

1. Zoning Board Regular Meeting Agenda (PDF)

Documents: [20160210 ZBA AGENDA.PDF](#)

2. 20160210 ZBA Meeting Packet

Documents: [20160210 28 PLYMOUTH AVE.PDF](#), [20160210 30 TEMPLE ST.PDF](#),
[20160210 55 LAKE ST.PDF](#), [20160210 242 MAIN ST.PDF](#)



THE CITY OF NASHUA

"The Gate City"

Community Development Division Planning Department

January 27, 2016

The following is to be published on ROP January 30, 2016, under the Seal of the City of Nashua, Public Notice Format 65 MP 51.

Notice is hereby given that a Public Hearing of the City of Nashua Zoning Board of Adjustment will be held on **Wednesday, February 10, 2016**, at 6:30 PM at the Nashua City Hall Auditorium, 3rd floor, 229 Main Street.

1. Ballinger Properties, LLC & BT Realty Limited Partnership, Joanne Charron and Towers Motor Parts Corporation of Nashua (Owners) 242 Main Street, 1 & 5 East Hollis Street (Sheet 31 Lots 1, 2 & 6) requesting the following variances: 1) to allow an electronic changing message center sign on a portion of a new ground sign, 2) to exceed maximum ground sign height, 10 feet allowed, 24 feet proposed, 3) to exceed maximum ground sign area, 50 sq.ft allowed, 88 sq.ft proposed, 4) to exceed maximum wall sign area, 100 sq.ft allowed, 112 sq.ft proposed, 5) to allow an additional wall sign on the building, two permitted, an additional wall sign proposed for eastern façade for a total of three wall signs, and 6) to exceed maximum wall sign area, a total of 200 sq.ft allowed, 285 sq.ft proposed for all three wall signs. D-1/MU Zone, Ward 4. [ONLY VARIANCES #2 AND #3 TABLED FROM 1-12-16 ZBA MEETING]
2. Brian M. & Susan J. Lefebvre (Owners) Northpoint Construction Management, LLC (Applicant) 28 Plymouth Avenue (Sheet 60 Lot 89) requesting variance to encroach 2'-6" into the 25 foot required front yard setback to construct a 22'x7' front farmers porch. RA Zone, Ward 2.
3. CREG-Temple Street, LLC (Owner) Triangle Credit Union (Applicant) 30 Temple Street (Sheet 33 Lot 31) requesting variance to exceed maximum wall sign height, 20 feet permitted, 76 feet proposed. D-1/MU Zone, Ward 4.
4. Lake Street Mill Condominium (Owner) Cellco Partnership, d/b/a Verizon Wireless (Applicant) 55 Lake Street (Sheet 99 Lot 30) requesting variance for open space, 35% required, 10.6% existing - 10.2% proposed, to add an equipment shelter, condenser pad and generator pad. RC Zone, Ward 6.

OTHER BUSINESS:

1. Review of Motion for Rehearing:
2. Review of upcoming agenda to determine proposals of regional impact.
3. Approval of Minutes for previous hearings/meetings.

"SUITABLE ACCOMMODATIONS FOR THE SENSORY IMPAIRED
WILL BE PROVIDED UPON ADEQUATE ADVANCE NOTICE."



City of Nashua
 Community Development Division
 City Hall, 229 Main Street, PO Box 2019
 Nashua, New Hampshire 03061-2019

Community Development	589-3099
Planning and Zoning	589-3090
Building Safety	589-3080
Code Enforcement	589-3100
Urban Programs	589-3088
Economic Development	589-3070
Conservation Commission	589-3105
FAX	589-3119
www.nashuanh.gov	

VARIANCE APPLICATION

This application must be completed and submitted to the Planning Department no later than the dates listed on the Zoning Board of Adjustment (ZBA) schedule sheet. The ZBA will not consider incomplete or inaccurate applications for action. ~ PLEASE PRINT OR TYPE ~

1. VARIANCE INFORMATION

a. ADDRESS OF REQUEST 28 PLYMOUTH AVENUE
 Zoning District RA Sheet 60 Lot 89

b. VARIANCE(S) REQUESTED
ENCROACHING ON THE FRONT YARD SET BACK BY 2.5'
(EXISTING HOUSE IS AT 29' NEW 22'x7' FRONT PORCH
BEING ADDED)

2. GENERAL INFORMATION

a. APPLICANT / OPTIONEE (List both individual name and corporate name if applicable)
NORTHPOINT CONSTRUCTION MANAGEMENT, LLC / GARY THOMAS
 Applicant's signature [Signature] Date 1/12/16
 Applicant's address 94 RIVER ROAD HUDSON, NH 03051
 Telephone number (home) _____ (work) 603-546-2000

b. PROPERTY OWNER BRIAN M + SUSAN J LEFEBVRE
 Owner's signature [Signature] Date _____
 Owner's address 28 PLYMOUTH AVENUE
 Telephone number (home) 540 3891 (work) _____

Case number _____ Application Deadline _____ Date Received 1/12/16 Date of hearing 2/9/16

Notices: Newspaper Abutters Board Action _____

\$ _____ fee Date Paid _____ Receipt # _____

\$ _____ application fee Date Paid _____ Receipt # _____

\$15 signage fee \$100 recovery fee Date Paid _____ Receipt # _____

2016-00010

3. PURPOSE OF REQUEST

Answer all questions below. Provide as much information as available to give the ZBA the necessary facts to review your case. Attached additional sheets if necessary. See "Procedures for Filing a Variance" for further information.

- 1. **Granting of the requested variance will not be contrary to the public interest**, because: (The proposed use must not conflict with the explicit or implicit purpose of the ordinance and that it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

LOOKING TO GIVE THE HOUSE CURB APPEAL
+ IT WILL NOT CONFLICT WITH OTHER RESIDENCES

- 2. **The proposed use will observe the spirit of the ordinance**, because: (The Proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

PROPOSED PORCH DOES NOT CONFLICT W/ ORDINANCE
CHARACTER OF THE NEIGHBORHOOD WILL NOT BE
COMPROMISED

- 3. **Substantial justice would be done to the property-owner by granting the variance**, because: (The benefits to the applicant must not be outweighed by harm to the general public or to other individuals.)

GRANTING THE VARIANCE WILL BENEFIT THE AREA &
POTENTIALLY INCREASE PROPERTY VALUES

- 4. **The proposed use will not diminish the values of surrounding properties**, because: (The Board will consider expert testimony but also may consider other evidence of the effect on property values, including personal knowledge of the members themselves.)

THE NEW PORCH WILL NOT DIMINISH THE VALUE OF
SURROUNDING PROPERTY

- 5. **Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship**, because: (The applicant must establish that because, because of the special conditions of the property in question, the restriction applied to the property by the

ordinance does not serve the purpose of the restriction in a "fair and reasonable" way. Also, you must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. Alternatively, you can establish that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.

THE EXISTING HOME WAS BUILT PRIOR TO THE 25'
FRONT YARD SETBACK. WE ARE HOPING TO UTILIZE
THE PORCH TO SIT OUT FRONT + ENJOY THE NEIGHBOR-
HOOD,

4. USE VARIANCE ADDITIONAL INFORMATION

Please answer all questions below that are applicable. Your answers to these questions will allow staff to better understand your request.

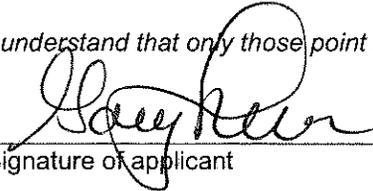
- a. Total number of employees N/A Number of employees per shift _____
- b. Hours and days of operation _____
- c. Number of daily and weekly visits to the premises by customers, clients, vendors and solicitors _____
- d. Number of daily and weekly commercial deliveries to the premises N/A
- e. Number of parking spaces available N/A
- f. Describe your general business operations _____

- g. Describe any proposed site renovations, including, but not limited to – landscaping, lighting, pavement, structural changes, signage, access and circulation

NEW FRONT PORCH, SIDEWALK + SHRUBS

I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all the city ordinances and state laws regulating construction.

I understand that only those point specifically mentioned are affected by action taken on this appeal.


Signature of applicant

1/12/16
Date

The staff report for a Use Variance request will be available no later than Friday of the week before the ZBA meeting. If you would like a copy, please indicate below:

- I will pick it up at City Hall
- Please email it to me at GARY@NORTHPOINTCM.COM
- Please mail it to me at _____



City of Nashua
Community Development Division
 City Hall, 229 Main Street, PO Box 2019
 Nashua, New Hampshire 03061-2019

Community Development 589-3095
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VARIANCE APPLICATION

This application must be completed and submitted to the Planning Department no later than the dates listed on the Zoning Board of Adjustment (ZBA) schedule sheet. The ZBA will not consider incomplete or inaccurate applications for action. ~ PLEASE PRINT OR TYPE ~

1. VARIANCE INFORMATION

a. ADDRESS OF REQUEST 30 Temple St, Nashua NH 03060
 Zoning District D-1/MU Sheet 33 Lot 31

b. VARIANCE(S) REQUESTED
Allow the installation of a sign greater than 20 feet above ground level in
a D-1 District.

2. GENERAL INFORMATION

a. APPLICANT / OPTIONEE (List both individual name and corporate name if applicable)
Triangle Credit Union - Mark Warner, Executive Vice President

Applicant's signature [Signature] Date 1/19/16
 Applicant's address 30 Temple St. Unit 700 Nashua, NH 03060
 Telephone number (home) (603) 566-7037 (work) (603) 589-8113

b. PROPERTY OWNER CREG - Temple Street, LLC

Owner's signature [Signature] Date 1/19/16
 Owner's address 30 Temple St. Suite 400, Nashua NH 03060
 Telephone number (home) (603) 672-0300 (work) _____

Case number _____ Application Deadline _____ Date Received _____ Date of hearing 2/9/16

Notices: Newspaper Abutters Board Action _____

\$ _____ fee Date Paid _____ Receipt # _____

\$ _____ application fee Date Paid _____ Receipt # _____

\$15 signage fee \$100 recovery fee Date Paid _____ Receipt # _____

2016-00015

3. PURPOSE OF REQUEST

Answer all questions below. Provide as much information as available to give the ZBA the necessary facts to review your case. Attached additional sheets if necessary. See "Procedures for Filing a Variance" for further information.

- 1. **Granting of the requested variance will not be contrary to the public interest**, because: (The proposed use must not conflict with the explicit or implicit purpose of the ordinance and that it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

Granting of the requested variance will not be contrary to the public interest, because the property is an existing commercial building with office space therefore will not change the character of the neighborhood. The proposed sign location on the top floor (7th floor) is a substantial distance away from the neighboring buildings and intersections and will not cast light that will impede or threaten public health or safety.

- 2. **The proposed use will observe the spirit of the ordinance**, because: (The Proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

The proposed use will observe the spirit of the ordinance because the D-1/MU zone allows the use of an internally illuminated wall mounted sign with a maximum allowed of 100 sq ft. The proposed single sided internally illuminated wall mounted sign has a maximum of 49 sq ft. The proposed sign would be on the west side of the building facing the D-1/MU zone and the residential zone is on the opposite side of the building to the east.

- 3. **Substantial justice would be done to the property-owner by granting the variance**, because: (The benefits to the applicant must not be outweighed by harm to the general public or to other individuals.)

Substantial justice would be done to the property owner by granting the variance because the property is located two blocks off Main St so the proposed sign located on the buildings top floor will give the owners adequate visibility to their members allowing traffic to flow more freely throughout the surrounding streets.

- 4. **The proposed use will not diminish the values of surrounding properties**, because: (The Board will consider expert testimony but also may consider other evidence of the effect on property values, including personal knowledge of the members themselves.)

The proposed use will not diminish the values of surrounding properties because this existing commercial building with office space has been at this location since 1984 and the proposed sign is in keeping with the mixed use zone in which the property is located therefore there is no foreseen detriment to property values of the adjacent properties.

- 5. **Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship**, because: (The applicant must establish that because, because of the special conditions of the property in question, the restriction applied to the property by the

ordinance does not serve the purpose of the restriction in a "fair and reasonable" way. Also, you must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. Alternatively, you can establish that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.

Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship, because the 20' maximum height does not give the property a reasonable announcement from the street thereby making locating the property and applicant difficult. We feel the proposed sign located on the top floor of the west wall is facing away from the residential neighborhood will not alter the character of the property or neighborhood in a negative way.

4. USE VARIANCE ADDITIONAL INFORMATION

Please answer all questions below that are applicable. Your answers to these questions will allow staff to better understand your request.

