

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
October 27, 2009

A public hearing of the Zoning Board of Adjustment was held on Tuesday, October 27, 2009 at 6:30 PM in the Auditorium at City Hall.

Jack Currier, Chair, conducted the meeting.

Members present were:

Jack Currier, Chair  
Kathy Vitale  
Robert Shaw  
Robert Carlson  
Carter Falk, Deputy Planning Manager/Zoning

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

- 1. Nashua Development Co. (Owner) Irrigation Consulting, Inc. (Applicant) 25 Fairway Street (Sheet 116 Lot 1) requesting special exception to work within the 75-foot prime wetland buffer of the Merrimack River to remove an existing pump house. R9 Zone, Ward 7.**

Voting on this Case:

Jack Currier  
Kathy Vitale  
Robert Shaw  
Robert Carlson

Jeff Bluman, Project Engineer, Irrigation Consulting, Pepperell, MA. Mr. Bluman said the existing pump house that serves the golf course is located within the 100-year flood plain, and is at an elevation of 100 feet. He said the site is subject to annual flooding, and the site has been undermined, and the mechanical equipment has been compromised as well. He said the objective is to build a new pump house outside the buffer zone.

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Mr. Bluman went over all the relevant special exception points of law, as well as the wetland special conditions.

Mr. Currier read over the Conservation Commission stipulations of approval, which are and will be fulfilled by the applicant.

**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 use is listed in the Table of Uses, Section 190-112. Mr. Currier stated that per testimony, there will be no change to traffic congestion or pedestrian safety, and will not overload public water, sewer or drainage or any other municipal systems.

Mr. Currier stated that the nine special regulations are fulfilled per testimony, and the revised pump house will not be out of character or be detrimental to the health, morals or welfare of the residents.

**SECONDED** by Mr. Carlson

**MOTION CARRIED UNANIMOUSLY 4-0.**

2. **Stellos Family Investment Properties (Owner) Sarah Beth Smith (Applicant) 125 Northeastern Boulevard (Sheet 140 Lot 31) requesting use variance to allow a ballet school in a portion of an existing building [Granted by ZBA on 4-8-08, approval lapsed]. PI Zone, Ward 9.**

Voting on this case:

Jack Currier  
Robert Carlson  
Robert Shaw  
Kathy Vitale

Attorney Gerald Prunier, Prunier & Prolman, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that nothing has changed from

the approval in 2008, the applicant did not get a building permit, or a certificate of occupancy within the 12 month period, and the approval lapsed. He said that the building and property is identical, the same issues and points of law from the previous case should be used.

**SPEAKING IN FAVOR:**

No One.

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

No One.

**MOTION** by Mr. Currier to grant the use variance on behalf of the applicant. Mr. Currier stated that the Board granted approval on that were April 8, 2008, by testimony, there are no substantial changes to the building, the property, or this area of Northeastern Boulevard, and therefore, the Board finds it a reasonable request to grant the case again, he said the five points of law initially found should apply now.

**SECONDED** by Mr. Carlson.

**MOTION CARRIED UNANIMOUSLY 4-0.**

3. **Glenn A. & Loretta M. Reigleman; and Daniel D. & Louise E. Desclos (Owners) City of Nashua, Division of Public Works (Applicant) 359 & 361 Main Dunstable Road (Sheet C Lots 925 & 818), requesting special exception to work within the 40-foot critical wetland buffer of Hale Brook to construct a drainage pipe and rip-rap, as part of a right-of-way and drainage improvement project. R9 Zone, Ward 5.**

Voting on this case:

Jack Currier  
Robert Carlson  
Robert Shaw  
Kathy Vitale

Jon Lebrun, Deputy City Engineer, DPW, 9 Riverside Street, Nashua, NH. Mr. Lebrun stated that this is a section of Main Dunstable Road that is very flat, and tends to collect water, especially in the winter months. He said this is a DPW project

that would add catch basins in the street, and the nearest outlet for that stormwater is Hale Brook, a critical wetland. He said they have negotiated an agreement with the two property owners that are in the application, as a drainpipe will go in their properties, outletting into Hale Brook.

Mr. Lebrun said they have met with the Conservation Commission, and they have approved the project with stipulations, which are agreed to.

Mr. Lebrun also went over the nine wetland special conditions as well, and they will all be fulfilled.

