

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
December 16, 2008

A public hearing of the Zoning Board of Adjustment was held on Tuesday, December 16, 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  
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. **Bonnette & Picard LLC (Owner) 502 West Hollis Street (Sheet E Lot 83) requesting the following:** 1) use variance to allow a two-story, 16,900 square foot medical & dental professional use and building; 2) use variance to allow a 4,200 square foot medical & dental professional use in the existing, unoccupied residential building formerly used over 4 years ago as a radio studio/office (former WSMN building); 3) use variance to allow 2 (two) four-story multi-family buildings, 64-units per building (total of 128 multifamily units); 4) variance to exceed maximum building stories, 2.5 stories permitted, 4 stories requested; 5) variance to exceed maximum building height, 35 feet permitted, 47 feet requested; 6) variance to exceed maximum density, 4 dwelling units permitted per acre, 11.29 dwelling units requested (a total of 136 residential dwelling units and a total of 21,100 square of medical & dental professional office on approximately 12.05 acres); and 7) variance to exceed number of principal structures permitted on a R9 residentially zoned lot, 1 principal structure permitted, 12 principal structures requested (2

**medical & dental buildings, 2 multi-family buildings and 8 single-family homes). R9 Zone, Ward 5.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Kathy Vitale  
Rob Shaw  
Gerry Reppucci

Attorney John Edwards, K&L Gates, Boston, MA. Atty. Edwards passed out a concept plan for discussion. He said that the site plan calls for eleven new structures, and a rehabilitation of an existing structure, that housed the WSMN radio station, and the Broadcaster. In addition, this plan calls for a 2-story, 16,900 square foot building, to be used for a medical offices, and potentially some dental offices, in addition, eight single-family homes, of which four are under some portion of construction, and four to be built, and to the back of the property will be two multi-family structures that will have a garage partially underground, and three living floors above. He stated that an area variance is also being requested for the number of stories, and the building height. He said he has some architectural renderings to show as well, and depict the apartment buildings conceptually, and one of the pictures shows when you look at the front of the building, it shows it facing West Hollis Street, and you'd see a three-story structure. He showed another picture showing the underground parking.

Atty. Edwards said for hardship, the answer is clear, the property is full of ledge underneath the surface. He showed pictures of the ledge they have encountered while doing excavation work. He said there is significant fractured granite ledge. He said the cost of readying this site for single-family dwellings has proved to be prohibitive, and it cannot economically be developed with forty single-family homes.

Atty. Edwards showed a topographical drawing done by Sanborn Head and Associates. He pointed out some blue lines that showed topographical issues with significant ledge issues. He said at least six of the units couldn't be built due to this ledge, as the grades would eat into the location of where the houses would be situated, and they would need a significant retaining wall. He said that fewer than forty homes could be built, and there is significant ledge, and the cost of removing this ledge would add

\$750,000 to the cost of this project, rendering it uneconomical, and a considerable loss would have to be taken. He said a significant good faith effort was made to construct this project as approved, but it is not feasible.

Atty. Edwards said construction needs to be done to reduce the costs of site preparation, or, a more intensive use needs to be put here, or else the project will sit fallow. He said the proposal that we have now, will remove significantly less ledge, based upon the Sanborn study, and based upon the conceptual drawings, in particular from the two multi-family structures, as they will be built on a slab, and there will not be a need to bring in as much fill.

Atty. Edwards said this property meets the spirit and intent of the ordinance, it represents orderly development, consistent in character with the neighborhood, and increasing the green space, and are prepared to give the City \$150,000 towards the cost of traffic mitigation, and a traffic analysis has been done.

**MOTION** by Mr. Duffy to suspend the rules to have an Alderman speak, prior to a previous meeting.

**SECONDED** by Ms. Vitale.

Mr. Currier said that this is consistent with past practice.

**MOTION CARRIED UNANIMOUSLY 5-0.**

Alderman Michael Tabacsko, 5 Federal Hill Road, Nashua, NH. Ald. Tabacsko said the site has a long history, and the response to people in the area has been overwhelming, 100% of the responses he's heard have been against this request, and have been forwarded to Staff. He said he also submitted a letter from himself. He said his concern is the increased density, and this site was the subject of a Resolution years ago that it remains R9 zoned property.