- a. Total number of employees 51 Number of employees per shift 51
- b. Hours and days of operation M - F 8:00am - 5:00pm, Saturday 8:00am - 3:00pm
- c. Number of daily and weekly visits to the premises by customers, clients, vendors and solicitors 12 - 15 per week
- d. Number of daily and weekly commercial deliveries to the premises 3 - 5 Weekly
- e. Number of parking spaces available _____
- f. Describe your general business operations
Operations Center for a well established, locally owned financial institution with Main Office located at 33 Franklin St, Nashua NH 03064
- g. Describe any proposed site renovations, including, but not limited to – landscaping, lighting, pavement, structural changes, signage, access and circulation
Fitting up the 7 floor with carpet, paint, and minimal wall configuration changes
Install a proposed business sign approximately 32" tall x 218" long internally illuminated fabricated letters and logo. (49sf).

I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all the city ordinances and state laws regulating construction.

I understand that only those point specifically mentioned are affected by action taken on this appeal.


Signature of applicant

1/19/16
Date

The staff report for a Use Variance request will be available no later than Friday of the week before the ZBA meeting. If you would like a copy, please indicate below:

- I will pick it up at City Hall
- Please email it to me at mwarner@trianglecu.org
- Please mail it to me at _____

EXISTING



PROPOSED



OKUMIINO

THEATRE
OKUMIINO



parking spaces, and could be a more intense use. He said the proposed use could be less intensive than the financial planner office. He said the owner just wants to live there and work there, with no employees.

MOTION by Mr. Currier to deny the use variance on behalf of the applicant and owner. Mr. Currier said that the Board finds that a zoning restriction as applied does not interfere with the landowner's reasonable use of the property. He said the building has been a residence for many years, up until the Board approved it for a business. He said that the Board has demonstrated that it can function as a business but the Board is sensitive to what type of business is located here, as it is immediately adjacent and in a residential zone.

Mr. Currier said the Board finds that by denying this use for a tattoo salon, it is not taking away the landowners reasonable use of the property.

Mr. Currier said in summary, the Board finds that this requested use is not within the spirit and intent of the ordinance, because of the testimony we received tonight, that because the driveway on Amherst Street, and the mixed use of residential and commercial that would be a difficult situation for parking to be as it is on Amherst Street, and therefore, it is not within the spirit and intent of the ordinance.

Mr. Currier said there is more universality on the Board in that it will adversely affect property values of surrounding parcels, the Board has two letters of testimony by professionals that state that the use of the residence would impact negatively, and this case would be contrary to the public interest if approved.

SECONDED by Mr. Johnson.

MOTION CARRIED 4-1 (Mr. Boucher)

- 
5. CREG-Temple Street, LLC (Owner) Akumina, Inc. (Applicant) 30 Temple Street (Sheet 33 Lot 31) requesting the following variances: 1) to allow an off-premises wall sign; and, 2) to exceed maximum height of wall sign, 20 feet permitted, 73 feet proposed. D-1/MU Zone, Ward 4.

Voting on this case:

Gerry Reppucci
Jack Currier
Rick Johnson
J.P. Boucher
David Creed

Robert Perry, Sousa Signs, Manchester, NH. Mr. Perry said that they are asking for a variance for the location of a wall sign greater than 20 feet high, also, the sign is off-premises, as it would be on the 7th floor of the building. He said that the Akumina Company occupies the 3rd floor.

Mr. Reppucci said the application is thorough and complete.

Mr. Currier asked if the off-premises wall sign is because the business is on the 3rd floor.

Mr. Falk said the business is on the 3rd floor, and the sign would be on the 7th floor, therefore, it's not in their physical space, and is considered off-premises.

Mr. Currier asked if the business were on the 7th floor, they wouldn't be asking for the off-premises wall sign variance.

Mr. Falk agreed, but they'd still need a variance to exceed the maximum wall sign height of 20 feet in the D-1/MU Zone.

Mr. Currier said that he thinks that someone walking or driving on Temple Street would see the sign, that's it. He said the rationale for the sign is puzzling.

SPEAKING IN FAVOR:

Steve Sherkowski, Akumina, 30 Temple Street, Nashua, NH. Mr. Sherkowski said the reason for the sign is for branding and a positive image. He said you could see the sign from the intersection of Amherst Street and Main Street, so, they need the sign higher so folks see it, recognize it, and come for an employment standpoint. He said it's more for brand positioning in the City.

He said he believes they're the largest tenant in the building, and future plans are for expansion to the 7th floor.

Mr. Reppucci said his concern is that everyone else in the building will want a sign this high up on the building.

Mr. Sherkowski said that there is a letter in the packet, from the building management office, stating that they are giving permission to place the sign on the 7th floor, but only at a size that is 50% of what is allowed for size.

Mr. Currier asked about the color of the sign, it looks violet.

Mr. Sherkowski said that is their corporate colors.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Boucher to grant the variance on behalf of the applicant as advertised, with both cases taken together. Mr. Boucher said that the variances are 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 the area variances.

Mr. Boucher said that the case is within the spirit and intent of the ordinance, it will not adversely affect the property values of surrounding parcels. Mr. Boucher said that it is not contrary to the public interest, and substantial justice will be served.

SECONDED by Mr. Creed.

MOTION CARRIED 4-1. (Mr. Currier)

The Board took a 5-minute break.

At this point, a representative for the case for 12A - 12B Hanover Street, Case #9, came to the podium, stating that the person who they wanted to come as a translator couldn't make the meeting.

Mr. Reppucci said that the Board could Table the case to the January 28, 2014 meeting.



City of Nashua
Planning Department
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Nashua, New Hampshire 03061-2019

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Conservation Commission 589-3105
FAX 589-3119
www.gonashua.com

January 15, 2014

CREG-Temple Street, LLC
30 Temple Street, Suite 400
Nashua, NH 03060

RE: CREG-Temple Street, LLC (Owner) Akumina, Inc. (Applicant)
30 Temple Street (Sheet 33 Lot 31) requesting the following
variances: 1) to allow an off-premises wall sign; and, 2)
to exceed maximum height of wall sign, 20 feet permitted,
73 feet proposed. D-1/MU Zone, Ward 4.

To whom it may concern;

Your recent application for the above referenced request was granted by the Zoning Board of Adjustment on January 14, 2014, with the following stipulations and/or reasons for granting, with both requests considered collectively:

- 1) The Board found that the variances are 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 the area variances.
- 2) The Board found that the spirit and intent of the ordinance is being kept in good faith.
- 3) The Board found that property values should not be negatively impacted.
- 4) The Board found that the request is not contrary to the public interest.
- 5) Substantial justice is served to the applicant.

IMPORTANT INFORMATION:

Per RSA 677:2, any party to the action or proceedings, or any person directly affected by any order or decision of the Zoning Board of Adjustment may apply for a rehearing within 30 calendar

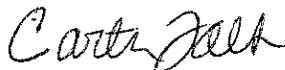
days following the date of decision. Building permits issued during this appeal period are at the sole risk of the owner/applicant.

A variance or special exception shall be null and void twelve (12) months from the date of its approval if, within this period a building permit has not been secured or, in the case of a variance or special exception relating to lot area, preliminary or final subdivision/site plan approval, is not obtained. Proper permits are required before the erection of any sign, construction, or subdivision/site plans are commenced.

Granting of the variance or special exception does not relieve the owner/applicant of the requirement to obtain Planning Board approval for site plan, preliminary or final subdivision of land. Please contact the Planning Department to determine whether Planning Board approval will be necessary.

The Zoning Board of Adjustment appreciates your cooperation in this matter. Should you have any questions regarding this notice, please contact Carter Falk at 589-3090.

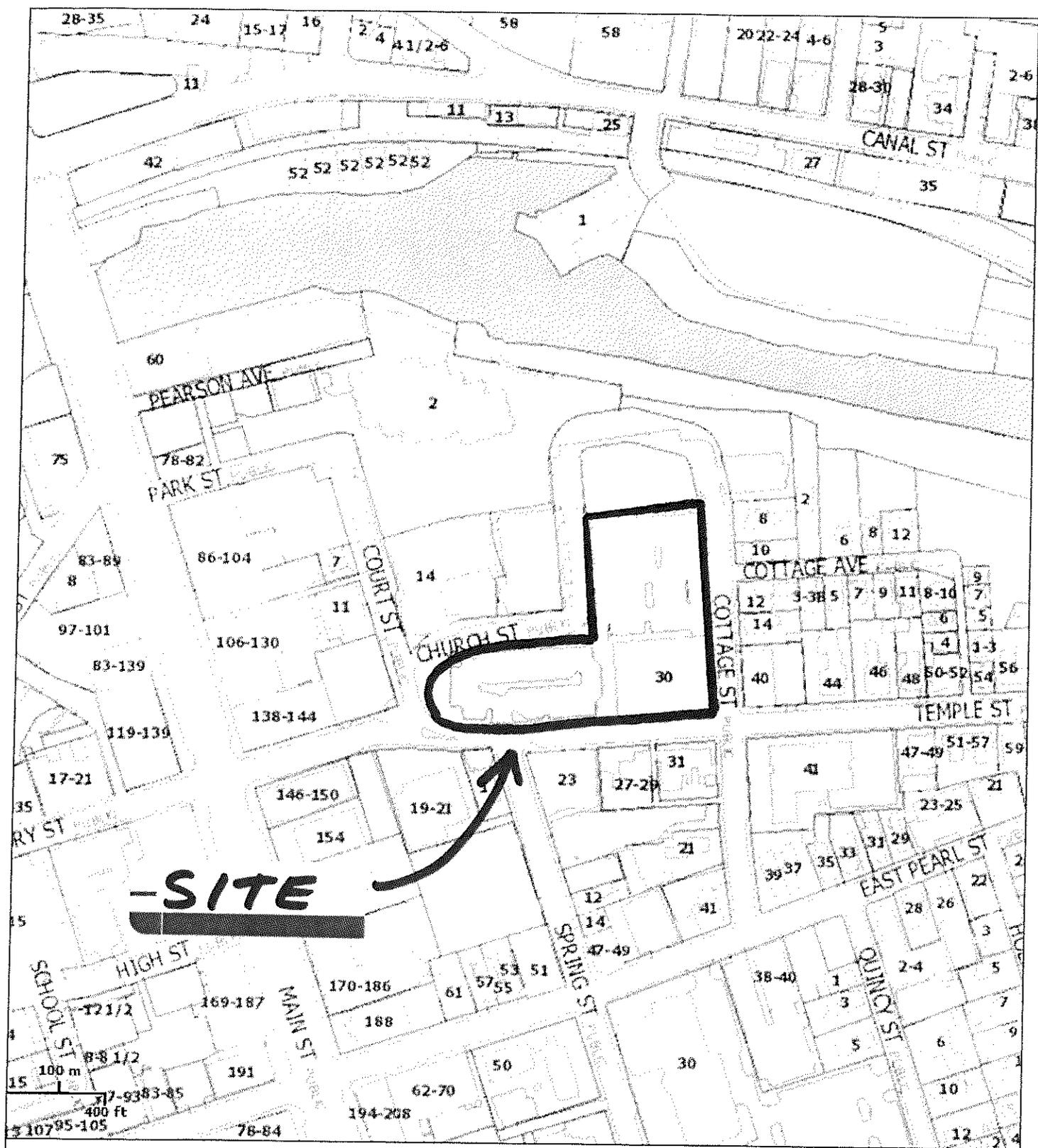
Respectfully,



for ZONING BOARD OF ADJUSTMENT
City of Nashua, New Hampshire

CF/cf

cc: Roger L. Houston, Planning Director
Bill McKinney, Building Department Manager
Mark Collins, Plans Examiner



NASHUA
New Hampshire



This map is for reference purposes only. The City of Nashua makes no representation or guarantee as to the content, accuracy, timeliness, or completeness of any information provided herein.

GIS





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Community Development Division
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 Nashua, New Hampshire 03061-2019

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VARIANCE APPLICATION

This application must be completed and submitted to the Planning Department no later than the dates listed on the Zoning Board of Adjustment (ZBA) schedule sheet. The ZBA will not consider incomplete or inaccurate applications for action. ~ PLEASE PRINT OR TYPE ~

1. VARIANCE INFORMATION

a. ADDRESS OF REQUEST 55 Lake Street
 Zoning District RC Sheet 99 Lot 30

b. VARIANCE(S) REQUESTED
Section 190-16, Table 16-3 - Open Space Percentage Requirement.

Current conditions have virtually no open space, where 35% is required (legal pre-existing non-conformity). Applicant proposes additional 500 sq. foot building which will not change current open space conditions.