**SPEAKING IN FAVOR:**

Louise Desclos, 361 Main Dunstable Road, Nashua, NH. Ms. Desclos said they are in agreement with the work, it will be a benefit to their property.

**SPEAKIN 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 all the five criteria for a special exception have been met per testimony, also, tonight, orally the Board heard the nine criteria for wetland conditions, either do not apply, or have been accepted.

Mr. Currier stated that the five criteria have been met, and the City DPW has agreed to the five conditions from the Conservation Commission.

**SECONDED** by Ms. Vitale.

**MOTION CARRIED UNANIMOUSLY 4-0.**

4. **Joseph S. & Staci Blecharczyk; William W. & Teresa M. Craven; Melissa J. & Mark N. Pettigrew, and Richard R. & Kelley L. Soucy (Owners) City of Nashua, Division of Public Works (Applicant) 23 - 26 Sanborn Drive (Sheet E Lots 953, 914, 954 & 448) requesting special exception to work within the critical wetland and the 40-foot critical wetland buffer of Lincoln Brook to install stormwater drainage improvements. R9 Zone, Ward 1.**

Voting on this case:

Jack Currier  
Robert Carlson  
Robert Shaw  
Kathy Vitale

Jon Lebrun, Deputy City Engineer, DPW, 9 Riverside Street, Nashua, NH. Mr. Lebrun stated that this is another drainage project that DPW is doing on Sanborn Drive. He said there are culverts that carry water to Lincoln Brook, and at times, they become plugged up and it impacts the High School property, and the owners on the upstream part of that crossing. He stated that this project will remove the dirt from inside the culverts, and a video camera inspection will be done to ensure that they are cleaned out, also, they will remove and replace the riprap on either side of the area. He said that all of the four homeowners are in favor of the plan, and the Conservation Commission voted in favor as well, with stipulations that he read into the record.

Mr. Lebrun went over the five criteria for the special exception, to the Boards satisfaction.

Mr. Currier went over the nine special regulations for wetlands, all either not applicable or satisfied by the applicant.

Further discussion ensued.

**SPEAKING IN FAVOR:**

No One.

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

Ald. Mark Cookson, 18 Inca Drive, Nashua, NH. Ald. Cookson stated that he is in favor of the project, and will benefit the four homeowners, however, there are concerns where it outlets into the Nashua River, that area consistently fills up, to the point that it floods, on the back side of Kanata and Huron Streets. He asked if the flow is improved upstream, through Sanborn Drive, they should also look at Cheyenne Drive, and that it won't cause increased flooding.

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Mr. Lebrun stated that there shouldn't be any back-up at Cheyenne Drive whatsoever.

**MOTION** by Mr. Carlson to grant the special exception on behalf of the applicant. Mr. Carlson said that the use is listed in the Table of Uses, Section 190-112, it will not create undue traffic congestion or unduly impair pedestrian safety, it will not overload public water, drainage or sewer or other municipal systems.

Mr. Carlson said all the special regulations have been fulfilled, and it will not be out of character with the neighborhood, or be detrimental to the health, morals or welfare of the residents.

Mr. Carlson said the nine wetland criteria have been met, and the applicant has acknowledged the stipulations from the Conservation Commission.

**SECONDED by Mr. Currier.**

**MOTION CARRIED UNANIMOUSLY 4-0.**

Atty. Prunier stated that two of the four members sitting on the case are running for Aldermen, and asked if they should disqualify themselves, as there could be a question about conflict of interest.

Ms. Vitale stated that she is aware that the Pine Hill Road case is in the Ward she would be running for Alderman in. She didn't see any problem with sitting on the case, and contacted the City's Corporation Counsel, and they said it is up to her, and there is no reason she should recuse herself for this case.

Mr. Carlson said he's taking a very aggressive taxation stance, and conflict of interest. He said it may be best that he recuses himself from the case.

Atty. Prunier stated that he is proud of the members of the Zoning Board, and said as long as Ms. Vitale wants to hear the case, he said he is fine with it.

Ms. Vitale said because she was appointed to the Zoning Board, she said she does not garner votes this way.

Mr. Currier suggested that they hear Case #5, in case Mr. Duffy can arrive for the case.

