

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
April 9, 2019

A public hearing of the Zoning Board of Adjustment was held on Tuesday, April 9, 2019 at 6:30 PM in the Auditorium, 229 Main Street, at City Hall.

Members in attendance were:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Jack Currier
Efsthathia Booras
Jay Minkarah

Carter Falk, Deputy Planning Manager/Zoning

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

- 1. Teresa Richard (Owner) 10 Forest Park Drive (Sheet 50 Lot 7) requesting the following: 1) special exception from Land Use Code Section 190-15, Table 15-1 (#3) to allow an accessory (in-law) dwelling unit; and, 2) variance from Land Use Code Section 190-32 to exceed maximum size of accessory dwelling unit, 750 sq.ft permitted - 900 sq.ft proposed - to enlarge one-car garage into a two-car garage and construct attached accessory dwelling unit in back of garage. R9 Zone, Ward 6.**

[TABLED FROM THE MARCH 26, 2019 MEETING.]

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Jack Currier
Efsthathia Booras

Mr. Boucher said that all the testimony from the previous meeting is in the record, and at the previous meeting, the special exception was approved, tonight, the request is only for the variance.

Teressa Richard, 10 Forest Park Drive, Nashua, NH. Ms. Richard said that the Board questioned the amount of square footage for the in-law unit at the last meeting, she said that the plan was advertised for 900 square feet, but it's actually 852 square feet. She said that she would prefer the 852 square feet, and her architect has another plan that shows one foot was removed from the back of the unit, which would reduce the unit to 822 square feet, but wants the 852 square foot size.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Mr. Boucher said it was great to be informed about the exact square footage, and believes that the addition is off the back of the house, and really won't be seen by too many people. He said that it is a reasonable request, and is in favor of the 852 square foot proposal.

Mrs. MacKay agreed, and is in support, and you won't be able to see it, and will blend in with the neighborhood.

Mr. Lionel said it's in the back of the house, and is supportive of the 852 square foot area.

Mr. Currier said he is in support as well, and this house, with the proposal, will look equivalent with the houses around it. He said that the addition is in the back, and won't be very visible towards the street, and appreciated the design done by the architect, as it is specific to what is going to be built.

Mr. Minkarah said he appreciates the owner wanting the extra square footage, but there was a rationale for the City adopting the 750 square foot maximum. He said he doesn't see any justification other than desire. He said that there is a difference between 750 square feet and 850 square feet, and it's

not a case where there is something peculiar about the property, this would be a completely new addition to the house, and didn't see any peculiar circumstance, it's just the owners desire to have something larger, which isn't a significant justification.

Ms. Booras said that she is in support of the request.

MOTION by Mr. Boucher to approve the variance application on behalf of the owner as advertised. He said that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance. He said that the proposed addition falls within the neighborhood, and there are similar homes that have second story additions and two-car garages, and the addition, being in the rear of the property, is something that most people would not recognize as being larger than 750 square feet.

Mr. Boucher said that it is within the spirit and intent of the ordinance. He said that it will not negatively impact property values.

Mr. Boucher said that the request it is not contrary to the public interest, and substantial justice is served.

SECONDED by Mrs. MacKay.

MOTION CARRIED 5-0.

2. Perimeter-Day, LLC (Owner) Ashlyn Rockwell - McGonagle School of Irish Dance (Applicant) 116 Perimeter Road (Sheet E Lot 1510) requesting use variance from Land Use Code Section 190-15, Table 15-1 (#251) to allow a dance school in a portion of an existing multi-tenant building. AI Zone, Ward 1.

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Jack Currier
Jay Minkarah

Ashlyn Rockwell, McGonagle School of Irish Dance, 30 Carriage

Lane, Milford, NH. Ms. Rockwell said that the school has been in Nashua for over 25 years, and the unit here on Perimeter Road would be a lovely space, and would require very little construction to be ready. She said that the use is great for the public, and twelve of the fifteen zoning districts in the City allow this use. She said that they do a lot of community service with schools in the area as well. She said that they operate mostly during off-peak hours, and traffic should not be an issue, and there would not be any threat to any residential neighborhoods nearby.

Mr. Minkarah asked if she has looked at other locations in other zones.

