

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
January 13, 2009

A public hearing of the Zoning Board of Adjustment was held on Tuesday, January 13, 2009 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 & Clerk
Robert Shaw (arrived at 9:00 p.m.)
Kathy Vitale
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. Brook Village North Associates (Owner) 201 Brook Village Road (Sheet A Lot 646) requesting special exception to work within a 40-foot critical wetland buffer to remove existing pavement and construct a swimming pool and landscaped parking islands. RC Zone, Ward 8.**

Voting on this Case:

Sean Duffy
Jack Currier
Robert Shaw
Kathy Vitale
Gerry Reppucci

Richard Maynard, Maynard & Paquette, E. Pearl St, Nashua, NH.
Mr. Maynard stated that he is going forward with four members, but reserves his right to appear before a full Board. Mr. Maynard stated that the property has 83 multi-family apartments, and has 7.73 acres of land. Mr. Maynard said that the project controls their water levels and drainage. He said the project

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includes removing 4,680 square feet of pavement within the 40-foot buffer to the pond, landscaped islands will be created, and loaming and seeding will take place where the pavement was located. Mr. Maynard said a small in-ground pool and a utility building in a fenced area will be constructed in an area where the pavement will be removed.

Mr. Maynard went over all the special exception points of law, as well as the special wetland regulations. He said that the Conservation Commission approved the project. He said it will start this summer, and should be done by the fall. He said the pool will be located where the driveway is now, and it will allow the pool to be more centrally located within the development. He said the plan will go forward to the Planning Board.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Currier to grant the special exception on behalf of the applicant. Mr. Currier stated that the request is listed in the Table of Uses, Section 190-112. Mr. Currier stated it will not create undue traffic congestion or unduly impair pedestrian safety, in fact, it will enhance both of these. Mr. Currier stated that it will not overload public water, drainage or sewage, or other municipal systems. Mr. Currier said that the special regulations are fulfilled, and by moving this pool more central, it will not impair the integrity or be out of character with the neighborhood, or be detrimental to the health, morals or welfare of the residents.

Mr. Currier said there are nine wetland special conditions that have been addressed, per testimony. Mr. Currier said at the October 8, 2008 Conservation Commission they approved this project with eleven stipulations, and the applicant has agreed to.

SECONDED by Mr. Reppucci.

MOTION CARRIED UNANIMOUSLY 4-0.

- 2. Randal J. & Laureen August (Owners) 181 Ridge Road (Sheet B Lot 2701) requesting variance to encroach 4.5 feet into the 6 foot left side yard setback to erect an 8'x12' shed. R18 Zone, Ward 9.**

Voting on this case:

Sean Duffy
Jack Currier
Kathy Vitale
Gerry Reppucci

Randal August, 181 Ridge Road, Nashua, NH. Mr. August stated that they are requesting this variance to construct an outdoor shed for storage of lawn equipment and tools. He said it will allow fair use of the property, and will be in character with the neighborhood. He said he has discussed the location of the shed with his direct neighbor, who has submitted a letter in support of the request, at 3 Poliquin Road.

Mr. August went over the points of law with respect to the variance. He said it will be one-story, 8'x12' in size. He said it will be placed on a slab foundation. He said at a later date, they will be putting up a fence to block the shed, and to allow for additional privacy. He said there will be about 14 feet distance between the shed and the garage, so emergency equipment can pass through.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Duffy to approve the variance on behalf of the owner. Mr. Duffy stated that the request is to encroach up to 4.5 feet into the 6 foot left side yard setback to construct a single-story 8'x12' shed, on a slab, as the variance is needed to ensure the proposed use of the property, as the special conditions of the property is that there are no other accessory uses in the area, and the applicant cannot reasonably include an accessory use of the shed on another portion of the lot, given the topography and arrangement of the rear and side yard, and

there are no incursions to the sight lines, or to the abutter at the 3 Poliquin Drive location, therefore, it is within the spirit and intent of the ordinance that a reasonable use of a potentially temporary and accessory use of a shed, which might be removed at some future date.

