1. Zoning Board Regular Meeting Agenda (PDF)

    Documents:

        20161109 ZBA AGENDA.PDF

2. 20161109 ZBA Meeting Packet

    Documents:

        20161109 5 MERRIMACK ST.PDF
        20161109 7 MORSE AVE.PDF
        20161109 190 TINKER RD.PDF
        STAFF REPORT 122 MANCHESTER ST APPEAL.PDF

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.gonashua.com	

October 25, 2016

The following is to be published on ROP October 29, 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**, **November 9**, 2016, at 6:30 PM at the Nashua City Hall Auditorium, 3rd floor, 229 Main Street.

1. Dillard E. & Laurie D. Collins (Owners) 7 Morse Avenue (Sheet 6 Lot 27) requesting variance to exceed maximum driveway width, 24 feet permitted, an extra 6 feet proposed for a total width of 30 feet. R9 Zone, Ward 7.

2. David J. & Brenda N. Levesque (Owners) 190 Tinker Road (Sheet H Lot 71) requesting variance to exceed maximum accessory use area, 40% permitted, 77.5% requested, to maintain an existing barn and shed. R40 Zone, Ward 2.

3. Jennifer Delker-Montplaisir (Owner) 1 Main Street, LLC (Applicant) 5 Merrimack Street (Sheet 67 Lot 39) requesting use variance to convert a single family home into a professional office use. RB Zone, Ward 3.

4. Diane E. Gimber & Bishop Realty Management (Owners) Granite Green Investment Partners, LLC (Applicant) 122 Manchester Street (Sheet 59 Lot 135) appealing administrative decision and requesting clarification why a use variance is required for an age restricted development, along with a variance to exceed more than one principal structure per lot, for a proposed development with 5 buildings and 18 condominium units. RA Zone, Ward 2.

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."

To: Zoning Board of Adjustment

From: Carter W. Falk, AICP, Deputy Planning Manager/Zoning

Date: October 25, 2016

Subj: **USE VARIANCE: Jennifer Delker-Montplaisir (Owner) 1 Main Street, LLC (Applicant) 5 Merrimack Street (Sheet 67 Lot 39) requesting use variance to convert a single family home into a professional office use. RB Zone, Ward 3.**

PROPOSAL:

The applicant, 1 Main Street, LLC, owned by Dr. Evan Greenwald from The Counseling Center, is requesting a use variance to convert an existing single-family house into a professional office use. The property is located in the B-Urban Residence (RB) Zone. The lot is 3,906 sq.ft (0.09 acres).

SITE ANALYSIS:

The subject site is located on the east side of Merrimack Street, just north of Amherst Street (see attached site location map). To the north of the subject lot is a two-family residential building. To the east are multi-family buildings, one with 5 units, one with 8 units. To the south is the City of Nashua Amherst Street Fire Station. To the west, across Merrimack Street, are single family and two-family units. All surrounding properties are zoned RB.

According to the Land Use Code, Section 190-15, Table 15-1, (#97), *"Office building, without drive-through facility"* is not a permitted use in the RB zone. This use is permitted in the Downtown/Mixed Use (both D-1/MU and D-3/MU), Local Business (LB), General Business (GB) and Highway Business (HB) zones, and is allowed as a Conditional Use, subject to Nashua Planning Board approval, in the C-Urban Residence (RC) zone. Further, it is allowed as a Conditional Use, subject to Nashua Planning Board approval, in the Park Industrial (PI) and Airport Industrial (AI) zone, as long as at least 75% of the floor area is reserved for uses listed in the "Industrial and Manufacturing" category.

According to the application, the applicant is proposing to use the building for administrative staff for a private group behavioral health practice (The Counseling Center). City Assessing Department records indicate that the building has 1,337 square feet of space. Office use requires parking at 1:1,000, therefore, a total of two spaces will be required. The applicant has indicated on their application that four parking spaces are available, thereby satisfying the Ordinance.

The City's Future Land Use Plan identifies the subject property as "Medium Density Residential".
In order for the ZBA to grant the variance request, the applicant must satisfy all the relevant points of law, as listed below:

Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship: 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, 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, 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 applicant has indicated that historic building has been unoccupied for ten years and is deteriorating, which makes it financially challenging for a residential occupant to rehabilitate the building. The proposed professional office use will permit the upgrade of the property and the preservation of the building, and should enhance the value of the neighborhood.**

The proposed use will observe the spirit of the ordinance: 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 applicant has indicated that the use of this property would be in the spirit and intent of the ordinance, which would not entail evening usage, and no burden to school occupancy and busing expenses, and no increase or burden to City utilities, and even perhaps a lesser burden due to only daytime non-residential use.**

The proposed use will not diminish the values of surrounding properties: 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 applicant states that the Counseling Center provides 50% of the behavioral health services to southern New Hampshire, and is an important resource to the community, and due to the demand of the current administration, the business has expanded and this building will allow a quiet and unburdened use of the property, and will also serve the community in a positive manner.**

Granting of the requested variance will not be contrary to the public interest: 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".

> **The applicant states that adequate parking exists on the side of the road during the day on Merrimack Street as well as on Abbott Street, with additional parking are of Holman Stadium within two blocks of the subject property. They state that there is**

no burden to residential parking during business hours as the street parking is largely vacant. Also, there will be no clients or customers visiting this building; it will be 100% administrative staff.

Substantial justice would be done to the property owner by granting the variance: the benefits to the applicant must not be outweighed by harm to the general public or to other individuals.

The applicant states that the properties immediately behind the subject property are 5 & 8 unit multi-family apartment buildings, and the neighborhood on Merrimack Street is a mix of single family and two-family units, also, the Fire Station is to the south, along with several office uses on Amherst Street within two blocks of the subject property.

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

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Planning and Zoning

Economic Development
Conservation Commission
FAX
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 5 Merrimack St. Nashua, NH 03064

Zoning District RB Sheet 67 Lot 39

b. VARIANCE(S) REQUESTED:

Requesting Variance for professional office use, in Residential zone.

2. GENERAL INFORMATION

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

(Print Name): 1 Main St LLC / Evan Greenwald / or assignees

Applicant's signature [signature] Date 10/11/16

Applicant's address 1 Main St. Nashua, NH 03064

Telephone number H: C 6033454136 E-mail evan.greenwald@counseling center.com

b PROPERTY OWNER (Print Name): Jennifer Delken-Montplaisir Current

Owner's signature _____ Date _____

Owner's address ~~244 Boston Post Road Amherst, NH 03031~~ 10 Willard Ave Portsmouth, NH

Telephone number H 930-5191 W 679320 E-mail: jmontplaisir@co.rockingham.nh.us

OFFICE USE ONLY

Application checked for completeness: ML

Case number _____ Application Deadline _____ Date Received 10/11/16 Date of hearing 11/9/16

Notices: Newspaper ☐ Abutters ☐ Board Action _____

$_____ _____ fee ☐ Date Paid _____ Receipt # _____

$_____ application fee ☐ Date Paid _____ Receipt # _____

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

PLR2016-00225

Address 5 Memmack St.

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.")

Adequate parking exists on side of road during the day on Memmack St as well as on Abbott St with additional parking area of Holman Stadium within 2 blocks of the subject property. There is no burden to residential parking during business hours as the street parking is largely vacant. Deliveries to the property would be no more than 1 per week for office supplies; no clients or customers would come to this location. 100% administrative staff

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.")

Use of this property would be in keeping with spirit + intent of the ordinance which involves quiet use of the property not including evening hours reduced burden to school occupancy + busing expenses, and no increase in burden to Nashua septic or water, perhaps reducing utility burden due to daytime non-residential use.

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.)

Properties immediately behind subject property on Abbott St are 5+8 unit multifamily apartments and the neighborhood on Memmack St is single + two family residential units and it immediately abuts the fire station and a small market across Amherst St and professional use is consistent with Amherst St and Auburn St mixed use professional office space properties within 2 blocks. One additional grandfathered business exists within 2 blocks on Memmack St.