Ms. Rockwell said that she has been looking for many years, and the school has been looking to expand for the Irish Step Dancing. She said that they need a space that is safe for the kids, climate controlled, with level surfaces. She said it's hard to find a space with a safe floor and safe parking.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Mr. Currier said he thought the application stands on its own. He said he doesn't have any concern with it, and agrees with the applicant's testimony that finding a suitable space has been difficult. He said he also appreciates the letter from the owner in support of the school. He said he doesn't have any concerns with the school, even though it's not a permitted use in the AI Zone.

Mr. Boucher agreed, and it's his feeling that this is the only retail-type building on the street, with multi tenants, and there are a lot of hangars on the other side of the street. He said that the site has enough parking, lighting.

Mr. Minkarah said that there are a wide range of uses in the area. He asked if there were a lot of other use variances for this area.

Mr. Falk said that the only one that comes to mind was a school for Autistic children that was approved about a year or two ago. He said he couldn't recall any others in recent years. He said that there just isn't that many buildings on this side of Perimeter Road to begin with.

Mr. Minkarah said he's struggling with this one. He said that the range of uses permitted in this district is astonishing, a variety of uses. He didn't think that the proposed use is compatible, when looking at the long list of uses that are permitted. He said that this building doesn't appear to be a building for support uses for the airport.

Mr. Currier said he doesn't see harm coming to the District if this were approved. He said that the Board did not approve an auto repair off of Charron Avenue, and there were abutters that raised a lot of concerns, and that was in the AI Zone. He said that it isn't unreasonable to have a dance school here in the AI zone, and the autism school seems to be doing well.

Mr. Falk said that there was a recent rezoning along the southern part of Amherst Street, from approximately the area by Peters Auto to past Sunnyside Acura, from AI to PI/MU, in which numerous properties were rezoned, it's mostly the properties along the side streets.

MOTION by Mr. Currier to approve the use variance application on behalf of the owner as advertised. He said that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, the Board recognizes that it is in the AI District, but this, and some other buildings nearby haven't been supporting the AI District, and to allow a school of Irish Dance is needed to enable the applicants proposed use of the property.

Mr. Currier said that it is within the spirit and intent of the ordinance to allow this use variance. He said that it will not negatively impact property values of surrounding parcels.

Mr. Currier said that the request it is not contrary to the public interest, and substantial justice is served.

SECONDED by Mr. Lionel.

MOTION CARRIED 5-0.

3. Brenda Lavoie & Tim Demanche (Owners) 101 Farley Road (Sheet I Lot 31) requesting variance from Land Use Code Section 190-264 to exceed maximum accessory use area, 40% permitted, 78.9% requested, to construct a 48'x30' 3-bay metal garage. R30 Zone, Ward 1.

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Jack Currier
Efstathia Booras

Brenda Lavoie & Tim Demanche, 101 Farley Road, Nashua, NH. Ms. Lavoie said that the current garage they have is too small to house all the items that they have, which is a plow, an ATV, a tractor, a bobcat, there are just too many things that don't fit into the garage. She said that they have the Pennichuck access road, and the church on that side, and on the left side is a neighbor. She said that the garage would go in the back left corner, it would be 72 feet in, and all the trees there would remain in the buffer area. She said it will look like the house, and won't be an eyesore. She said that the garage won't block anyone's view.

Mr. Boucher asked about the structure in the back.

Ms. Lavoie said it's a barn, there were horses there, but it's very small, and to access it, you have to use the access road to go to it.

Mr. Currier asked about the choice of construction, the metal versus the traditional wood.

Mr. Demanche said that the metal garage can be constructed within three days, versus 2-3 weeks or longer for wood. He said it will be built much faster, and much less disturbance. He said that the garage will actually give the neighbor an opportunity to have more privacy.

Mr. Minkarah asked what the reason is for the high central bay.

Ms. Lavoie said just for looks. She said that they need a taller bay due to the trucks and other equipment such as the tractor.

Mr. Minkarah asked if the backhoe, bobcat and trailer are for use at this property, or use elsewhere.

Ms. Lavoie said that they have used them all at this property, but they are a combined household, and these items just don't fit without the garage. She said that they have a drywall company in which items cannot be left out.

Mr. Boucher asked what the allowed height is.

Mr. Falk said that for an accessory structure, it is 20 feet, measured at the midpoint between the eave and ridge.

Ms. Lavoie said that the garage is one story, not two.