5. **Jensen's, Inc. (Owner) 949 West Hollis Street (Sheet D Lots 33, 34, 43, 50, 51, 117, 139 & 157) requesting special exception to work within the 75-foot prime wetland buffer of the Nashua River, the 40-foot critical wetland buffer of Lyle Reed Brook, a 40-foot "other" wetland buffer and a 20-foot "other" wetland buffer to construct new water and sewer lines, reconstruct existing roadways and driveways, and to construct a driveway to a proposed pump station. R9 & R30 Zones, Ward 5.**

Voting on this case:

Jack Currier  
Robert Carlson  
Robert Shaw  
Kathy Vitale

Jim Petropulos, Hayner Swanson, Inc., 3 Progress Avenue, Nashua, NH. Mr. Petropulos stated that they are replacing the water and sewer lines throughout the Jensens property, and a portion of it lies within the wetland buffers.

Mr. Petropulos stated that Jensens is a 480-home manufactured home project, west of West Hollis Street, and east of West Hollis Street. He said that they operate on private septic systems. He said this project will have sanitary sewer lines connected to the City's lines through both sections of the project, and the water lines will all be replaced, too. He said it is a 5-year project, and will cost about ten million dollars.

Mr. Petropulos said they have the Dept. of Public Works approval to connect into the City's system. He said they have also reached an agreement with the Board of Aldermen.

Mr. Petropulos said even though they are working within the wetland buffer, they are not removing any trees. He showed the Board some photos. He said once the utility lines are put in, everything will look the same.

Mr. Petropulos went over the five special exception points of law. He said the water lines are 50 years old, and they will be replaced. He said a benefit is that they are removing 470

septic systems from the site. He also went over the nine wetland special conditions. He said they also received approval from the Conservation Commission.

**SPEAKING IN FAVOR:**

No One.

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

No One.

**MOTION** by Mr. Currier to approve the application on behalf of the applicant. He said that per testimony, the five criteria for a special exception have all been met. Mr. Currier stated that the nine wetland special conditions have also been met, and they also agree to the stipulations of approval by the Conservation Commission. He said the application is clear and thorough.

**SECONDED** by Mr. Carlson.

**MOTION CARRIED UNANIMOUSLY 4-0.**

6. 45 Pine Hill Road Real Estate Development, LLC (Owner) 45 Pine Hill Road (Sheet E Lot 44) requesting the following:  
1) use variance to allow two buildings with a total of 52 multi-family dwelling units; and the following variances:  
2) to exceed maximum number of principal structures on one lot, 1 permitted - 2 proposed, and 3) to exceed maximum building stories, 2½ permitted - 3 proposed. R9 Zone, Ward 1.

Voting on this case:

Jack Currier  
Robert Shaw  
Kathy Vitale

Attorney Gerald Prunier, Prunier & Prolman PA, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that he objects to going forward on the case without a full Board of five members, even though there is an Ordinance that says that they have to hear the case.

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Atty. Prunier stated that the property is like an island, to the north across the railroad tracks is the old Bahama Beach Club site, zoned highway business, to the northwest is a cemetery, zoned airport industrial, and across the street is a mixture of multi-family uses. He said it is the only property that is zoned R9 and surrounded by non-R9 uses. He said the closest use to what fits into the neighborhood is the proposed use.

Atty. Prunier said they are proposing two buildings, three stories high, 28 units in one building, and 24 in the other, and there will be adequate parking.

Atty. Prunier said that this location distinguishes itself from other land in the same area. He described the abutting zoning districts. He said it is an island, surrounded by different zoning districts, and the use will have no adverse impact on the public interest, because it will not cause any harm to the area, it fits into the residential area. He said he has two reports about property values, both stating that the proposed use will not negatively impact property values, and that substantial justice will be served to the applicant, because it is a reasonable use considering the abutting uses and zoning districts.

Mr. Shaw asked about the hardship, especially since about fourteen single family homes could be built here as currently zone.

Atty. Prunier said there is no other place in the City like this piece of property, it's not a mixed zone, it's a mix of different zonings in a residential area, they want to take the use that's closest to it, which is residential, and use it as residential.

Mr. Currier asked what the difference in traffic is between the proposed use and if it were developed as single-family uses.

Mr. Currier said he didn't see the neighborhood being multi-family, but mostly single family. He said he didn't see the Bahama Beach Club as being part of the neighborhood, even though it's bordered by an HB zone, it is across the railroad tracks, and is not accessible.

Atty. Prunier said it's not proper zoning.

Mr. Currier stated that he believed it is a challenge going west from this site, towards Rt. 101.