Mr. Duffy said there have been a lot of recent emails, and gave a copy of them to Atty. Edwards.

Mr. Currier asked what a "refusal contour plan" is, specifically, the 120-foot contour line.

Atty. Edwards stated that it is the point in time where you cannot dig anymore, due to ledge.

Mr. Currier said this 120-contour mark, it looks like five homes would be taken out, and didn't see how this matches with the six homes to be taken out.

Atty. Edwards said it's not simply where you encounter bedrock, it's where you cut and re-grade the land. He said some substantial retaining walls would need to be installed, and they would be very expensive, with a 3:1 grade slope.

Mr. Currier said he's been to the site many times, and asked about the dirt pile, and how it would compare to the height of the multi-family buildings.

Atty. Edwards stated that the height of the buildings will barely exceed the code maximum.

Mr. Currier asked if the building would be terraced down, or would be one flat structure.

Atty. Edwards said there would be a cut into the slope for the first structure, and the second structure would be dropped down somewhat, due to the slope.

Mr. Currier said he'd like to look at the traffic analysis, maybe an executive summary.

Mr. Reppucci asked about the land analysis of the property, and asked if they knew about the land and sub-surface characteristics before the property was purchased.

Atty. Edwards said it is impossible to know about the conditions, and to understand the breadth of the problems, but said a land study could not have alluded to the extent of the problems they have encountered after they've begun, the magnitude of the ledge and the excavation that has taken place. They didn't know to the degree of ledge until they've gotten this far into the project.

Mr. Duffy asked when the test pit testing began and ended, approximately.

Atty. Edwards stated that the test pit has been the excavating, and it's been uncovered the extent of the problems, it's been there for Sanborn & Head to see, and others as well, so the analysis has been based upon all the work that's been done at the site, it's been over the past 14 months.

Mr. Shaw said he's surprised, and concerned, that there is an un-recognized amount of ledge in this area, especially in a hilly region. He said in his subdivision, there was a lot of ledge, and a lot of blasting work that had to be done, and they did it there. He said he wanted to know more about the 1999 report of the soils, and the evolution to today.

Atty. Edwards said it was done by someone who wanted to put in a supermarket in the late 90's, which led to the Board of Aldermen's re-affirmation that the property is zoned R9. He stated that the answer is that you can never know the extent of the problem, being ledge, until you start excavating, and the applicant struggled with removing it, and spending about a million dollars in preparing the road and for infrastructure, but, this applicant has spent a lot of time and money, and knew it was too expensive to undertake.

Mr. Shaw asked if the 1999 report was available to the applicant prior to doing any work.

Atty. Edwards said they did not have that report.

Mr. Duffy asked if the applicant is planning on giving up on the original approval for this site.

Atty. Edwards said the economics of the original approval of 40 single-family homes is physically impossible to achieve. He said about 32 or 33 homes could be built there, but the economics of that is even more impossible.

Mr. Duffy said a figure of \$750,000 was invested in ledge work, but if you spread that out over 40 homes, it is approximately \$18,750 per home, but that's just additional cost, not the only cost.

Atty. Edwards said that is additional cost, but the \$750,000 figure is predicated on 10,000 cubic yards of ledge that has to be removed from this site, in fact, Sanborn & Head said it may be 8,000 cubic yards, so it would be 20% less than \$750,000.

Mr. Duffy asked if they did an analysis of the project with doing about 35 homes, and not doing the extensive ledge work.

Atty. Edwards said they'd lose between \$10,000 - \$30,000 per unit.

Mr. Shaw asked if the six units are not buildable in the back part of the property, was the amount of ledge removal of \$750,000 or less just in this area, or is there a further cost in removing the ledge.

Atty. Edwards said he's not sure, but will find out.

Mr. Currier said the written application had several points, one is the 3a1 insert on affordable housing and workforce housing.

Mr. Duffy said he was looking for a little more information on the hardship points of law, he said he's pretty unconvinced right now.

Mr. Currier said the application mentioned the WSMN radio station, and that it had publication and distribution facilities. He said he never remembered the building in that capacity, he said his recollection of the building is that the building was pretty low key, the written description in the application makes it seem like a distribution facility.