Mr. Demanche said that the highest point would be 16 feet, the bay door would be 12 feet.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Ken Santerre, 107 Farley Road, Nashua, NH. Mr. Santerre said that the back of his lot touches the subject lot. He said he is concerned with the size of it, it's a pretty big barn. He said that they're asking for double the space of an accessory structure. He said that there is no other garage like this in the area this large.

He said that they already have a three car garage, a two car garage, and the barn. He said that there's nothing like this in the area.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Demanche said that the trucks that he has don't even come close to fitting in the garage. He said that there is lawn equipment, snow removal equipment, there's no room whatsoever. He said that the barn was for horses, it has a dirt floor, it's

not conducive to storing equipment without it rusting, and mice. He said that the new garage would house any of the equipment without it being in the elements. He said that he's a drywaller, so there is staging, lifts, and a lot of equipment, and the garage will help to keep the property organized and neat. He said that the tent garage is not structurally sound. He said that the garage will match the colors of the house, and won't be an eyesore.

Mr. Currier asked what the current accessory use area is now.

Mr. Falk said he didn't have that information.

Mr. Minkarah asked if the increase only includes the proposed structure, or some of the existing structures.

Mr. Falk said that the proposed new garage is close to 1,500 square feet in size.

Ms. Lavoie said that before the new structure is in, there was 492 square feet left over before going over the 40%. She said that the canopy garage type structure will be removed, as it is an eyesore.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

None.

Mr. Lionel remarked how this area has a rural feel to it, large parcels, and the house on this property is not very large compared to other similar sized lots. He said that the proposal would be in character with the neighborhood, and is in support.

Mr. Currier said that he puts value into the abutter's testimony that it's out of character with the neighborhood. He said that the testimony was that it would be painted the same color as the house. He said there is merit in that items will be stored indoors, and that the shelter garage would be removed. He said that he didn't think that the metal-type structure gives more of a look of an airplane hangar, versus a barn in a rural area. He said that there has been conflicting testimony whether this would be in or out of the character of the neighborhood.

Mr. Minkarah said that they are asking for a pretty substantial excess of the limitations. He said it's not a typical,

customary ordinary use on a residential property. He said that it looks like a commercial building, and would be used for commercial purposes, to house equipment, which is not typical for a property this size. He said that this isn't a farm property either. He said it looks out of character, it appears industrial looking.

Mrs. MacKay said her neighbor has a metal roof, and have it because they said it lasts longer. She said she doesn't have any issue with the size, as large trucks need this size, and there is logic behind wanting the larger size. She said she can justify the size, and the metal, because it is fast construction. She said she is supportive.

Mr. Boucher said he's seen metal structures painted any color, and is not too concerned with the way it looks. He said that the request is reasonable so that the owner can use his property in a manner he sees fit. He said if he were driving down this road, he wouldn't be surprised to see a structure of this size. He said that it is a significantly sized lot.

Ms. Booras said that she is supportive of the application.

MOTION by Mr. Boucher to approve the variance application on behalf of the owner as advertised. He said that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, the Board discussed the size of the property, the location of the garage, and discussed the lot's unique location in the City of Nashua, and some of the Board members feel it is a rural area compared to the rest of the City.

Mr. Boucher said that it is within the spirit and intent of the ordinance. He said that it will not negatively impact property values.

Mr. Boucher said that the request it is not contrary to the public interest, and substantial justice to the landowner is served.

SECONDED by Ms. Booras.

MOTION CARRIED UNANIMOUSLY 4-1 (Mr. Currier)

4. Bruce Kinville (Owner) 21½ Fairmount Street (Sheet 62 Lot 190) requesting the following variances from Land Use Code Section 190-16, Table 16-3: 1) for minimum lot frontage, 45.9 feet existing, 50 feet required; and, 2) minimum lot width, 48.77 feet existing, 60 feet required - both requests to subdivide one lot into two lots and construct a new single-family house. RB Zone, Ward 4.

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Jack Currier
Jay Minkarah

Attorney Thomas J. Leonard, Welts, White & Fontaine, 29 Factory Street, Nashua, NH. Atty. Leonard said that the lot has a single-family home with access off of Fairmount Street. He said that the lot is an odd-shaped lot, and has another frontage on Paxson Terrace.