2. GENERAL INFORMATION

a. APPLICANT / OPTIONEE (List both individual name and corporate name if applicable)
Cellco Partnership, d/b/a Verizon Wireless

Applicant's signature Date January, 2016

Applicant's address c/o McLane Middleton, 900 Elm St., 10th Fl., Manchester, NH 03101

Telephone number Attn: Christopher Swiniarski (home) _____ (work) (603) 628-1322

b. PROPERTY OWNER Lake Street Mill Condominium

Owner's signature see attached memorandum of lease Date _____

Owner's address 55 Lake Street, Nashua, NH 03060

Telephone number (home) _____ (work) _____

Case number _____ Application Deadline _____ Date Received _____ Date of hearing 2/9/16

Notices: Newspaper Abutters Board Action _____

\$ _____ fee Date Paid _____ Receipt # _____

\$ _____ application fee Date Paid _____ Receipt # _____

\$15 signage fee \$100 recovery fee Date Paid _____ Receipt # _____

2016-00011

3. **PURPOSE OF REQUEST**

Answer all questions below. Provide as much information as available to give the ZBA the necessary facts to review your case. Attached additional sheets if necessary. See "Procedures for Filing a Variance" for further information.

1. **Granting of the requested variance will not be contrary to the public interest**, because: (The proposed use must not conflict with the explicit or implicit purpose of the ordinance and that it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

See project narrative included herewith.

2. **The proposed use will observe the spirit of the ordinance**, because: (The Proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

See project narrative included herewith.

3. **Substantial justice would be done to the property-owner by granting the variance**, because: (The benefits to the applicant must not be outweighed by harm to the general public or to other individuals.)

See project narrative included herewith.

4. **The proposed use will not diminish the values of surrounding properties**, because: (The Board will consider expert testimony but also may consider other evidence of the effect on property values, including personal knowledge of the members themselves.)

See project narrative included herewith.

5. **Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship**, because: (The applicant must establish that because, because of the special conditions of the property in question, the restriction applied to the property by the

ordinance does not serve the purpose of the restriction in a "fair and reasonable" way. Also, you must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. Alternatively, you can establish that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.

See project narrative included herewith.

4. USE VARIANCE ADDITIONAL INFORMATION

Please answer all questions below that are applicable. Your answers to these questions will allow staff to better understand your request.

- a. Total number of employees 0 Number of employees per shift 0
- b. Hours and days of operation 24 hours, 7 days per week
- c. Number of daily and weekly visits to the premises by customers, clients, vendors and solicitors 0
- d. Number of daily and weekly commercial deliveries to the premises 0
- e. Number of parking spaces available 1
- f. Describe your general business operations
Provider of telecommunications and personal wireless services pursuant to license by the
Federal Communications Commission.

- g. Describe any proposed site renovations, including, but not limited to – landscaping, lighting, pavement, structural changes, signage, access and circulation
Addition of head end building as shown on plans included herewith.

I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all the city ordinances and state laws regulating construction.

I understand that only those point specifically mentioned are affected by action taken on this appeal.



Signature of applicant

January ____, 2016
Date

The staff report for a Use Variance request will be available no later than Friday of the week before the ZBA meeting. If you would like a copy, please indicate below:

- I will pick it up at City Hall
- Please email it to me at chris.swiniarski@mclane.com
- Please mail it to me at _____



CHRISTOPHER A. SWINIARSKI
Admitted in NH and MA

McLane Middleton, Professional Association
900 Elm Street, 10th Floor
Manchester, NH 03105-0326
Direct Dial: 603-628-1322
Email: christopher.swiniarski@mclane.com

January 6, 2016

City of Nashua Zoning Board of Adjustment
229 Main Street
Nashua, NH 03061-2019

Re: Application for Variance
Applicant: Cellco Partnership, d/b/a Verizon Wireless (“Verizon”)
Parcel ID: Map 99, Lot 30
Street Address: 55 Lake Street, Nashua, NH (the “Property”)
Zoning District: RC

Dear Board Members:

The purpose of this letter is to file the enclosed Variance application for Verizon Wireless’ proposed head-end facility (the “Facility”) to be installed on the Property. The Facility will consist of a 25’ x 20’ equipment shelter that will house equipment for signal processing and other functions of Verizon Wireless’ network in Nashua, NH. The Facility does not include any telecommunication antennae, and is generally unmanned except for periodic maintenance inspections. Specific details of the proposed Facility are set forth on the plans included herewith. This package includes the following materials:

1. Variance Application
2. Plans
3. Abutter’s List
4. Copy of Memorandum of Lease executed by the Property Owner
5. Check in the amount of \$434.70 representing the application fee (\$330) + (\$3.49) x 30 abutters notification fee)

SUMMARY DESCRIPTION OF PROPOSAL

The Application is for a project consisting of a single 25’ x 20’ (500 sq. ft.) building to be located at 55 Lake Street, Nashua, NH (the “Property”). The project is more fully described on the plans included with the Application (the “Project”). The building will serve as a head end or hub for “Small Cell” telecommunications facilities planned for deployment in Nashua.

Small Cell telecommunications facilities are modern sites that seek to avoid development of large towers or large arrays or roof top antennae in certain dense areas where they can be used as a substitute. Small Cell facilities involve one or more small antennae at a low height, placed to provide coverage to targeted areas of dense demand. Examples include small unnoticeable canisters mounted on utility or light poles, or discreet antennae installed inside large buildings or arenas.

Unlike larger "Macro Cell" sites, Small Cell sites relay the data that they carry back to the network via existing infrastructure, typically fiber optic lines. Many of these fiber optic lines already exist in urban areas, such as Nashua, Manchester, Portsmouth, and Concord. These lines must all connect into a central processing facility, known as a Head End. That proposed 500 sq. ft. building that the Application covers is the Head End for Nashua.

It is easy to see how the Small Cell is highly advantageous to cities and wireless carriers alike. Where the Small Cell can be deployed, it eliminates the visual impacts of telecommunications towers, while maximizing network coverage by using small discreet antennae to target small areas of greater demand and usage. By their nature, Small Cell networks are only feasible in densely populated areas with some degree of existing fiber optic infrastructure, or the ability to readily deploy the same. Therefore, only those municipalities (such as Nashua) are able to realize the tremendous benefits of a Small Cell network.

VARIANCE SOUGHT

Verizon seeks a variance from Section 190-16 of the Land Use Code of the City of Nashua, NH, revised through September 1, 2012 (the "Ordinance"). Specifically, Verizon seeks a variance from the 35% Open Space Percentage Requirement set forth in Table 16-3, as the Property is currently almost completely lacking in open space (see photo below).



VARIANCE CRITERIA

- 1. The variance would not be contrary to the public interest.**

The United States Center for Disease Control has surveyed, among other things, the number of wireless only homes. In 2011, that number was estimated at 34%. Only three years later, that

number rose to 54%. (See Blumberg SJ, Luke JV. Wireless, substitution: Early release of estimates from the National Health Interview Survey, July–December 2014. National Center for Health Statistics. June 2015.)

There is no denying that the demand for wireless service is growing at an astonishing rate. It is very much in the public interest to provide better wireless service as demand grows, such that mobile service providers engage in competition to ultimately benefit the American consumer.

Utilizing the Property as set forth in the Application is an excellent way to meet the demand of the public without detrimentally affecting its interest. **The Application utilizes a previously developed property within close proximity to existing fiber optic cables to provide a critical service that the public demands.**

2. The spirit of the ordinance is observed.

Generally speaking, the spirit of the Ordinance is to promote public safety, convenience and welfare, without unduly impacting quality of life, congestion, and municipal resources. The Project promotes public safety by enhancing the sole means of communication used by residents outside of their homes and, for many, the only means of telephonic communication *inside* their homes. It has no impact on municipal resources, creates no congestion because it is unmanned, and promotes a better quality of life by utilizing an existing development rather than using an undeveloped property for the Project.

3. Substantial justice would be done.

Literal enforcement of the Ordinance would require the applicant to locate a property within close proximity to fiber optic cables that is relatively undeveloped. The applicant would then use this theoretical property for a small 500 square foot unmanned building, resulting in a tremendous under-utilization of the land. The application before you, instead, is the most just way to avoid a blighted near-vacant parcel that would result from literal enforcement of the Ordinance.

4. The values of surrounding properties would not be diminished.

The Project proposes a small, attractive structure that will not be visible to a majority of surrounding properties. There is no data to suggest that any negative property value impact could result from the Project.

5. Special conditions exist such that literal enforcement of the ordinance would result in an unnecessary hardship.

As previously stated, strict enforcement of the Ordinance would necessarily result in the applicant acquiring a parcel that is largely vacant, with only the small Project building located thereon. Additionally, the Property is uniquely situated for this use because it directly abuts existing fiber optic infrastructure, which is necessary for the proposed use as described above. Requiring the applicant to locate an undeveloped parcel and lay additional fiber optic infrastructure to that parcel would be a tremendous hardship, if even possible at all.

Page 4

Thank for considering this application. Based on the meeting schedule published by your department, we anticipate this matter would be considered at the ZBA's meeting on February 9, 2016. In the interim, please feel free to contact me with any questions regarding the same.

Sincerely,

A handwritten signature in black ink, appearing to be 'CS' or similar initials, written in a cursive style.

Chris Swiniarski
Attorney for Verizon Wireless



CITY OF NASHUA, NH PLANNING BOARD

FOR ZONING

PREPARED FOR:

400 FRIBERG PARKWAY
WESTBOROUGH, MA 01581
(508) 330-3330 TEL

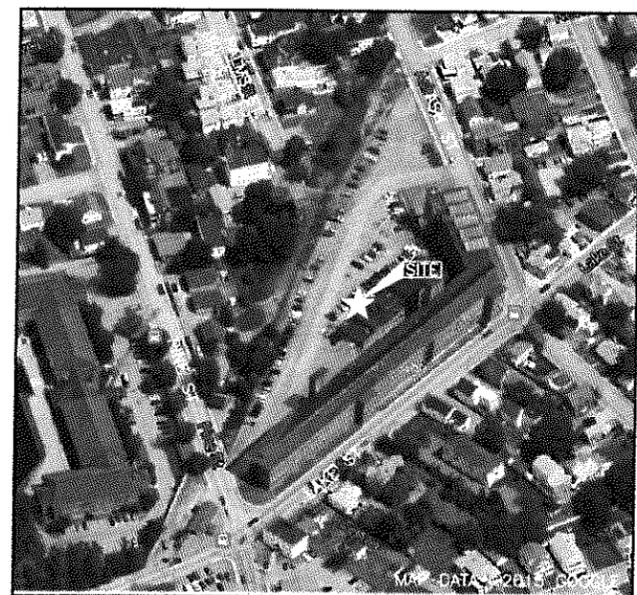
Hudson Design Group, LLC

1600 OSGOOD STREET
BUILDING 20 NORTH, SUITE 3090
N. ANDOVER, MA 01845

TEL: (978) 557-5553
FAX: (978) 336-5386

NASHUA NH HEAD END

55 LAKE STREET NASHUA, NH 03060



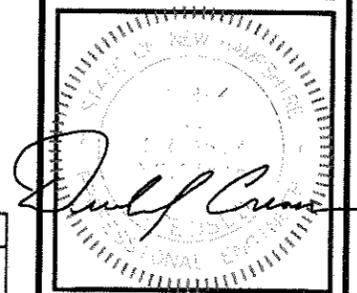
VICINITY MAP SCALE: N.T.S.