Atty. Edwards said the Broadcaster wasn't physically published there, but it was run out of there, and it was a fairly significant volume.

Mr. Currier said in point #7, that further potential non-residential development could occur in the PI zone, northwesterly of the proposed site. He said that this property is the edge of residential, and where commercial or PI begins. He said he was puzzled by the potential non-residential development northwesterly, which site is the applicant referring to.

Atty. Edwards said that is an error.

Mr. Currier said for the workforce housing concept, he said he's been in favor of these cases in the past, and asked about East Hollis Street and Marshall Street, and has been trained to be

accommodating these facilities, but hasn't seen any data on whether these cases are working.

Atty. Edwards said the data he's received from the Nashua Housing Authority is that we have hundreds of families waiting for workforce housing to be available. He said as of October 30<sup>th</sup>, 452 families were waiting for 2-bedroom units, and 168 are waiting for 3-bedroom units, and the waiting list for Section 8 assistance total 2,199 families, so the need is clearly there. He said there are people here from HUD assistance for this project, and this is sorely needed. He said the public benefit, at this location, is clear, as well as the substantial justice. He gave a letter to the Board.

Mr. Duffy said that single-family home values have fallen dramatically in the recent past. He said the City has done a great job in helping to allow for all types of housing.

Ms. Vitale said the City's zoning ordinance does allow for all types of housing, and has done a great job in the past to allow for elderly housing and workforce housing.

Ms. Vitale asked what the cost of the proposed housing will be.

Louis Knapp, 99 Sagamore Street, Manchester, NH. Mr. Knapp stated that under HUD guidelines, there are certain restrictions and parameters, it is a matrix of income and people in the household, and what percentage goes for housing. He said a broad range is \$652 for a one bedroom, and up to \$1,150, including utilities, for a 2-bedroom. He said the single family units are proposed for a breakeven cost of \$235,000 to \$255,000.

Mr. Duffy said he generally wanted to discuss land use, instead of fiscal issues.

Mr. Duffy said when he looked at the abutting properties, nothing significant has changed.

Atty. Edwards agreed.

Mr. Duffy asked about the essential character of the proposed development, and whether it is consistent with the neighborhood, and whether this size of structure and shape, in an R9 zone, is consistent.

Atty. Edwards said in looking at the commercial structure in the front, it is consistent with the scale of what is directly across the street, and it avoids signage and retail, and is no more obtrusive than other buildings. He said for the two multi-family buildings in the back, he said they will not exceed the height restrictions of the R9 zoning by a significant amount, and variances are requested for height and stories. He said the height will try to meet the spirit and intent, by only exceeding the height by only a few feet. He said they will preserve more open space and light with the proposed project than the previously approved project with forty homes. He said that 14 homes will not be built in the area of the multi-family buildings, so this will not unduly overburden the property.

Mr. Duffy said for the area variances, the 120-foot ledge area, that the extra 8,000 to 10,000 amounts of ledge, it does not look like these buildings are going to be in this space, and this is going to be leftover space anyways, he said the single-family homes, while dense back there, is more in keeping with the R9 zone, but these multi-family structures are pretty incompatible with the abutting properties, and pretty different.

Atty. Edwards said it would be impossible to develop that side of the road as approved, with 40 homes.

Mr. Duffy asked what the square footage and density of the 40 homes would be, compared to the two multi-family buildings, per acre.

Atty. Edwards said the footprint is

Mr. Currier said there was a lot of language in the application for an easement with the church, providing public benefit, and asked if the plan for ingress/egress is going to be access for the site, or just to the church.

Atty. Edwards said there are two public benefits. He said the applicant has been in negotiation with the church for access, and by creating this ingress/egress, it will help moving traffic in and out of the church, also, would be a benefit to the roadway.

Mr. Duffy asked about the emergency access to the rear on the plan, and asked if it is still proposed.

Atty. Edwards said it is still proposed.

Atty. Edwards said he has two letters from real estate professionals, and gave copies to the Board.

**SPEAKING IN FAVOR:**

Bernard Streeter, 26 Indiana Drive, Nashua, NH. Mr. Streeter said that the community does need workforce housing, and has been heavily involved with this in the past, and this project will provide that. He said that half of the City employees do not live in Nashua, as they think it's too expensive.