**SPEAKING IN FAVOR:**

Richard Maynard, Engineer, Maynard & Paquette, East Pearl St, Nashua, NH. Mr. Maynard said that exit 6 is a full half mile away from the site, and exit 7 is a full mile away from the site. He said that traffic going to this site would take exit 6, not exit 7. He said for traffic, the existing use is a convention hall, using about several hundred trips per hour on a peak event or function. He said for the proposed multi-family, it is about a one-half trip per unit. He said with 52 dwelling units, they would have a peak hour of 26 trips per peak hour.

Mr. Maynard stated that with 15 single family homes, there would be a peak hour of 15 trips per hour.

Mr. Maynard said the pavement would be five feet away, and a building would be 30 feet away, also, there is a major power line, which is a negative factor for single family development.

Ms. Vitale stated that there is a wetland and wetland buffer in the Bahama Beach Club site.

Mr. Maynard said it is a concern, but it's off to one site, but it is a consideration.

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

Donald Davidson, 71 Browning Avenue, Nashua, NH. Mr. Davidson stated that he objected to speaking for only five minutes. He stated that he is against the variance for three main reasons, safety, economics, and noise for the potential inhabitants. He said he has signatures from about 75 persons from the airport against the proposal. He said for safety, the airport uses precision and non-precision approaches. He said that a precision approach is the lowest minimum approach you can make, and requires certain equipment in the airport, and on the aircraft. He said that a non-precision approach does not require that accurate equipment, and the minimum that the pilot needs to land are higher. He said that non-precision approaches are slowly going away. He said that new approaches are WASS, which you can have a glide slope of lower minimums.

Mr. Davidson said that the buildings, when built, will be within 50 feet of the bottom of the extended glide slope on runway 32. He said the new runway centerline, which will be built in 2011, and has been all approved, will be north of the existing runway. He said that the new runway will be right over this property. He said the FAA letters that the Board received are only on existing information. He said the runway will have a touchdown will have a slope that is closer, about 50 feet above the buildings. He said the FAA will never comment about future conditions, only existing conditions.

**MOTION** by Mr. Currier to allow Mr. Davidson to speak for an additional five minutes.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 3-0.**

Mr. Davidson said the FAA will never give a letter on the noise issue, they make some recommendations, but they will never say they are against it for noise. He said the FAA will never speculate, or give an opinion on a potential accident. He said buildings this close to the glide slope is a recipe for disaster. He said this would potentially put 150 souls right under the centerline of an approach lane.

Mr. Davidson said for economics, the airport is the busiest airport in New England. He said a great number is for corporate flights, and corporate jets. He said this is a lot of revenue, because they have to pay their registration fees in this state. He said the economic vitality of the airport is estimated to be between thirty and thirty-five million dollars a year. He said this is a major economic engine to the City. He said that the noise is another major factor, as the airport wants to be a good neighbor. He said that the governing body of the airport wants to be a good neighbor. He said the noise potential will be a big problem for the airport for the residents. He said by putting 150 people this close to the runway is not in the best interest of the City.

Mr. Currier asked if all the takeoffs are going east.

Mr. Davidson said the prime wind direction out of our area is going to the northwest, so a majority of the flights take off going towards Hollis. He said the issue is that planes would be

passing very low over these apartment units, and the residents will complain. He said the City has an opportunity to prevent many problems to happen in the future.

Ms. Vitale asked if the airport has any plans to purchase any other properties.

Mr. Davidson stated that the new runway will be about 300 feet northeast of the current runway, there is no property impacted by it. He said the centerline of the new runway is directly over the proposed multi-family development.

Ms. Vitale said there are a couple trees that are tall, and asked if they will be removed.

Mr. Davidson said this issue has been addressed, but with trees, there are no inhabitants in the trees except for birds. He said the problem with the proposed multi-family is that there will be a lot of people living there, with less than 50 feet to the glide slope.

Mr. Shaw asked what limit may be imposed on a future development on the Bahama Beach Club site, as far as building height.

Mr. Davidson said that a 10-story building would be turned down by the FAA as a hazard to the existing approach. He said that even if the zoning allows it, the FAA would state that it would impact the glide slope for non-precision approaches.

Steve Cunningham, 39 Dorchester Way, Nashua, NH. Mr. Cunningham said he owns and operates a flight training facility. He said he chose Nashua because it is one of the finest in the northeast. He said they are really concerned about the safety. He said they are also concerned that about 160 people living so closed, that noise will be an issue, and it will impact the airport with political pressure to move the new runway.