DIRECTIONS TO SITE:
 HEAD NORTHWEST ON FRIBERG PKWY TOWARD RESEARCH DR
 TURN LEFT ONTO RESEARCH DR
 TURN RIGHT TO MERGE ONTO MA-9 E/STATE HWY 9 E/BOSTON WORCESTER TURNPIKE
 MERGE ONTO I-495 N VIA THE RAMP TO LOWELL
 FOLLOW I-495 N AND US-3 N TO MAIN DUNSTABLE RD IN NASHUA.
 TAKE EXIT 5 FROM US-3 N. MERGE ONTO I-495 N
 TAKE EXIT 33 TOWARD COUNTY ROUTE 4/N CHELMSFORD
 TURN LEFT ONTO MA-4 N (SIGNS FOR COUNTY ROUTE 4 N/N CHELMSFORD)
 TURN LEFT TO STAY ON MA-4 N (SIGNS FOR US-3 N)
 MERGE ONTO US-3 N VIA THE RAMP TO NASHUA NH
 ENTERING NEW HAMPSHIRE. TAKE EXIT 5 TOWARD NASHUA/NH-111 E
 DRIVE TO LAKE ST. CONTINUE ONTO MAIN DUNSTABLE RD
 SLIGHT RIGHT ONTO LAKE ST. DESTINATION WILL BE ON THE LEFT
 55 LAKE ST, NASHUA, NH 03060

CONSULTANT TEAM	
PROJECT ENGINEER	
HUDSON DESIGN GROUP, LLC 1600 OSGOOD STREET BUILDING 20 NORTH, SUITE 3090 NORTH ANDOVER, MA 01845 TEL: 1-(978)-557-5553 FAX: 1-(978)-336-5586	

PROJECT SUMMARY	
SITE NAME:	NASHUA NH HEAD END
SITE ADDRESS:	55 LAKE STREET NASHUA, NH 03060
APPLICANT:	VERIZON WIRELESS 400 FRIBERG PARKWAY WESTBOROUGH, MA 01581
ZONING DISTRICT:	RC
ZONING JURISDICTION:	CITY OF NASHUA, NH
LATTITUDE:	N42° 45' 01.27"
LONGITUDE:	W71° 28' 03.59"
PARCEL ID:	99-30
PROPERTY OWNER:	3-10 LAKE STREET MILL, LLC 2 CHEROKEE AVE NASHUA NH 03064

SHEET INDEX	
SHT. NO.	DESCRIPTION
T-1	TITLE SHEET
C-1	PLOT PLAN
A-1	COMPOUND PLAN
A-2	ELEVATION



CHECKED BY: JX

APPROVED BY: DPH

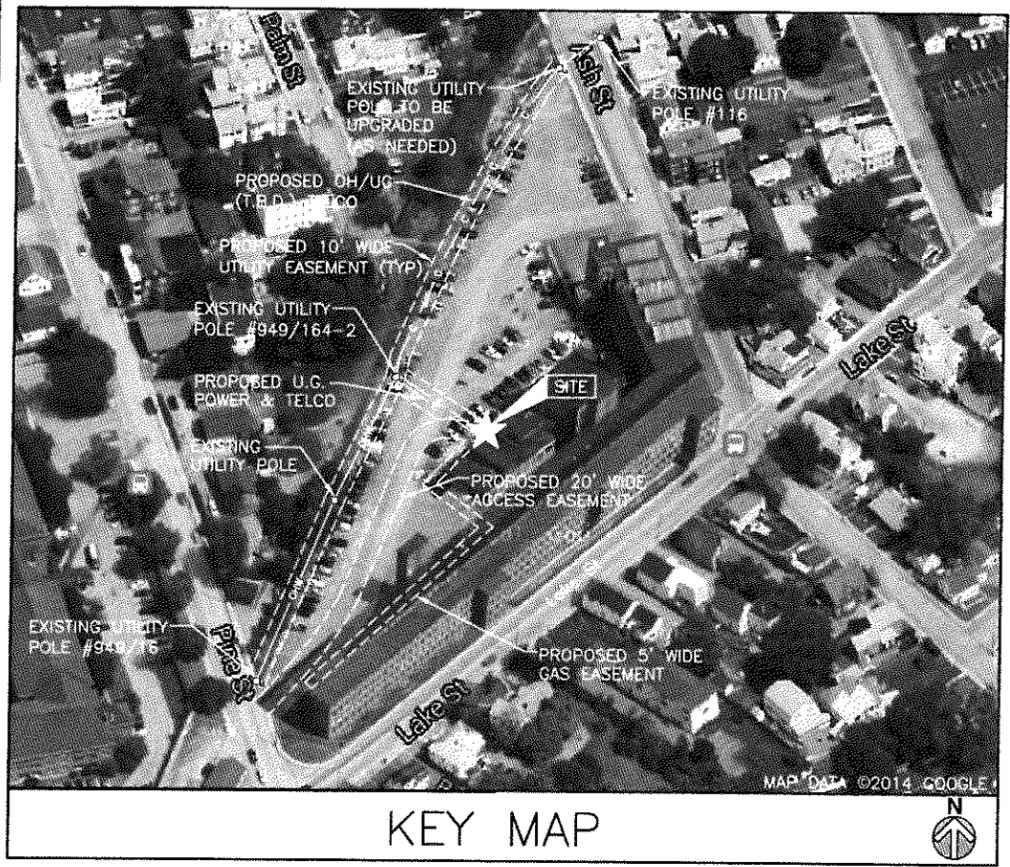
SUBMITTALS			
REV.	DATE	DESCRIPTION	BY
1	12/16/15	FOR ZONING	MR
0	04/06/15	FOR ZONING	GC

SITE NAME:
NASHUA NH HEAD END

SITE ADDRESS:
55 LAKE STREET
NASHUA, NH 03060

SHEET TITLE
TITLE SHEET

SHEET NUMBER
T-1

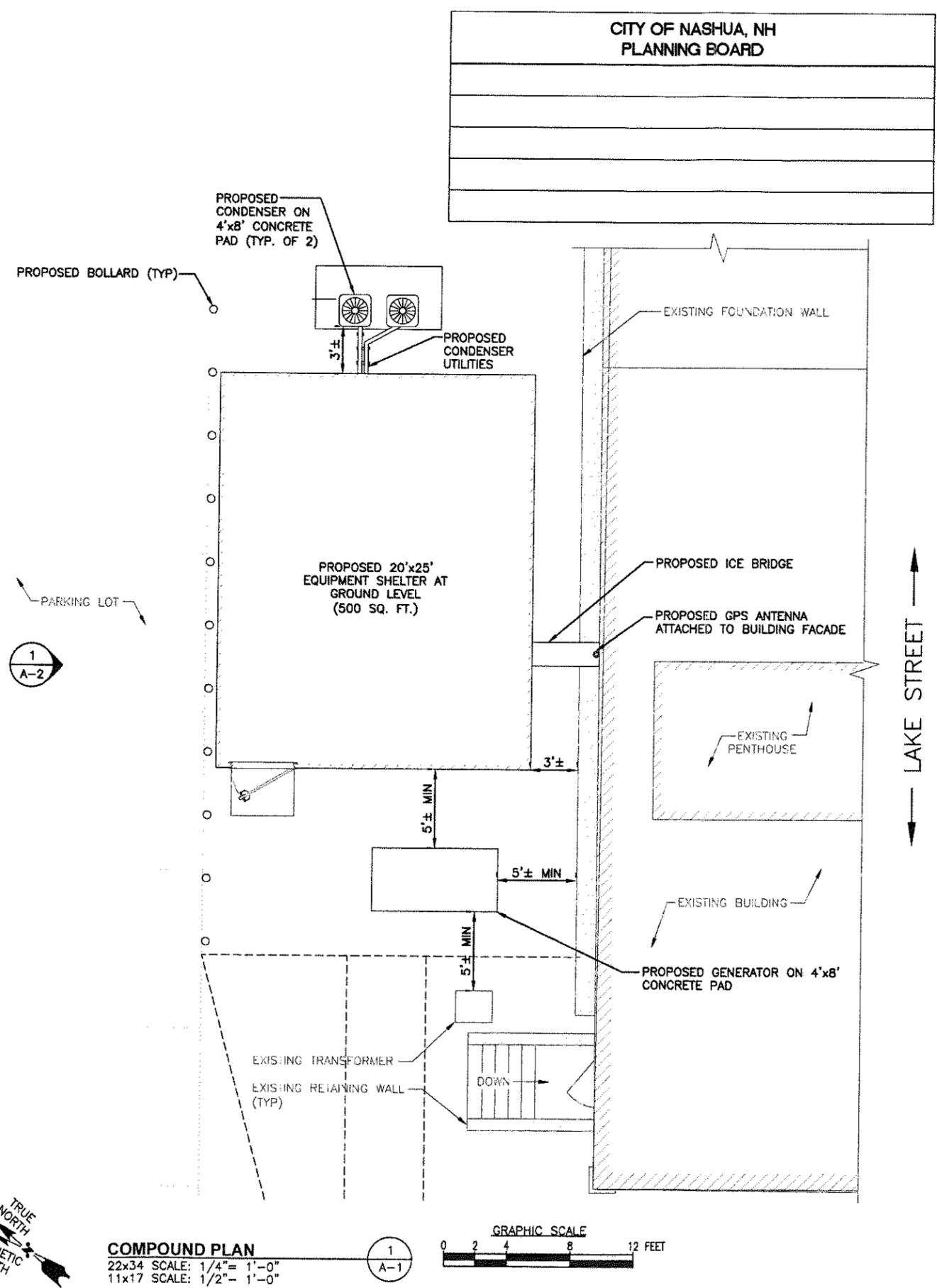


KEY MAP

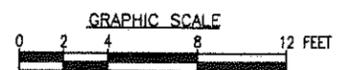


APPROXIMATE COORDINATES: LAT: N42° 45' 01.27" LONG: W71° 28' 03.59"

NOTE:
AN ANALYSIS OF THE CAPACITY OF THE EXISTING STRUCTURE TO SUPPORT THE PROPOSED LOADING HAS NOT BEEN COMPLETED BY HUDSON DESIGN GROUP, LLC. DRAWINGS ARE SUBJECT TO CHANGE PENDING OUTCOME OF A STRUCTURAL ANALYSIS.



COMPOUND PLAN
22x34 SCALE: 1/4" = 1'-0"
11x17 SCALE: 1/2" = 1'-0"

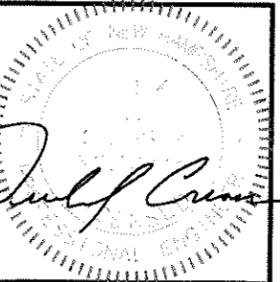


CITY OF NASHUA, NH
PLANNING BOARD

FOR ZONING

PREPARED FOR:
verizonwireless
400 FRIBERG PARKWAY
WESTBOROUGH, MA 01581
(508) 330-3390 TEL

Hudson Design Group, LLC
1600 OSGOOD STREET
BUILDING 20 NORTH, SUITE 3090
N. ANDOVER, MA 0 845
TEL: (978) 557-5553
FAX: (978) 336-5386



CHECKED BY: JX
APPROVED BY: DPH

SUBMITTALS			
REV.	DATE	DESCRIPTION	BY
1	12/16/15	FOR ZONING	MR
0	04/06/15	FOR ZONING	GC

SITE NAME:
NASHUA NH HEAD END

SITE ADDRESS:
55 LAKE STREET
NASHUA, NH 03060

SHEET TITLE
COMPOUND PLAN

SHEET NUMBER
A-1

APPROXIMATE COORDINATES: LAT: N42° 45' 01.27" LONG: W71° 28' 03.59"

NOTE:
AN ANALYSIS OF THE CAPACITY OF THE EXISTING STRUCTURE TO SUPPORT THE PROPOSED LOADING HAS NOT BEEN COMPLETED BY HUDSON DESIGN GROUP, LLC. DRAWINGS ARE SUBJECT TO CHANGE PENDING OUTCOME OF A STRUCTURAL ANALYSIS.