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 Counseling Center provides 50% of behavioral health services to Southern NH, is an important psychiatric + counseling resource in the community including assisting with the current opioid epidemic. Due to increased demand moving our current administration staff at 8 Auburn St would allow for expansion of clinical services at our Nashua location(s): 1 Main St and 8 Auburn St. Quiet unburdened use would also serve the community in this manner

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

Address 5 Merrimack St.

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.

This historic building has been unoccupied for 10 years and is deteriorating and the degree of deterioration makes it unfavorable + financially challenging for a residential occupant to rehab. it. A professional office use will permit upgrade of the property and regular upkeep of historic district property. No extensive renovations will occur, and preservation of the property will enhance the value in the neighborhood.

(over)

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 25 Number of employees per shift 25
b. Hours and days of operation 8-6 am M-F
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
e. Number of parking spaces available 4
f. Describe your general business operations Private Group Behavioral Health Practice - building use per administrative staff only.
g. Describe any proposed site renovations, including, but not limited to – landscaping, lighting, pavement, structural changes, signage, access and circulation NO immediate

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 — Date 10/11/16

Evan Greenwald — Print Name — Date 10/11/16

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 evan.greenwald@counselingcenter.com; rsartor@counselingcenter.com
- ☐ ~~Please mail it to~~ me at

The fire station abutting this property makes it less conducive for use as a residential property and professional office use so close to Amherst St where other professional offices exist, is a reasonable use based upon location

Additional application information submitted by applicant on 11/1/16:

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.")

The proposed used is for Counseling Center administrative offices for approximately 11-16 staff. Most staff would continue to park on Abbott and Auburn Street and walk to the building, as well as utilize existing open daytime parking on Merrimack Street which is largely vacant during these hours (see photograph). Two spaces per code requirements (9' x 20') currently exist at the subject property, one in the garage, and the other on the existing 15' X 36.5' driveway. There is no burden to residential parking during daytime hours as the street parking is largely vacant (see photograph). Deliveries to this property would be no more than one per week for office supplies, and no clients or customers would be coming to this location. (Continued on separate page)

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.")

Use of this property would be in keeping with spirit and intent of the ordinance, which involves quiet use of the property not including evening hours, reduced burden to school occupancy and busing expenses, no changes in drainage, and would represent no increased burden to Nashua septic or water, perhaps reducing the utility burden due to daytime non-residential use. The neighbors I have spoken did represent that they had prior concerns about the tenants in this residential building, and the presence of professional offices would reduce the likelihood of noisy or undesirable tenants to disturb the peace or present a undesirable presence in the neighborhood. (Continued on separate page)

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.)

The owner of the property has had difficulty selling this property due to its presence immediately behind the fire station and the frequent noise from sirens, proximity to Amherst Street which negatively impacts the property in terms of excess road noise (see letters from seller and realtor). It is a less desirable single family neighborhood due to the neighborhood predominately existing of multi-family homes, or multi-unit (5-8 unit) apartment buildings immediately behind it on Abbott Street. It is one lot distant from Amherst Street, which is mixed use, and a small convenience store and other businesses exist with one or more blocks of this property. It is also two blocks away from Auburn Street with professional offices within the first block of Amherst Street. (Continued on separate page)

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.)

Property values would remain the same, or increase, due to the enhanced upkeep of the property which has remained unmaintained. Since the property has become unattractive as a single family dwelling, it has been rented to tenants at low rental rates with neighborhood concerns noted in the past regarding renters vs. established families. Please see attached letter from realtor regarding attestation that property values would not diminish from change in use.

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.

This historic building has been unoccupied for many years, with some tenants occupying the unit, and the property is deteriorating, and the degree of deterioration makes it unfavorable and financially challenging for a residential occupant to rehabilitate it (the realtor selling the property indicates that many singe families have looked at the property for purchase, but not one offered to purchase it due to its state of disrepair). No exterior renovations will be undertaken (Continued on separate page)

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 11-16 Number of employees per shift 11-16
b. Hours and days of operation
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 1
e. Number of parking spaces available 2-3
f. Describe your general business operations
Administrative offices
g. Describe any proposed site renovations, including, but not limited to – landscaping, lighting, pavement, structural changes, signage, access and circulation
Per Mark Collins a handicapped ramp will be required to be installed. It will be located in the rear of the building to preserve historic district features of the front of the building, if approved

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.

Evan Greenwald, MD
Signature of Applicant

11/1/2016
Date

Evan Greenwald
Print Name

11/1/2016
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 evan.greenwald@counselingcenter.com and rsartor@counselingcenter.com

☐ Please mail it to me at

Continuation of Variance Application for 5 Merrimack Street.

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.")

...The character of the neighborhood would remain as it exists, which is quiet residential neighborhood. No increased hazards or risk would be presented, and in fact additional daytime staff activity would likely increase security in the neighborhood given the presence of professionals coming and going during in the a.m., lunch hour, and the end of the day, during business hours of 8-5.

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.")

No weekend occupancy of offices would benefit the neighborhood in terms of reduced noise from other potential residential/rental occupants if the use remained residential. The improved upkeep of the property without exterior changes would improve the value of the property, and therefore surrounding properties values.

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.)

Two additional grandfathered businesses for professional use exist within two blocks on Merrimack Street (16-161/2 and 18 Merrimack St), so a change from residential use to professional office use would be in keeping with the general immediate three blocks of mixed office/business use in that immediate Amherst Street neighborhood. This property was on the market unusually long for Nashua (45 days vs. 15 days) before The Counseling Center signed a purchase and sales agreement contingent upon this variance being approved, highlighting the hardship this owner experiences in selling the property (see realtor letter relative to hardship issues associated with this property). The owner is in a senior care facility and is unable to maintain the property, and is challenged in her effort to sell it. It has remained vacant for some undetermined amount of time with limited upkeep. Substantial justice would also be afforded to the new property owner in that The Counseling Center provides 50% of behavioral health services to Southern NH and is an important psychiatric and counseling resource in the community, including assisting with the current opioid epidemic. Due to increased demand for services, moving our administrative staff currently located at 8 Auburn St would allow for expansion of clinical services at the 8 Auburn Street location, and improve capacity for serving the Nashua community.

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.

(other than the addition of a handicapped ramp in the rear of the building per Mark Collins/code requirement) and preservation of the property will enhance the value of the neighborhood. The fire station abutting this property makes it less conducive for use as a residential property, thereby denying the owner or a subsequent owner the ability to sell or resell the property. Professional office use so close to the fire station, as well as Amherst Street businesses and Auburn Street professional offices , is a reasonable use based upon location, and perhaps is the only viable use for this property given its current condition. Its location next to the fire station makes it current residential use unfavorable or impossible, and the property therefore experiences hardship, along with the proximity to Amherst Street mixed business zone and road noise. Allowing professional office use will permit upgrade of the property, and regular upkeep of a historic district property, and will allow the property to be used in keeping with the mixed commercial properties in the Amherst Street area.