Janet Currier, 40 Pine Hill Road, Nashua, NH. Ms. Currier said there will be more traffic, and said she is concerned about the impact it will have on Birch Hill Elementary School, as it is already crowded. She said when the jets go over her house, it shakes, and didn't see any good to come with this project.

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Eric Currier, 40 Pine Hill Road, Nashua, NH. Mr. Currier stated that he believes that the traffic is an issue, and it is a residential area, and didn't see how this would go through.

Bill Rogers, CEO, Ektron Company, 542 Amherst Street, Nashua, NH. Mr. Rogers stated that they have employees flying into the Nashua Airport, and have training facilities that are bringing in people on a regular basis. He said the airport is wonderful, and to put a building that close to the end of the runway, will have a diverse effect on pilots.

Tom Pelkey, 75 Pine Hill Road, Nashua, NH. Mr. Pelkey stated that his concern is traffic, getting out of the driveway is a chore, and there are accidents. He said at rush hour, the traffic is backed up, and adding units will make it worse.

Scott Wharen, 12 Hampshire Drive, Nashua, NH. Mr. Wharen said he runs a flight school at the airport, and one of the major industries at the airport is flight training, there are five operators at the field. He said the noise concerns will be a problem for the airport, because the residents will be right under the flight path.

Armand Dufresne, Gale Associates, Airport Consultant. Mr. Dufresne stated that airports are like a bowl, the inside is protected, nothing is supposed to stick up through the bowl into the air space. He said the approach zones are like the end of the bowl, like a football stadium. He said there's a lot of airspace around the airport, but if the new runway 300 feet to the north puts it further away from the residences. He indicated on a map where the approach zones are. He said the aircraft typically operate a little higher than the surface, but pilots only get horizontal readings, they'll know if they're on the centerline or off of it, but they don't get vertical information. He also said there are other factors such as weather and changes in barometric pressure that affect altimeter readings. He said the airport and the proposed residential are not compatible uses.

Frank Williams, 352 Main Dunstable Road, Nashua, NH. Mr. Williams said he is a flight instructor, and said he agrees that the traffic situation is a nightmare there already. He said there is a lot of primary training, which is takeoffs and landings, and there are hundreds a week. He said all the

aircraft will be directly over this development, from 50 to 200 feet above the buildings.

Royce Rankin, Nashua Airport Manager. Mr. Rankin said they have identified 19 trees in the 32 zone that will need to be removed. He said they will work on easements with the people out there, and there are two trees right out there that do protrude into the obstruction. He said they run 100,000 takeoffs and landings a year, runway 32 is used 72% of the time, so they'll have the aircraft come directly over the proposed complex. He said on a busy weekend, it's not uncommon to have 550-600 takeoffs and landings, as that's when people are off work. He said there will be numerous complaints about noise, it will be unbearable.

Ms. Vitale asked what happens when a noise complaint is submitted.

Mr. Rankin stated that when they get one, a form is filled out with names and basic information. He said they follow up with the control tower and find out if it's an uncommon occurrence.

Mr. Shaw asked if there is a capacity limit with the number of takeoffs and landings, especially with the new runway.

Mr. Rankin said they do not envision any more operations with the new runway, they have about 80 operations an hour, which maxes out the air traffic controllers.

Andrew Stevens, 20 Georgetowne, Nashua, NH. Mr. Stevens said he is a flight instructor at the airport, and said he wanted to back up what everyone else has said, and that there is a lot of volume, especially at 32. He said some days he's had 50 flights just by himself. He said there are student pilots, flying at an altitude that is too dangerous for people to live right under.

Ed Carvalho, Crosswoods Path, Merrimack, NH. Mr. Carvalho said he's a pilot, flying out of the Nashua Airport. He said the wingspan on his plane is 35 feet, and in gusty conditions, it can turn a small plane on its side, he said he didn't want to deal with a residential building only 50 feet below where he is flying. He said also there is a lot of wet weather here, making the conditions more dangerous.

Tim Jodice, Baboosic Lake Road, Amherst, NH. Mr. Jodice said he recently lived right near the airport, and is a pilot, flying

out of Nashua. He said the air, and vehicular traffic, is very severe at times. He reinforced what previous speakers said.

