the hill wasn't there, it would be possible, but the bulkhead is an emergency exit.

SPEAKING IF FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Mr. Duffy read an email that was sent to the City on 11-08-08

from Mr. and Mrs. Fong of 108 Cherrywood Drive, they cannot attend the meeting, and have some concerns about the encroachment.

Mr. Shaw said he concluded from the letter that they believed it was only a six-inch encroachment.

Mr. Duffy gave the applicant a copy of the email.

Mr. Nagabhushanaradbya said they talked to the builder from the house next door, and they didn't have any issues with the request.

Mr. Reppucci said he cannot support basically eliminating the side yard setback.

Mr. Currier said when the Flexible Use zone was installed, one of the topics was that when these lots were made smaller for the benefit of the zone, the City has the right to restrict the setbacks, because homeowners should understand in this zone that there is a large common area throughout the district for the benefit of the owners.

Ms. Vitale said if they didn't have the bulkhead, they probably could go in the back.

MOTION by Mr. Duffy to deny the variance on behalf of the owner. Mr. Duffy stated that the applicant has no special conditions on the property that are unique to it, compared to the other properties in the area, there are methods reasonably feasible for the applicant to the rear of the property, even though it may be an additional cost, the potential uses and accessory uses are known, or should be known, by homeowners that have bought into this FUOD zone, the cluster bonus and essential character of the neighborhood is a build-out close to the setback area for right, front and side yard setbacks and front yard setbacks, so it is within the spirit and intent of the ordinance so that cluster bonus is granted and shared by for all, so that individual property owners actually are going to be giving up some of those potential uses that are in other zones in the area.

SECONDED by Ms. Vitale.

MOTION APPROVED UNANIMOUSLY 5-0.

10. David & Gayle Dionne (Owners) 417 Main Dunstable Road (Sheet C Lot 126) requesting variance to subdivide one lot into eight lots, using lot dimensions and setbacks consistent with the R9 zone. R30 Zone, Ward 5.

CASE POSTPONED TO THE DECEMBER 9, 2008 MEETING.

11. Siva & Mukunda Dogipartui (Owners) Kevin Sharp (Applicant) 4 Hydrangea Road (Sheet C Lot 2763) requesting variance to encroach up to 9 feet into the 25 foot required rear yard setback for an 8'x8' deck and a 14'x16' deck. FUOD Zone, Ward 9.

NOTE: THIS CASE WAS SCHEDULED FOR EARLIER IN THE AGENDA, AND WHEN IT WAS CALLED, THE OWNER WAS NOT PRESENT TO GIVE A PRESENTATION. THE BOARD MOVED IT TO THE END OF THE AGENDA. IT IS PUBLIC KNOWLEDGE, DUE TO A NEWSPAPER ARTICLE, THAT THERE WAS AN AUTO ACCIDENT AT THE PROPERTY THE DAY BEFORE.

MOTION by Mr. Duffy to deny the variance request by the owner.

The Board discussed that in this situation, this was in the paper and there was an accident.

Mr. Falk suggested Tabling this request to the next meeting, due to the very special circumstances.

Mr. Duffy withdrew his Motion.

MOTION by Mr. Reppucci to Table this request to the next meeting.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 5-0.

REHEARING REQUESTS:

None.

REGIONAL IMPACT:

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

MINUTES:

October 28, 2008:

MOTION by Mr. Reppucci to waive the reading and place these minutes on file. He stated that there is a correction on Page 2 to be made, it states that on the Motion that Mr. Duffy said something, when it should not be him.

Mr. Falk said the change will be made

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 3-0 (Mr. Shaw and Mr. Duffy not voting, as they were not present for that meeting).

ADJOURNMENT:

Mr. Currier called the meeting closed at 11:34 p.m.

Jack Currier
Acting Clerk

CF
Taped Hearing