Mr. Duffy said it should not affect property values of surrounding parcels, in fact, there was no public testimony to that, also, the request is not contrary to the public interest, and substantial justice is served with reasonable development rights of an accessory use of an 8'x12' shed be allowed in the R18 zone be considered.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 4-0.

3. **Joyce M. Adams (Owner) 64 East Hobart Street (Sheet 129 Lot 105) requesting variance to encroach 14 feet into the 25 foot required front yard setback (on Dudley Street) to construct an 11'x15' home addition. RA Zone, Ward 7.**

Voting on this Case:

Sean Duffy
Jack Currier
Kathy Vitale
Gerry Reppucci

Joyce Adams, 64 East Hobart Street, Nashua, NH. Ms. Adams stated that the variance is being requested to allow for handicapped accessibility for her father. She said the house was constructed in 1926, and it sits 14 feet from the boundary on the Dudley Street side. She said there is no other place on the house to build the addition, and the proposed location will allow for handicapped accessibility and a ramp.

Ms. Adams said the addition will not make the house any closer to Dudley Street, and the home would be more valuable. She said she's lived here since 1957. She passed out photos of the property.

She said the addition will have a full poured foundation, and has talked to the abutters about it, and none of them had any concerns.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Reppucci to grant the variance on behalf of the owner. Mr. Reppucci stated that the variance is for a single-story home addition, and it is needed to enable the applicants reasonable use of the property, given the special conditions of the property, as the applicant stated that her father is handicapped and that is a hardship that she is going to remedy with this addition.

Mr. Reppucci said that the request is within the spirit and intent of the ordinance, it will not make the present structure any closer to the street, it will not adversely affect the property values of surrounding parcels, it is not contrary to the public interest, and substantial justice is served to the owner.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 4-0.

4. Benjamin F. Hill III (Owner) 115-121 Tolles Street (Sheet 45 Lot 199) requesting variance for minimum driveway length, 20 feet required, 14.5 feet proposed for one compact car. RC Zone, Ward 3.

Voting on this case:

Sean Duffy
Jack Currier
Kathy Vitale
Gerry Reppucci

Sam Katz, Building Manager, on behalf of Benjamin Hill. Mr. Katz submitted some photographs of the property. He said the reason for this request is that there is a lot of traffic in the area, and there is no place to park, or leave a car. He said the area was previously crushed stone, and it was recently

paved. He stated that the building has four units, and it lacks parking.

Mr. Currier said that there are not many cars that can fit in there without blocking the sidewalk, not many cars are that small. He also asked where the trash cans will go.

Mr. Katz stated that the garbage cans can fit on the side, and his full-sized Volvo automobile fit in the space with room to spare. He said the owner has a Toyota Prius. He said that the apartment will only be allowed to have a compact car park there.

Mr. Currier asked if all four units are occupied.

Mr. Katz said they are, and two of the units have elderly occupants, and do not drive.

Mr. Currier asked how many vehicles are with the other two units.

Mr. Katz said each of the other units only have one car. He said it will be neater and cleaner.

Mr. Duffy asked what year the property was built.

Mr. Katz said over 50 years ago.

Mr. Duffy said it is a nonconforming use, but we're making it more nonconforming. He didn't see a change to allow another curb-cut would be convincing.

Mr. Katz said the curb cut wouldn't be a major change to the area, the best thing would be to add another parking space to the building, especially since the building has nine bedrooms. He said his Volvo wagon fits in this space.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Kristie Betegh, 111-113 Tolles Street, Nashua, NH. Ms. Betegh said she lives to the right of Mr. Hill's property. She wanted to make sure the parking space was on the other side of their

building, not next to hers. She said she was notified by the City. She said that aesthetically it is a worse situation, however, the function of having a parking space is a better situation.