CITY OF NASHUA, NH
PLANNING BOARD

FOR ZONING

PREPARED FOR:



400 FRIBERG PARKWAY
WESTBOROUGH, MA 01581
(508) 330-3330 TEL



1600 OSGOOD STREET
BUILDING 20 NORTH, SUITE 3090 TEL: (978) 557-5553
N. ANDOVER, MA 01845 FAX: (978) 336-5366




Paul Crum
Professional Engineer

CHECKED BY: JX

APPROVED BY: DPH

SUBMITTALS

REV.	DATE	DESCRIPTION	BY
1	12/16/15	FOR ZONING	MR
0	04/06/15	FOR ZONING	GC

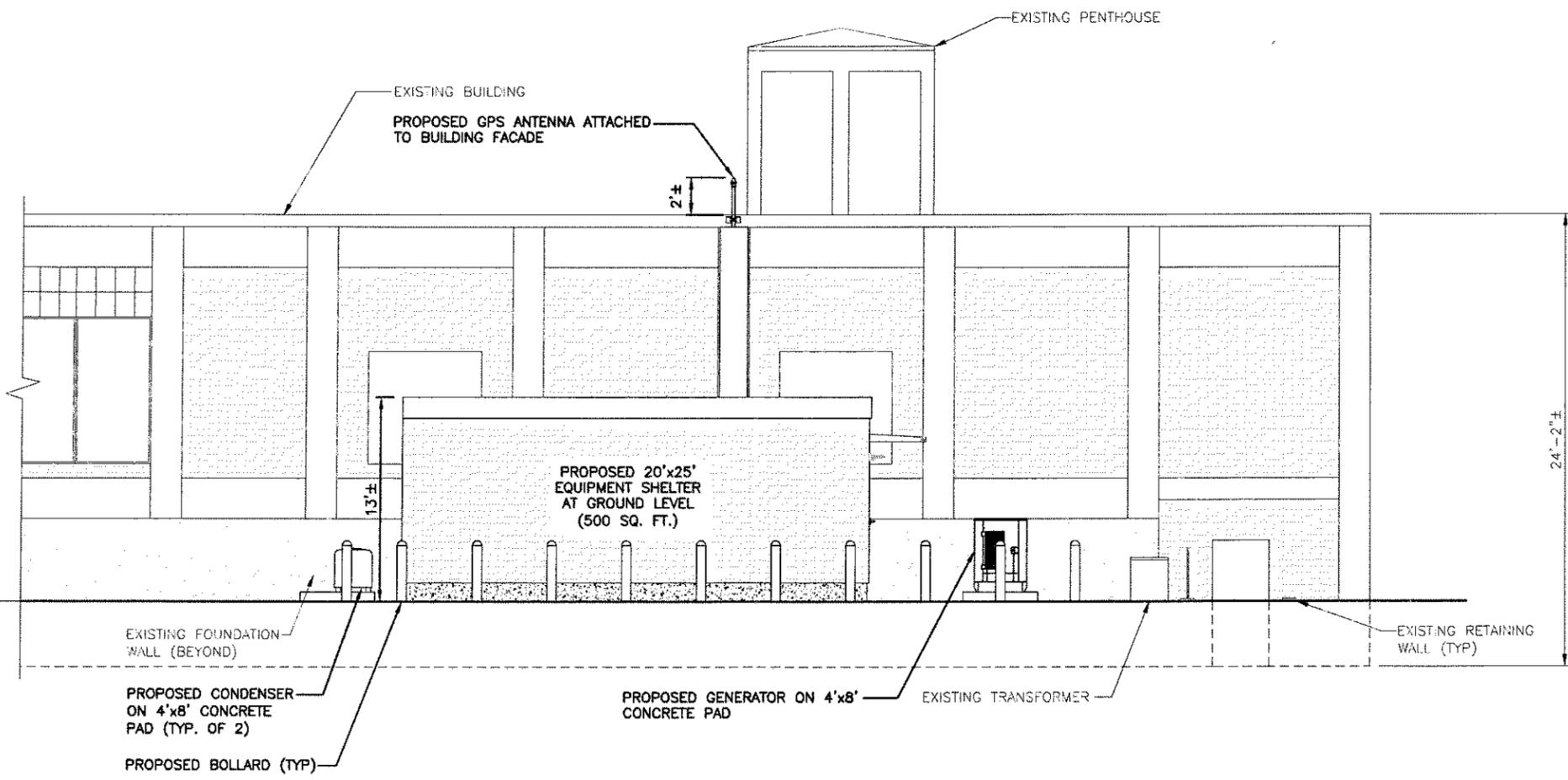
SITE NAME:
NASHUA NH
HEAD END

SITE ADDRESS:
55 LAKE STREET
NASHUA, NH 03060

SHEET TITLE
ELEVATION

SHEET NUMBER
A-2

- TOP OF HIGHEST APPURTENANCE (EXISTING PENTHOUSE)
ELEV. = 30'-8" ± (AGL)
214'-8" ± (AMSL)
- TOP OF PROPOSED GPS ANTENNA
ELEV. = 22'-8" ± (AGL)
206'-8" ± (AMSL)
- TOP OF EXISTING ROOF
ELEV. = 20'-8" ± (AGL)
204'-8" ± (AMSL)
- GRADE
ELEV. = 0'-0" ± (AGL)
184'-0" ± (AMSL)



NORTH ELEVATION

22x34 SCALE: 1/4"=1'-0"
11x17 SCALE: 1/2"=1'-0"

GRAPHIC SCALE

0 2 4 8 12 FEET

1
A-2

To: Zoning Board of Adjustment
From: Carter W. Falk, AICP, Deputy Planning Manager/Zoning
Date: January 29, 2016
Re: ZBA Meeting: February 10, 2016 – Downtown Master Plan

As the Board is aware, the CVS case on Main Street was tabled to the February 9, 2016 meeting (which is now February 10th), with respect to the proposed ground sign.

The request was for a 24 foot high ground sign, where the Land Use Code allows 10 feet in height, also the area requested is 88 square feet, where the Code allows a maximum of 50 square feet. The Board tabled this request, to have the applicant provide a photo/drawing of how the proposed sign would look on the property, superimposed in the photo.

Subsequent to the meeting, I was asked if there is any information in the Downtown Master Plan relative to signage. The Downtown Master Plan addresses market strategies, potential building design, initiative areas and opportunities, streets and connectivity; it does not have an analysis of existing, or desired signage. It does, however, state that the downtown area is a pedestrian friendly environment. I have attached a few pages where this is stated. To illustrate this point, a drive along Main Street will show that most if not all the existing ground signs are smaller, monument-scaled signs.

If you have any questions, please call me at 603 589-3116, or e-mail me at falkc@nashuanh.gov

to create a series of initiatives around which different activities and developments are organized. Private efforts, along with public improvements and public/private partnerships have been formulated into five initiatives for the City:

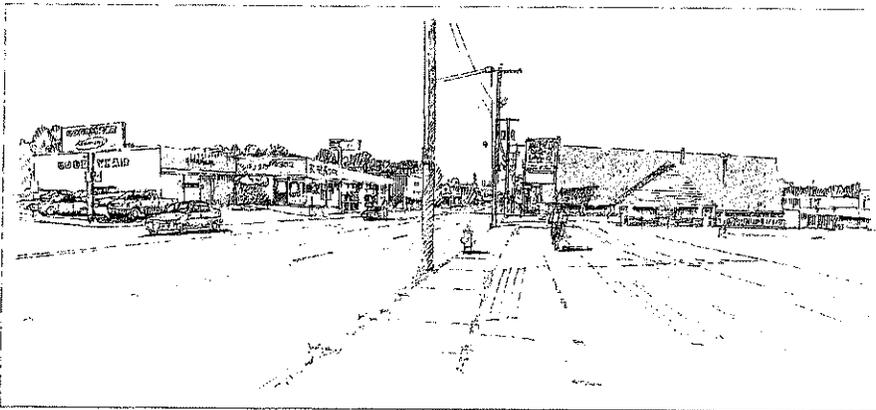
- 1 Riverfront West
- 2 Riverfront East
- 3 Railroad Square
- 4 Main Street North
- 5 Main Street South

Frameworks

In order to support these five initiatives, the Plan recommends improving upon

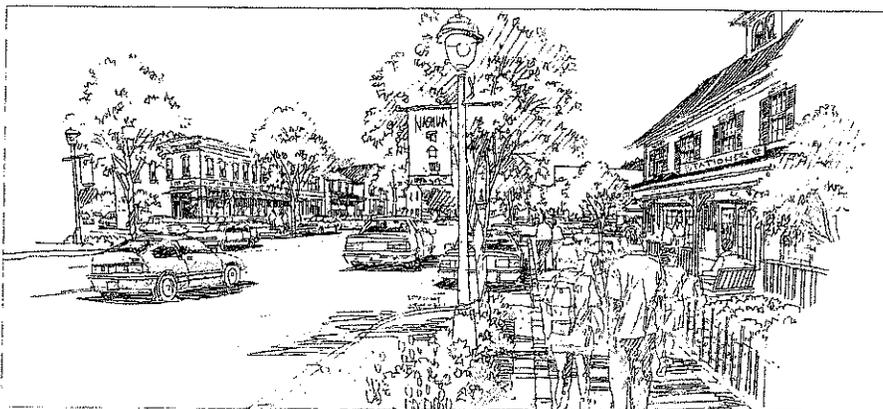
and creating a series of frameworks that connect different parts of Downtown. The frameworks, focusing on connectivity, are designed to:

- continually enhance the pedestrian experience on the streets of Downtown
- support and extend the system of bikeways and trails that link the areas of Downtown to each other, as well as the neighborhoods, and to the region's remarkable recreational and heritage amenities
- clarify pedestrian and vehicular circulation through an incremental process of converting one-way streets



Main Street South
New Streetscaping and redeveloped parking lots will transform Main Street South into a pedestrian friendly shopping street.

Existing Condition
(top)



Proposed
Redevelopment
(bottom)

Strengths, Weaknesses and Opportunities

At each focus group meeting, interview and public meeting, participants were asked the same three questions:

- 1 What are the strengths of Downtown Nashua?
- 2 What are the weaknesses of Downtown Nashua?
- 3 What is your vision for the future?

The Downtown assets considered strongest and cited most frequently related to its character and its sense of place created by the pedestrian-friendly environment on Main Street North.

The liabilities most often identified included the confusing, local one-way street system, the disconnect between the Downtown neighborhoods and Main Street, and the development along Main Street, south of Hollis Street.

Visions included a “complete” Downtown in which neighborhoods were connected to and interwoven with Downtown retail and institutions, the development of an expanded, connective riverfront park system, the addition of cultural and entertainment facilities, and an improved public transportation system.

The strengths, weaknesses, and visions are listed in more detail on this page and the following two pages.

Strengths

History

- Heritage of Nashua as one of the first planned industrial cities in the Northeast
- The preserved and rehabilitated buildings along Main Street of historic and/or local character

Main Street

- The walkable, vibrant, and safe environment between the Nashua River and City Hall
- New investments and restaurants creating an active sidewalk and street
- Variety of uses along this spine
- Strong sense of place rooted in traditional streetscape standards
- Locally owned and operated businesses – no national franchises



Strengths and Weaknesses: Main Street North is depicted in green, representing the Downtown's historic core and its strength. Shown in red, the Downtown's main weaknesses are its underutilized riverfront and the vacuum feel and uncoordinated planning of Main Street South.

Pedestrian Connectivity

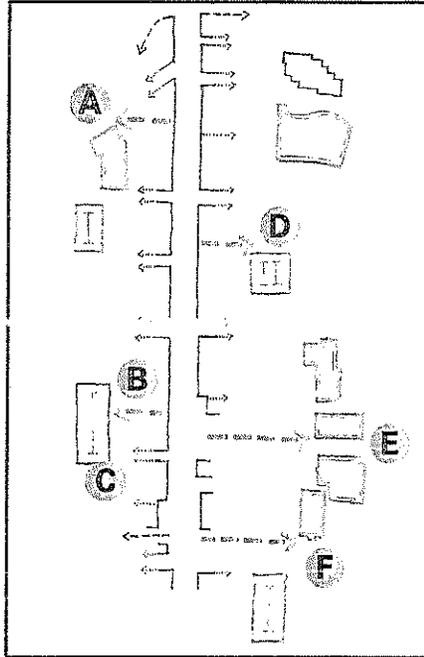
The Library Walk is a great success. It provides pedestrian access through Nashua's long blocks to destinations located one block behind Main Street. More such connections are required in order to connect and stimulate investment along Spring and Elm Streets.

The Master Plan recommends creating five additional through-block pedestrian connections: two on the interior of buildings, and three exterior. The exterior pedestrian paths should be public, well-lit, and modeled after the successful Library Walk. The interior paths require partnerships with private building owners. They should be integrated with the interior circulation through a lobby or public corridor.

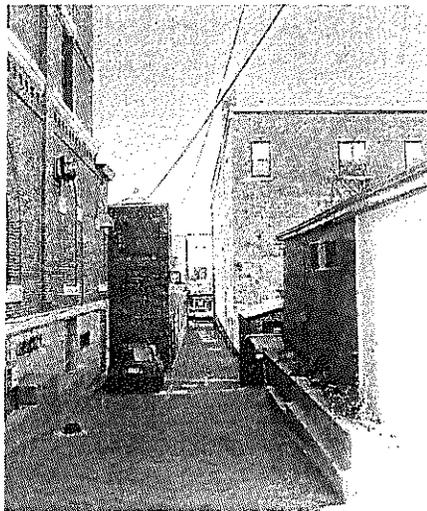
Hollis and Main Street intersection: The Region's 100% Corner

There is no more important intersection to redevelop in Nashua than the intersection of Hollis and Main Streets. The intersection is the region's "100% corner," as it creates gateways to Main Street from the east and west and south.

All four corners of this intersection are currently underutilized and underperforming. In a City with limited available land and relatively low-scale buildings, three of the four corners present opportunities to add significant square footage to the Downtown inventory of office, retail, institutional, and cultural space without creating an inappropriately sized building. Downtown's largest new buildings should be sited at



- A** Through an existing building
- B** In place of the relocated Joanne's Kitchen
- C** A new lane beside relocated parking
- D** Along side of the church
- E** Through new Downtown common
- F** An extension of the rail trail



New Pedestrian Connections
Several new pedestrian connections (similar to Library Walk and shown in red) should be created to improve the permeability of Main Street's long blocks.