Mr. Currier said there was some workforce housing built on Harbor Street, near the YMCA, it seems to be up and running, and asked if he had any data on it.

Mr. Streeter said those units are all sold, and it's been a successful development, at a reasonable price.

Louis Knapp, 99 Sagamore Street, Manchester, NH. Mr. Knapp stated that he worked with the applicant for this project, and looked at the market, we are convinced that there is a need for workforce housing. He said they have been in this field since 1991, and do a lot of due diligence, to not waste anyone's time.

Mr. Duffy said the City's ordinance has no definition of workforce housing, but there is one for density. He said most of the multi-family and denser residential is located in the RB, RC and even in the Downtown zones. He said that if a use is not specified in the Code as a permitted use in a certain zone, then it is not allowed. He asked how this amount of density in an R9 zone, with all the single-family residential abutters, matches the adjoining neighborhood, or the essential character of these areas.

Mr. Knapp stated that this subject should be brought up by the next speaker, a former city employee, now working in Maine, and he can explain how this development fits into the neighborhood.

Mr. Reppucci asked if there is to be one unit in the whole development that will be affordable.

Mr. Knapp said there will be a mixed use.

Mr. Reppucci said there is a 2,200 square foot, four bedroom house being built, and asked if there are any others being built.

Mr. Knapp said about 40% of the rental properties.

Mr. Duffy asked if he has worked on any other projects in Nashua.

Mr. Knapp said not in Nashua, but in other cities in the State.

Alan Manoian, Principal, OIA, 3 Autumn Leaf Drive, Nashua, NH.

Mr. Manoian said that this development follows smart growth and sustainable economic development, and social responsibility in Nashua. Mr. Manoian described the surrounding area, including Mine Falls Park, and mentioned the out-migration of uses from the downtown area to the subject surroundings, such as the Police station, DPW, the Greek Church. This was done due to the population shifting after the Everett Turnpike went in. He further described the current uses in the general area, many of which functioned in the traditional downtown, and now they are out here.

Mr. Manoian said there will be a connective residential system, with an opportunity for a functional neighborhood form, with the multi-family units and DPW so close, where people can walk to work, generally a four-minute to six-minute walk to work. He said the time-distances are there for a nice model for new urbanism, and the re-adaptation of this area.

Mr. Duffy said many of the uses just mentioned are in the PI Zone, and many had a use variance and/or a site plan.

Kim Hazarvartian, TEPP, Inc., Salem, NH. Mr. Hazarvartian said his firm is doing the traffic analysis for the project. He described the intersections in this area. He said the applicant plans on relocating Hollow Ridge Drive opposite Panther Drive, and tie the church driveway into it, creating one intersection point. He said they have looked at sight distances, and they are more than adequate for safe ingress and egress. He said they have looked at TRIP generation, and it is moderate, it won't be a major traffic generator.

Mr. Hazarvartian said he has the current traffic analysis, and they did the traffic analysis for the 40-home single-family

development, he said the model is based upon a three-volume trip generation manual, and the statistics are generated from the proposed uses. He said they are standard national rates, using ITE methodology.

Mr. Shaw asked about the mid-range traffic analysis.

Mr. Hazarvartian said it is the impact, which would be negligible, a supermarket would be a large traffic generator. AT the PM peak traffic, it would be 170 trips going in/out, a supermarket would be several hundred trips, and the forty homes would generate about one trip each. He said the 170 trips are in/out, and east/west, and for the two lanes of traffic on West Hollis Street. He said the trips would be from the multi-family, the single-family, and the medical office usage.

Mr. Reppucci asked if the old WSMN building would be part of the medical trips generated to the site.

Mr. Hazarvartian said yes.

Mr. Duffy said that if the City requires more in-depth traffic planning studies, would he be able to produce additional reports.

Mr. Hazarvartian said that his applicant has put forth \$150,000.

Mr. Duffy asked how many physicians are proposed in the medical office space.

Mr. Hazarvartian said the model is only based upon square footage for the use.

Mr. Currier asked about Hollow Ridge Drive being relocated, and asked where the roads would line up on the map.

Mr. Hazarvartian indicated where the roadways would be relocated across from Panther Drive.

Mr. Shaw said the provision of the easement is just a proposal from the applicant, and asked if it is approved yet.