Shane McLaughlin, Pilot, Flight Instructor, Developer, and Attorney. Mr. McLaughlin stated that there are five FBO's, or, fixed base operators. He said they have a fixed base at the airport, and they offer services. He said there are two large operators, with significant investments in the airport. He stated that development, when well planned, is appropriate, but not this case. He described the glide slope, and reiterated how dangerous and loud it would be to live in the proposed development. He stated that no further residential development should be considered by the City of Nashua, or by applicants, between the extended centerline of the end of the runway, including Pulaski Park, or the new runway, it should be clear of residential development. He said it is zoned R9, but should be zoned AI, it is not the appropriate place for residential development.

Harlan Loken, Sargent Road, Hollis, NH. Mr. Loken stated that he owns property at the airport, and is a real estate agent. He said that the experimental pilots have been losing members, and they started a program called Young Eagles, and it is the intent of the program to get young children, ages 8-17, interested in flying, or an aviation career. He said there is a vehicular traffic problem in this area.

Rick Vogeley, 156 Cypress Lane, Nashua, NH. Mr. Vogeley reiterated that there is a heavy traffic issue in this area, and additional residential units will only make it worse. He said that 52 units are proposed, and stated that there are plenty of empty and available units in the market right now. He said that traffic on Pine Hill Road at the bend is dangerous, as well, and there is enough available housing out in the market right now.

Steve Martin, Carroll Street, Nashua, NH. Mr. Martin also stated that the traffic issues in this area are very difficult. He said this area is still rural, and the traffic there is bad.

Roland Noyes, 16 Coburn Avenue, Nashua, NH. Mr. Noyes asked why two structures need to be built on 1 lot, perhaps because it cannot be justified. He said he didn't hear any valid reasons why they need to build more stories than are allowed. He said that the airport has a very high economic impact to the City, it is a huge benefit to the tax base, and to put these two

residential buildings up, it would be a big risk to the airport operations.

Alderman Mark Cookson, 18 Inca Drive, Nashua, NH. Ald. Cookson stated that when the arts & craft shows used to be there, parking was all on the street, and there should be at least two parking spaces per unit and spaces for guests, and no parking on Pine Hill Road, should this proposal be approved.

Ald. Cookson stated that the BG athletic field case is also coming up soon, and this case will also add traffic to this area, there are not too many ways to get out to Farley Road, and if this case is approved, it will be even more traffic.

Mr. Currier stated that the letter submitted to the Board by Mr. Davidson has at least 75 signatures in opposition to this project.

**SPEAKING IN FAVOR - REBUTTAL:**

Atty. Gerald Prunier. Atty. Prunier stated that the height allowed in the GB zone is 60 feet, not 100 feet. He stated that he is a fan of the airport, but from what he heard tonight, nothing should be built on this property. He said the hardship has been identified, in that the property is unique as compared to the surrounding area. He said for traffic, there has to be a comparison with the existing use and the proposed use, and in testimony, there is very little, if any, difference with the single family and the proposed multi-family.

Att. Prunier said this property will not have any affect on the economic viability of the airport, we all want to see the airport be successful.

Mr. Currier asked why they are proposing two buildings and not one, and why three stories instead of two.

Atty. Prunier said they wanted to have two buildings, so there wouldn't be one larger building with 52 units in it, also, they wanted to have some light and space between the buildings. He said they thought that this is a better overall plan.

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

Mr. Donald Davidson, 71 Browning Avenue, Nashua, NH. Mr. Davidson said that the new runway planning started years ago, and the decision to put it where it is had a lot of factors. He said at that time, the church owned the property. He said that one of the benefits of the new runway gives the airport a residence free centerline. He said the FAA letters comment to the present conditions that they were asked about, and they only addressed the current runway and touchdown zone, also, they will not comment on noise, or accidents, because they don't feel that there should be any accidents.

Mr. Shaw said there is a large strip of R9 zoned property in this area, towards Charron Avenue, and continuing. He said the character of this zone is still like R9, and residential. He said there will be noise issues with buildings larger than single family homes. He said he struggles to see the actual hardship, and why they cant construct 15 or 16 single family homes, in the classic R9 zoned lots. He said an issue was raised on why additional multi-family units are needed.

Ms. Vitale agreed with Mr. Shaw, and the feel of this road is single family as you drive down Pine Hill Road. She said the Pine Hill Gardens development is buffered, and is not visible from there, it is more visible from the turnpike. She said that this property would not be buffered in any way, even though the cemetery is there. She said that the noise complaints will be made, and it will be a big factor.