SPEAKING IN FAVOR - REBUTTAL:

Sam Katz. Mr. Katz said that it is an improvement, as the area was gravel before, and it was a mess.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

No One.

Ms. Vitale said that he still has to obtain a curb-cut permit from DPW.

Mr. Reppucci said he gets a total driveway width of 24 feet.

Mr. Falk said they would have 24 feet with both of these cuts.

Mr. Reppucci said he feels strongly about off-street parking in these inner-city tight areas, with narrow streets. He said it is even worse at night, and if there are snow banks.

Further discussion ensued amongst the Board members.

MOTION by Mr. Reppucci to grant the variances on behalf of the applicant. He stated that the variance is needed to enable the applicant's proposed use of the property, he is limited to 14.5 feet by the existing structure.

Mr. Reppucci stated that the request is within the spirit and intent of the ordinance, the Board has established that the structure was built long before the ordinance was written, it will not adversely affect property values, we heard concern from an abutter, but not in the area of property values, and the Board was convinced through discussion that the abutters concerns were not going to be impacted by the granting of this variance. He stated that it may enhance public interest through the granting of this variance, and substantial justice is granted.

SECONDED by Mr. Currier.

MOTION CARRIED 3-1 (Mr. Duffy).

5. **Ana D. & Jose R. Colon & Porfirio Cruz (Owners) 14-16½ South Street (Sheet 37 Lot 34) requesting variance for minimum open space, 35% required, 6% requested - after paving back yard. RC Zone, Ward 4.**

Voting on this case:

Sean Duffy
Jack Currier
Kathy Vitale
Gerry Reppucci

Arliss Cruz, 14-16½ South Street, Nashua, NH. Mr. Cruz is the son of the owner, speaking in behalf. He said they paved the back yard about three or four years ago, he said they were unaware they needed a permit. He said the reason is to provide additional parking, the structure is a two-family dwelling, and they couldn't fit all the cars. He said that cars used to park in the rear, but it became muddy and icy, and was not a good situation.

Mr. Duffy asked if it is a three unit structure.

Mr. Cruz said it is a two-family unit.

Mr. Currier said he agrees with this request, there is no parking.

Mr. Cruz said the street is narrow, and there is no parking. This request will allow us to park in our own property, and not in the street.

Mr. Currier asked about drainage or runoff problems.

Mr. Cruz said it is not a problem.

Mr. Reppucci asked how this case got here.

Mr. Falk said it was a Code Enforcement issue, and then they needed a variance for the open space.

Mr. Duffy said this is a nonconforming use, being made more nonconforming, and by putting cars right up against the property

line, and this is a lot of pavement. He asked why it was paved all the way to the property line.

Mr. Cruz said it is for ease of the vehicles getting in and out, without blocking other cars.

Mr. Duffy asked about the open space percentage.

Mr. Cruz said he doesn't know about the 6%, he said they know it is less than 35%.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

Mr. Currier said there are no other structures right up against the parking, so there's no problem with cars in the back yard. He said he would have an issue if they wanted to increase the number of units. He said that Williams Court is extremely narrow, and there is no other place to park.

Ms. Vitale said there is no real impact, the streets in this area are narrow, and they would reasonably have at least four cars, so something has to be done, the cars have to park somewhere.

MOTION by Ms. Vitale to grant the area variance on behalf of the owner. 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, it's a two-family house and they need reasonable use for parking, 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.

Ms. Vitale said it is within the spirit and intent of the ordinance, it will not adversely impact property values, it has been this way for three years, it is not contrary to the public interest, and substantial justice is served to allow the applicant to have additional off-street parking.

SECONDED by Mr. Currier.

MOTION CARRIED 3-1 (Mr. Duffy).