Mr. Hazarvartian said the Attorney will answer that question.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

Jane Ebel, 20 Westborn Drive, Nashua, NH. Ms. Ebel said she is concerned about the traffic, and mentioned a tractor-trailer that was in an accident, and took 40 minutes to drive from this area to the center of town. She said there is no place for the traffic to go. She said the roadway will have to be changed besides the traffic light itself. She said there is no room for this development at this site.

Marilyn Pizzolon, 22 Pitary's Drive, Nashua, NH. Ms. Pizzolon said she is a direct abutter. She said she wants to protect the integrity of this zone, which has been confirmed by the Aldermen. She said the previous approval had called for a 30-foot buffer, pre-blast notices, and the blasting rocked their house. She said trees were cut at will. She provided some photos of the condition of the construction site. She said the buildings on the site are open to the elements, and the siding is falling off. She said the developer owes quite a bit of money in back taxes, and a previous request on this site by this developer for a bank was denied, and this development as proposed will create bad traffic issues. She said there is over 120,000 square feet of vacant office space right on Northeastern Boulevard. She said the WSMN building was used for fire training exercises by the Fire Department, and the site has eroded and there is a total disregard for the site and for the abutters.

Paula Johnson, Shore Drive, Nashua, NH. Ms. Johnson said the applicant should show how this site meets the points of law. She said that the applicant owes a large sum of back taxes to the City, and should not be heard until they pay. She said this is not smart growth. She said there is a real concern about traffic in this area, and people are exiting the city, not moving in here.

Mr. Duffy said the Board has a letter from Tax Collector David Fredette that they will pay prior to permitting.

Steven Boyd, Wadleigh, Starr & Peters, 95 Market Street, Manchester, NH. Mr. Boyd stated that he represents Harold Vickerry. He said that they own a property that abuts the applicants property to the west, we were not notified as abutters, but have a 1/3 deed undivided interest on a strip of land that abuts to the western side of the property. He stated that they do not necessarily oppose the project, but have two

concerns, the first is traffic. He said there were significant concerns when the 40 single-family homes were approved, and this project is significantly more intense. He said the second issue is the diminution of property values. He stated that they didn't see anything that addresses this, given that it is an inconsistent use and a grossly different use of the property than that of the existing abutting properties that exist, we are concerned about the impact on property values.

Bill Keaney, 39 White Plains Drive, Nashua, NH. Mr. Keaney said there is an emergency access way that was a requirement for the 40 home subdivision. He said that certain improvements must have been made to my property from Mr. Picard, and to the other neighbors as well. He said that the agreement is attached to my deed so it indicates where the easement is located, and outlines other details, such as a fence that was never done, seeding the back yards, a sprinkler system in parts of the back yard, sod. He said that Mr. Picard hasn't performed any of the work.

Robert Desharnais, 36 White Plains Drive, Nashua, NH. Mr. Desharnais said he is opposed to the plan, beginning with the proposed Shaws that was denied, as this is an R9 zone, confirmed by the Aldermen. He said the Triangle Credit Union case was also denied, and urged the Board to deny this request, as it is similar to spot zoning to allow a use that is not allowed in this zone. He said it is not allowed in the Master Plan.

Joe Marshall, 23 Gendron Street, Nashua, NH. Mr. Marshall stated that he's lived here for 42 years, he said it will significantly increase the traffic, and will change the character of the neighborhood. He said he is amazed by the vagueness of the information proposed, and this analysis should be looked at as preliminary. He said the WSMN building generated very little traffic, and the medical use cannot be fairly compared to this building. He said that many people do not like to walk very far, in relation to the workforce housing.

Andy Bauer, 34 Deerhaven Drive, representing Pitarys, Nashua, NH. He said his clients own a number of properties on Pitarys Drive, and elsewhere in the neighborhood. He said they own the property at 518 West Hollis Street. He said his client, 12 years ago, requested a variance for a medical office of 2,000 square feet, which was denied by the ZBA. He said that Pitarys is opposed to the request, as it is zoned R9. He said it is a self-imposed hardship, for many reasons, and it is not a

hardship in the land. He said the major reason for the Master Plan is to have zoning districts with proper land uses for the zone in which they are located within. He said the abutters will have to look at an immense, 4-story multi-family building façade, which will be towering over their back yards, which will affect their property values.