City of Nashua
Planning Department

City Hall, 229 Main Street, PO Box 2019
Nashua, New Hampshire 03061-2019

Community Development 589-3095
Planning and Zoning 589-3090
Building Safety 589-3080
Code Enforcement 589-3100
Urban Programs 589-3085
Economic Development 589-3070
Conservation Commission 589-3105
FAX 589-3119
www.gonashua.com

January 13, 2016

Attorney John H. Sokul, Jr.
Hinckley Allen & Snyder
11 South Main Street
Suite 400
Concord, NH, 03301

RE: Ballinger Properties, LLC & BT Realty Limited Partnership, Joanne Charron and Towers Motor Parts Corporation of Nashua (Owners) 242 Main Street, 1 & 5 East Hollis Street (Sheet 31 Lots 1, 2 & 6) requesting the following variances: 1) to allow an electronic changing message center sign on a portion of a new ground sign, 2) to exceed maximum ground sign height, 10 feet allowed, 24 feet proposed, 3) to exceed maximum ground sign area, 50 sq.ft allowed, 88 sq.ft proposed, 4) to exceed maximum wall sign area, 100 sq.ft allowed, 112 sq.ft proposed, 5) to allow an additional wall sign on the building, two permitted, an additional wall sign proposed for eastern façade for a total of three wall signs, and 6) to exceed maximum wall sign area, a total of 200 sq.ft allowed, 285 sq.ft proposed for all three wall signs. D-1/MU Zone, Ward 4.

Dear Attorney Sokul;

Your recent application for the above referenced variance request was considered by the Zoning Board of Adjustment on January 12, 2016. As per your letter dated January 12, 2016, variance #1 for the electronic changing message sign was withdrawn.

Further, the Board Tabled variances #2 and 3 to the February 9, 2016 meeting so that the applicant can provide a photo/rendering of the proposed sign superimposed on the property.

The Board approved variances #4, 5 and 6, all considered collectively:

- 1) The Board found that the variances are needed to enable the applicant's proposed use of the property, and given the special conditions of the property, and the request sought by the applicant cannot be achieved by some other

method reasonably feasible for the applicant to pursue, other than the area variance.

- 2) The Board found that the spirit and intent of the ordinance is being kept in good faith.
- 3) The Board found that property values should not be negatively impacted.
- 4) The Board found that the request is not contrary to the public interest, the sign reflects the Hospital's new logo.
- 5) Substantial justice is served to the applicant.

Per RSA 677:2, any party to the action or proceedings, or any person directly affected by any order or decision of the Zoning Board of Adjustment may apply for a rehearing within 30 calendar days following the date of decision. Building permits issued during this appeal period are at the sole risk of the owner/applicant.

The Zoning Board of Adjustment appreciates your cooperation in this matter. Should you have any questions regarding this notice, please contact Carter Falk at 589-3090.

Respectfully,



ZONING BOARD OF ADJUSTMENT
City of Nashua, New Hampshire

CF/cf

Cc: Ballinger Properties, LLC
BT Realty Limited Partnership
Joanne Charron
Towers Motor Parts Corporation
Roger L. Houston, Planning Director
Bill McKinney, Building Department Manager
Mark Collins, Plans Examiner
Louise Brown, Assessing Department



City of Nashua
Community Development Division
 City Hall, 229 Main Street, PO Box 2019
 Nashua, New Hampshire 03061-2019

Community Development 589-3095
 Planning and Zoning 589-3090
 Building Safety 589-3080
 Code Enforcement 589-3100
 Urban Programs 589-3085
 Economic Development 589-3070
 Conservation Commission 589-3105
 FAX 589-3119
 www.nashuanh.gov

VARIANCE APPLICATION

This application must be completed and submitted to the Planning Department no later than the dates listed on the Zoning Board of Adjustment (ZBA) schedule sheet. The ZBA will not consider incomplete or inaccurate applications for action. ~ PLEASE PRINT OR TYPE ~

1. VARIANCE INFORMATION

a. ADDRESS OF REQUEST 242 Main Street; 1-5 East Hollis Street

Zoning District D-1 Sheet 31 Lot 1, 2, 6

b. VARIANCE(S) REQUESTED

See attached

2. GENERAL INFORMATION

a. APPLICANT / OPTIONEE (List both individual name and corporate name if applicable)

John H. Sokul, Jr., Esq. - Hinckley Allen & Snyder

Applicant's signature Date _____

Applicant's address 11 S. Main Street, Ste. 400, Concord, NH 03301

Telephone number (home) _____ (work) (603) 545-6132

b. PROPERTY OWNER See attached authorization letters. Applicant is counsel for CVS.

Owner's signature _____ Date _____

Owner's address _____

Telephone number (home) _____ (work) _____

Case number _____ Application Deadline _____ Date Received _____ Date of hearing 12/8/15

Notices: Newspaper Abutters Board Action _____

\$ _____ fee Date Paid _____ Receipt # _____

\$ _____ application fee Date Paid _____ Receipt # _____

\$15 signage fee \$100 recovery fee Date Paid _____ Receipt # _____

PLR2015-00220

3. **PURPOSE OF REQUEST**

Answer all questions below. Provide as much information as available to give the ZBA the necessary facts to review your case. Attached additional sheets if necessary. See "Procedures for Filing a Variance" for further information.

- 1. **Granting of the requested variance will not be contrary to the public interest**, because: (The proposed use must not conflict with the explicit or implicit purpose of the ordinance and that it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

See Attached.

- 2. **The proposed use will observe the spirit of the ordinance**, because: (The Proposed use must not conflict with the explicit or implicit purpose of the ordinance and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights.")

See attached.

- 3. **Substantial justice would be done to the property-owner by granting the variance**, because: (The benefits to the applicant must not be outweighed by harm to the general public or to other individuals.)

See attached.

- 4. **The proposed use will not diminish the values of surrounding properties**, because: (The Board will consider expert testimony but also may consider other evidence of the effect on property values, including personal knowledge of the members themselves.)

See attached.

- 5. **Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship**, because: (The applicant must establish that because, because of the special conditions of the property in question, the restriction applied to the property by the

ordinance does not serve the purpose of the restriction in a "fair and reasonable" way. Also, you must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. Alternatively, you can establish that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.

See attached.

4. USE VARIANCE ADDITIONAL INFORMATION

Please answer all questions below that are applicable. Your answers to these questions will allow staff to better understand your request.

- a. Total number of employees _____ Number of employees per shift _____
- b. Hours and days of operation _____
- c. Number of daily and weekly visits to the premises by customers, clients, vendors and solicitors _____
- d. Number of daily and weekly commercial deliveries to the premises _____
- e. Number of parking spaces available _____
- f. Describe your general business operations
CVS Pharmacy
- g. Describe any proposed site renovations, including, but not limited to – landscaping, lighting, pavement, structural changes, signage, access and circulation
Entire new building and site layout

I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all the city ordinances and state laws regulating construction.

I understand that only those point specifically mentioned are affected by action taken on this appeal.


Signature of applicant

11/10/15
Date

The staff report for a Use Variance request will be available no later than Friday of the week before the ZBA meeting. If you would like a copy, please indicate below:

- I will pick it up at City Hall
- Please email it to me at jsokul@hinckleyallen.com
- Please mail it to me at _____

**NARRATIVE IN SUPPORT OF
VARIANCE APPLICATION OF CVS PHARMACY**

This variance application, submitted by TMC New England, LLC on behalf of CVS Pharmacy, is related to three properties located at 242 Main Street, 1 East Hollis Street and 5 East Hollis Street in Nashua (collectively the "Property"). CVS has obtained zoning and site plan approvals to demolish the existing buildings, and build a new approximately 13,000 square foot CVS store including a pharmacy with drive through window. The Property is zoned D-1 (Downtown 1) and is within the MU Overlay District (Mixed Use).

CVS proposes to install a primary ground sign including a panel for electronic lettering, and four wall signs on the building, all as depicted on the plans submitted herewith. The electronic message center will contain text only, and will not have any animation or other distracting features. The ground sign is being relocated and updated to include a more substantial and attractive design with a peaked shingle top, clapboarding, and detailed trim work. The wall signage will consist of simple CVS Pharmacy lettering, and lettering for the Drive-Thru Pharmacy. The wall signage will face Main Street, East Hollis Street, and Medical Center Drive. All of the proposed signage will be generally consistent both with CVS pharmacies elsewhere, and the prior CVS signage on this site.

The following variances are required for the proposed signage:

Ground Sign Variances

- 1) A variance from §190-101, Table 101-7 to allow an electronic message center sign, where such signs are otherwise prohibited;
- 2) A variance from §190-101, Table 101-7 to allow a 24' tall ground sign, where a maximum of 10' is otherwise allowed; and
- 3) A variance from §190-101, Table 101-7 to allow ground sign area of approximately 88 s.f., where a maximum of 50 s.f. is otherwise allowed.

Wall Sign Variances

- 4) A variance from §190-108(C)(6) to allow a wall sign area of approximately 112 s.f. on the Main Street frontage, where a maximum of 100 s.f. is otherwise permitted;
- 5) A variance from §190-108(C)(6) to allow a wall sign to be located on the eastern façade of the building; and
- 6) A variance from §190-108(C)(6) to allow total wall signage area of approximately 285 s.f., where a maximum of 200 s.f. is otherwise allowed.

DISCUSSION

Pursuant to RSA 674:33, I(b), the Zoning Board of Adjustment has the power to authorize a variance from the terms of the zoning ordinance, if:

- (1) The variance will not be contrary to the public interest;
- (2) The spirit of the ordinance is observed;
- (3) Substantial justice is done;
- (4) The values of surrounding properties are not diminished; and
- (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Under the last provision, “unnecessary hardship” means either:

(A) Owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) The proposed use is a reasonable one; or

(B) If, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Here, the variances requested by CVS satisfy the statutory requirements.

1. The variance will not be contrary to the public interest.

A variance is contrary to the public interest if “it unduly and in a marked degree conflicts with an ordinance such that it violates the ordinance’s basic zoning objectives.” Farrar v. City of Keene, 158 N.H. 684, 691 (2009) (internal quotations omitted). In determining whether a variance would violate basic zoning objectives, the board should examine whether the variance would alter the essential character of the locality, or whether the granting of the variance would threaten public health, safety or welfare. Id.

The ground sign variances are not contrary to the public interest. The electronic message center sign (“EMC”) will display text only, and will not have any animation. In that sense, it merely offers more convenient changing of the text, but will be no different than a traditional lettered sign from a messaging perspective. The proposed ground sign will be similar in height and size to the existing CVS ground sign on the property. It will have a nearly identical CVS Pharmacy panel, and the existing lettering panel below will be replaced with an EMC of similar size and purpose. The appearance of the sign will be updated to be consistent with current CVS design, and will improve the overall appearance with more substantial pillars and a peaked shingle and clapboard top. The proposed sign does not clutter the streetscape or detract from the character of the locality. Further, the sign will have no detrimental impact on public health, safety or welfare in any way.

The wall sign variances are not contrary to the public interest either. The property is a corner lot, with frontage on East Hollis Street and Main Street. On the building façade facing Main Street, CVS seeks to maintain a general CVS Pharmacy sign, consistent with the existing wall sign on the building, and to add a sign for the Drive-Thru Pharmacy. The combined square footage of these two signs totals approximately 112 s.f., where a maximum of 100 s.f. is allowed. This signage is only a minor increase from the permitted square footage, and will not have any noticeable impact. The wall signage facing East Hollis Street does not contain a Drive-Thru Pharmacy sign, and consequently, meets the 100 s.f. maximum standing alone.

CVS also seeks to install a wall sign on the eastern façade of the building, which will be a standard CVS Pharmacy sign, consistent with the façade facing East Hollis Street. This sign is proposed because the eastern façade of the building faces Medical Center Drive. Although there is a parking lot between the building and Medical Center Drive, the building is plainly visible from that street. The proposed sign will identify the pharmacy for traffic on Medical Center Drive. With the addition of this signage, the total wall signage on the building is approximately 285 s.f. This modest increase in sign area is justified based on the visibility of the building from three separate streets. Each individual sign is appropriately sized for the area and will result in no adverse impact to public safety, health or welfare.

Finally, despite the additional sign area, the proposed signage does not create hazardous or distracting displays, which is also in the public interest.