Atty. Leonard said that this request is only about lot frontage and lot width. He said that the lot is over 23,000+ square feet in size. He said that they are requesting a variance to allow two lots, both would have sufficient size, but one lot would be nonconforming with regards to frontage and width.

Atty. Leonard said it is a large lot for the area, and the RB zone allows 6,000 sq.ft for a minimum sized lot. He said that the lot is also an awkward shape. He said that there is a steep slope in the middle of the lot. He said that the existing single-family home has been there a long time, before the neighborhood was established. He said that the neighborhood is a standard RB neighborhood, mostly duplex or multi-family units, and even after a subdivision, this proposal will be right in character with the area.

Atty. Leonard said that the proposal is just related to the frontage and width, as advertised, and the plan is a concept to what the lots would look like. He said that there is ample area on the second lot to be a duplex lot, and the second lot would meet the area requirements for a duplex, but it wouldn't change the request, and in the end, both lots would comply except for the advertised requests.

Atty. Leonard went over the applicable points of law for the variances. He stated that the written application is very clear and it's very thorough. He said that it is an odd-shaped lot, and is also very large for the neighborhood, and the use is allowed and reasonable. He said that this request would go for a subdivision approval before the Planning Board should this request be approved.

Mr. Currier said that the topographic challenges are surprising. He asked if the first level of the house would be at Paxton Street.

Atty. Leonard said that for the new lot, and the difficult terrain is one area of the lot, and there is a flatter area. He said that the compliant lot would be the new lot.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Mr. Currier said he feels supportive, and the requests aren't that large numerically, and this is a very unique lot, and the topography is challenging. He said that the proposal is not out of character with what is on Paxton Avenue. He said that Paxton Street is pretty dense with duplexes, and this would look in character.

Mr. Lionel agreed, the request is not significant in terms of the under-age, and it looks like a reasonable use of the land, and doesn't see anything that would cause him to object to it.

Mr. Minkarah agreed, it is a large lot, and the density even with three units is below the density of the area, and the housing is mixed with single-family, duplex and multi-family. He said that the lot is unusually shaped, and there will be sufficient access.

Mrs. MacKay agreed with other Board members comments, and said it's a huge lot, and the request is small.

Mr. Boucher said he supports the application.

MOTION by Mr. Currier to approve the variance application on behalf of the owner as advertised, with both requests considered collectively. He said that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, which, per testimony tonight is the unusual lot size, unusual lot topography, and the current frontage and continued proposed frontage on two roads, and given that situation, and the neighborhood, it is reasonable.

Mr. Currier said that it is within the spirit and intent of the ordinance. He said it will not negatively impact property values of surrounding parcels.

Mr. Currier said that the request it is not contrary to the public interest, and substantial justice is served.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 5-0.

5. Estate of Margaret Whitney (Owner) James R. Whitney, Executor of Estate (Applicant) 36 Fifield Street (Sheet 3 Lot 19) requesting variance from Land Use Code Section 190-16, Table 16-3 for minimum rear yard setback of 30 feet to property line, instead of 30 feet from unbuildable paper street. R9 Zone, Ward 7.

[WITHDRAWN BY APPLICANT.]

6. Richard A. & Patricia A. Jennings (Owners) Echo Development, LLC (Applicant) 324 Lake Street (Sheet 104 Lot 6) requesting the following: 1) Use Variance from Land Use Code Section 190-15, Table 15-1 (#15) to allow a six-unit multi-family building; and, 2) variance from Land Use Code Section 190-16, Table 16-3, for minimum lot area, 43,560 sq.ft required, 28,039 sq.ft existing. RA Zone, Ward 6.

Voting on this case:

JP Boucher, Chair
Steve Lionel, Vice Chair
Mariellen MacKay, Clerk
Jack Currier

Jay Minkarah

Attorney Jeffrey Zall, 221 Main Street, Nashua NH. Atty. Zall passed out some materials to the Board members. He said that the first page is a map of this zone, the RA Zone, with a bit of the RB Zone on the bottom right, and it shows single-family and duplex properties and some commercial and multi-family uses. He said that the properties are appropriately marked on the plan.

Atty. Zall said that the second page is zoning map, and highlighted in purple are the three RA zones in the City. He said in blue is the adjacent RB zone. He said that the third page is a display of what the proposed six-unit townhouse would look like. He said the next few pages are signatures of abutters who are in favor of the plan, and the last two pages are letters from brokers attesting to the fact that there is no diminution in value.