Mr. Bauer went over other points of law, and stated that it is not in keeping with the spirit and intent of the ordinance, it will affect property values, and is not in the public interest, especially with traffic. He said the application is too much, and has not taken into account the effect it will have on abutters.

Ann Marie Gaudet, 13 White Plains Drive, Nashua, NH. Ms. Gaudet said WSMN had only about four cars parked there at any one given time. She said she agreed with prior speakers in opposition.

John Fisher, 101 Shore Drive, Nashua, NH. Mr. Fisher stated that he is disappointed with the traffic information, and finds it difficult to believe that it will only be four times the traffic. He said the multi-family, along with the medical use, will be significantly more, probably about 7 or 8 times as much traffic as the 40-home subdivision. He said if this is approved, it will breach the R9 zone in this area, it will look like 101A in Amherst, as retail and restaurants will want to come in, and it will be difficult to turn down similar requests in the future. He said the Board should follow the Master Plan, and deny this project.

Arnold Canner, 34 Laurel Court, Nashua, NH. Mr. Canner said he lives in Ledgewood Court, which the name tells you right away about the geology of the area. He said his property is a neighbor to this one, and has about 376 units. He said his property is full of ledge. He said the previous approval was generally in keeping, and reasonably matched, the neighborhood, and the City's expectation, of the zone and the land. He said if the approved variance was good then, then why is it not good now, if there was no interference with the regulations. He said that by granting the variances, and all the proposed structures, will affect property values and the density of the neighborhood, traffic, lack of green space, and will damage the series of residential neighborhoods in the area. He said there are no special conditions on the land that would warrant this approval, and it should not encompass financial or economical reasons.

Kathleen Rivard, 26 Briarcliff Drive, Nashua, NH. Ms. Rivard said this requests impedes the rights of all residents to this area, as water pressure is bad now, and with an additional 136 homes and the commercial buildings will make it an impossibility. She said the lights from a 4-story building looming over our 2-story homes will adversely affect the quality of our life, and the use of our property, also, it will affect the property values if we try to sell our homes. She said the noise levels, the amount of trash will affect us, as well as the amount of new traffic. She said this intersection is the most dangerous one in the City, and with this request, will make it much worse. In addition, she said this is not a walking neighborhood for the workforce housing. She said she has a couple letters of other residents who could not attend, all in opposition. She said that zoning laws have to mean something in this City, or they mean nothing.

Charles Lowther, 10 Althea Lane, Nashua, NH. Mr. Lowther stated that he is President of a condominium association and represents 63 individual owners living in Kensington Ridge. He said for all the reasons previously stated, we are against the proposed development plan, especially the impact on property values and the effect on traffic on West Hollis Street.

Ron Kelley, Kensington Drive, Nashua, NH. Mr. Kelley stated that the history of the Alderman's Resolution, and all the new uses in the neighborhood, that area would be left as R9, because of all the new uses such as Stellos Stadium, the DPW offices and the Police Department. He said for the hardship, this is a case of let the buyer beware. He said the abutters shouldn't bear the responsibility of it.

Jim & Denise Dale, 37 White Plains Drive, Nashua, NH. Mr. Dale said they are direct abutters. He stated that numerous test boring samples have been done for ledge, and these tests should have been made available if they wanted it. He said if the 64-unit apartment buildings can be built on slabs, then the houses in this area should be able to as well. He said that houses can be built on hard ledge.

Ald. Fred Teeboom, 24 Cheyenne Drive, Nashua, NH. Ald. Teeboom said he was contacted by several constituents to speak against this plan. He said one of the items the Board should look at is the character of the neighborhood, and what it looks like. He

said these buildings don't fit the character of the neighborhood. He said other things don't fit as well in the neighborhood. He said that financial hardship is not allowed to be used for hardship in a variance. He said in the Victorian age, workforce housing used to be used for poor people.