6. **Evelyn Neveu Irrevocable Trust (Owner) 97 Linwood Street (Sheet 103 Lots 186, 188 & 190) requesting variance for minimum lot area, 12,446 square feet required, 9,000 square feet proposed for an existing two-family dwelling unit - to consolidate three lots into two lots and with a lot line adjustment, create one conforming 6,000 square foot lot for a single family home. RB Zone, Ward 6.**

Voting on this case:

Sean Duffy
Jack Currier
Kathy Vitale
Gerry Reppucci

Attorney Charles Moser, 197 Jeds Lane, Mason, NH. Atty. Moser stated that the Neveu family has owned three lots since the 1950's. He said the entire subdivision was all 5,000 square foot lots, and many of the lots were combined into 10,000 square foot lots for a single family home. He said there is a duplex on one of the lots, that has been there since they bought the property.

Atty. Moser said they want to combine lots 186 and 188, and take a ten foot wide strip and add it onto lot 190 to make it a conforming 6,000 square foot lot. He said it would be for a single-family home in the future. There is an existing shed that would be removed. He said all the other lot size criteria would be met, except for the lot area for the duplex, as it would be 9,000 square feet, where 12,446 would be required.

Atty. Moser stated that the spirit and intent of the ordinance is that many lots in the area already conform to the lot sizes that we are requesting, as shown by a map that we prepared for duplexes. He said that out of 19 similar lots of 12,446 square feet or less, 17 are nonconforming, so this request is similar to others.

Atty. Moser said they would add a single-family home, so it wouldn't impact property values, it is not contrary to the

public interest, and justice would be done to the family to allow this request.

Mr. Duffy asked if the new single-family house would meet all the setbacks.

Atty. Moser said they are not asking for any other variances.

SPEAKING IN FAVOR:

Richard Maynard, Maynard & Paquette, Nashua, NH. Mr. Maynard said this subdivision all had 50'x100' lots. He said the duplex was built in 1950, and for zoning purposes, it is one lot. Further, the 9,000 square foot lot, under the old regulations, would be conforming. He said the minimum lot size for single-family would be conforming. He said there are 19 duplexes within 500 feet of the property, and there will be no need for any additional variances. He said this request exactly matches the property to the rear.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No One.

MOTION by Mr. Duffy to grant the area 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 the special conditions of the property, there are other 6,000 square foot lots in this neighborhood, and the general appearance of a single-family home in the RB Zone is in keeping with the character of the neighborhood, and the applicant cannot achieve by some other method reasonably feasible to develop this use that is similar to the other properties in the neighborhood.

Mr. Duffy stated that the request is within the spirit and intent of the ordinance that the applicant has reasonable development use of the property, it is in keeping with the essential character of the neighborhood, it should not negatively impact the property values of surrounding parcels, it will not be contrary to the public interest, and substantial justice is granted to allow a single-family home.

Mr. Duffy said a special condition is that it will be a single-family home, no more than two stories tall, meeting all yard setbacks.

SECONDED by Ms. Vitale.

Mr. Reppucci asked if it should just meet the height requirement.

Mr. Falk said they can have 3 stories, at 35 feet in height.

Mr. Duffy said they stipulated that it would be only two stories.

Mr. Reppucci asked why the Board would further restrict the applicant.

AMENDMENT TO THE MOTION by Mr. Reppucci that we amend the height limit to a three-story structure, to meet the ordinance.

NO SECOND to the amendment.

MOTION CARRIED UNANIMOUSLY 4-0.

7. 17 Hobbs Street LLC (Owner) 17 Hobbs Avenue (Sheet 24 Lot 7) requesting use variance to construct a two-family dwelling unit after a subdivision of one lot into two lots. GI Zone, Ward 7.

Voting on this case:

Sean Duffy
Jack Currier
Kathy Vitale
Gerry Reppucci

Richard Maynard, Maynard & Paquette, Nashua, NH. Mr. Maynard said the property was once two lots, and it was combined into one lot into 2002. He pointed it out on a map. He said if this request is approved, they will go back to the Planning Board. He said this area is zoned GI, but there are no general industrial uses in the neighborhood, most of the properties are multi-family. He said each lot would be about 8,500 square feet in size. He said they would like to construct a two-family structure on the other lot. Mr. Maynard went over all the relevant points of law for a use variance.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

David Morin, 32 Crown Street, Nashua, NH. Mr. Morin said he is representing his mother's property. Mr. Morin stated that they are against this request, a neighbor on 8 Chase Street just built a two-story garage which blocks a lot of the view of the rear yard, and this request will further block the view.