Mr. Currier said he was basing a lot of weight on what the FAA's response was. He said there was a lot more presented tonight, and thought what was presented tonight was alarming. He said the fifty feet below the landing area is frightening. He said he wasn't persuaded by the testimony that this land cannot be developed as R9. He said Pine Hill Road looks very residential, and R9 is fine. He said that the Board should be considerate of the growth of the airport, and the testimony we heard tonight will be in direct conflict with the airport, and thought that the economics of the airport is substantial, while the applicant still can have reasonable use. He also wasn't persuaded by the appraisals, and thought the request was against the spirit and intent of the ordinance.

Mr. Currier stated that it should be looked at as against the spirit and intent of the ordinance to have the requested number of units so close to the glide path, especially at that height.

Mr. Shaw stated that the public interest is the large amount of federal money that is invested into the airport, it is a very significant economic engine, and a lot of companies and industries relocate here due to the airport, it is a very important part of the city. He stated that with taller buildings right in the glide path, it is against the spirit and intent of the ordinance and the public interest, by limiting and diminishing the airports capacity.

Mr. Currier said that the Board has heard three main topics this evening, safety, economics and noise. He stated that for safety, the increased height is negative to safety, as well as noise, higher buildings and more people make these issues worse.

Mr. Shaw said a lot of the premise of what the Board heard tonight is that the property should be treated like it was an RC zoned piece of land, as opposed to R9.

Mr. Currier said it is a strong argument, with HB and RC nearby. He stated that with the Simplex case, then why isn't it ok with this piece, but directly across the street are single family homes, and that's what the neighborhood looks like, he said he saw little or no connection between the HB and this property, because of the topo changes and the tracks. He said it is disconnected, and disagrees that taller buildings are warranted due to that.

Ms. Vitale agreed, it is a totally different area, the railroad tracks and the topography make a natural divide between the areas, and the HB zone is separate, and there is the barrier there.

Further discussion ensued.

**MOTION** by Mr. Currier to deny the use variance as proposed by the applicant. He stated that he didn't believe the zoning restriction, which is R9, interferes with the landowners reasonable use of the property, it was certainly zoned R9 for decades, long before this landowner had it, and this Board found that, unanimously, that this property can be developed as R9, in fact, the use variance to allow two buildings, which ends up being 52 multi-family units, is against the spirit and intent of the ordinance, which is to develop the land reasonably in

proximity to the airport, bringing in more than what is already permitted stresses that.

Mr. Currier said the Board has conflicting testimony on property values on surrounding parcels, and the Board found that with the already stressed traffic, to put additional traffic, 26 vs. 15 vehicle trips per hour, this is not helping the property values of surrounding parcels, he is not persuaded by the two appraisals the Board has that it will increase property values, he stated that he believed it will decrease it.

Mr. Currier stated that they heard a lot of information from the airport pilot community that with the huge economic impact that the airport has, the noise will be a big factor, and therefore, this will be against the public interest.

Mr. Currier stated that substantial justice is not served by granting this request, and believed the City will benefit by the growth of proper R9 zoning, and not the use variance.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 3-0.**

**MOTION** by Mr. Currier to deny the area variances to exceed the maximum number of stories, and the maximum number of principal structures on one lot.

Mr. Currier stated that for the first criteria, that the variance is needed to enable the applicants proposed use of the property, but as previously stated, the building height and testimony the Board has heard is impactful to this long established training college, and the 100,000 flights per year, and didn't believe it is in the spirit and intent of the ordinance.

Mr. Currier said the Board has already spoken about property values, but that height is inappropriate in this area, and believes the property can be developed with the maximum height allowed in the zone.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 3-0.**

**REGIONAL IMPACT:**

Mr. Falk said there are two cases for telecommunication towers, and the RSA's require that notification is required for all towns within a twenty mile radius.

The Board did not see any cases of regional impact.

**REHEARING REQUESTS:**

None.

**MINUTES:**

September 22, 2009:

Mr. Shaw stated that the minutes should show Mr. Duffy and Ms. Vitale as co-clerks.

Mr. Falk will make the proper change to the minutes and place them on file.

**MOTION** by Mr. Currier to waive the reading of the minutes and place on file the minutes as presented, with the correction.

**SECONDED** by Ms. Vitale.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**ADJOURNMENT:**

Mr. Currier called the meeting closed at 10:33 p.m.

Robert Shaw  
Clerk

CF  
Taped Hearing