5 Merrimack Street

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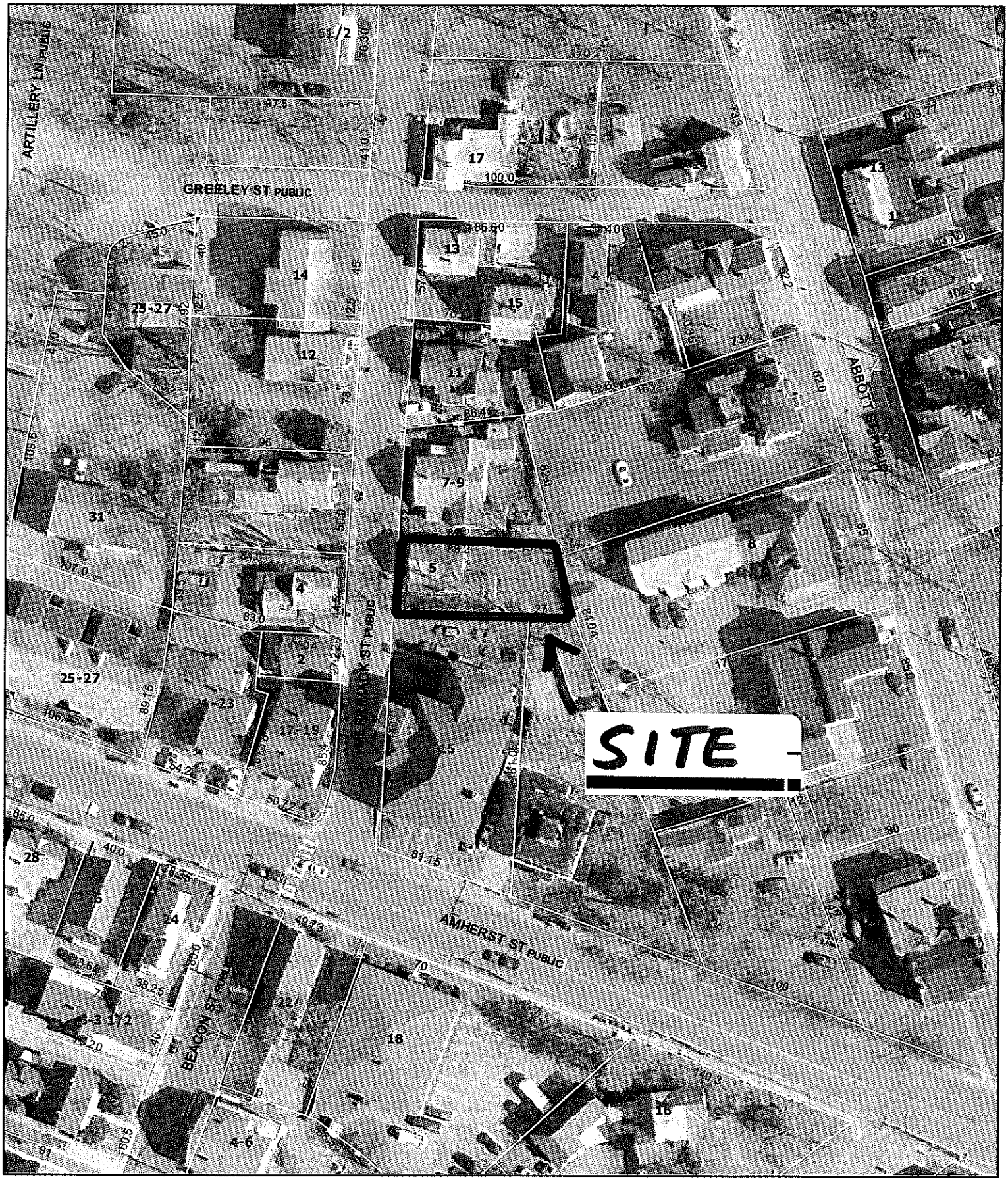
0 65 130 260 Feet

1 inch = 100 feet

NASHUA GIS



5 Merrimack Street

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Feet
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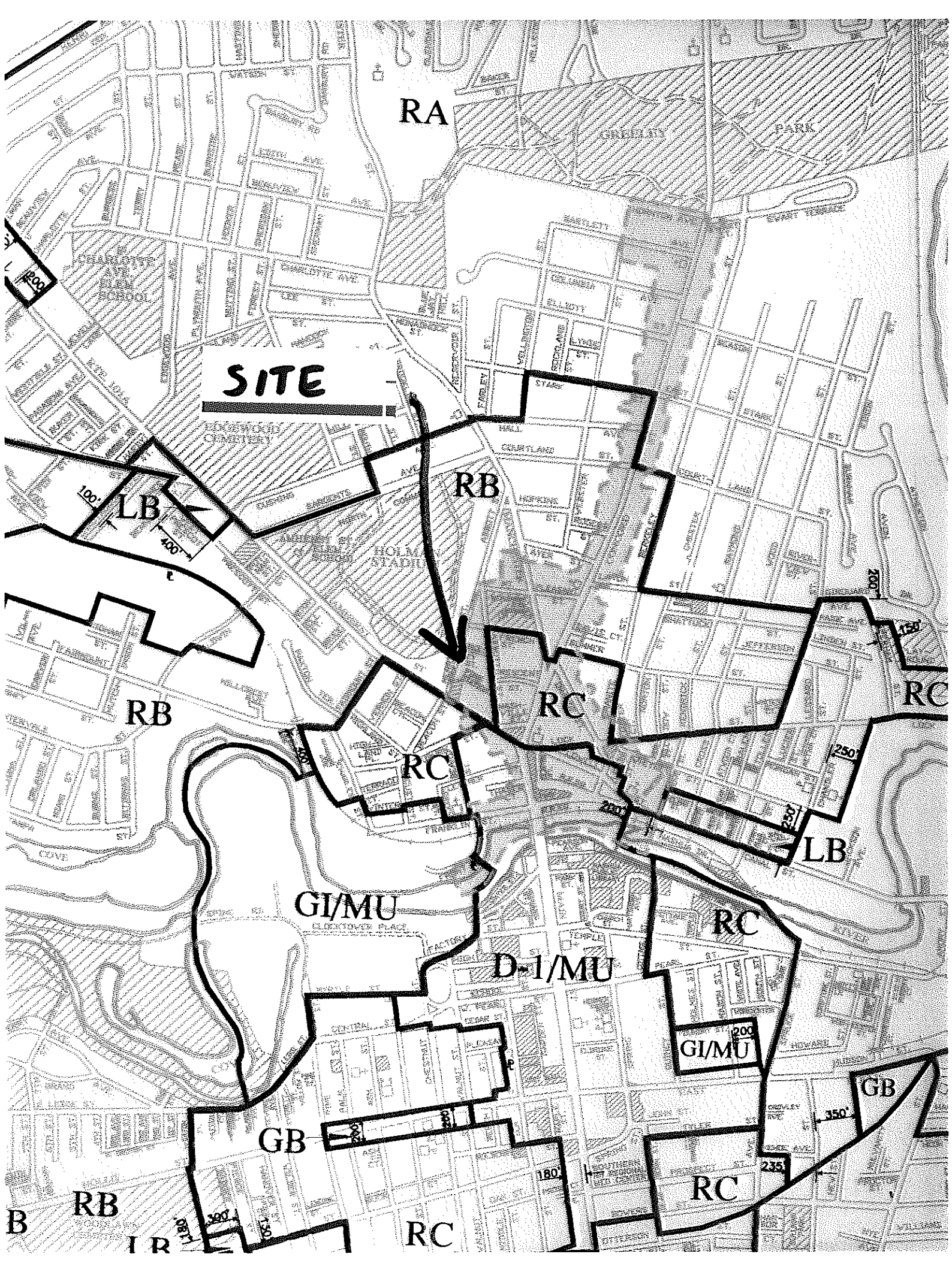
1 inch = 100 feet

NASHUA NEW HAMPSHIRE GIS



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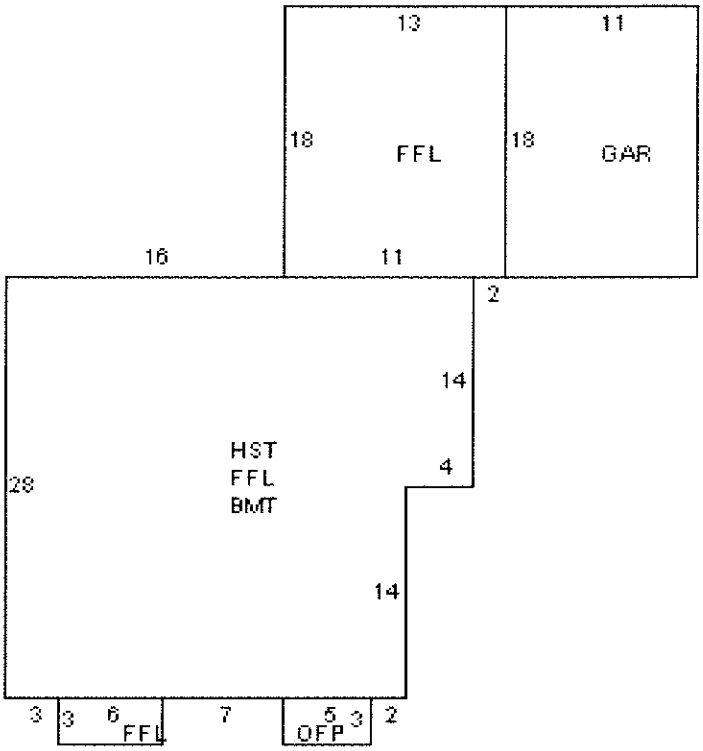
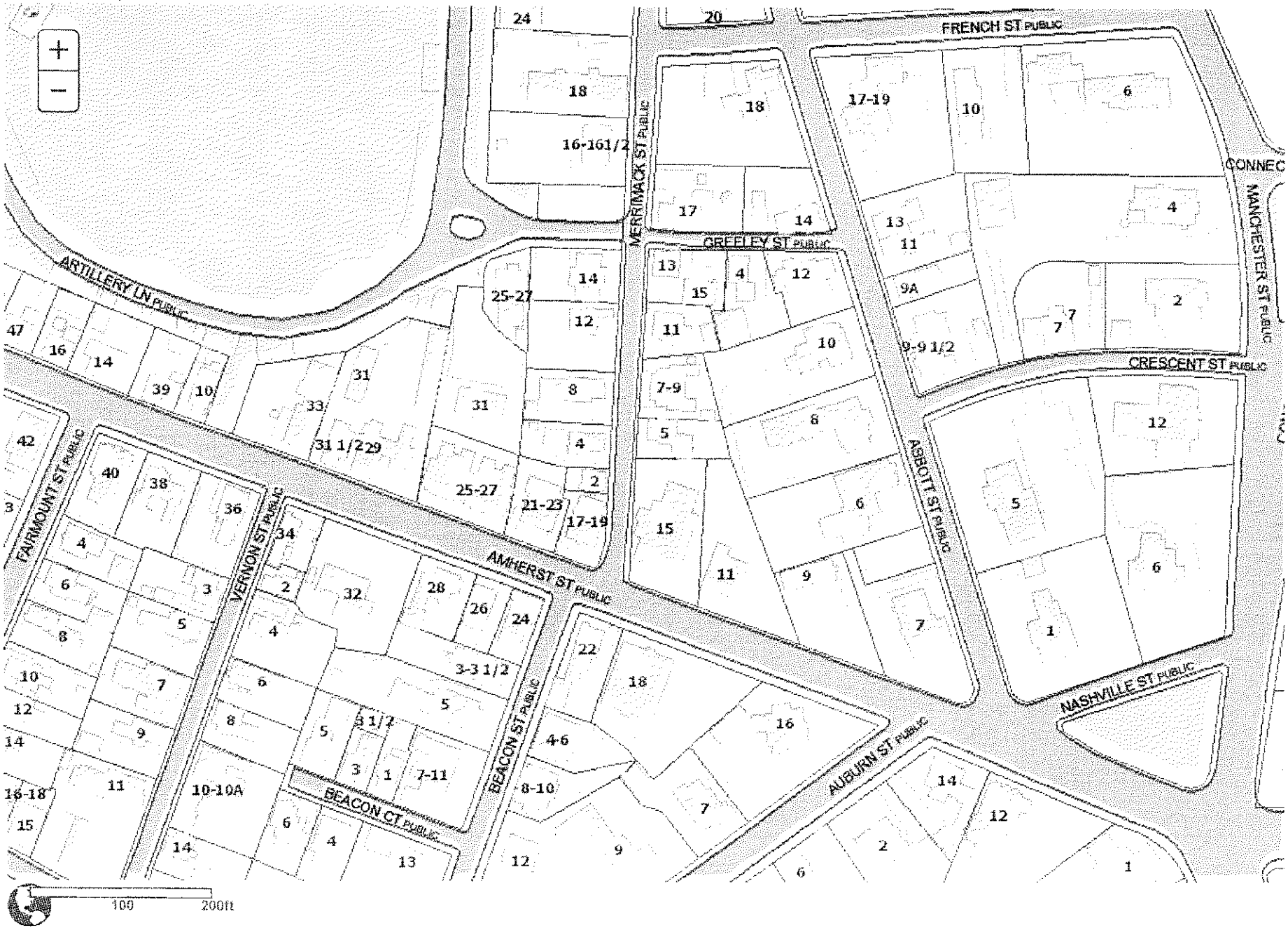


Sum Area By Label :
HST = 700
FFL = 952
BMT = 700
OFP = 15
GAR = 198

RECEIVED
OCT 11 2016

-71.469001, 42.767742



October 26, 2016

I am writing this letter to convey my realtor perspective relative to the hardship associated with the property at 5 Merrimack St. Nashua NH.

I have shown this property two times, once to a 1st time home buyer and then to Dr. Evan Greenwald and his staff. The 1st time home buyer was not interested, as the property needed too much work and they were not willing to take on such a project. I have also gotten several online inquiries and once I discussed the type of work the house needed the buyers were usually not interested in pursuing any further.

The reason the property experiences hardship is due to the deteriorating condition of the property and also the fact that it is located directly behind the Amherst Street Fire Station which when being called out can be quite noisy and is also amidst several multi-family homes. I feel it would be a very hard sell to a family given these factors.

It is my professional opinion that the use of office space for which Dr. Greenwald will be using it will not negatively impact the values of surrounding homes.

Sincerely,

Pamela Duchesne

Pamela Duchesne
REALTOR

20 Trafalgar Square, Suite 101
Nashua, NH 03063
Office: (603) 883-8400 Fax: (603) 889-4907

Each Office is Independently Owned and Operated

The property at 5 Merrimack Street has been a rental for the past ten years. It does need significant improvements but has proved difficult to market to single family home buyers due to the area. It currently has the fire station to the right with associated traffic and noise. At the back and on the corner the property is abutted by parking lots for rental buildings. To the side is a duplex and the two properties across the street are both rental units. The house is one building back from Rte. 101a which is a busy road and there is also traffic associated with the proximity to Holman Stadium. While the house has ample room the area and condition is making it unappealing to families . There is a convenience store located just on the other side of 101a and a mixed used variance would be advantageous as it is a convenient location for office space.

Jennifer Delker Montplaisir
Owner

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

Community Development	589-3095
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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. Please print clearly or type. **INCOMPLETE OR ILLEGIBLE APPLICATIONS WILL BE RETURNED TO APPLICANT.**

1. VARIANCE INFORMATION

a. ADDRESS OF REQUEST 7 Morse Avenue, Nashua

Zoning District R9 Sheet 6 Lot ~~6~~ 27

b. VARIANCE(S) REQUESTED:

We are requesting permission to put in a three car driveway. This will replace a two car driveway. The proposed driveway will be in front of our new two car garage. Apparently the typically approved limit of width is 24 feet, and we are requesting 6 additional feet to ~~reach a width of 30 feet. The garage sits 20 feet in from the street and a variance was~~ approved earlier this year by the ZBA.

2. GENERAL INFORMATION

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

(**Print** Name): Dillard E and Laurie D Collins

Applicant's signature _____ Date _____

Applicant's address 7 Morse Avenue Nashua NH 03060

Telephone number H: 603-882-315 C: 603-438-9235 E-mail: ladec@comcast.net

b. PROPERTY OWNER (**Print** Name): Dillard E and Laurie D Collins

Owner's signature Dillard E Col Date 10-7-16

Owner's address 7 Morse Avenue Nashua NH 03060

Telephone number H: 603-882-315 C: 603-438-9235 E-mail: ladec@comcast.net

OFFICE USE ONLY **Application checked for completeness:** CR

Case number _____ *Application Deadline* _____ *Date Received* 10-7-16 *Date of hearing* 11-9-16

PLR# 2016-00226 *Board Action* _____

$_____ *application fee* ☐ *Date Paid* _____ *Receipt #* _____

$_____ *signage fee* ☐ *Date Paid* _____ *Receipt #* _____

$_____ *certified mailing fee* ☐ *Date Paid* _____ *Receipt #* _____

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.")

This is a private home in a residential neighborhood. Morse Ave is a narrow dead end street and parking on the street is difficult. especially during the winter months with snow banks. The street is only 15 feet wide. By having three parking spaces we will have ample off street parking for our family and friends.

~~This neighborhood has many homes with driveways that allow for parking two across as well as three across. Most of the driveways allow for parking of two rows, but our proposed driveway will only allow for one row of parking. By having enough width for three spaces, it will be consistent with most of our neighborhood.~~

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.")

This will be typical of our neighborhood and will not infringe on neighbors.
This request is supported by the abutters which are all family.
Three of the homes in this neighborhood are owned by family members. Two of the properties are abutters, owned by Laurie's parents Pearly and Jane Deneault.

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.)

This request is supported by the abutters which are all family.
This is a simple request for an additional parking space, which we want to pave with asphalt.

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.)

This home is very typical of other homes in the neighborhood. Some have garages with parking and all have ample parking.

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 hardship is that parking is limited due to the narrow street and the fact that the house sits close to the street as does every house on our street. We simply want more parking accessible from the street, similar to that of others in our neighborhood.

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 na Number of employees per shift na
b. Hours and days of operation _____
c. Number of daily and weekly visits to the premises by customers, clients, vendors and solicitors na
d. Number of daily and weekly commercial deliveries to the premises na
e. Number of parking spaces available 2
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 _____
We put on an addition this summer which was approved with Zoning Board approval because the garage is 20 feet from the street.

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.

Dillard E Collins — Signature of Applicant — Date: 10-7-16

Dillard E Collins — Print Name — Date: 10-7-16

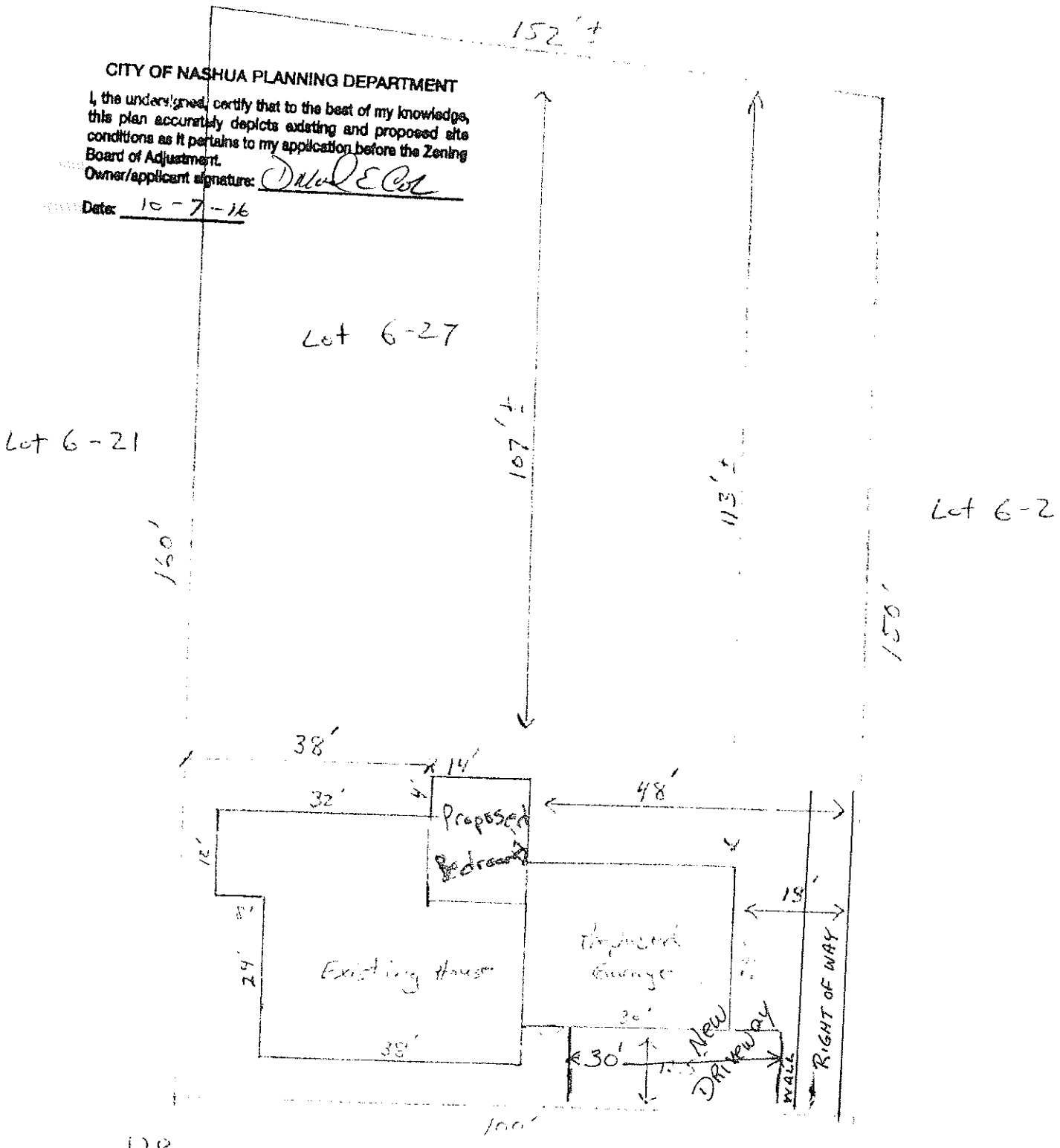
The staff report for a Use Variance request will be available no later than Friday of the week before the ZBA meeting. If you would like a copy, please indicate below:

☐ I will pick it up at City Hall

☐ Please email it to me at _____

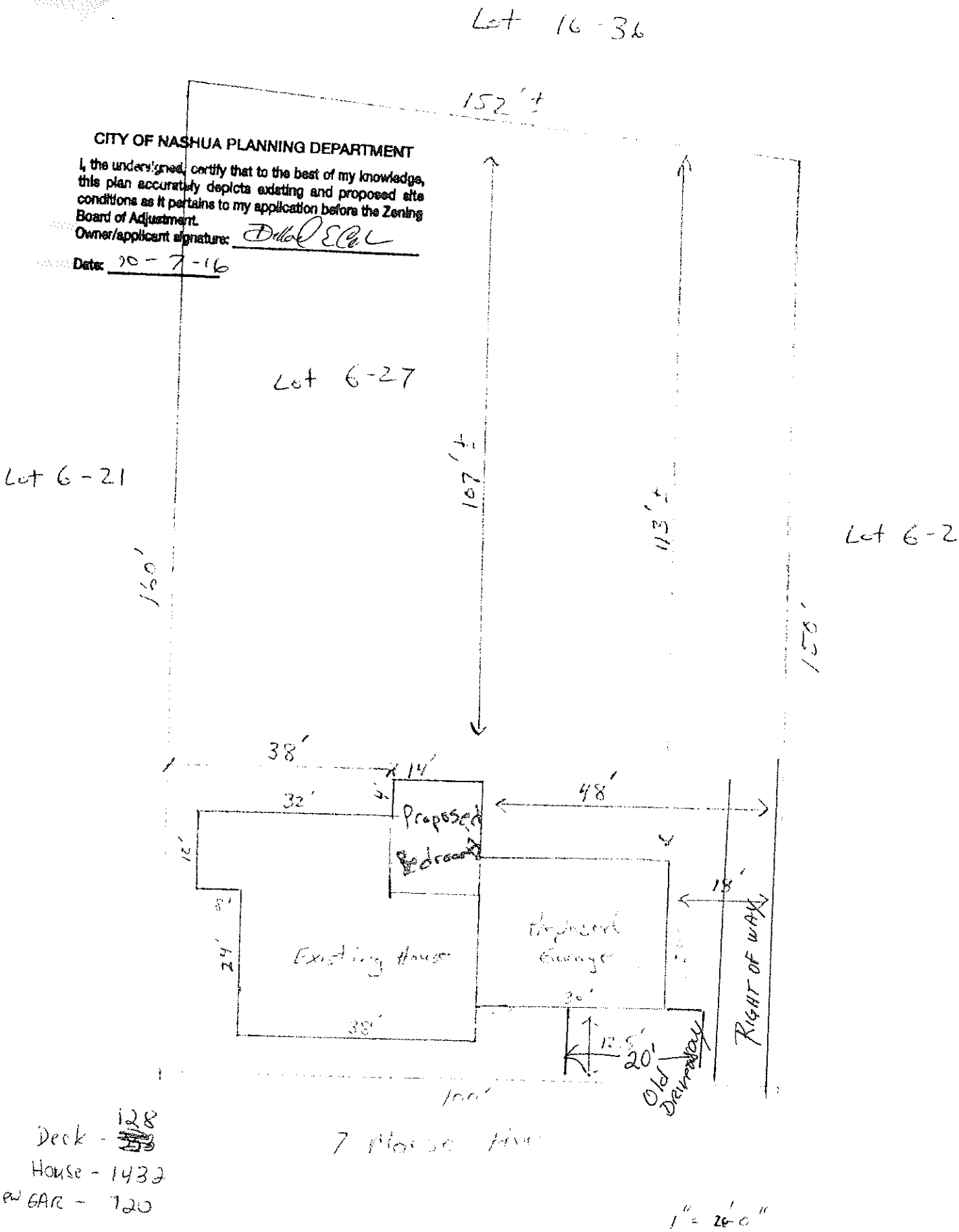
☐ Please mail it to me at _____

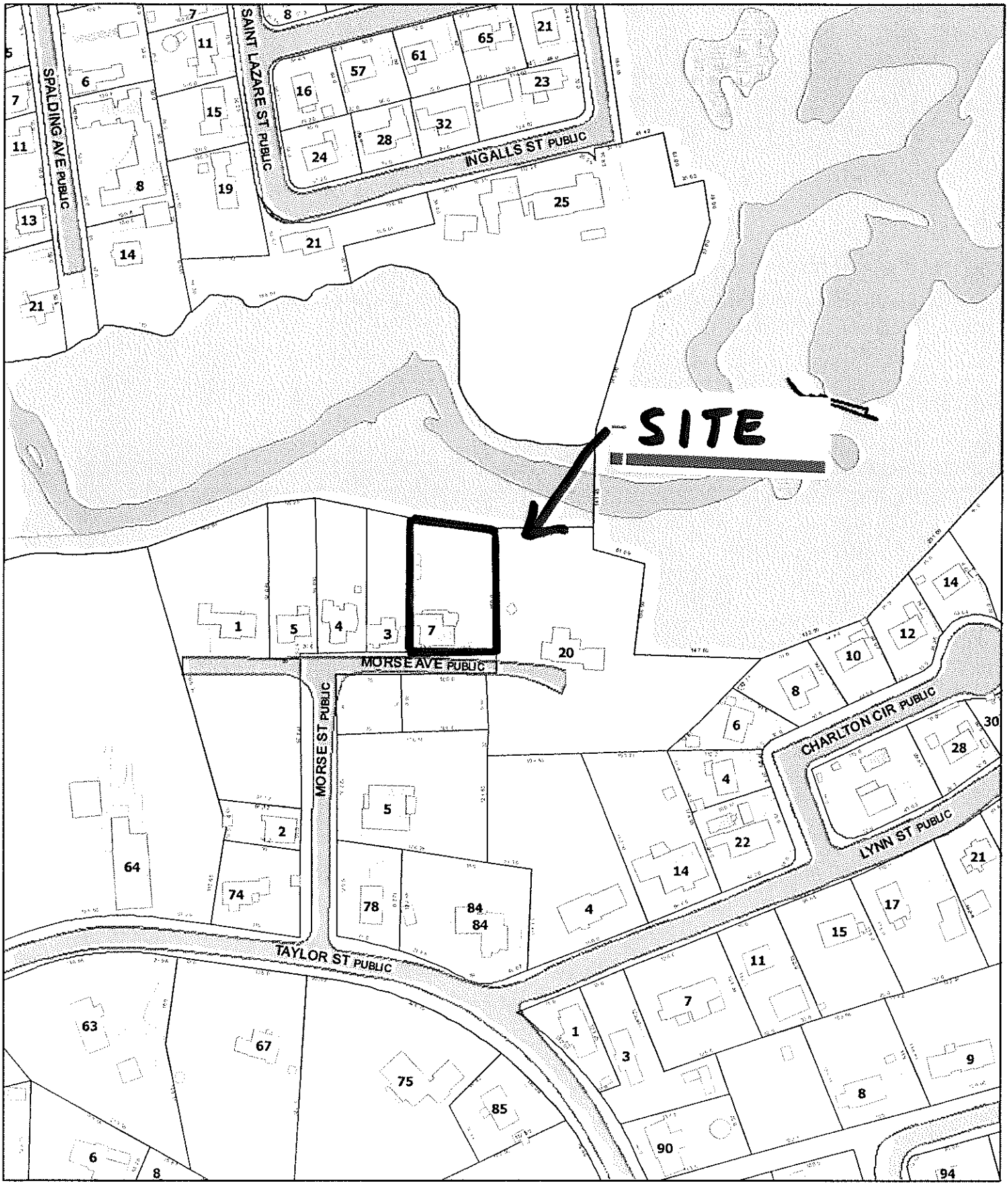
Lot 16-36



Deck - 128
House - 1432
GAR - 720

1" = 20'-0"


Lot 16-36
152'±
CITY OF NASHUA PLANNING DEPARTMENT
I, the undersigned, certify that to the best of my knowledge, this plan accurately depicts existing and proposed site conditions as it pertains to my application before the Zening Board of Adjustment.
Owner/applicant signature:
Date: 10-7-16
Lot 6-27
Lot 6-21
107'±
113'±
Lot 6-2
160'
150'
38'
14'
32'
48'
Proposed Bedroom
12'
8'
24'
Existing House
Proposed Garage
18'
RIGHT OF WAY
30'
38'
12.5'
20'
Old Driveway
100'
Deck - 128
House - 1432
GAR - 720
1" = 26'0"



7 Morse Avenue

N
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Feet
0 137.5 275 550
1 inch = 200 feet

NASHUA NEW HAMPSHIRE GIS

enable the applicant's proposed use of the property, given the special conditions of the property, to allow for some quality back yard space.

Mr. Currier 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 Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 5-0.

6. **Dillard & Laurie Collins (Owners) 7 Morse Avenue (Sheet 6 Lot 27) requesting variance to encroach 7½ feet into the 20 foot required front yard setback to construct an attached 24'x30' garage. R9 Zone, Ward 7.**

Voting on this case:

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

Matt Erickson, Erickson Construction, Nashua, NH. Mr. Erickson said that the owners would like an attached two-car garage. He said that the house is a single-story single family home, with a hip roof, and the garage would look the same as the house. He said it will blend in nicely in the neighborhood. He submitted some pictures to the Board.

Mr. Erickson said that the home is set back 6½ feet from the front property line, as are all the homes on Morse Avenue. He said that the homes were built many years ago, before today's zoning requirement of twenty feet. He said that this house is set back the same as the others on the street, the main reason why the houses are so close to the street is that the lots drop off dramatically in the rear behind the homes.

Mr. Reppucci asked if the addition is all garage, or part living space.

Mr. Erickson said it's all garage, there will be a dining room

expansion in the back of the house, but it's not part of this application.

Mr. Reppucci asked if the third window in the front is part of the garage.

Mr. Erickson said it is, there is a delineation inside so that when you're in the garage, it's an extra six feet wide, as the standard sized garage is 24'x24'. He said that the owners just wanted a little more space inside the garage.

Mr. Reppucci said that the garage is actually set back further than the existing house.

Mr. Currier asked where cars are parked now.

Mr. Erickson said that you can see the pavement on the GIS map that was provided, and it's actually further away from where the garage is now.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Reppucci to approve the variance application as advertised on behalf of the owner. Mr. Reppucci said that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, 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, as the Board feels that if the garage was put further back, it would be a true hardship on the applicant with the topography of the land.

Mr. Reppucci 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. He said that the garage will actually be placed further back than the existing house.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 5-0.

7. **William & Linda Porter (Owners) 30 Caron Avenue (Sheet 49 Lot 79) requesting variance to encroach 6 feet into the 10 foot required left side yard setback to construct an attached 26'x28'-3" garage. RA Zone, Ward 3.**

Voting on this case:

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

William Porter, 30 Caron Avenue, Nashua, NH. Mr. Porter said that they're interested in constructing a functional sized garage, so that's why they went with a little extra width for the garage.

Mr. Currier asked if there are any neighbor concerns, especially on the side where the garage would be.

Mr. Porter said that all the neighbors are fine with the request.

Mr. Currier asked about the height of the garage.

Mr. Porter said it's not a big structure, and the way the gable is designed, it's about 15 feet away from the property line.

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

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

RECEIVED
OCT 13 2016

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 190 Tinker Rd

Zoning District R40 Sheet H Lot 71

b. VARIANCE(S) REQUESTED:

building to say on property
to exceed ~~excessory~~ accessory use
area 775% requested

2. GENERAL INFORMATION

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

(Print Name): Brenda Levesque

Applicant's signature Brenda Levesque Date 10/13/16

Applicant's address 190 Tinker Rd

Telephone number H: 603-883-2495 C: 603-315-9969 E-mail: brenda.lev65@yahoo.com

b. PROPERTY OWNER (Print Name): David & Brenda Levesque

Owner's signature Brenda Levesque Date 10/13/16

Owner's address (same as above)

Telephone number H: _____ C: _____ E-mail: _____

OFFICE USE ONLY

Application checked for completeness: ML

Case number _____ Application Deadline _____ Date Received 10/13/16 Date of hearing 11/9/16

Notices: Newspaper ☐ Abutters ☐ Board Action _____

$_____ _____ fee ☐ Date Paid _____ Receipt # _____

$_____ application fee ☐ Date Paid _____ Receipt # _____

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

PLR2016-00227

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.")

Its set back enough so no one to see it.

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.")

Its a nice building and has flowers around it

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.)

Theres no harm.

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.)

It looks nice.

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.

I have not been able to finish cleaning my father in laws belonging. I need more time to do so.

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

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.

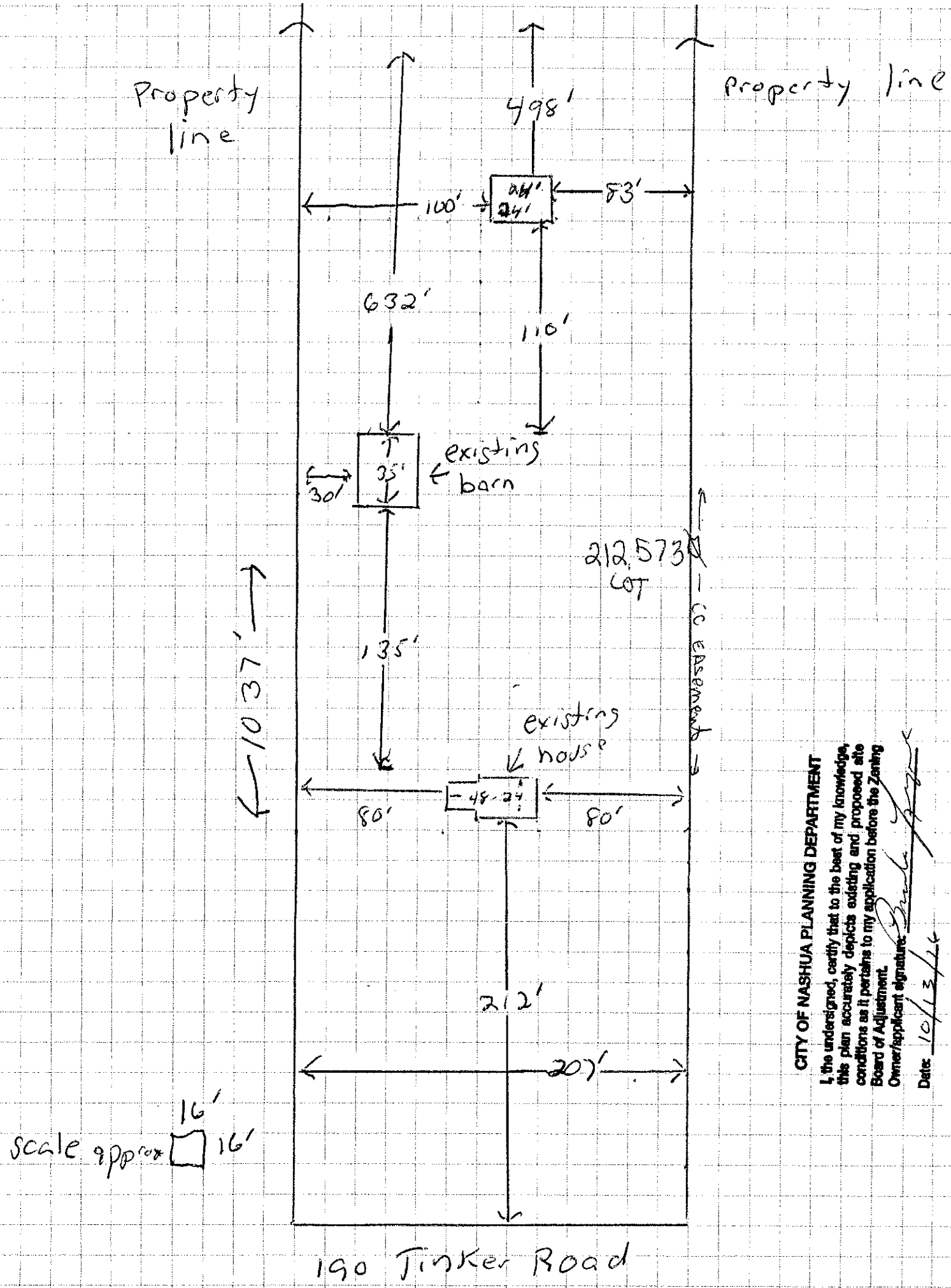
I understand that only those point specifically mentioned are affected by action taken on this appeal.

Brenda Levesque — Signature of Applicant — Date 10/13/16

Brenda Levesque — Print Name — Date 10/13/16

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 _____
- ☐ Please mail it to me at _____

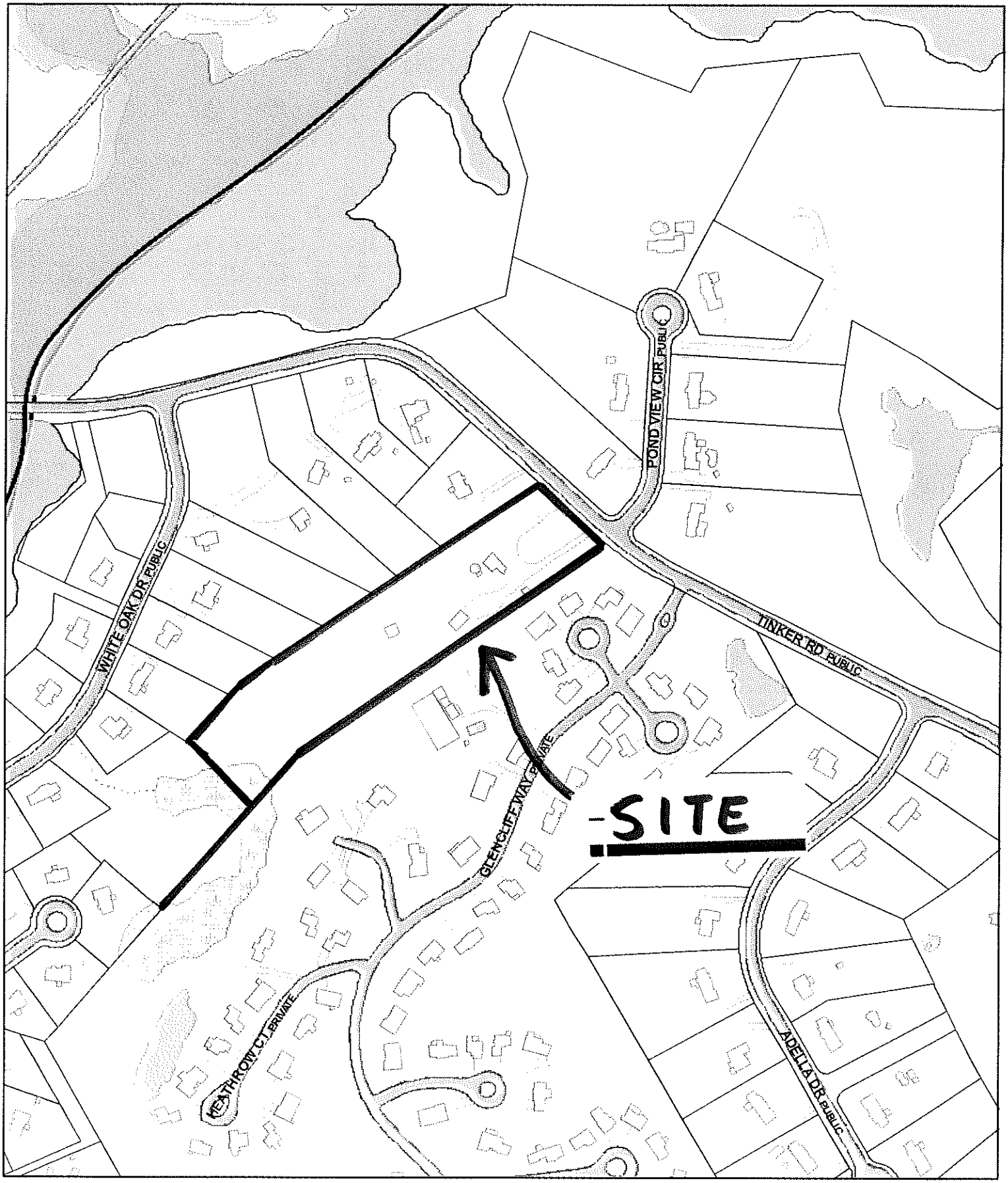


CITY OF NASHUA PLANNING DEPARTMENT

I, the undersigned, certify that to the best of my knowledge, this plan accurately depicts existing and proposed site conditions as it pertains to my application before the Zoning Board of Adjustment.

Owner/applicant signature: [signature]

Date: 10/13/16



190 Tinker Rd

N
W E
S

Feet
0 275 550 1,100
1 inch = 400 feet

NASHUA GIS

To: Zoning Board of Adjustment

From: Carter W. Falk, Deputy Planning Manager/Zoning

Date: November 1, 2016

SUBJ: **Diane E. Gimber & Bishop Realty Management (Owners) Granite Green Investment Partners, LLC (Applicant) 122 Manchester Street (Sheet 59 Lot 135) appealing administrative decision and requesting clarification why a use variance is required for an age restricted development, along with a variance to exceed more than one principal structure per lot, for a proposed development with 5 buildings and 18 condominium units. RA Zone, Ward 2.**

BACKGROUND:

Per RSA 676:5 an appeal may be taken by any person aggrieved by any decision of the administrative officer that involves construction, interpretation, or application of the terms of the ordinance.

Staff believes that the appeal is timely, and submitted within the 30-day time frame. The applicant received constructive notice of the staff decision on/about September 7, 2016. Carter Falk, Deputy Planning Manager/Zoning, wrote a memorandum to Linda Panny, Deputy Planning Manager, on September 6, 2016, and indicated that for case PLR2016-00194, two variances will be required. It is from this letter (see attached memorandum dated September 6, 2016 from Carter Falk), that the applicant has appealed the decision of the administrative officer (see attached letter dated October 5, 2016, from Prunier & Prolman, P.A.). The first one is that a use variance is required, as the type of housing proposed, age restricted, is not one of the categories listed in Section 190-42, Table 42-1, Elderly Housing Classifications. The second one is that a variance is required to exceed more than one principal structure per lot.

PROPOSAL:

The proposed development is located at 122 Manchester Street. It is zoned A-Urban Residence (RA), and totals 2.358 acres in size (102,694 square feet). To the north, south and west of the subject lot are single-family homes. Across Manchester Street are single-family homes and the First Baptist Church. All surrounding properties are also zoned RA.

The site presently has a single-family home and garage. The proposal is to remove the home and construct 5 buildings, with a total of 18 condominium units. Also, an 800 square foot community center is proposed (see attached plan for more details).

Please note that for the Appeal, the question is whether or not the proposal meets the criteria to be considered as an Elderly Housing development. Abutters will be allowed to speak in favor, or in opposition or with questions or concerns about this item. However, there should not be any testimony about the specifics of the proposed development, such as setbacks, building aesthetics,

grading, drainage, traffic, location of the buildings on the lot, etc. The testimony should only be related to whether or not the proposed use, included with the attached Conditions, falls under one of the Elderly Housing categories as specified in Section 190-42, Table 42-1. If the Board determines that it does, then the variance for more than one principal structure would be moot, as elderly housing in multi-family buildings is anticipated.

ORDINANCE:

City of Nashua Land Use Code Section 190-15, Table 15-1, lists approximately 300 land uses. Number 12 is "*Elderly housing, except as provided in #13 below (see 190-42B).* Number 13 is "*Elderly housing, with residents in single-family detached housing only (See 190-42B).* Number 14 is "*Elderly housing, nursing care facilities*".

Section 190-15, Table 15-1, both numbers 12 and 13 refer to Section 190-42 (B). Elderly housing, with residents in multi-family type developments is a permitted use in the RA zone. ***However***, it is permitted as long as it meets Section 190-42(A), Applicability. Section 190-42(A)(1) states that the purpose of this section is that elderly housing means any of the housing categories and supportive services described in Subsection A(2) below, that complies with the provisions of RSA 354-A:15 (Housing for Older Persons).

Table 42-1, Elderly Housing Classifications, lists six different categories: 1) Assisted living services, 2) Life care or continuing care services, 3) Community care facilities for the elderly, 4) Continuing care retirement communities, 5) Skilled nursing services or nursing care facilities, and 6) Homes for the Elderly.

ANALYSIS:

It is Staff's position that in order for any elderly housing development to be considered as elderly housing, it must fall into one of the six categories identified in Table 42-1. At the time the plan was submitted, there were no documents or supporting information that specifically ties the proposed development to one of these six categories.

Subsequently, a list of Conditions was submitted on October 5, 2016 (see attached conditions). It is Staff's opinion that these conditions do not meet any of the definitions under Table 42-1, Elderly Housing Classifications. It is clear that the development does not meet any of the first five categories whatsoever. The closest category is #6 - Homes for the Elderly, in which the definition states "comprises establishments primarily engaged in providing residential and personal care services for (1) the elderly or other persons who are unable to fully care for themselves and/or (2) the elderly or their persons who do not desire to live independently..."

Staff believes that none of the proposed Conditions in the letter relate to people who are unable to care for themselves, or do not desire to live independently. It appears as if the proposed Conditions are elective, and are just items that are offering information on, rather than providing, services.

Also, on October 17, 2016, Staff received a list of Elderly Housing Covenants from the applicant (see attached Covenants). It lists eight different items, and they shall be binding to every owner within the development. It states that there shall be a Board of Directors of the Association, and the Association shall cause the condominiums to remain in compliance with State laws. Please note that private covenants such as this are not reviewed or approved by Staff, nor are they required to be submitted.

There have been recent discussions with this elderly housing proposal with other City officials. General questions have been raised about the Ordinance itself, and why it may appear that Staff is asking this applicant for information about meeting one of the categories listed in Table 42-1, that may not have been asked of other applicants. Since the revised Land Use Ordinance was effective as of January 2, 2006, there have only been a few new elderly housing developments. Each and every one was reviewed by not only the Planning staff, but a Technical Review Committee including staff from several different departments, and either the Zoning Board of Adjustment or the Planning Board, or both boards.

Further, there has been a referral from the Board of Aldermen, O-16-120, "Clarifying and Updating the Elderly Housing Supplemental Use Regulations" (see attached), which is scheduled to go to the Planning & Economic Development Committee and the Planning Board. This update clarifies that every development shall provide significant facilities and services designed to meet the physical and social needs of older persons, and lists several examples.

SUMMARY/RECOMMENDATION:

The Board should review the proposed Conditions and determine whether they meet the criteria to fall under one of the categories for Elderly Housing. If the Board believes that it does, then the applicant can go to the Planning Board, and no Zoning Board action is needed based upon the submitted plan.

However, should the Board believe that the Conditions do not meet the Ordinance, then the applicant should submit an application and plans for Zoning Board of Adjustment review as stated originally.