Atty. Zall said that the lot is 28,039 square feet in size, with 83 feet of frontage on Lake Street, and 316 feet of depth, plus a 20'x80' access to Ferson Street. He said that the lot is surrounded by single-family homes on Ferson Street, Kingston Drive, Lake Street and Swan Street. He said that the neighborhood is made up of single-family and duplex lots.

Atty. Zall said that there are three RA Zones in the City. He said that this particular RA Zone is quite different from the other two, as the RA zone in the north end transitions between lower density residential zones like R18 and R9, to RB and Commercial. He said that the one in the south end of the City does the same thing, it transitions from lower density to R18, R9, to higher density RB, RC and Commercial. He said that the subject RA Zone is different, as it doesn't really transition from low density to high density, it is surrounded by an RB Zone, which is a higher density zone, that allows multi-family use, pursuant to a Conditional Use permit, and it's also surrounded by Commercial, and on the far left hand side it borders on the highway.

Atty. Zall said that in 2002, a variance was granted for a seven-unit multi-family at 192 Kinsley Street. He said that that particular case is similar to this one. He said that the Board at that time determined that it was a zone in transition and that was the basis of the hardship, as there was an office building across the street, and all the properties around 192

Kinsley Street were single-family homes. He said that this case is very similar in size. He said that they also discussed the possibility of dividing this property into three duplex lots, although variances would be needed for lot width and density, as well as a special exception. He said that there are a significant number of duplex lots in the neighborhood, and the general size of them are around 9,000 square feet, and with that size, they would fit within the neighborhood, but rather than pursue that form of development, they believed that the proposed six-unit townhouse would fit in better with the neighborhood, it would have more greenspace, better off-street parking, and buffers to adjacent properties.

Atty. Zall said that the request satisfy all the points of law. He said that the spirit of the ordinance would be observed, as the neighborhood has duplexes ranging from 6,000 to 13,000 square feet, most of them at 9,000 square feet. He said that the density proposed by the applicant is commensurate with the average density of the duplexes in the neighborhood. He said that substantial justice would be served to make full use of the property to the same extent that the majority of the duplexes in the area make use of their property.

Atty. Zall said that property values would not be devalued, right now the property is vacant, rundown, and there is correspondence from two real estate brokers attesting to the fact that there would be no diminution of values.

Atty. Zall stated that the special condition of this property results in an unnecessary hardship, as it is a 28,000 square foot rectangular lot, with 83 feet of frontage and 316 feet of depth, and there are very few, if any, other lots in the neighborhood that are similar, and to restrict this property to single-family or duplex use, on 28,000 square feet, would not be fair and reasonable, and the proposed use is a single building with six units. He said that an alternative method of developing this lot by subdividing it into three lots, and obtaining variances and special exceptions would reasonably achieve the same number of units, just spaced out.

Mr. Currier said that most all the homes around this lot are single story homes, and that the back yard privacy they have would be an attraction. He said the 3-story tall structure behind homes would be a change of character, and it would be an impact to the homes next to this lot.

Atty. Zall said he didn't disagree about the height. He said it is proposed that way for the garage on the first level. He said if the Board wanted a condition that it would be no more than two stories, they would accept that as a reasonable condition.

Mr. Currier asked about the proposed access, if the primary entry would be off of Ferson Street, not Lake Street.

Atty. Zall said that the next step would be the Planning Board for site plan review, and they could help determine the better access to the property. He said both streets are possible.

Mr. Currier said if it were off Ferson, it would basically turn into a street.

Mr. Currier asked about the condition of the existing house, if it's terminally run down.

Atty. Zall said it's been vacant for two years, and the applicant intends to tear it down indicates it's in bad shape.