**SPEAKING IN FAVOR - REBUTTAL:**

Atty. John Edwards. Atty. Edwards stated that due to the multitude of comments, he was going to categorize them into a few categories. He said the first is whether an undue hardship exists in the State of New Hampshire other than a financial or market condition hardship. He said there is a hardship that is unique to this land, and it is the geological conditions on the land, which makes it impossible from an economic standpoint to develop the property consistent with the requirements of R9 zoning. He said that more intensive development is needed to make it economically viable, whatever the market.

Atty. Edwards said another issue is why they have come to this Board knowing the conditions. He said they reject this notion outright, it was understood there was rock there, but not to the extent known now until extensive excavation had already occurred. In addition, this applicant has spent 14 months struggling to address these issues, in putting in a sewer system, building the road, and beginning to address these issues.

Atty. Edwards said the attorney for the Pitary's properties indicated that an application for a small nonconforming use was made for one of their properties on Pitary's Drive in 1996. He said the argument made was that if they couldn't get it, then neither should we. He said the standards for measuring hardship was different then, and do not know the site characteristics.

Atty. Edwards said that another issue is that Mr. Picard is not a good steward of the property. He mentioned an easement for landscaping, which is a private agreement, and he has done over \$10,000 worth of work, and have put in an irrigation system. He said the stockpiles, such as soil and fill, need to be put in one place, it is the nature of these types of projects, and is usually a site plan requirement.

Atty. Edwards said that DES was on this site not long ago, and is satisfied in the stormwater and other compliance issues. He

said they want to move forward with responsible development and move this project along.

Mr. Duffy asked if the developer had any meetings with the abutters.

Atty. Edwards said they did not.

Mr. Duffy said they've heard that the character of the neighborhood will be affected, in that this side of the street is zoned R9 and the other side is zoned PI. He asked about the essential character of the neighborhood, and how this development is consistent with that.

Atty. Edwards stated that there are significant abutters to the project that are not present this evening, and have had nothing to say. He said this case will not have any retail or restaurant use, which is similar to Rt. 101A, and they have addressed concerns about density. He said the square footage between the footprints of the 40 homes and this proposal is essentially zero. He said the hardship is compelling.

Mr. Reppucci said what he is hearing, is that you cannot develop this land with 4 dwelling units per acre, but we can develop it with 11.3 units per acre, which is besides the 21,000 square feet of medical office space that will be on the site. He asked how we go from 40 units, to 136 living units and the office space, with nothing in-between. He asked if they could modify the application, with something that would meet the height requirements, and not need a use variance, so that it would be a moderate modification, as the current application is staggering.

Atty. Edwards stated that he heard the question as couldn't they come up with something in-between the approved plan and the proposed plan. He said one of the problems with the 40-unit proposal is the need for full basements. He said it is not viable, in this market, to build these houses on slabs. He said the proposal for the two structures in the back, and the commercial structure, will employ different construction techniques, and will allow some return that is reasonable. He said that there probably could be viable alternatives to the current proposal.

Mr. Shaw requested a follow-up on some earlier testimony, such as the cut into the 30-foot buffer zone, the pre-blast

inspections, the 6-foot high stockade fencing, and asked Atty. Edwards for comments on these issues.

Atty. Edwards said there has been no violation to the 30-foot buffer. He said that blasting cannot take place without notifying the Nashua Fire Department, and at all times they were involved and in conjunction with all rules. He asked Mr. Picard.

John Picard stated that the requirements are strict, and all inspections were done.

Mr. Duffy asked if they are proposed to be located in any setback areas.

Atty. Edwards said that is correct.

Mr. Duffy asked what is the peak height of the proposed 3-story medical office building, and also, the two back properties.

Atty. Edwards requested to defer to Mr. Picard.

Mr. Picard said the architect is here, and want to go with the same height and style, to tie the buildings together architecturally.

Michael Kean, Michael Kean Architects, Newmarket, NH. Mr. Kean said they did the conceptual plans for the project. He said the medical office building will stay within the height limitations, and will be between 30-35 feet. He said the back buildings will have a total height of 45' 6" from the parking level to the top of the parapet roof. He said the Code defines the height from the average grade, and since going from the westerly to the easterly side, there is a grade plane change that hasn't been determined yet, so we will not exceed 45' 6", we expect, by definition, will be somewhat under that.

Mr. Shaw asked about the ability to provide proper utilities and water pressure.