Mr. Reppucci said that the owner could build a use that is allowed in the GI zone, without coming to the Zoning Board.

Mr. Morin said it is more of a function and aesthetics issue, the two-story garage is very large on Chase Street, and the duplex would also be very large. He said the affects of adding this will make a big difference in the neighborhood, and will look odd.

Further discussion ensued.

SPEAKING IN FAVOR - REBUTTAL:

Richard Maynard. Mr. Maynard stated that the subdivision doesn't need any variances. He said they want a reasonable use of a two-family structure, which is in keeping with the neighborhood. He said the garage at 8 Chase Street was already approved. He said that the request will allow for a substantial rear yard, and the new duplex will be built close to the street, and it will be a reasonable use for the neighborhood.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

None.

Further discussion ensued.

MOTION by Mr. Duffy to grant the use variance on behalf of the owner. Mr. Duffy stated that the current ordinance and the GI zone interfere with the current definitions of the landowners reasonable use of the property, considering the unique setting in that this is a district most made up of residential and two-family homes, even though it is in a mixed use zone. Mr. Duffy

said the general purpose of the zoning ordinance is therefore a restriction on the property.

Mr. Duffy said the request is within the spirit and intent of the ordinance that the Zoning Board grant a use variance. He said the request should not adversely affect property values of the surrounding parcels, even though there was no expert testimony, but the Boards experience is that the request, in a neighborhood of two-family homes, is a reasonable use, and is not contrary to the public interest, and substantial justice is served for reasonable development use of a two-family dwelling in this area.

Mr. Duffy said the special conditions are that the structure be no more than two stories in height, and it will be in compliance with all other setbacks.

SECONDED by Mr. Reppucci.

MOTION CARRIED UNANIMOUSLY 4-0.

8. **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. [TABLED FROM THE DECEMBER 16, 2008 MEETING]**

WITHDRAWN BY THE APPLICANT.

9. Bonnette & Picard LLC (Owner) 502 West Hollis Street (Sheet E Lot 83) requesting the following: 1) use variance to allow a 4,200 square foot office professional use in the existing, unoccupied residential building formerly used over 4 years ago as a radio studio/office (former WSMN building); 2) use variance to allow 2 (two) four-story multi-family buildings, 64-units per building (total of 128 multifamily units); 3) stories of living and one story of ground level parking; 3) variance to exceed maximum building stories, 2.5 stories permitted, 4 stories requested; 4) variance to exceed maximum building height, 35 feet permitted, 47 feet requested; 5) 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 4,200 square of professional office on approximately 12.05 acres); and 6) variance to exceed number of principal structures permitted on a R9 residentially zoned lot, 1 principal structure permitted, 11 principal structures requested (1 office building, 2 multi-family buildings and 8 single-family homes). R9 Zone, Ward 5.

WITHDRAWN BY THE APPLICANT.

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. [TABLED FROM THE DECEMBER 9, 2008 MEETING]

MOTION by Mr. Duffy to remove the case from the Table.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 3-0.

Voting on this case:

Sean Duffy
Jack Currier
Kathy Vitale
Gerry Reppucci - **RECUSED**

Kevin Milligan, 15 Reservoir Street, Nashua, NH. Mr. Milligan said he is a family friend, and is representing the owner. He said he wishes to retain his rights to be heard before a five-member Board, but will go forward this evening.