SPEAKING IN FAVOR:

Mr. Boucher said that there was a letter of support signed by nine abutters or neighbors, from 8 Kingston Drive, 15 Kingston Drive, 325 Lake Street, 21 Ferson Street, 16 Ferson Street, 2 Kingston Street, 12 Ferson Street, 20 Ferson Street and 18 Ferson Street. He also read two letters of support from real estate agents.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Kevin Bergeron, 5 Kingston Street, Nashua, NH. Mr. Bergeron said that this proposal is out of character with this neighborhood. He said that the duplex units are all 2 stories at the most, this one would be three stories. He said that no structures in this neighborhood are that high. He said the office buildings nearby are all two stories. He said that the lot is long and not wide, so to allow for vehicle access, the building will be placed over to the left side. He said that every tree and shrub will need to be taken down on this lot. He said that especially during spring, he has water problems, and the ground gets soggy and other neighbors have the same issue with water. He said that the subject property is a vacant lot,

and it perks now, and there is still water trouble, so if the property is paved and has a large building on it, and with the grading around the building, it will be much worse for all the neighbors. He said as far as the duplexes in the area, they were all built around the same time, about forty years ago. He said that there are ten houses around the circle, and nine of them have fences. He said that they're all 6-foot tall privacy fences, and with this proposal, people living there would be looking over the fences, and there will be no privacy. He said that the people on Ferson will now basically have a street in their back yard, and with plowing, there will be even more issues. He said that this request is too much. He said all the houses around the circle face into this lot, and everyone's property values will go down, as no one will want to buy our homes looking at this large structure.

Mr. Boucher indicated that all stormwater runoff has to be contained on the subject property, it cannot run off of it.

Neddy Raby, 322 Lake Street, Nashua, NH. Ms. Raby said that whatever they build will be right up next to her house. She bought her house with the understanding that all back lots were grandfathered and could not be built on, so that she could have a large back yard for the children to play in, without people staring in the yard. She said that to build a new six-unit right next to her house, is just not right.

Ken Harvey, 7 Kingston Drive, Nashua, NH. Mr. Harvey said that there are duplexes in the area, but they're at the end of Kingston Drive, it's not in this section. He said that the houses around the lot are all ranches, and to put a 6-unit multi-family is a bad idea, and he'd be forced to sell his house. He said that with young children, there would be no privacy looking into his back yard from their decks. He said that he has a lot of trees, with shade, and has a pool. He said that this request is not a good idea.

John Puliafico, 328 Lake Street, Nashua, NH. Mr. Puliafico said that the proposal will be out of character with the neighborhood. He said the size of the proposed building alone will be huge, and the area has small ranch homes. He said that they only have 65% of the required land area. He said that will be a lot of cars coming and going from this site.

Keith Fiandaca, 16 Ferson Street, Nashua, NH. Mr. Fiandaca said

that his wife signed one of the petitions in favor, and he would like to strike it from the record. He said that his wife was told that the access would be from Lake Street, not the little access way off of Ferson. He said that the area already has water problems, and this development will not solve it, it will be worse. He said he never would have bought his house if he knew that a 6-unit multi-family building would be built literally in his back yard.

SPEAKING IN FAVOR - REBUTTAL:

Atty. Zall said that the design of the building was just a concept plan, and agrees that three stories is gargantuan. He said that a condition can be placed on an approval for two stories. He said that water, drainage and plowing issues will be addressed by the Planning Board at site plan review. He said that the building will meet all setback requirements, and there will be enough room for decks, so that they won't be up against the neighbor's properties. He said that the decks won't be very high, they'll be at the same level as the abutting house decks are. He said that the abutters would love to see the vacant area in their back yards, because it's nice, but not to the extent that it deprives the land owner a reasonable use of their property. He said that a two-story building would be a reasonable use here.

Mr. Currier asked what the rear yard setback would be for the homes surrounding this lot.

Mr. Falk said 25 feet.

Mr. Currier asked if the yards around the subject lot would be side or rear yards.

Mr. Falk said the subject lot would be side yards.

Mr. Falk said going clockwise, in looking at the map, 322 Lake Street would be side yard to side yard. He said 5 and 7 would be their rear to the applicant's side. He said 9 is not an abutter. He said 4 would be rear yard to rear yard. He said that 20 is not an abutter. He said that 18 would be rear yard to side yard. He said that 16 will be their rear to the applicant's side. He said that 12, a corner lot, would have two sides facing the subject lot.

Mr. Currier asked if the proposed structure would be centered, or on the left or right side, or up in the air with respect to where it would be on the lot.