John Picard said the sewer comes in from West Hollis Street, and the water pressure was not adequate in West Hollis Street, so we came in from White Plains with an 8-inch line that feeds the property from the back.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:**

Arnold Canner, 34 Laurel Court, Nashua, NH. Mr. Canner said that the applicant has appeared to keep a lot of detail from the Board, to make it look as favorable as it can for them, and the lateness of the submission, we had no chance to read and think about any of the documents that were submitted tonight, and they want to reinforce some of the arguments that say that this proposal will change this parcel of land from an R9 to a commercial zone by variance, rather than by right.

Mr. Duffy said the Board has received a lot of extra information this evening, and he would like more time to review it. He said the abutters may want to look at the extra information, and it will be on file with the City.

Mr. Duffy suggested a motion to close the Public Hearing, but we may want to, by suspension of the rules, open the Public Hearing to answer specific questions based upon the information presented to us this evening, not to allow additional testimony or to have other people come forward with other information, but to address specifically the points that we may have and that we would go into the Public Meeting, but is assuming that there may be some information we might need.

Mr. Reppucci asked for clarification.

Mr. Duffy said we would close the Public Hearing, and open it back up for the applicant's counsel and/or the gentleman that spoke in rebuttal or his designee. He said he would also like to make this the last agenda item at the next meeting, as we usually do.

Mr. Reppucci said his sense is that we can get this done tonight.

Ms. Vitale said that they've been given a lot of information this evening at the meeting, due diligence would say to read through it, and see if there's any additional information that you should consider. She said it might be worthwhile to go back over the traffic information, it was a pretty basic report.

Mr. Shaw said he could go either way.

Mr. Currier said a lot of people want an answer, especially after spending the night here, but for the application deadline two weeks in advance of the meeting, that's for a majority of the information, we're supposed to be site-walked, keyed-up, knowledgeable on the site, and the presentation tonight is a cursory summary, that's why we have the 15 and 5 minute testimony. He said we've had a lot of information, and we've had a lot of information, and said it's better to err on the side of caution and make sure we've digested the material to the maximum, so he said he's leaning towards tabling the case, however, he said he's not in agreement with opening up another public meeting, because people have been here all night, and as far as the traffic report goes, we have it, and that's what we make our decision on. He said there shouldn't be another Public Hearing, we should digest the information we've had.

Mr. Shaw said there is the appeal process, and a rehearing request, so if there's new information that's been made available after we've acted, that's something that can be pursued. He said we've heard the case material tonight, and thinks there has been ample time to process it.

Mr. Currier said in two weeks when this comes back, if that's the way it will be, there will be no more public testimony, so the audience members do not necessarily have to come back, or any of the professionals who testified.

Mr. Reppucci said it's been difficult to get five members here, so it could be months before all five can be here.

Mr. Currier said he spoke with Ms. Rice and Mr. Carlson today, and they both plan on being here at the next meeting. He said they will have the minutes and case information.

Mr. Duffy said there has been a lot of information, and is not sure if a well-crafted motion can be made in either direction.

**MOTION** by Mr. Currier on behalf of the applicant to table the deliberation of the Public Meeting until January 13, 2009, to allow the members of the Board to review all the materials received this evening and to do the maximum diligence possible to consider all the testimony that we've heard, and to be prepared to come to the January 13<sup>th</sup> meeting with a motion in mind and a vote will be taken at that time.

**SECONDED** by Ms. Vitale

Mr. Reppucci asked if we're going to come back with a motion in mind.

Mr. Currier said we'll come back with the data processed, and perhaps we're coming back with a favorable feeling, or a negative feeling.

Mr. Duffy said the intent is to come back and have a decision, not to have it tabled many times.

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

Mr. Duffy said this will be the last case on the January 13, 2009 meeting.

**REHEARING REQUESTS:**

None.

**REGIONAL IMPACT:**

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

**MINUTES:**

November 25, 2008:

**MOTION** by Mr. Currier to waive the reading and place these minutes on file as presented.

**SECONDED** by Mr. Reppucci.

**MOTION CARRIED UNANIMOUSLY 3-0.**

**ADJOURNMENT:**

Mr. Duffy called the meeting closed at 10:44 p.m.

Jack Currier  
Clerk

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING

December 16, 2008

Page 22

Taped Hearing