2. The spirit of the ordinance is observed.

The Supreme Court has determined that the requirement that a variance not be contrary to the public interest “is co-extensive and related to the requirement that a variance be consistent with the spirit of the ordinance.” Chester Rod & Gun Club v. Town of Chester, 152 NH 577, 580 (2005). “The public interest is protected by standards which prohibit the granting of a variance inconsistent with the purpose and intent of the ordinance, which require that variances be consistent with the spirit of the ordinance, or which permit only variances that are in the public interest.” Id. As such, this criterion overlaps with the public interest requirement.

In Nashua, the spirit of the sign ordinance is to provide reasonable but uniform signage opportunities to properties, despite their different features and characteristics. The Ordinance also intends that such signage should allow an owner or occupant to reasonably identify the use housed on its property. The additional sign area accomplishes this, with simple, plain signage. The proposed ground sign provides similar identification as the existing ground sign, with a more appealing appearance and facilitated message changing via the EMC versus traditional letter paneling. The wall signs allow proper identification of the pharmacy from the three streets with good visibility. Thus, allowing this particular signage accomplishes the intent of fair treatment for CVS.

3. Substantial justice is done.

Substantial justice is done where granting a variance will not cause harm to the general public that outweighs the benefit to the applicant. See Malachy Glen Associates v. Town of Chichester, 155 N.H. 102, 109 (2007). That is the case here.

There is no harm to the general public by the requested variances. The ground sign is generally consistent with the size of the existing ground sign on the property. The proposed sign will have a peaked top, with more attractive construction than the existing sign. The EMC will not provide any animation or other distracting features, but will merely provide text. Similarly, the wall signs will cause no public harm. Individually, they are generally consistent with the allowed sizing, with only a minor increase (12 s.f.) on the Main Street frontage due to the addition of a Drive-Thru Pharmacy sign. Allowing wall signage on the eastern building façade will assist the public in identifying the building from Medical Center Drive, where the pharmacy is plainly visible. To this end, the proposed signage is actually a benefit to the general public, rather than a hindrance. Additionally, the signage will have no adverse impact of any kind on pedestrian safety.

The benefit to the applicant from the variances is substantial. The proposed signage will allow the pharmacy to be consistent with CVS design and other CVS pharmacies, which is critical from a branding and recognition perspective. The proposed signage will allow for customers to easily locate and identify the pharmacy, and will provide appropriate visibility, given the nature of the development, its location and the traffic in the area. As such, substantial justice would be done by granting the variances.

4. The value of surrounding properties is not diminished.

Granting the variances will not diminish surrounding property values. The proposed signage is in keeping with the neighborhood and the character of the commercial area. It will help identify the use of the site, given its access and visibility. The variances will not result in a site cluttered with signage. The ground sign will be a significant improvement over the existing ground sign, and the total square footage of the wall signage is spread over three façades, such that no single façade will appear to have an abundance of signage. As a result, in terms of size and scale, the additional sign area will not affect the property values in the area.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because, owing to special conditions of the property that distinguish it from other properties in the area:

- a. *No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.*

The general public purpose of the EMC prohibition is to prevent unsightly signs which frequently change display and provide a distraction to motorists. The EMC sign proposed will contain no animation, and will provide text only. In this sense, it is similar to a traditional

lettered sign, with the added convenience of being able to change the message of the text remotely and easily.

The sign area limitations in the Ordinance are to prevent the proliferation of signage that presents aesthetic, safety, and design issues that are contrary to the area and to the City's vision of the area. However, as applied to this property, it would result in a very obscure site. Given the high traffic volume in the area, and the location of the property at a busy intersection, a prominent ground sign is necessary to safely and adequately identify the site entrance for traffic coming from many different directions on numerous streets. The increased wall signage is also justified because the building is located on a corner lot, and is visible to traffic on three streets.

b. The proposed use is reasonable.

As noted above, the EMC sign is reasonable because it will display text only, and will not provide animation or other distracting features the City seeks to avoid. The ground sign height is generally consistent with the existing ground sign, and the new peaked-roof design will improve overall appearance. The additional sign area poses no safety, traffic, aesthetic or design issues for the site, the area or the district in general. It is simple and traditional signage, in fitting with general CVS designs, and does not materially depart from the existing signage on the property. It will ensure safe and adequate identification of the pharmacy from the streets and will not adversely impact the public in any way.

necessitate steps coming down because of the grade in the land.

He said they live in a very stable neighborhood. All of them have lived here for over thirty years and they are all good friends. He said they don't want to move - they would rather add on.

SPEAKING IN FAVOR

No One.

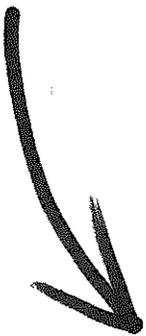
SPEAKING IN OPPOSITION

No One.

MOTION by Ms. Nessel to grant the variance for a encroachment of 7' into the 30' required rear yard setback to construct an 18'X24' one-story addition at 22 Edinburgh Drive. The hardship is the slope in the back yard. It is within the spirit and intent of the ordinance that they have reasonable use of their property. It will not adversely affect property values. It is not contrary to the public interest. Substantial justice will be served by the reasonable usage of the site.

SECONDED by Mr. Milligan.

MOTION CARRIED UNANIMOUSLY

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8. Ballinger Properties, LLC & BT Realty Limited Partnership (Owners) 242 Main Street (Sheet 31 Lot 2) requesting the following variances: 1) to exceed maximum number of allowed wall signs, 2 allowed - 4 proposed, 2) to exceed maximum allowed wall sign area, 100 square feet allowed - 246 square feet proposed, 3) to exceed maximum ground sign area, 50 square feet allowed - 102.76 square feet proposed, 4) to exceed maximum ground sign height, 10 feet allowed, 15 feet existing - 24 feet requested, 5) to allow an electronic changing sign to display messages other than display of current time and temperature, and 6) to allow three lines of text on electronic changing sign - one line of text allowed. CB/MU Zone.

Voting on this Case:

Kevin Milligan
Sean Duffy
Tom Jenkins

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Jay Coffey

Mike Floyd, Site Enhancement Services, South Bend, Indiana. Mr. Floyd said they work with CVS Pharmacy on their signage. Some handouts were passed out to the Board. He said one of them is the elevation of the property showing the signage on the new facade and what they are going to look like on the building.

He said the ground sign represents a reduction in height and square footage. He said he looked at the property and the proposed sign fits better for this site. He said they are reducing the size from 102 square feet to approximately 68 square feet. The height is being dropped down to an overall height of 20'.

Mr. Milligan said this means the request is being changed. Number 3 will be to exceed maximum ground sign area to 68 square feet and #4 to exceed maximum ground sign height to 20' instead of the 24' they were requesting. He said they can continue hearing because they are reducing their request from what was originally published.

Mr. Milligan asked the size of the square footage that is on the sign right now.

Mr. Floyd said he believes it is approximately 25 to 30 square feet.

He said the zoning restriction for signage hampers reasonable use for CVS at this site. It severely limits the business's ability to effectively communicate information. He said the site is old and dated. Nobody uses this style any more and they want to freshen the look. They want to give the site the attention it needs. The signs will be easier to read and they feel what they are proposing is a better package for the site.

He said the strict application of the zoning ordinance will not allow CVS the use of the electronic message board. This type sign allows specific programming, for example, there is a sale on tablets at this site. This message could be displayed. It could also be used for a community related issue - for example a blood pressure screening to be held on a certain date or flu shots to be given on certain dates.

Mr. Floyd said one of the things that the ordinance addresses is flashing, scrolling, and/or moving messages on the sign. He said

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this sign will not do any of this. Their message(s) will be static - perhaps changing every minute or so, but there will be no animation.

He said one of the purposes of the sign division in the zoning ordinance is to give information and direction. He said the proposed signs will do this. It also states that it provides a format for street advertising and that is what this is. It puts the message out letting people know what the site is and what goods and services are available at the property.

He said the third item is build the image of the business/industry. He said this site's signage is dated. It is old and it looks it. The facade/signage renovations are going to work together to try improve the look of the site.

He said the electronic message board will eliminate a lot of possible uses of other signs - for instance, other signs occurring for other products that CVS might offer in the future instead of offering them in an actual constructed sign on the property, eliminating the need for someone like him coming to the Board asking for permission for a sign advertising something new that CVS might carry.

Mr. Milligan said that what he is saying that CVS won't come back to the Board if they get the electronic message center.

Mr. Floyd said this is where he is going, although he couldn't say absolutely and positively they would not come back to the Board.

Mr. Milligan asked if the CVS pharmacy sign is internally lit.

Mr. Floyd said the CVS pharmacy sign on the building is internally illuminated. The 24-hour box sign next to it is internally lit. The other two signs are not. The panel that says CVS Pharmacy on the ground sign is lit. Obviously the electronic message center is illuminated.

He said that another purpose of the ordinance is to incorporate new technologies and obviously that is what they are trying to do here. This type of sign is a new technology that is being used and will address concerns CVS has about keeping up to snuff with competitors as well as putting the latest product out there.

He said this is a business that is within a business zone and

they want to make sure they are using signage that the property can live up to its full potential.

Mr. Coffey asked what the hardship is.

Mr. Floyd said they are looking to upgrade the site. He said it is in need of desperate need of signage upgrades and they want to make sure they are giving it the best package that is available to CVS. He said they feel the package they are offering offers the best opportunity for that.

Mr. Milligan asked again about the hardship.

Mr. Floyd said the signage the zoning ordinance allows for square footage hampers the reasonable use of the property by CVS. They want to make sure they get the message out clearly and in a pleasing way with something that makes sure it continues the viability of the site.

Mr. Jenkins said he believes they could put a license plate on the property stating CVS and everybody in town would know it is a CVS store. He said that they are talking about a message center on one of the busiest intersections in the whole city of Nashua. There are pedestrian crossings, four intersections meeting with two of the busiest streets in Nashua. They are going to distract people driving downtown with a message center right on the corner. There is a hospital right up the street where people are sometimes dazed about getting someone there. He said he fails to see the hardship.

Mr. Floyd said the message is not going to be that distracting to somebody who is driving. They will see the information, process it, and act on it if you interested or not if you are not interested.

Mr. Duffy asked how long the pharmacy has been in this location.

Mr. Floyd said he doesn't have the site plan, but he believes it has been there a number of years. The signage is dated.
Mr. Milligan said "definitely over nineteen years."

Mr. Duffy said he is having a problem understanding why the zoning restriction is unreasonable for a property that has been in existence for a large number of years at a very busy intersection.

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Mr. Floyd asked if the primary concern lies with the square footage alone.

Mr. Duffy said that Mr. Floyd's testimony has indicated that it is not informational or directional. This is advertising and that's what Nashua is trying to de-minimize considering the circumstances and the area.

Mr. Floyd said it can be used for that. That is why he pointed out its flexibility. It is more than the product message that can be put on the sign. He said he can work to try to adjust the overall square footage if that is a concern.

Mr. Milligan asked if this is the best that CVS can do.

Mr. Floyd said he can take it back to CVS to voice the Board's strong opinions and move on it. He asked how that would work.

Mr. Milligan said he can continue with what he has presented to the Board and the Board can take each part of the variance and vote on it. If it is no, than CVS can request that it be reheard based on new information or other criteria that Mr. Falk could explain to the applicant. There is a thirty-day appeal period. If a rehearing is granted, then the applicant can come back. If it isn't granted it can be brought to the State Superior Court. He said if he would like to talk about lesser-sized signs tonight he would be able to do that. What they are requesting is huge and it is taking advantage of the generosity of the Board to allow members of the community to identify their business. By the pictures presented it looks like over half of the front facade of the building will be signage.

Mr. Floyd said this is the package that CVS feels is the best package for this site.

Mr. Duffy asked Mr. Floyd if he is willing to allow the Board to review the proposal with a possible reduction on what has been presented tonight.

Mr. Floyd said once he takes this back to CVS and relates the Board's concerns.

Mr. Duffy asked if Mr. Floyd is OK with working with a lesser proposal than has been proposed on the application.

No response could be heard, but apparently Mr. Floyd nodded his head.

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Mr. Duffy said there is a "food shop" sign and a "one-hour photo" sign. Usually these kind of informational signs are advertising.

He said to him a one-hour photo is always in a CVS. He asked what the "food shop" is. He asked if this was unique or different.

Mr. Floyd said it's pretty much explanatory. It is convenience items such as milk and bread - not a full grocery store.

Mr. Coffey asked for clarification on the East Hollis Street side elevation. He asked if this is the fourth wall sign.