Atty. Zall said it is up in the air, as it will be addressed by the Planning Board. He said it will be placed in a location where it would have the least effect on the abutters. He said that the logical place would be in the middle. He said that it is likely that the garages would be on the side of the units, as there is plenty of lot depth.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Mr. Bergeron said that by lowering the height, the building will be longer, and there will be more asphalt and building coverage, so the green space will be even less. He said that the drainage behind the unit will be grass, that will be graded away from the building, and it will create drainage and water problems for several houses. He said that the neighbor's quality of life and privacy will be gone, and it's never going to come back. He said that if this is constructed, no one will ever buy his house. He said that the duplex units that were mentioned were already there when we all bought our houses. He said that they don't have enough land to have the proposed number of units. He said that this proposed building will be as long as the streets, Kingston and Ferson going down to Swan, except for one house. He said that all the neighbors will have a street in their back yard. He said that this proposal will not work.

Mr. Boucher asked what Mr. Bergeron's thoughts would be if they were to remove the existing house, construct a very large single family meeting the setbacks.

Mr. Bergeron said it would be a permitted one-family house, not a multi-family building that is too large. He said that he's seen garages turn into apartments and living space as well.

Mr. Minkarah said that the lot is clearly oversized for the area, with an unusual shape, but cannot support a six-unit multi-family building. He said it doesn't meet the spirit of the ordinance, as this is the RA Zone, which allows predominantly single-family homes. He said that multi-family is not allowed in this zone. He said the idea of an alternate development of three duplex units, with multiple variances and special exceptions, is also not reasonable. He said that this

is a neighborhood of predominantly single-family homes, and this property is totally surrounded by single-family homes. He said that the relief being sought is excessive, the density is excessive, and the impact to the area will be dramatic. He said that this request is seeking relief that is far beyond what is justified. He said that it doesn't meet the hardship.

Mr. Lionel agreed with Mr. Minkarah's statements. He said that this will absolutely adversely impact abutting property values, as multiple abutters have stated that it will be difficult to sell their homes with a large building in their back yards. He said it is not a reasonable use of the property, given the neighborhood being surrounded by single-family homes, and the duplex units are farther away from this lot.

Mr. Currier said he agrees with Mr. Minkarah's and Mr. Lionel's testimony. He said that it certainly is a unique shaped property, and perhaps some relief down the line may be warranted, but this request is far above a reasonable request. He said that this request is not within the spirit and intent of the ordinance. He said that the Board has a plan to review, and there are no plans of a two-story with garages next to the units. He said it will negatively affect the property values of surrounding properties. He said it is contrary to the public interest, and the property owner has plenty of development opportunities.

Mrs. MacKay agreed with other Board members comments. She said the neighbor's quality of life would be negatively impacted, they will have no privacy. She said that the proposed building is so tall and so out of character, there are all single-family homes surrounding this lot, and the proposed building would be huge. She said she cannot support the scope and impact this would have on this neighborhood.

Ms. Booras agreed with other Board members comments, and cannot support this request.

Mr. Boucher agreed, and there is opportunity for other forms of development here. He said that the impact of this proposal is not within the spirit and intent of the ordinance, it is just too impactful. He said he cannot support this application.

MOTION by Mr. Currier to deny the Use Variance as advertised on behalf of the applicant. He said that the variance is not

needed to enable the applicant's proposed use of the property, the property can be used as is, or developed in other fashions, given the special conditions of the property that do not require a use variance to allow a six-unit multi-family building.

Mr. Currier said that the proposal is not within the spirit and intent of the ordinance, given how this property is situated with single family homes around it.

Mr. Currier said that it will adversely affect the property values of surrounding parcels, especially the ones immediately around it.

Mr. Currier stated that the multi-family building is contrary to the public interest, and substantial justice is not served.

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 5-0.

MOTION by Mr. Currier to deny the Area Variance as advertised on behalf of the applicant. He said that the variance is not needed to enable the applicant's proposed use of the property, the property can be developed without this much of an overage as being requested.

Mr. Currier said that the proposal is not within the spirit and intent of the ordinance, especially to allow this much overage.

Mr. Currier said that it will adversely affect the property values of surrounding parcels, especially the ones immediately around it.

Mr. Currier stated that the multi-family building is contrary to the public interest, and substantial justice is not served.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 5-0.

MISCELLANEOUS:

REHEARING REQUESTS:

None.

MINUTES:

None.

REGIONAL IMPACT:

Mr. Falk said that the Board did not see any cases that would have Regional Impact.

ADJOURNMENT:

Mr. Boucher called the meeting closed at 9:16 p.m.

Submitted by: Mrs. MacKay, Clerk.

CF - Taped Hearing