Mr. Milligan stated that the objective of this request is to take a 7-acre piece of property to create eight building lots. He said the owners feel that there are several hardships, one is that the property is split into two zones, R30 and R9. He said only a small portion of the lot is located in the R9 zone. He said another hardship is that there are several lots that look exactly like what is proposed here. He said the spirit and intent of the ordinance is to allow homes that are similar in the neighborhood. He said that eight new homes would allow for greater property values. He said the public benefit is to create a street for these homes, instead of having them back right onto Main Dunstable Road.

Mr. Milligan stated that from the highway to the property is 1.8 miles. He said there are 20 streets in this distance, and there have been at least 20 other circumstances where someone has asked for a very similar request.

Mr. Currier asked why the R30 cannot work, and why it isn't better, orderly growth.

Mr. Milligan said R30 doesn't work because a good percentage of the property is wetlands in the back, also, to get three or four lots, the width of the lots couldn't be met, and variances would be needed anyways.

Mr. Duffy said across on Renee Drive, they are all R9 lots. He asked, based upon the drawing, how far back they would go.

Mr. Milligan said about 440 feet back.

Mr. Duffy said the eight lots would go in a 3½ acre site.

Mr. Duffy said the R30 zone to the south are significantly larger lots, and asked what is unique about this lot.

Mr. Milligan said they are the border property to the R9 zone, it is like a wedge-shaped piece bordering the R9 zone, almost cut out of it.

Mr. Duffy said that there is another reasonable use for about three homes, instead of eight, without a variance.

Mr. Milligan said they still would need some variances, due to the frontages on Main Dunstable Road, in addition, a road would be on the side, and the abutters would have a roadway in their back yard.

Mr. Milligan said the density would be the entire property, and lots 4 and 5 would be taxed for the wetlands. He said that notes could be put in the deeds that nothing would be built in the wetland area for lots 4 and 5. These lots go all the way to the back, and they would remain as green space.

Ms. Vitale asked if they have ever been before the Conservation Commission for this property.

Mr. Milligan said they have not.

Ms. Vitale said there should be some signage so that people cannot go back there to ride dirt bikes or anything.

Mr. Milligan said the objective is to protect the wetland, it will remain undisturbed. All of the construction will be on dry land, they will stay away from the 40-foot wetland buffer.

Mr. Duffy asked about the land area for lots 4 and 5.

Mr. Milligan explained the total lot size for lot 4 is 137,939 square feet, and the other lot is 95,000 square feet.

SPEAKING IN FAVOR:

Mr. Larry Kittle, 45 Springfield Circle, Merrimack, NH. Mr. Kittle stated that they met with the neighbors, and went over the proposal, and they all seemed to be in favor, and had them sign a document that they have no objection to the request.

Mr. Currier asked about the extent of the wetlands.

Mr. Kittle said the back is pretty wet, and there's about four acres of wet area.

Jean Bennett, 15 Renee Drive, Nashua, NH. Ms. Bennett stated she's lived here about 20 years. She said she is familiar with

the plan, and lives at the end of Renee Drive. She said the impact would have been worse many years ago, and they have had a lot of development since, many streets of this size on Main Dunstable Road.

David Dionne, Groton Road, Nashua, NH. Mr. Dionne said the intent was to remove the house and build some others. He said the house is not built very well, and it really can't be moved. He said they're not going to trash the neighborhood, they want something nice. He said they are very concerned about the wetlands, too.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Amanda Smith, 4 Renee Drive, Nashua, NH. Ms. Smith said she lives on the corner of Renee and Main Dunstable. She provided a letter from another homeowner at 11 Renee Drive. She said traffic and speeding cars will create a more dangerous location. She said there have been multiple accidents at this curve. She said the reflective mirror at the intersection gave an incorrect viewing of the mirror. She said eight homes in this area is too much.

Cynthia Justvig, 420 Main Dunstable Road, Nashua, NH. Ms. Justvig said she raised concerns about the number of dwellings, but, she signed the form from Mr. Kittle about having no objections to the project. She said she is concerned about the wetlands, and about the drainage. She said it is a dangerous curve. She would like her name be taken off the letter as one who is not concerned.

Dan Curcio, 415 Main Dunstable Road, Nashua, NH. Mr. Curcio said his property is adjacent to the subject lot. He said he didn't sign the letter from Mr. Kittle. He said he likes the plan, but where lot four is, is about four feet lower than his, and is concerned about drainage. He said the curve is somewhat dangerous, and there are accidents there.

Mr. Currier said if this were to be approved, lot 4 can not drain onto the Curcio's lot, so there will not be water pushed to this lot.

SPEAKING IN FAVOR - REBUTTAL:

Kevin Milligan, 15 Reservoir Street, Nashua, NH. Mr. Milligan said there was a strong effort to contact the neighbors and let them know what is intended. He said they went to everybody. He said the basic concern of the neighborhood is the traffic coming out of Renee Drive. He presented some photographs. He pointed out that the entrance and egress from the newer street would be much safer than on Renee Drive. He said that Renee Drive is very well hidden, but, the new street would be much more visible. He stated that there is R9 all around the property, and they are requesting a reasonable development.

Mr. Duffy said there is a reasonable use of one home now, and there could be another reasonable use of 3 or 4 homes. He said the Aldermen could change the zoning map, as well, to R9. He said there are other methods reasonably feasible to develop the land.

Mr. Milligan stated that relief can be granted by the ZBA. He said that the property can be sponsored to be rezoned to R9. He said this request is right on the border of another zone, and it is the zone that we are seeking for development. He said no one has really spoken about the density, except from the letter from Marie McCarthy on Musket Drive.

Ms. Vitale said she didn't feel the hardship of having eight homes was met, she could understand having 2 or 3 lots as being reasonable. She said she wasn't convinced that eight lots was reasonable.

Mr. Milligan said they've thought of how many lots would be reasonable to agree to, if eight lots cannot be approved.

Mr. Duffy asked which lots would be removed, if, six lots were to be approved.

Mr. Milligan said lots 4 and 5 would remain the same, because they would be connected to the wetlands. He said they would have 3 lots on each side of the street, perhaps, but a layout is not done for that.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Amanda Smith, 4 Renee Drive, Nashua, NH. Ms. Smith said there are R30 lots from Renee Drive and south. She said that having eight houses into 3½ acres is too much.

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Mr. Currier said there are four acres of buildable land, and this has become a question of how many lots can be built there. He said he feels that the R30 should be respected, and so should the wetlands. He said he's debating how many lots are reasonable. He said perhaps the best thing is to table this request.

Ms. Vitale said wetlands are involved, and she would like to know where the start of the wetlands are. She said it would be nice to have a full, complete map. She said the map is cut off, and would like to see a complete plan of the property. She said she is really looking at this as a 3½ acre lot.

Mr. Duffy said no part of the wetlands can be counted towards the lot area.

Ms. Vitale asked about the lining up of Renee Drive and the new road, there are regulations on how far apart they can be.

Mr. Duffy said that is a Planning Board issue.

Mr. Currier said he can argue one way or another with the density, but would like to go over it a little more closely, there are tradeoffs with this.

Mr. Currier said that he'd like to have a plan of the whole property given to Staff.

MOTION by Mr. Currier to Table to the January 27, 2009 meeting, only the Public Meeting portion.

Mr. Duffy said it will be at the end of the Agenda.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 3-0.

Mr. Duffy stated that Mr. Shaw is now present at the meeting.

REHEARING REQUESTS:

Siva & Mukunda Dogipartui, Owners, 4 Hydrangea Road, **rehearing request** from 11-25-08 approval of the 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 - **in which the ZBA granted a 2 foot encroachment, not 9 feet as requested.**

Mr. Duffy asked if there was any procedural error, or any improper notice.

The Board members all said no.

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

The Board members all said no.

Mr. Duffy asked if the rehearing request contains any new information not presented or available to the Board at the original Public Hearing.

Mr. Currier said there may have been new information, but nothing new that the applicant stated about a lack of knowledge about the process. He didn't think anything submitted was relevant, as far as being new.

Mr. Duffy said he didn't see anything new or significant.

Mr. Duffy asked if there is anything submitted that would cause the Board to make a different decision.

Mr. Currier said the homeowner did not know about the mixed use overlay zone, or the potential complications with that, but it's nothing that would or could cause the Board to come up with a different decision.

Mr. Shaw said he empathizes with the applicant, but sees nothing to change the outcome of the decision.

MOTION by Mr. Duffy to deny the rehearing request. Mr. Duffy stated that there was no procedural error or improper notice. He said the Board believed it wasn't an illegal decision, and the Board did not fail to completely address all the points of law and significant discussions and dialogue for the applicant's request. Mr. Duffy said the rehearing request does not contain any new information not presented or available to the Board at the original Public Hearing, there was minimal discussion but

nothing of substance, and there was nothing submitted to make the Board come up with a different decision.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 5-0.

OTHER BUSINESS:

Mr. Reppucci brought up the withdrawn cases for 502 West Hollis Street. He said the Board heard all the public testimony for both sides, and we should have the option to come up with a decision. He said it doesn't mean that we should disregard what happened, as people can come through the process, get a feel for the meeting, withdraw the case, and come back with a revised application that may have a better chance to get approved. He said if the Board allows people to do this, they can present their case, and go through it again, they are circumventing the rules if they can start from scratch again. He stated that the Board received guidance from the City Attorney's Office, and the direction was that we had three options, and one option was that we could proceed on the case, even though the applicant withdrew after the Public Hearing was closed.

Mr. Duffy said he didn't believe we heard the case in its entirety, because there are a lot of unanswered questions. He also mentioned that if the applicant gets a feeling that if the Board will deny their case, they have the right to withdraw it at any time, and thought it was subjective that that is the reason why they withdrew the request. He also said they would start from scratch. He said the applicant is trying to do the right thing, and felt that the Board could review any of the previously submitted information, if they thought it was relevant, for the next time they come before the Board. He didn't know of anyone who has tried to circumvent the approval process since he's been on the Board.

Mr. Reppucci said the public hearing portion of the meeting was closed, and we wouldn't allow any additional input, and we were tabling it for the public meeting.

Mr. Shaw agreed that the public hearing portion was closed.

Mr. Currier also agreed that the public hearing was closed.

Mr. Duffy said he would have probably asked for a suspension of the rules to discuss any further information submitted.

Mr. Reppucci said the case was heard in it's entirety in the public hearing, that part was complete. He said there will be other questions later.

Mr. Currier said ideally, the application deadline is 4 weeks before the meeting. He said sometimes the Board allows additional testimony, even on the date of the meeting. He said that perhaps the applicant is trying to help out the abutters, but it's the applicant's prerogative, if they want to withdraw their application, they can do so.

Mr. Reppucci said its different if someone withdraws prior to a public hearing, but when the Board already goes through the public hearing, it is a different scenario. He said this case has been withdrawn twice.

Mr. Shaw said the Board has to be careful, we cannot assume anything. He said they could have withdrawn for any one of many reasons. He said the Board can't really know what their reasons for withdrawing are, but the Board cannot judge them because of that.

Mr. Duffy said he cannot even imagine what a Judge would say if someone withdrew their application, and the Board came up with a decision on their case.

REGIONAL IMPACT:

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

MINUTES:

December 16, 2008:

MOTION by Mr. Duffy to approve the minutes, waive the reading, and place the minutes in the file.

The Board stated that on the last page, it should not indicate that Mr. Currier is the "Acting" Clerk.

Mr. Falk will make the appropriate change.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 5-0.

ELECTION OF ZBA OFFICERS FOR 2009:

This will be on the Agenda for January 27, 2009.

ADJOURNMENT:

Mr. Duffy called the meeting closed at 11:17 p.m.

Jack Currier
Clerk

CF
Taped Hearing