Mr. Floyd said on the Main Street facade there are four signs. They say "food shop", "one-hour photo", the 24-hour sign, and the one that states CVS pharmacy. There is one sign on the East Hollis Street side.

Mr. Jenkins asked Mr. Floyd if he had a layout of the old signs.

Mr. Floyd said he did not. He said it's so old that he didn't have anything in his files and CVS couldn't supply him with anything.

Mr. Falk said there are three signs facing Main Street - the "food shop", "one hour photo", & "CVS - 24 hours." The fourth sign is the one facing East Hollis Street.

Mr. Milligan asked how many were allowed on each frontage.

Mr. Falk said one for each frontage.

There was discussion about the number of signs which are allowed and the size with Mr. Milligan stating that they are allowed 100 square feet and they are requesting 246 square feet.

Mr. Coffey said there is a list which shows the total square footage and he believes it is 348 square feet, which includes the ground signs.

Mr. Floyd said he believes the ordinance states they may have a wall sign at a maximum of 100 square feet per frontage, if there is more than 100 square feet on the right-of-way for corner properties. He said they have one sign of 100 square feet and another of 65 1/2 square feet for the frontage facing East Hollis Street. On the Main Street frontage there are three signs that

total 246 square feet.

Mr. Milligan said they are permitted to have a 10' high street sign and they are asking for 15'.

Mr. Duffy asked if the proposed pylon sign would be in the same place.

Mr. Floyd said it is.

SPEAKING IN FAVOR

No One.

SPEAKING IN OPPOSITION

No One.

Mr. Milligan said he doesn't believe this site needs any more signage that what it has.

Mr. Jenkins said he didn't see any hardship. He said the business has obviously proven that it can function in this location. It is very successful. He said he is definitely voting against the message center on the corner of Main Street.

Mr. Milligan said by right they can have a message center that can only display time and temperature. They are requesting the ability to display other messages and to have three lines.

Mr. Coffey said everyone knows the CVS store is here and he doesn't see what the additional signage is for. He still didn't understand the hardship.

Discussion ensued.

MOTION by Mr. Milligan to deny the six variance requests for signage for Ballinger Properties, LLC, 242 Main Street. He said there is no hardship.

SECONDED by Mr. Coffey.

MOTION CARRIED

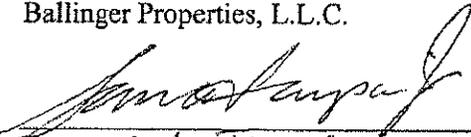
9. Vickerry Realty Co. Trust (Owner) 14 Gusabel Avenue
(Former site of cinema at Nashua Mall) (Sheet E Lots 2184

September 25, 2014

To Whom It May Concern:

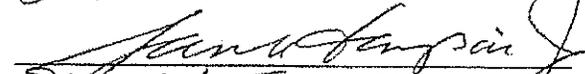
We are writing as the duly authorized agents of Ballinger Properties, L.L.C. and BT Realty Limited Partnership, the co-owners of 242 Main Street, identified as Tax Map 31, Lot 2, Nashua, New Hampshire. We authorize CVS Pharmacy, and/or its agents, including, but not limited to, TMC New England, LLC and Hinckley, Allen & Snyder, to execute, submit and prosecute applications and any applicable materials to the City of Nashua land use boards on our behalf, for the purpose of obtaining municipal permits and approvals for the development it has proposed.

Ballinger Properties, L.L.C.

By: 
Samuel A. Tamplin, Jr. (print name)
MANAGER (title)
Duly authorized

BT Realty Limited Partnership

BY its General Partner: Ballinger Properties, LLC

By: 
SAMUEL A. TAMPLIN, JR. (print name)
MANAGER (title)
Duly authorized

SEPTEMBER 26, 2014

To Whom It May Concern:

I am writing as the duly authorized agent of Towers Motor Parts Corporation of Nashua, the owner of 5 East Hollis Street, identified as Tax Map 31, Lot 6, Nashua, New Hampshire. I authorize CVS Pharmacy, and/or its agents, including, but not limited to, TMC New England, LLC and Hinckley, Allen & Snyder, to execute, submit and prosecute applications and any applicable materials to the City of Nashua land use boards on my behalf, for the purpose of obtaining municipal permits and approvals for the development it has proposed.

Towers Motor Parts Corporation of Nashua

By: Mark E Levine
MARK E LEVINE (print name)
PRESIDENT (title)
Duly authorized

Kathy Vitale
Mariellen Mackay

Paul Martin, Barlo Signs, Hudson, NH. Mr. Martin said that a variance was approved in the past for the existing wall sign, it was 7'-6" x 6' wide. He said that the hospital has changed their logo, and the new sign will be 7'-6" x 7'-6". He said the reason why they're asking for the extra square footage is to cover up the mounting of the existing sign, the building is fairly new, and instead of seeing patch marks on the wall, the new sign could cover the whole area with the slightly larger sign.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Ms. Vitale to approve the variance application as advertised on behalf of the owner. Ms. Vitale 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. She said it is a benefit to put the new sign up without doing patch work, and the additional square footage is minor.

Ms. Vitale said that it's within the spirit and intent of the ordinance, it is not contrary to the property values, it is not contrary to the public interest, and substantial justice is served.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 5-0.

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5. Ballinger Properties, LLC & BT Realty Limited Partnership, Joanne Charron and Towers Motor Parts Corporation of Nashua (Owners) 242 Main Street, 1 & 5 East Hollis Street (Sheet 31 Lots 1, 2 & 6) requesting a determination whether a material change of circumstances affecting the merits of the

application has occurred, or that the application is for a use that materially differs in nature and degree from the variances denied by the ZBA on 8-26-03; and, if so, requesting the following variances: 1) to allow an electronic changing message center sign on a portion of a new ground sign, 2) to exceed maximum ground sign height, 10 feet allowed, 24 feet proposed, 3) to exceed maximum ground sign area, 50 sq.ft allowed, 88 sq.ft proposed, 4) to exceed maximum wall sign area, 100 sq.ft allowed, 112 sq.ft proposed, 5) to allow an additional wall sign on the building, two permitted, an additional wall sign proposed for eastern façade for a total of three wall signs, and 6) to exceed maximum wall sign area, a total of 200 sq.ft allowed, 285 sq.ft proposed for all three wall signs. D-1/MU Zone, Ward 4.

Voting on this case:

Gerry Reppucci
Jack Currier
J.P. Boucher
Kathy Vitale
Mariellen Mackay

Mr. Reppucci said that there was an application before the Board in 2003 that was denied for signage at this property. He said that the Planning Department has determined that the applicant must prove that there is a substantial change in the application before the Board proceeds. He said that the court case was the Fisher v. Dover case.

Attorney John Sokul, Hinckley Allen & Snyder, P.A. Concord, NH. Atty. Sokul stated that the sign company representative hoped to be here this evening, but had another hearing in another town, and will not be able to attend. He said he'd like to request a continuance until next January. He said he could wait until then to discuss everything, or can go over just the legal issue this evening.

Mr. Reppucci said that the Fisher v. Dover issue is relevant. He said he had no problem with just going over the legal matter, and table the rest of the case until January.

Mr. Currier agreed, and believed that the Board can just go over the Fisher v. Dover tonight.

Ms. Vitale agreed that they can do the legal matter tonight.

Mr. Reppucci said that the Board is fine with Atty. Sokul just going over the Fisher v. Dover matter tonight.

Atty. Sokul submitted a letter to the Board relative to the Fisher v. Dover issue. He said that a variance was denied for this site in 2003 for both wall signs and a ground sign. He said that there are some similarities, but also many differences. He said that there is also NH Supreme Court law that says that a change in the law governing variances in between the original application and the new application can constitute a change in circumstances. He said that the variance standard has evolved since the 2003 decision. He said that in 2003 the Simplex Technologies was in effect, and in 2004 that standard was modified by the Boccia decision that created different standards for area and use variances, which was subsequently repudiated by the New Hampshire legislature in 2009, which came up with a 5-pronged standard, which is similar to the Simplex, and there has also been some New Hampshire case law that deal with sign variances that is relevant. He said that the change in law alone is sufficient.

Atty. Sokul said that it's also a completely different site, two additional properties have been added to the site, the former Charron Medical Supply, and the Asian Restaurant. He said that the building location is also different, the sign locations are all different, and the ground sign location is 180 feet further to the south.

Mr. Reppucci said that his impression on the property is that there are changes, enough to justify hearing the application again.

Ms. Vitale agreed, she said that with the addition of the other two properties, the change of the location of the building, the whole configuration, it's a substantial change.

Mr. Currier asked if the two old buildings were the same ones in 2003.

Mr. Sokul said yes, and the buildings on those properties have been demolished.

Mr. Currier asked what the old square footage was, versus the

proposed square footage of the new building.

Atty. Sokul said that the existing building is about 9,600 or so square feet, and the new building is proposed for 13,000 square feet and change. He said it'll be a bigger building.

Mr. Currier asked what the square footage was for the two buildings that were demolished, and if they were equivalent.

Atty. Sokul said that his understanding is that the total proposed signage that we are asking for would be less than the existing CVS site and the two buildings that were added, so there is less signage overall.

Mr. Currier said that in the end, the square footage of the new structure will be about the same as the existing ones. He said that also, the proposed signage is equivalent, or less, than the three buildings that were there.

Atty. Sokul said that what he's been told is that the signage that will exist on the new CVS property, assuming the variances will be granted, will be less than the existing CVS and the signage on the two other buildings.

Mr. Currier asked that whether to support a Fisher v. Dover decision, if it's important to consider not only the particular property, but also of the neighboring properties as well, and what's happening in the area.

Atty. Sokul said that the purpose of the Fisher v. Dover ruling was to prevent Zoning Boards from having to consider repetitive applications, and a change in the neighborhood can qualify as a change in circumstances that would take it out of the Fisher v. Dover holding. He said that there has been a change in circumstances here, but it doesn't necessarily relate to the surrounding neighborhood per se.

Atty. Sokul said that another major change is that there will be direct access to the site from Medical Drive to the rear, and parking will all be to the rear.

Mr. Currier said he believes that overall, there is a material change in the site.

Mr. Reppucci said that if the Board votes on the legal issue,

there would be a 30-day window on that decision, which will probably be beyond our next meeting date, which is January 12, 2016. He asked what would happen if someone appeals a decision should the Board supports a Fisher v. Dover determination within the next 30 days.

Mr. Currier said it would, if a request came to the Board about a rehearing within the 30 days, a valid request, the Board would have to act upon it within 30 days.

Mr. Reppucci said that the request would have to come in within the next 30 days, not necessarily our action on it. He said if someone does submit for a rehearing on the Fisher v. Dover decision, we'll consider it if it comes in.

Mr. Falk said it's certainly proper for the Board to consider just the Fisher v. Dover case, and if they want to table the dimensional variances until the first meeting in January, that's fine.

MOTION by Mr. Reppucci to re-open the Public Hearing to allow Atty. Sokul to speak

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 5-0

Atty. Sokul said if we had the entire meeting tonight, the Board, at the beginning of the meeting, would have made a determination on the Fisher v. Dover piece, and assuming that determination came out positively, we would have continued on to the balance of the variances. He said he'd prefer that the Board make their determination, and continue the public hearing until January 12th, and not have it be a final decision by the Board.

Mr. Reppucci said it could cause the Board other problems, procedurally, we may not have the same Board the next time, then, we'd have to go over this. He said that he believes that we'd be better off making a decision on this tonight, and the 30-day clock would start ticking on that piece.

Atty. Sokul said he'd leave it to the Board's good judgment.

Mr. Falk said he wanted to make sure that Atty. Sokul is good

with the first meeting date in January, which is January 12, 2016.

Atty. Sokul said that they'd like to go as soon as possible.

Mr. Falk said it would be tabled to a date certain of January 12, 2016, the first meeting in January.

Mr. Currier asked if the Board can get a full-sized plan, the one that is submitted is somewhat small to read.

Mr. Falk said if we can get them by year-end, he'd make sure that the Board gets them, seven copies would be good.

MOTION by Mr. Reppucci that this Board finds that there are some substantial differences in this application, and the application is fit to be heard by the Board.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 5-0.

Mr. Currier said that he believes that the neighborhood hasn't really had any substantial changes, but there is a substantial change on this property. He said they're not taking a bite from the same apple here, the application is very different.

Mr. Boucher agreed. He said he believes that there is a material change in the law.

MOTION by Mr. Reppucci to table the dimensional variances for signage to the January 12, 2016 meeting.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 5-0.

MISCELLANEOUS:

REHEARING REQUESTS:

None.

REGIONAL IMPACT:















