1. Zoning Board Of Adjustment Regular Meeting Agenda(PDF)

   Documents:

   20200212 ZBA AGENDA - AMENDED.PDF

2. 20200212 ZBA Case Packets

   Documents:

   20200212 122 MANCHESTER ST.PDF

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

Planning & Zoning 589-3090
Fax 589-3119
WEB www.nashuanh.gov

ZONING BOARD OF ADJUSTMENT

6:30PM, FEBRUARY 12, 2019

AMENDED AGENDA

1. Suzanne R. Sullivan (Owner) Equivise, LLC (Applicant) 17 Curtis Drive (Sheet C Lot 793) requesting the following: 1) special exception from Land Use Code Section 190-112 to work within the 75-foot prime wetland buffer of Salmon Brook; and 2) variance from Land Use Code Section 190-16, Table 16-3, to encroach 15 feet into the 40 foot required front yard setback – both requests to construct a new single-family home. R40 Zone, Ward 9. **[POSTPONED TO THE FEBRUARY 25, 2020 MEETING.]**

2. Million Dollar View, LLC (Owner) 122 Manchester Street (Sheet 59 Lot 135) requesting variance from Land Use Code Section 190-17 (B) to allow more than one principal structure on one lot, one existing - four single-family detached homes proposed. 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."

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 122 Manchester Street

Zoning District RA Sheet 59 Lot 135

b. VARIANCE(S) REQUESTED

This Variance Application seeks relief from Section 190-17(B) of the Land Use Code to permit more than one principal structure on a lot to facilitate a residential condominium community of 4 single-family detached units.

LAND USE CODE SECTION 190-17(B)

2. GENERAL INFORMATION

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

Million Dollar View, LLC - c/o Eric Pearson

Applicant's signature _____ Date 1-17-20

Applicant's address P.O. Box 3691, Nashua, NH 03061

Telephone number (home) (603) 305-5175 (work) (603) 661-0717

b. PROPERTY OWNER Same as Applicant

Owner's signature _____ Date _____

Owner's address _____

Telephone number (home) _____ (work) _____

2020-00003
Case number _____ *Application Deadline* _____ *Date Received* 1/17/2020 *Date of hearing* 2/12/2020

Notices: Newspaper ☐ *Abutters* ☐ *Board Action* _____

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

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

$15 signage fee ☐ *$100 recovery 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.")

   In general the area surrounding the subject property consists of residential properties. The proposed use and density for this 4-unit single family condominium project will be consistent with the surroundings and meets the RA zoning requirements as outlined in the Land Use Code. The layout of the development has been situated to provide a nice residential setting with buffering to the surroundings. This proposal will therefore not have a negative impact on the neighborhood, the public health, safety, welfare or otherwise injure public rights.

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 proposal will rejuvenate the subject property and will create a development that will be consistent with the surroundings, meet the RA zoning requirements and will thereby observe the spirit of the ordinance. The properties elongated shape does not allow for a reasonable conventional style development as it would yield significant land alteration and impacts and woudl not provide the same level of buffering to the surrounding properties. The proposed layout will be in harmony with the neighborhood and will not threaten the public health, safety, welfare or otherwise injure the public rights.

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 will be granted, in recognising the nature of this property, its shape and location in the RA district, its compatibility with the surroundings and its reasonable manor with regards to the proposed density and layout that is sensitive to the surrounding properties. Substantial justice would thereby be done to the property owner by granting this variance as it would allow a reasonable development of the property without any harm to the general public as this proposal would be in harmony with the surrounding properties.

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 is consistent and compatible with the surrounding uses and will therefore not diminish the surrounding property values. New construction typically has positive impacts to adjacent land values. Given this we believe this proposal should actually have positive impacts on the surrounding property values.

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 proposed use is reasonable due to the special conditions of the property. The subject property is a 2.3+ acre lot with an irregular shape as its a deep lot with narrow frontage located along an arterial roadway.The most practical proposal for this site is a single family development with a private road, privately maintained in a condominium form of ownership. The proposed use is compatible and in harmony with the surroundings and literal enforcement of the regulations would result in an unnecessary hardship due to the special conditions of the property.

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 NA
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+ per unit
f. Describe your general business operations
NA - there is not business operations proposed.

g. Describe any proposed site renovations, including, but not limited to – landscaping, lighting, pavement, structural changes, signage, access and circulation
This project will include the construction of a private roadway with associated drainage, utility, lighting and landscaping improvements which will be completed and reviewed through the Planning Board approval process.

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.

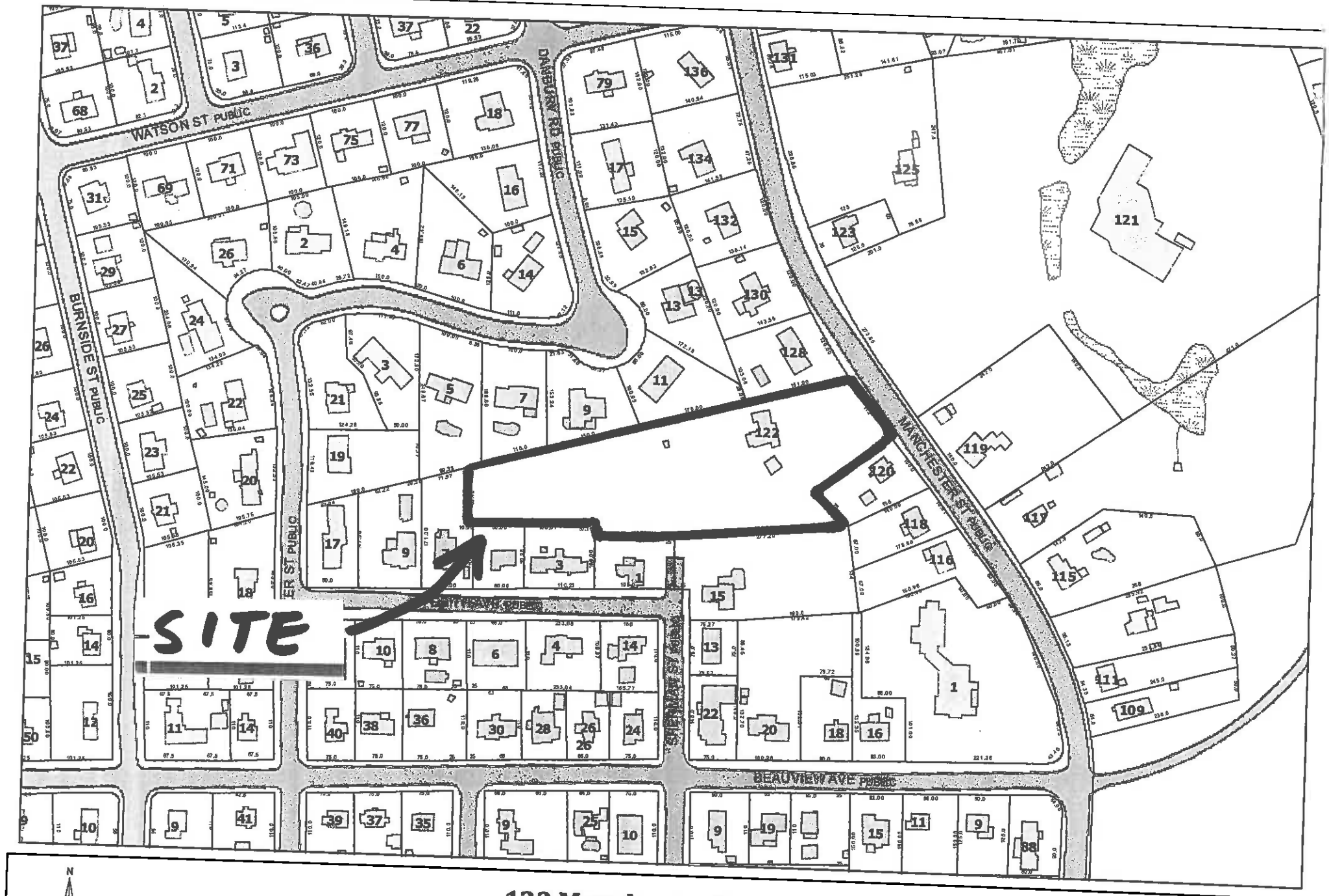
I understand that only those point specifically mentioned are affected by action taken on this appeal.

Signature of applicant

1-17-20
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 CEBranon@FieldstoneLandConsultants.com
- ○ Please mail it to me at



122 Manchester Street

N
W E
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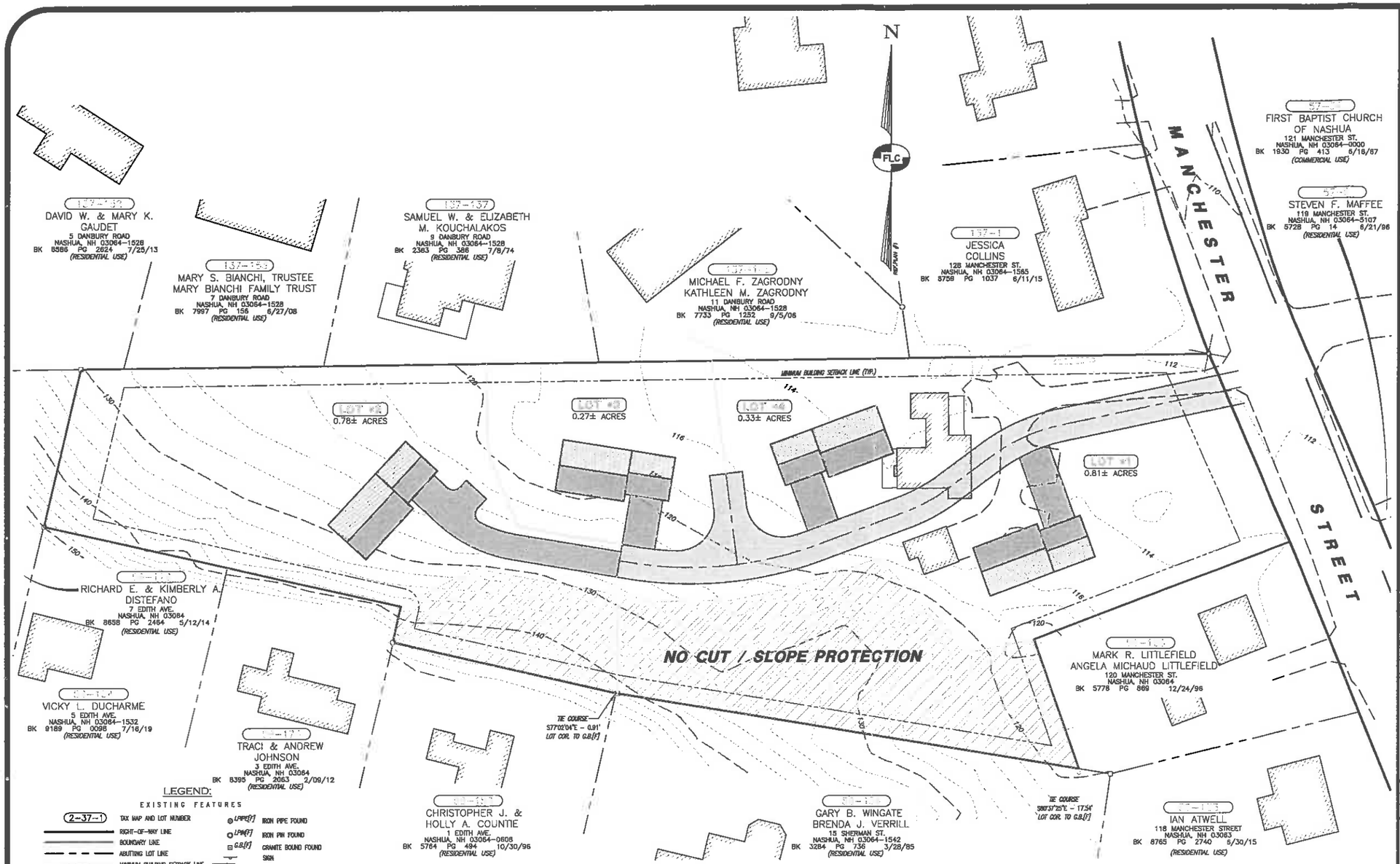
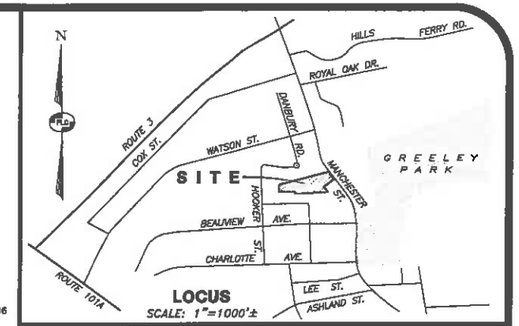
0 130 260 520 Feet

NASHUA
NEW HAMPSHIRE
GIS





REFERENCE PLANS:

1. "SUBDIVISION & CONSOLIDATION PLAN (MAP 59, LOT 133 & 155) – MANCHESTER ST. – NASHUA, NEW HAMPSHIRE – PREPARED FOR – FRANK JAMES LUCIANI JR.", SCALE: 1"=20', DATED: AUGUST 27, 1985 BY CJOCO & CORMIER, INC. (RECORDED AT THE H.C.R.D AS PLAN #18347).
2. "SUBDIVISION PLAN – WELLINGTON FARMS – MANCHESTER STREET – NASHUA, N.H. – SURVEYED FOR TERRAFIELD CORPORATION", SCALE: 1"=50', DATED: APRIL 1989 BY W. ROBERT NOLTE & ASSOCIATES (RECORDED AT THE H.C.R.D. AS PLAN #4114).
3. "LAND OF – ELLA F. WARREN – MANCHESTER STREET – NASHUA N.H.", SCALE: 1"=40', DATED: FEB. 25, 1955 SURVEYOR UNKNOWN (RECORDED AT THE H.C.R.D. AS PLAN #1163).
4. "PLAN SHOWING LOTS OWNED BY – HIGHLAND SPRINGS SANATORIUM – MANCHESTER STREET – NASHUA, N.H.", SCALE: 1"=80', DATED: JULY 30, 1936 SURVEYOR UNKNOWN (RECORDED AT THE H.C.R.D. AS PLAN #151 SHEET 5)
5. "LAND – OF – E.J. COPP – IN – NASHUA, N.H.", SCALE: 1"=100', DATED: 1893 BY A.H. DEAN, C.E. (RECORDED AT THE H.C.R.D. AS PLAN #300 PLATE NO. 2)

NOTES:

1. OWNER OF RECORD:
   MILLION DOLLAR VIEW, LLC – C/O ERIC PEARSON
   P.O. BOX 3691
   NASHUA, NH 03061
   BK. 9246 PG. 0026 IN THE H.C.R.D.
2. THE PURPOSE OF THIS PLAN IS TO DEPICT A 4 UNIT CONDOMINIUM STYLE RESIDENTIAL SUBDIVISION OVER TAX MAP PARCEL 59-135 AS SHOWN.
3. THE TOTAL AREA OF TAX MAP PARCEL 59-135 IS 2.358 ACRES OR 102,694 SQ. FT.
4. LOT NUMBERS REFER TO THE CITY OF NASHUA ASSESSORS MAPS 57, 59 & 137.
5. ZONING FOR ENTIRE PARCEL IS R-A DISTRICT

PROPOSED IS A CONDOMINIUM SUBDIVISION	REQUIRED	EXISTING	PROPOSED
MIN LOT AREA	7,500 SF	102,694 SF	102,694 SF
MIN LOT WIDTH	75 FT	112 FT	112 FT
MIN LOT FRONTAGE	80 FT	112 FT	112 FT
MIN LOT DEPTH	90 FT	550 FT	550 FT
MIN FRONT SETBACK	25 FT	25 FT	25 FT
MIN SIDE SETBACK	10 FT	10 FT	10 FT
MIN REAR SETBACK	25 FT	25 FT	25 FT
MAX. BUILDING HEIGHT	35 FT	20±FT	35 FT(MAX)
MAX. STORIES	2.5	2	2.5(MAX)
CONSERVATION AREA	NA	NA	NA
OPEN SPACE FOR EACH LOT	50%	50+%	50+%
DENSITY: 8 UNITS PER ACRE	14 UNITS	1	4

GRAPHIC SCALE
30' 15' 0 30' 60' 90'
IMPERIAL: 1"=30'

LEGEND:

EXISTING FEATURES

- (2-37-1) TAX MAP AND LOT NUMBER
- RIGHT-OF-WAY LINE
- BOUNDARY LINE
- ABUTTING LOT LINE
- MINIMUM BUILDING SETBACK LINE
- EDGE OF PAVED ROAD
- EDGE OF GRAVEL ROAD
- TREE LINE
- WIRE FENCE
- WOOD FENCE
- STONE WALL
- OVERHEAD UTILITIES
- EDGE OF EASEMENT
- W — WATER MAIN
- SEWER LINE
- GAS LINE
- DRAIN LINE
- IPIPE[?] IRON PIPE FOUND
- IPIN[?] IRON PIN FOUND
- G.B.[?] GRANITE BOUND FOUND
- SIGN
- EXISTING BUILDING
- UTILITY POLE AND GUY WIRE
- (T.B.R.) TO BE REMOVED
- PROPOSED GRANITE BOUND [TBS]
- PROPOSED DRILL HOLE/IRON PIN [TBS]
- DRAIN MANHOLE
- SEWER MANHOLE
- TREES
- (11) STREET ADDRESS

REV.	DATE	DESCRIPTION	C/O	DR	CK

RESIDENTIAL CONDOMINIUM CONCEPT PLAN

MANCHESTER STREET ESTATES

TAX MAP PARCEL 59-135 - 122 MANCHESTER STREET
NASHUA, NEW HAMPSHIRE

PREPARED FOR AND LAND OF:

MILLION DOLLAR VIEW, LLC
P.O. BOX 3691 NASHUA, NH 03061

SCALE: 1" = 30' JANUARY 15, 2020

Surveying ✦ Engineering ✦ Land Planning ✦ Permitting ✦ Septic Designs

FIELDSTONE LAND CONSULTANTS, PLLC

206 Elm Street, Milford, NH 03055
Phone: (603) 672-5456 Fax: (603) 413-5456
www.FieldstoneLandConsultants.com

FILE: 498CN02A.dwg	PROJ. NO. 498.02	SHEET: CN-1	PAGE NO. 1 OF 1

MOTION CARRIED UNANIMOUSLY 5-0.

Mr. Currier said that the next case will essentially be about the definition of elderly housing. He said that an application has been brought forth to the City, at 122 Manchester Street, for an elderly housing development. He said that staff determined that the project meets the definition of elderly housing, however, there are abutters who are appealing the decision of staff, and they believe that the application does not meet the definition of elderly housing. He said that what is not before the Board this evening is parking, or building density, or other similar issues, the Board will only be focusing on the definition of elderly housing.

Mr. Shaw said that a lot of letters were submitted, and most of them raise issues that the Board cannot consider, as most of them are Planning Board issues, and tonight's discussion is more narrowly defined, the question is whether or not the usage of land meets elderly housing.

Mr. Currier said that if the Board determines that this does meet the definition of elderly housing, the application would then go to the Planning Board to be reviewed for parking, density, etc. He said if the Board decides that it does not meet elderly housing, then it will have to come back before the Zoning Board for a use variance and a variance for the number of principal structures on the lot. He said another issue came up at the Planning Board meeting about a rip-rap wall and whether it goes against open space, but that is not before the Board tonight.

Mr. Shaw asked about this case already going to the Planning Board.

Mr. Falk said that the applicant believed they did not need to go to the Zoning Board, and they did go to the Planning Board, and they tabled it pending the outcome of the appeal before the Zoning Board.

4. Gary Wingate, 15 Sherman Street (Sheet 59 Lot 154); Michael Zagrodny, 11 Danbury Road (Sheet 137 Lot 145); Samuel Kouchalakos, 9 Danbury Road (Sheet 137 Lot 137), and John Bianchi, 7 Danbury Road (Sheet 137 Lot 153), appealing the decision of the administrative officer that a proposed elderly housing development located at 122 Manchester Street (Sheet 59

Lot 135) will provide significant facilities and services designed to meet the physical and social needs of older persons. RA Zone, Ward 2.

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay
Rob Shaw
Kathy Vitale

Attorney Barbara Hantz, Sheehan Finney Bass & Green, 1000 Elm Street, Manchester, NH. Atty. Hantz said she represents the four people in the advertisement, who are abutters and their homes surround the development. She said that other letters have been submitted, and indicated that there are other issues in all these letters that are not before this Board.

Atty. Hantz said that the proposal is for a five building project, and elderly housing is permitted in the RA zone, as long as it meets the requirements of Section 190-42 A. She said in a letter from Atty. John Sokul, Mr. Falk determined that the proposed programs and services associated with the project qualified it as elderly housing, and that this determination reversed an initial preliminary decision that in fact it did not, and that decision was not appealed. She said that they are appealing the decision that says it is.

Atty. Hantz said that Section 190-42 A provides six categories for projects that qualify for elderly housing, congregate living facilities, assisted living, life care or continuing care communities, community care facilities, continuing care retirement communities, skilled nursing services or nursing care facilities are not part of this project. She said the last category, homes for the elderly, that is the closest category but we disagree that this project qualifies as homes for the elderly. She said that homes for the elderly require significant facilities and services specifically designed to meet the physical and social needs of older persons, pursuant to the Code, and those services are not present here. She said that the care typically includes room, board, supervision and assistance in daily living, such as housekeeping services. She said establishments may include assisted living facilities, with on-site nursing care, homes for the aged, homes for the elderly,

senior citizens homes without nursing care, but it speaks in terms of homes, not in terms of individual residences for over 55-age individuals. She said that what is proposed is a 55 and over community, and only 80% of the units have to be age-restricted, and it does not qualify as elderly housing.

Atty. Hantz said that they won't be providing primarily residential and personal care services, the proposed services in the application include some social and recreational activities, continuing education, counseling, property and building maintenance, some handicapped accessibility, and preventative health care programs through a variety of organizations. She said that there will be no staff associated with this development, it's for 18 units with an 800 square foot common room. She said that they will rely on a property management company to provide the services, and/or the residents who can create their own community services.

Atty. Hantz said at this time, they are not aware of any project management company that has any expertise or experience in providing the kind of social services that are intended to be included in elderly housing. She said that they're not the sort of services, such as games, entertainment, educational proposals, are not the sort of services that are geared toward increasing the residents ability to live independently, or providing care for those who can't fully care for themselves.

Atty. Hantz said that in addition to failing to fall under one of the elderly housing classifications, the proposed services do not rise to the level of significant facilities and services, specifically designed to meet the physical and social needs of older persons. She said that organized card games, movies have been mentioned, some educational and health care programs intended to be provided in this area, is insufficient to support actual meaningful services for the elderly. She said that the project is getting a density bonus, this lot qualifies as one lot, given its frontage, anything more than that, even subdividing it into two lots, there is insufficient frontage. She said that the lot would need a variance for more than one building on the lot in the RA zone. She said that there is sufficient square footage on the lot, likely for more than one residence if you could provide additional frontage, but nowhere near the density of 18 units that the elderly housing allows.

She said that the motivation here is to increase the density to 18, and by adding a road in and making it a single family lots, they couldn't get in more than half a dozen if that, because of the configuration of the lot. She said that the density bonus here is very significant. She said that when you are actually not providing what the ordinance is looking for, which is a real meaningful proposal for housing for the elderly, we don't feel that it earns that density bonus.

Atty. Hantz said that the elderly housing and the services that go along with it has been evaluated by the NH Supreme Court in a different context, because elderly housing can in some circumstances earn a charitable tax exemption, and certain organizations are considered charitable, and there's also a separate tax exemption for elderly housing units. She said that the Court has found that if it's simply housing, it doesn't qualify for that charitable exemption, you have to have enough services to show that you are actually facilitating older folks living independently and providing support for those things they cannot do on their own. She said that basic retirement housing doesn't qualify, you have to have meaningful services for the older retired people, services that are akin to assisted living services or nursing care services that are available is what satisfies that criteria.

Atty. Hantz said that in the ordinance, new developments have to have a minimum of 30 units to be considered, and this should be considered new development, as opposed to redevelopment, repurposing a building you need to have a minimum of ten units. She said that they consider this a new development, not a redevelopment.

Atty. Hantz passed out a copy of her presentation to the Board members.

Mr. Shaw asked for some clarification about her last comment about the thirty units for new developments versus redevelopment.

Atty. Hantz pointed out, and read Section 190-42. She said that the density bonus for elderly housing only applies pursuant to language of the ordinance to projects consisting of more than thirty units in the case of new development, and more than ten units in the case of redevelopment of sites.

Mr. Shaw said the density bonus, whether it should be applicable or not, is depending upon how this part is interpreted.

Atty. Hantz said that there are two other elderly housing projects in the recent past, Stinson Park and Hayden Green. She said that neither one of those projects addressed this issue. She said the Hayden Green project had a lot to do with wetlands and the water tank, and the other one was subdivided off from the Diocese, so it didn't have a lot of issues. She said that she isn't sure of the density bonus for these sites would have made a difference, and it didn't come up in the meetings.

Mr. Currier asked about the benefits, and whether they're provided by a staff or the residents themselves, and the point was that in this proposal, the benefits are essentially provided by the residents themselves, versus a professional staff. He asked if they feel that the State definition is that a professional staff has to be there to care for physical needs, like nurses, and asked if that is what they need to provide to meet the definition of elderly housing. He said it's unclear of what is enough.

Atty. Hantz said it's just not professional staff, but agrees, that is the issue and it's not well-defined. She said that having actual services, people need rides to places, having a link to services, people might need help with meals. She said the language in the Ordinance seems to talk about assistance with daily living, helping people that can't live independently, or don't want to. She said that there are other issues, like safety, meals, socialization, so it doesn't have to be a professional staff, but it has to be more than something on a bulletin board with some phone numbers.

Mrs. MacKay said for independent living skills, that does for individuals with disabilities or elderly require a DSP (direct support provider), which is what Mr. Currier referred to, that's professional. She asked if there has to be some kind of professionalism attached to it, and asked if she is stating that these are 18 independent units with one common room where people can watch a tv or say hello, but no one to help with meal preparation, no skilled nursing staff for medication issues, no one there in case something happens to someone, no 24-hr presence, no one providing recreation, etc.

Atty. Hantz said that's the way it's being described, presented to the City, and the reliance will be on residents to choose what services they want, and a property management outfit to supply those services. She said in the category of Homes for the Elderly, the abutters feel that there is nothing that distinguishes this from any other condominium.

Atty. Hantz said that the definition states that Homes for the Elderly comprise establishments primarily engaged in providing residential and personal care services for the elderly that are unable to care for themselves, and/or persons that do not desire to live independently.

SPEAKING IN FAVOR (OF THE APPEAL AGAINST CITY STAFF'S DECISION):

Jeff Eckberg, 128 Manchester Street, Nashua, NH. Mr. Eckberg said he lives directly to the right of 122. He said he's worked with long term assisted living and nursing care for the past twenty-one years, and works as a director at a skilled nursing center outside of Boston.

Mrs. Eckberg, 128 Manchester Street, Nashua, NH. Mrs. Eckberg said she is an occupational therapist, and specializes in teaching activities of daily living, and independent activities of daily living.

Mr. Eckberg said that staff asked the applicant for evidence that would show that it is elderly housing providing supportive services to be considered as elderly housing, and the facilities and services be provided in a meaningful manner. He said that the word meaningful is very important in the health care field. He said the definition of meaningful itself cannot be a qualitative measure alone, it requires a quantitative analysis process that includes measures, and nothing shown from the applicant indicate a qualitative measure. He said bingo, cards, tv and a computer in a separate room does not suffice, and said that the list the applicant provided is redundant, many of the nine categories say the same thing, and the recreational programs show activities that are not taking place here, they're at senior centers somewhere else. He said that nothing provided is meaningful, and nothing they provide will really stand out.

Ian Atwell, 118 Manchester Street, Nashua, NH. Mr. Atwell said that he sent a letter of opposition. He said he's lived in several condominium complexes and the services that are proposed

are things that are offered at every condo complex, the games, and holiday parties. He said he doesn't believe its elderly housing.

Mark Littlefield, 120 Manchester Street, Nashua, NH. Mr. Littlefield said that none of what Attorney Sokul has indicated seem to complete the physical and social needs of elderly housing, and doesn't see how it complies. He said that movie nights, board games, reading material, nothing here will cost the management company anything, and there's no staffing, and maybe the management company will manage the building and grounds, but not the physical and social needs of the elderly. He asked who will oversee the future compliance. He said if this complies and is supported, it will have a great impact on the neighborhood because of the density.

Tracy Gilman, 3 Edith Avenue, Nashua, NH. Mrs. Gilman said that she is an occupational therapist, and has spent the last 30 years working with individuals to become as independent as possible, and to place someone in a house or condo with a separate room across the way, and hope they make it, is not considered supportive housing, so the definition is in question.

Michael Zagrodny, 11 Danbury Road, Nashua, NH. Mr. Zagrodny said that they're opposed to this project for many reasons. He said that he doesn't feel that the project meets the criteria for elderly housing, and shouldn't qualify for the density of 18 units. He said that the whole neighborhood is not in support of this project, and asked that the letters submitted be thoroughly reviewed.

Mr. Falk said that a lot of letters were received, and every one of them was forwarded to the Zoning Board members, and also to Attorney Sokul.

Mr. Falk said that the letters are from Gary Wingate, Brenda Wingate, Samuel Kouchalakos, Tracy Gilman, Holly Countie, Mark Littlefield, Ian Atwell, Michael Zagrodny and Jeff Eckberg.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS (THOSE IN FAVOR OF STAFF'S DECISION):

5-Min recess by the Board.

Attorney John Sokul, Hinckley Allen & Associates, Concord, NH. Atty. Sokul asked for a little extra time for his presentation, the Board voted to allow him 15 minutes.

Atty. Sokul said he's representing Granite Green Investments, the developer, and said that James Prieto, a principal of the company, is handing out a package for the Board members.

Atty. Sokul said that they're not proposing a Congregate Care Facility, or Assisted Living, or a Continuing Care Retirement Community. He said they are proposing an over-55 elderly housing project, which is allowed under the terms of the Nashua Ordinance. He asked where the concept of significant services and facilities comes from. He said under Federal law, the Federal Fair Housing Act protects citizens against discrimination. He said that that Act specifically exempts some types of senior housing from the discrimination requirements. He said that those types of senior housing you can discriminate against familial status, and those types of housing are: 1) housing provided under any State or Federal program that HUD has determined to be designed and operated to assist elderly persons, 2) housing intended for solely occupied by persons 62 years of age or older, and 3) intended and operated for occupancy by persons 55 years of age and older.

Atty. Sokul said that there are, therefore, three types of housing that qualify for that exemption under the Federal Fair Housing Act. He said that under current Federal law, to qualify for the over-55 exemption, a facility must have at least 80% of the units have at least one occupant who is 55 years of age or older, and the facility must publish and adhere to policies and procedures that demonstrate the intent to operate 55 and over, and the facility must comply with HUD regulatory requirements for age verification of residents. He said that originally, HUD had a series of regulations that specified these facilities and services, and in tab 3 of the material that was passed out, with examples of the types of services and facilities that need to be provided for each category.

Atty. Sokul said that it used to be, this regulation, was repealed in 1999, as being overly restrictive under a Federal Law Amendment to elderly housing, so this whole regulatory regime went away as being too onerous for elderly housing.

Atty. Sokul said that to comply, you had to offer at least ten of these items, two examples from category 10, leisure needs and category 11, accessible physical environment. He said that the applicant is proposing 36 of these items, where 10 would have been required, or used to be required before the regulation was repealed.

Atty. Sokul said that New Hampshire has the same regulatory regime, the exact same three types of elderly housing is allowed, and, until 2006, New Hampshire had a set of regulations containing 12 categories of services and facilities that would be sufficient for elderly housing, and that is set forth in Tab 5. He said that the Nashua ordinance makes specific reference to over-55 housing. He said that the New Hampshire regulations expired in 2006, but has not been replaced yet. He said he spoke to the Executive Director of the NH Human Rights Commission, and they are thinking of promulgating new rules, but it will take at least 60 days, and the Governor has put a kibosh on new rules and regulations until March 31st, so it's unclear when and if any new rules come to New Hampshire.

Atty. Sokul said in looking at the Nashua ordinance, in the preamble, it says that older persons are exclusively people age 55 and over. He said that the Master Plan indicates that the number of people 55 and over will increase significantly, and it recognizes that an exclusive zoning for persons 55 and over promotes the general health and welfare. He said that for purposes of elderly housing it talks about examples of uses that constitute elderly housing include the six items that Atty. Hantz mentioned. He said if you look at the compliance section, it says that the applicant shall certify that at the time of an application before the Planning Board, that a development will comply with all applicable rules and regulations established by the NH Human Rights Commission, age discrimination, and housing, including, if required, that every development shall provide significant facilities and services, specifically designed to meet the physical and social needs of older persons. He said that at the end of that section, it says that in the event the foregoing 55 year old age restriction is determined to be in violation of the laws of the State of New Hampshire, then in order to qualify as housing for older persons, the development must contain an age restriction that complies with the NH RSA's.

Atty. Sokul said that this project also precipitated a proposed amendment to the ordinance, and that amendment is now purporting

to add the same twelve examples of categories of elderly housing facilities and services that were in the NH Regulations that was repealed. He said that they came in and met with City Staff, Carter Falk, Roger Houston, Sarah Marchant and Steve Bolton, and went through the list, item by item, category by category, and came up with staff's determination that what was proposed satisfies the Nashua ordinance, and the developer wanted to do that even though the State's regulations no longer exist, and the Federal regs no longer exist, but wanted to make sure the proposal was bulletproof.

Atty. Sokul said it's true, there will not be any on-site staff, but this over-55 project is providing much more than the two over-55 projects that were previously mentioned, Stinson Park and Hayden Green. He said that the minutes from those meetings are included in the package, along with what their condo documents say, and for Stinson Park, what they actually provide for facilities and services, which are much much less that what is proposed.

Atty. Sokul said that item #10 in the handout is what is proposed at 122 Manchester Street. He said that it is far more extensive than anything that has been required from any applicant in Nashua going for the 55 and over exemption. He said that both of those two projects took advantage of the density, so for those reasons, 55 and over housing is allowed by the Nashua ordinance, it's more than any other similarly situated applicant, it complies with State and Federal laws, and those are also referenced in the Nashua Ordinance, and they believe that they comply with the terms of the Ordinance. He said that they're not Assisted Living, Congregate Care, they are an over-55 independent living, which is a certain type of elderly housing that is expressly allowed in the Ordinance.

Mr. Boucher asked for an explanation about Section B, part 3 of the Ordinance.

Atty. Sokul said that issue is not before the Board tonight. He said that is to mean that they have a site that is previously developed, and now it's being redeveloped with more than ten units.

Mr. Boucher said it's in Tab 6, page 18 of 57, Section B, paragraph 3.

Atty. Sokul said he believes that this is a redevelopment project, as the site was already developed.

Mr. Shaw mentioned that the testimony for Stinson Park and Hayden Green was that they utilized the density bonus.

Atty. Sokul said that is his understanding, and that's why they went through as elderly housing.

Mr. Falk said those two sites are different, Stinson Park is split-zoned between Airport Industrial and R9, it's by the airport, so there are different zoning densities involved. He said that Hayden Green is a much different development, as there is a very large multi-family building, and they also have single family homes and it's also a split zone.

Atty. Sokul said that both of those projects are supposed to have significant facilities and services, and their condo docs refer to those, and the proposed condo docs go far beyond with assurances and guarantees. He referred the Board to Tab 10, a letter to Carter Falk, these items follow exactly verbatim the State regulations that have expired, and what's proposed in the new ordinance, whether or not it will be adopted, and tried our best to comply with the spirit and intent of the ordinance. He said that the City is trying to add these things in now, as the cross-reference to the State regulations is no longer effective, as the State regulations have expired. He said that out of the 12 categories that the State regulation used to have, the proposed project is proposing 9, and the proposed ordinance says that you must meet half of them, and the State statute is clear that you didn't have to comply with all of them. He said that they've gone above and beyond what any other elderly housing project was required to do. He said that they're locked in and vested from the new ordinance.

Mr. Currier asked to clarify the professional services indicated in the condo docs.

Atty. Sokul said in Section 10, Article 15, deals expressly with elderly housing restrictions, stating that the condominium is developed pursuant to the City of Nashua land use code. He said it also indicates that the City has the right to enforce these things.

Mr. Currier asked about what the assistance would be, he said he did see something, in point E, Tab 10 at the bottom, about services to assist residents with maintenance and upkeep of buildings and grounds, and there is a management company, and asked if it is a professional management company like a property management company, that plows snow and mows grass.

Atty. Sokul said that there would be a company like that, but the applicant has been in touch with several other providers and management companies that have experience with elderly housing projects, and that is what he wants to hire, and that's what he intends to hire for this, someone used to providing these services, someone used to coming on site to give lessons and seminars. He said that the Federal regulations are pretty clear, management companies are allowed to do this, and they can do it both on-site or off-site, as long as there is public transportation and other things reasonably close to the facility. He said that there is a bus-stop twenty feet away from the entrance to the site, and the hospital is 1.9 miles away. He said even though it's going back to 1999, that's where this whole concept of significant facilities and services came from. He said that some of the things are pretty hokey, like bingo and tv and vcr's, maybe they are, but they are guaranteeing these categories will be met, the actual owners and occupants of the project, they will have the opportunity to decide what types of things under those categories will be provided, as long as those categories exist and are in use. He said that the condo docs also require that a subcommittee, which could be only one person, as there are only 18 units, be established to ensure that these things are provided and used, operated, and to coordinate with the management company, it's not intended to be an empty promise, these things are going to get recorded at the Registry of Deeds, they'll be in people's deeds, and they'll work with City staff to make sure they're happy with what goes on record to ensure. He said that they're trying to go by the rules, that's why they met with Attorney Steve Bolton, Carter Falk, Roger Houston and Sarah Marchant, and went through this line by line, item by item.

James Prieto, Granite Green Investment Partners, Principal, 170 S. River Rd, Bedford, NH. Mr. Prieto said that he's had conversations with different organizations that has experience with providing disabled people, elderly populations, people with some disabilities, they'll be the ones providing the services in conjunction with a property management group that

will take care of the condo dues and making sure that things will be maintained and plowed, they won't be responsible for the health and welfare and needs of the residents.

Carter Falk, Deputy Planning Manager, Community Development Department, City of Nashua. Mr. Falk said that there is an ordinance that is proposed before the Board of Aldermen that has already been before the Planning & Economic Development Committee, it's been revised and is in the process, and the applicants plan would conform to nine of the twelve different categories that are listed as required for an elderly housing development.

Mr. Falk said he didn't think that a density bonus was given here, its 2.38 acres, and in the RA zone, Table 190-42, it does allow multi-family at 8 units per acre, so they'd be allowed 18 units. He said that density bonus is given for Inclusionary zoning, which is more about income level, and how many units are available at certain low and moderate income levels.

Mr. Falk said that City staff has met with Atty. Sokul and at first when they submitted a plan, we didn't feel that it met the ordinance to qualify as elderly housing, and at a subsequent meeting, they did supply information that we believe met the ordinance.

Mr. Shaw asked if someone were to propose 18 units in a single multi-family structure, on this 2.38 acre parcel in the RA zone, would it be permitted.

Mr. Falk said that the Code does allow for a duplex or multi-family at 8 units per acre in the RA zone. He said that just by its nature, elderly housing in a multi-family setting does imply that there could be multiple buildings, instead of just one building.

Tom Prieto, 41 Raymond Street, Nashua, NH. Mr. Prieto said that he suggested his son, James, hire the best attorney he can, and meet with Carter Falk, Attorney Bolton, Sarah Marchant and Roger Houston and make certain that you follow the ordinance. He said that the advice of the City's Legal Counsel, and the Planning Department staff, that it did meet the ordinance. He said that is why they submitted, and have continued with this, but if they can't rely on City staff and the City's Corporation Counsel to make a determination to move forward or not, that is a problem.

He pointed out to Section (tab) 7 of the package, he said that Mayor Donchess proposed a new ordinance, O-16-xxx, and if you look at Section 2, the first page, and then go to the second page, then the third and fourth page, then the fifth page, you'll see under section 2, a, b, c, d, then k and l. He said that these are under the new clarification that the Mayor is proposing, which are similar if not exact to what his son has proposed. He said that City staff, when they went through and made a determination that his son's project meets the ordinance, they're even proposing a clarification which has the similar ones. He said that this isn't made up, not dreamt up, it's under the ordinance, and City officials have made a determination that it meets the ordinance.

SPEAKING IN FAVOR (OF THE APPEAL AGAINST CITY STAFF'S DECISION) - REBUTTAL:

Atty. Hantz said that the reference to the over-55 language in the Federal and State regs, she said that there are two divergent purposes, yes, the Federal and State regs came into existence because the issue was discriminating against people with families, kids, so the purpose for those regulations was, yes, recognizing that there can be a reason for over-55, or mature adult, or elderly communities, you're allowed to discriminate against families with kids by restricting the community, and 80% of the units can be older folks over 55, without kids, and 20% fall outside that restriction, those regs were developed for that reason.

Atty. Hantz said that this ordinance, by its purpose, was developed for a different purpose, to provide living accommodations for a group of people who need more than four walls and a roof, and you get that from the categories that are defined in the ordinance, Congregate Living, Assisted Living, Life Care, Community Care, Continuing Care Retirement Communities that definition is very similar, establishments primarily engaged in providing a range of residential and personal care services with on-site nursing care, contrast that with homes for the elderly, establishments primarily engaged in providing residential and personal care services without on-site nursing facilities. She said that the two groups are the same, the elderly or other persons who are unable to fully care for themselves, and/or the elderly or other who do not desire to live independently. She said even when her mother was 81, she had a hard time following when the plow guy was going to come,

and now is in a community with staff and there's no way she could manage figuring out what should be on the schedule. She said that the point is relying on the residents or the condo board in this community to provide services to help people who are unable to care for themselves is just not sufficient to follow this ordinances definition for providing significant services. She said that the definition for Federal and State regs were to qualify something to allow it to discriminate. She said that this is providing a specific kind of housing, so they have to be evaluated differently, because there is reference to the Federal and State regs means that it can be developed this way, but whether it satisfies what Nashua is trying to do, which is to provide supportive services for the elderly, is a different question. She said a bus stop being nearby is not the same as providing transportation services for people who can't drive or can't find their way to the bus stop, who can't walk the 1.9 miles to the hospital, it's just not sufficient.

Atty. Hantz said that on the development/redevelopment side, these terms are defined in the ordinance. She said that redevelopment is a development, rehabilitation, expansion and completion of phased projects on previously developed sites. She said that it's not this project, they're tearing down a single family home, and up go five buildings. She said that new development is any building permit application that is submitted to the City that results in the construction of new dwellings, yes, or the conversion of an existing non-residential use to a dwelling. She said that they do not believe that this is redevelopment, and that it is new development. She said that as far as the other two developments that were mentioned, while this one may be providing more than they did, those ones weren't tested, and so this Board has to deal with this application, and whether it meets the ordinance, whether those two could have been appealed and the Courts may have determined a different outcome, isn't really relevant for here, what they provide, and even though this development wants to mimic what they might have provided in their condo docs, it doesn't mean that any of these developments meet the ordinance definition for supported elderly housing.

Mr. Shaw said that the applicant is stating that it's a redevelopment site, whereas new development is on a site that wasn't developed at all previously. He said that he's hearing that the single family home on the lot doesn't rise to the level

of sufficiency, as a lot of the property is left in its natural state.

Atty. Hantz said it's a small house, and all the land around it is being developed.

Mr. Currier said the terms Congregate Care, and Skilled Nursing were brought up, and this project is not that, but what we're hearing from Atty. Sokul is that's not the definition any more, that maybe the bar has been lowered, and asked her for her response to his interpretation.

Atty. Hantz said that there are six categories of the ordinance, so maybe they're outdated, because Congregate Care is defined as establishments that serve meals and other services, so Congregate Care is one of the six categories that qualify. She said that Assisted Living Services, which helps people in their daily activities, Life Care Community Care, you get all the way down to the end and you get the definition for Homes for the Elderly. She said she's not saying that this needs to be a Congregate Care, with three meals a day, but it needs to be more than condominiums for older people. She said for the new ordinance, whether the new twelve things are sufficient, for the goal of this ordinance, she said she doesn't know, she said as Atty. Sokul said that we're stuck with what we got here, and this is the ordinance as it's defined right now, and quite frankly, while the nine things may meet the Federal definition of 55 and over, they're wanting to encourage that sort of housing for an aging population, she said she's not sure it meets significant services for the elderly, and the nine things they propose are fairly vague, and fairly left open to interpretation, they'll be provided by the management company or a service provider, and managed by the association, or a manager, she said the City can enforce, or the State can enforce, but if they don't, these people aren't being provided any services to help them live independently.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS (THOSE IN FAVOR OF STAFF'S DECISION) - REBUTTAL:

Atty. Sokul said that Atty. Hantz wants the ordinance to read a certain way, she's saying that only these six categories of things in certain provisions of them related to those six categories qualify as elderly housing. He said that is not what the ordinance says. He said that even though she says that the

State and Federal laws are enacted for a different purpose, the Nashua Zoning ordinance specifically refers to RSA 354-A:15. He said that that RSA is Tab 4 of his handout. He said that for purposes of this section, elderly housing is any housing categories and supportive facilities that are described below, that complies with the provisions of RSA 354-A:15, Housing for Older Persons.

Atty. Sokul said that if you look at 354-A:15, all this is about is the exemption from the Fair Housing Act. He said all it's about is the three types of categories that qualify. He said the first one is provided under any State or Federal program that the Secretary of US HUD the terms are specifically designed and operate to assist in elderly housing as defined in that State or Federal program. He said that we're not talking about that here. He said the second one is intended for solely occupied by persons 62 years and older. He said the third one is intended and operated for occupancy by at least one person age 55 or older, that is what we are talking about, that's what the ordinance allows. He said that the State Statute goes on to say in determining whether housing qualifies for persons 55 and over, the Commission shall adopt rules which require at least the following factors, the existence of significant facilities and services, that's what we've been talking about all night, those rules have expired, and thinks because they're inconsistent with Federal law. He said it goes on to say that at least 80% of the units are occupied by at least one person 55 years of age or older per unit, and the adherence to policies and procedures which demonstrate the intent by the owner or manager to provide housing for persons 55 years of age or older. He said that is what is required by the State, and even though those rules have expired, they are meeting, and going above and beyond the rules that existed before they expired. He said that housing shall not fail to meet the requirements for Housing for Older Persons by reason of A, which is irrelevant, and B unoccupied rules provided by such units are reserved for occupancy by persons who meet the age requirements. He said it says that any rule concerning the exemption available under this section shall be consistent with Federal law, which ties back to the Federal Statute and the Federal regs. He said the Federal regs requiring all those things expired because the Federal Government said that they were too restrictive, and so, the Nashua Ordinance talks about the Housing for Older Persons Act, the Fair Housing Act, by cross-referencing those regs, and speaks specifically about 55 year old age restrictions, we

wouldn't have all this talk about 55 year old age restrictions if 55 year old housing didn't comply with the regs. He said that older persons are exclusively age 55 and over. It is recognized that exclusive zoning for persons 55 and over promotes the general health and welfare.

Mr. Shaw asked if RSA 354-A:15 is expired, or just not applicable because of the Federal. He said Section 4A, the existence of significant facilities and services designed to meet the physical and social needs of older persons, or the provision of such facilities, and the housing for older persons, he asked if it is in effect.

Atty. Sokul said RSA 354-A:15 is in effect. He said if you turn to page 5, these were the rules that were promulgated under RSA 354-A:15, with respect to 55 and over housing. He said if you look at 354-A:15 IV, it says in determining whether housing qualifies as housing for 55 and over, the Commission shall adopt rules which require at least the following factors. He said that 302 - 03, which is Tab 5, was those rules until 2006, at which time they expired. He said that's one of the reasons why the City is looking to amend the ordinance, because it understands that there is a gap by cross-referencing that RSA and the rules.

Mr. Shaw asked that without those rules, specifically cited any longer available, one is left with the sole interpretation of those couple sentences in 4A.

Atty. Sokul said he looked at VI under RSA 354-A:15, and it says that any rule concerning the exemption under this section shall be consistent with Federal law. He said that if you go back and look at the Federal law, they've repealed all of the rules and regulations concerning those categories of things that need to be provided as being too restrictive and too onerous.

Mr. Shaw asked that the Federal law still cites something along the lines of significant facilities and services, or is it silent on that.

Atty. Sokul said no, it's gotten rid of the whole concept of significant facilities and services. He said in Tab 1, at the bottom, going to page 2, he said that there are three different kinds, "a" under 2a, provided by any State or Federal programs, "b" intended for solely occupied by persons age 62 years of age

or older, or "c" intended for persons age 55 or older, and, at least 80% of the occupied units are occupied by at least one person who is 55 years of age or older. He said that housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under the subparagraph, which means to be housing for over 55, and three, that the housing facility or community complies with rules issued by the Secretary for verification of occupancy, and other various verification requirements to prove out that they're meeting the 55 and over, and they'll have to agree to do it at least once a year, and provide the results to the City of Nashua.

Mr. Shaw asked if we are left with the Federal statute, if we're left with 2-A on that first page 1, that only says provided under any State or Federal program that the Secretary determines if specifically designed and operated to assist elderly persons. He said that seems to be the extent of anything that alludes to services or anything special regarding elderly persons.

Atty. Sokul said that they are under "C". He said that A is one category, B is all 62 and over, and then C, intended and operated for occupancy for persons 55 and older, that's the category they are. He said if you look at Tab 2, this is the Federal regs that were adopted in 1999, and you can see in the background section, he said he circled something, a facility or community seeking to claim the 55 and older exemption show three factors; 1) that the housing is intended and operated for persons 55 years and older, 2) that at least 80% of the occupied units be occupied by at least one person age 55 or older, and 3) that the housing facility or community publish and adhere to policies and procedures that demonstrate its intent to qualify for the exemption, but you need to advertise it as housing for older persons. He said that one significant change is the elimination of significant facilities and services previously required by the Act to meet the 55 and older exemption. He said that the section originally required that housing designed for persons who are 55 and older provide significant facilities and services, specifically designed to meet the physical and social needs of older persons, and that was eliminated by HOPA, Housing for Older Persons Act, which was adopted in 1995, and these regs became effective in 1999.

Mrs. MacKay asked if the State had a budget, and legislature doesn't vote on it, and you don't have a budget, you run by the

budget that was in existence, even though it expired, you're still running concurrently under that budget. She said that Federal regs, such as VR, that was expired for years, but everybody still followed the rules that were in existence, and if the Federal law does that, and just makes that assumption, that you follow what was before you do nothing, and the State of New Hampshire follows the same rules, why wouldn't we.

Atty. Sokul talked to the Executive Director of the NH Housing Commission, via email, and said that those things there are still for guidance, but because they're expired, they are not enforceable by the State. He said that the difference is because the State law, which calls for the promulgation of rules about the over 55 community, expressly states those rules need to be consistent with Federal law, and now, if those rules were still in effect, they would be inconsistent with Federal law. He said that the regs that were repealed in 1999, he said he didn't know why those regs were allowed to expire, and have not been replaced, but logic says that because the State statute, which authorizes the rules to be promulgated, and says that those rules must be consistent with Federal law, and now they wouldn't be. He said that this is very difficult for a lawyer trying to advise a client what to do, and that's one of the reasons why they wanted to provide more than what was previously required before it expired. He said that they've gone above and beyond. He said that the Ordinance specifically refers to over-55 housing, and refers to the State statute, which defines it. He said he doesn't think that there is any ambiguity there.

Mrs. MacKay said that there may be some ambiguity about the development or redevelopment issue.

Atty. Sokul said that issue is not before the Board tonight, and it was never raised in the Appeal.

Mr. Shaw asked what VR stands for.

Mrs. MacKay said it is Vocational Rehabilitation.

Public Hearing closed.

MOTION by Mr. Currier to suspend the rules to understand what Atty. Hantz question was asking about.

SECONDED by Mr. Shaw.

MOTION APPROVED UNANIMOUSLY 5-0.

Atty. Hantz said she had a question on the density bonus issue.

Mr. Shaw said that he doesn't believe the Board should bring this up again.

Mr. Currier said that we've already discussed the density bonus issue. He said that the Board won't hear anything else, and will move on to the Public Meeting.

Ms. Vitale said it's already been discussed and clarified.

Mr. Boucher said no.

Mrs. MacKay said she would have went with it.

Mr. Currier said it would be four opposed, so we won't hear it.

Mr. Shaw said in all his time on the Board, he would like some legal counsel to assist us with interpreting the case. He said he's not certain that he wants to advocate for that this time, but is finding that there is a lot of interesting and compelling testimony by a couple attorneys who do this all the time, and feels like there are some real legal nuances to how to interpret this. He said that there are layers of local, State, and Federal law, all intertwined, and it's daunting. He said the Board may need more time to deliberate, there was a lot of information tonight, and didn't think that the Board is ready to make a decision.

Mr. Falk said for other legal follow-up, Corporation Counsel for the City did make a determination that this did meet the elderly housing ordinance, it was already done.

Mr. Currier said that while he appreciates that Corporation Counsel has already weighed in, we are being asked to potentially override. He said that this is probably the most technical thing he's ever sat on, and a lot of layers, and a lot of fresh information, and it's difficult to process it all right now and do diligence to render a decision.

Mrs. MacKay said that Corporation Counsel rendered a decision based upon arguments presented by one attorney. She said if

both attorneys were in the room discussing back and forth the legalities that we may be missing, she wondered what the decision would have been then. She said that was based upon a one-sided argument in that room, in that present tense, and we heard a two-sided argument with rebuttal, and everyone in that room didn't hear rebuttal, they only heard justification on the application. She said she'd love to sit with Corporation Counsel, but said that she's being asked to make a decision that was just based on one side of the coin, and now we have two.

Ms. Vitale said that there are quite a lot of things to go over, and what we're looking at, is if this development will provide significant facilities and services designed to meet the physical and social needs of older persons. She said she'd like to go back and review the testimony and see what points she can pick out that will answer that for a decision.

Mr. Boucher said it's very clear to him, that having read this ordinance over and over, it is confusing with all the State and Federal laws and the City ordinance. He said that yes, there can be arguments that could be for interpretation, and said it's clear to him whether or not it's clear in the ordinance, but looking at it strictly for what it says, that there is credible evidence in the ordinance that this complies as elderly housing. He said that today, as it stands, he said that this follows the ordinance, but this ordinance is written for the lay person, which is why we're here, we're not city employees, it's written so that most lay people can understand the language in here. He said that there was great testimony from both the opposition and the applicant. He said the question is why we are here, we're here to decide on the administrative decision, and finds that whether it's fortunate or unfortunate of how people look at it, he said that he finds that it meets the ordinance.

Mrs. MacKay said that Mr. Boucher's point on page 18 of 57, where the provisions of the division shall apply to projects consisting of more than 30 units in the case of new development, or more than 10 units in the case of redevelopment, and didn't see it as redevelopment. She said its one tiny little house, sitting on a big piece of land, and then it would be taken down and five big buildings would be there, she said that that is new development, it's not redevelopment, they're not repurposing something that's there, they're taking it down and re-doing. She said she doesn't think it meets the needs of elderly housing.

Mr. Boucher said that is not what we are here to debate. He said we are here for something else, and said he's not using that at all to make his decision.

Mrs. MacKay said that in her mind, this does not meet elderly housing.

Mr. Shaw said if the Board looks at what we are being asked, if the proposed elderly housing development will provide significant facilities and services designed to meet the physical and social needs of older persons. He said he's still struggling with that, because he agreed that in some regards, that the criteria was put there, and now it's being judged against as there is vagueness, and thinks that some of what the applicant has proposed is of limited benefit, and questioned whether there is significant things to meet that question. He said about the development versus redevelopment issue, he said he's struggling with that in one sense, in the terms of the applicability, because it is stated as the where permitted, so that criteria needs to be met. He said he doesn't know if they should be considering that, because is the question even applicable, or maybe this is a whole separate item that interested parties can pursue in a different appeal regarding this case at some point.

Mr. Currier said that he agrees that some of the points, or benefits or services provided, some are fairly limited to what they really provide, but then what we have before us is what the law is. He said he's struggling to do diligence with all we received tonight, and a thought is to allow some down time and pick this up at the next meeting. He said right now he's feeling rushed, and would like a chance to read all of this over, and come back in three weeks.

Mr. Currier said he'd like to table the Public Meeting, no Public Hearing, and just continue this discussion and not take any more testimony.

Mr. Shaw said he'd like to have that happen too, there was a lot of information and this is complicated.

MOTION by Mr. Currier on behalf of the applicant to table the Public Meeting to a date certain of February 14, 2017 to allow

us to review a rather large amount of material we have tonight to do due diligence, and likely render a decision at that time.

SECONDED by Mr. Shaw.

MOTION CARRIED 4-1. (Mr. Boucher).

Mr. Shaw said that there will not be any more public testimony at that meeting; all the Board will be doing is continuing the deliberation.

Mr. Currier said that everyone is welcome to attend.

Mr. Shaw said that there will not be any conversations with any other member or any other attorney, it is not legal and it will not occur, it is against the rules.

MISCELLANEOUS:

REGIONAL IMPACT:

There is additional time in the schedule, Mr. Falk said he'd forward the agenda to the Board when it is available.

MINUTES:

None.

BY-LAWS:

Mr. Falk said that they're still looking at the comments that were brought up at the last meeting

ADJOURNMENT:

Mr. Currier called the meeting closed at 10:20 p.m.

Submitted by: Mrs. MacKay, Clerk.

CF - Taped Hearing

that it's been an abandoned lot for a long time, and there is also evidence of the applicant improving other lots on the street with proven success.

Mr. Boucher said that the proposed use would be within the spirit and intent of the ordinance.

Mr. Boucher said it will not adversely affect property values of surrounding parcels, as there was no testimony one way or another. He said that the request is not contrary to the public interest, and that substantial justice is met.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

6. **Gary Wingate, 15 Sherman Street (Sheet 59 Lot 154); Michael Zagrodny, 11 Danbury Road (Sheet 137 Lot 145); Samuel Kouchalakos, 9 Danbury Road (Sheet 137 Lot 137), and John Bianchi, 7 Danbury Road (Sheet 137 Lot 153), appealing the decision of the administrative officer that a proposed elderly housing development located at 122 Manchester Street (Sheet 59 Lot 135) will provide significant facilities and services designed to meet the physical and social needs of older persons. RA Zone, Ward 2. [TABLED FROM 1-24-17 MEETING]**

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay
Rob Shaw
Kathy Vitale

Mr. Currier reiterated what the appeal is about. He suggested that the Board start off with the six categories, in Section 190-42.

Mr. Shaw said that the Board did get one correspondence that was technically after the public hearing, but it was just a summarization of Attorney Sokul's testimony last night, and said that there wasn't any new information in there, it was just a summary of his presentation.

Mr. Falk said that staff received it early in the morning after the meeting, and he thought it was just a write-up of his presentation. He said that he didn't have copies to distribute to the Board at the meeting, and he just emailed it to staff the next morning, that's the reason why staff forwarded it to the Board.

Mr. Shaw agreed with Mr. Falk's reasoning.

Mr. Currier agreed, and didn't see it as any new information, it was just an encapsulation of the presentation. He said it was just a summary, and there is no new information in there.

Ms. Vitale said she didn't see anything that was new.

Mr. Boucher agreed.

Mr. Currier said that they're looking at the Land Use Code, Section 190-42, paragraph A 2, which is the six criteria are on the following page, the first one is assisted living services, the second one is life care or continuing care services, the third is community care facilities for the elderly, the fourth is continuing care retirement communities, the fifth is skilled nursing or nursing care facilities, and number six is homes for the elderly. He said he's fine with going over each of these and see if they fit in.

Mr. Falk said the list actually starts on the previous page, the first one is actually congregate living services, so there are actually seven categories.

Mr. Currier said the page before does list congregate living services. He said that one has to do with federal subsidized housing, and didn't think the applicant was questioning that one specifically. He said that the Board will start with congregate living services.

Mr. Shaw said it's all described in Tab 6, just a couple pages in, page 17 of 57.

Mr. Currier asked if any of the Board members feels that this one meets the congregate living services.

Mr. Currier said he sees some heads shaking "no". He said this one isn't applicable to this application, it's not a low income federally subsidized housing.

Mr. Currier said the next one is assisted living services. He said that these services are provided by board and care establishments such as adult foster care homes and adult care group homes, services include daily activity assistance such as dressing, bathing, and these establishments may be located in single family homes, and share the house with the care providers family.

Mr. Currier said that the third one is life care or continuing care services, the subcategory comprises church or social welfare organizations running retirement centers, where residents turn over some/all of their assets in exchange for housing, personal care, convenience care and some health care, terms used for such establishments are endowment facilities, founders care facilities, etc.

Mr. Currier said that the next one is community care facilities for the elderly, and these establishments are primarily engaged in providing residential and personal care services for the elderly who are unable to fully care for themselves, and for the elderly who do not desire to live independently, the care typically includes room and board, supervision and assistance in daily living such as housekeeping services, and in some instances these establishments provide skilled nursing care for residents in separate on-site facilities.

Ms. Vitale said it doesn't meet it, no.

Mr. Currier said a key thing on this is the housekeeping services, the daily living, the room and board, those are much more intensive than what the proposal is here, and the housekeeping is kind of like an indoor thing, so he stated that it doesn't apply to that one.

Mr. Currier said the next one is continuing care retirement communities, these establishments primarily engage in providing a range of residential and personal care services, with on-site nursing care facilities for the elderly and other persons who are unable to fully care for themselves, and/or the elderly and other persons who do not desire to live independently, individuals live in a variety of residential settings with

meals, housekeeping, social, leisure and other services available to assist residents in daily living, assisted living facilities with on-site nursing care facilities are included in this industry.

Mr. Currier said he's seeing two "no's". Three "no's".

Mr. Currier said that the next category is skilled nursing services or nursing care facilities, this sub-category comprises establishments that provide 24-hour skilled nursing care, included are nursing homes and convalescent hospitals for the elderly.

Mr. Currier said he's feeling no.

Mr. Currier said the final one is homes for the elderly, this U.S. industry comprises establishments primarily engaged in providing residential and personal care services, i.e. without on-site nursing care facilities for the elderly or persons who are unable to fully care for themselves, and/or the elderly or other persons who do not desire to live independently, the care typically includes room and board, supervision, assistance in daily living such as housekeeping services, and these establishments may include assisted living facilities without on-site nursing facilities, homes for the aged without nursing care, homes for the elderly without nursing care, old age homes without nursing care, old soldiers homes without nursing care, rest homes without nursing care, retirement homes without nursing care, and senior citizens homes without nursing care.

Mr. Currier asked about thoughts on that.

Mr. Shaw said the question for him comes down to the care typically includes room and board, supervision, and assistance in daily living, such as housekeeping services.

Mr. Currier agreed, he said the Board can start to, typically, what is meant by typically.

Mr. Shaw said that there is a vagueness to that, but that's the most questionable thing to him in satisfying that category.

Ms. Vitale agreed.

Mr. Currier agreed also, he said that he thinks he's sensing that the other ones are not, but this is the area that there might be satisfaction to in the application, perhaps. He said he struggled as well with the typically includes room and board and supervision himself.

Ms. Vitale said she looked at the first part of that, she said in number one, the elderly or persons who are unable to fully care for themselves.

Mr. Shaw said its really and/or, so only one of those or both of those, the elderly or other persons who do not desire to live independently. He said he didn't think the first part is satisfied, but thinks the second part is where the question, that's part of the question, the next part of the question, he said he didn't think this proposal is trying to take care of elderly persons who are unable to care for themselves, he said he thinks they're saying it's for the elderly or other persons who do not desire to live independently, however, he said he's not sure that what he seems to recall from the proposal was, more of elderly housing that's meant for very independent living, so to expand what he's concerned about meeting the criteria here, it is if this is intended for those that aren't interested in living independently, and is there going to be the care that's provided that addresses that, because that's what that statement is alluding to, either they can't fully care for themselves, or they don't want to live independently, and there would be care services provided at some level, specifically, to those conditions.

Ms. Vitale said all she can do is use her own experience with her old relatives. She said for her mother, who just sold her house and went into a multi-purpose, she's in an area where she has her own apartment, she gets housekeeping services regularly, it's part of living there, she gets staff that is on-call, they will show up. She said that she gets repairs, it's all included. She said that there is food on-site, there are activities galore on-site, they take them places, there's scheduled things that they can sign up for, there are rooms they can use, pools, exercise areas, the whole works. She said granted, this is meant to be like that completely, but said if she looks at where her grandmother going into it, it'd be a completely different situation, she couldn't care for herself, that was small apartments, someone lived on-site, they had a meeting area, there were things to do. She said this doesn't

come close to her mother's, it may be more like her grandmother's place, which is an older way of doing things, she said she'd look at it as more of because you can no longer be in your house, and afford your house, so you have like a one-bedroom apartment that the people can see each other from their front door, and talk and say hi.

Mr. Currier said he's seen those type of facilities to visit some friends in those. He said he didn't think that this is a proposal for that, and he said he didn't think they were claiming it to be at that level, he said he thinks what the Board is struggling with is it at a level that meets this criteria in general.

Ms. Vitale said she's trying to place what she knows into does it meet the criteria, does it meet the criteria.

Mr. Currier said the elderly or other persons who are unable to fully care for themselves and or the elderly or other persons who do not desire to live independently.

Mrs. MacKay said to her, it doesn't meet this criteria. She said like what Ms. Vitale described, where her mom would go, she went to her husband's family, and it just doesn't have the same thing, what we heard, what we were told, and what this says, seems to be very different, having a room, a community room, where somebody could go and have recreation, like a tv room, but you'd have to be awfully independent and be able to navigate and be cognitively aware of what was going on to be able to partake in that, and this doesn't, it just doesn't meet it. She said that this requires more, and doesn't think that this proposal, she said she didn't think that the bar is high enough, the bar is set at a certain level, and said she honestly didn't think it was being met. She said that typical care, typical care means average, it means it's SOP, standard operating procedure, it's room and board, it is supervision, assistance in daily living, such as housekeeping, but none of that is going to be there, in close or in proximity to, is not hands on, and didn't see a correlation.

Mr. Currier said that there were quite a few topics that were discussed at the last meeting when there was the public hearing. He said he wanted to make sure that the Board touches on all of those here in the discussion tonight. He said that one of those was the development/re-development question or conundrum. He

said that the other one was the Stinson Park Hayden Green, which was taken that there was some analogous elderly housing this is being offered more, so he wanted that in the Board's discussion tonight, and maybe we can pick that up in the discussion tonight, about the development/re-development forum, that's kind of important. Mr. Currier said that the Code says that the provisions of this division shall only apply to projects consisting of more than 30 units in the case of new development, and more than 10 units in the case of re-development of sites which have not received a site or subdivision plan approval in the previous 5 years.

Mr. Currier said that one of the point-counterpoints the Board heard was that this was defined as a new development, or is it re-development.

Mrs. MacKay said it's confusing, because when she looks at the property, she sees the front piece of the property, with a small structure, and you want to take that down and put up six. She said in her head, that she doesn't understand how that means it's re-development, you're going to develop three-quarters of a site that only one-quarter is developed now.

Mr. Shaw said it really comes down to the technicality of it. He said if it only has to have been that there was something that was developed on that piece of land, regardless of to what extent, that that automatically means that it's redevelopment, even though, and he said that if we look at the scope and scale and say that it's even more than that percentage, it has all the feel of re-development, but because it's still on this one piece of property that had some development originally, it seems that it could be that the technicality is that it's still re-development, and that's the kind of legal question that we've heard both arguments from the attorney's last time, so, he said he's still not really sure, because what it feel like to him, he agrees with Mrs. MacKay, but there may be some technicality there in that if there was some development there, it's automatically re-development, regardless of even if it was 1% of the property and the other 99% was undeveloped. He said that's part of the struggle for him, there was conflicting testimony.

Ms. Vitale said in this case, she's looking at it as new development. She said she looks at re-development as having, if that existing structure is being used, they could redevelop and build a new house, but they have to use part of that existing

structure in the new building, and she said she looks at this as new development, that's not the intent.

Mr. Falk said that regardless of what the Board thinks of the issue of the new development vs. re-development, that is not part of the appeal.

Mr. Currier said he looked up the definition of re-development in the paper dictionary, and it says two definitions, one is to develop something again, the other is to restore to a better condition.

Mr. Currier said the other discussion was the Stinson Park and Hayden Green properties.

Mr. Shaw took it as those are other projects that might have been errors in the way those were judged, and didn't know if the Board can go back and look at those, or if we might not question the validity of those as mentioned to the criteria that was in place at the time, but said he doesn't see a lot of compelling need to consider those cases, he said he feels like there's enough, there's quite a few differences in terms of the circumstances, also of those properties, their situations, proximity to abutters, etc. so he said he's not seeing that there is a lot of reason to consider what was or wasn't done, he said that they were judged or not judged.

Mr. Currier said that he's in agreement that those are separate projects, and felt that they were from the testimony, he said he felt that under the argument that these two are pretty new, they offer a lot less that what we're offering, and they kind of clicked under elderly housing. He said that they're two separate projects, and if he were considering those for elderly housing, he thinks that they offer less, much less to that definition than what this project does. He said that he doesn't think that the Board should take that into consideration if those projects had whatever density bonuses, etc., he didn't see it as a reason for him to have this one consider that, he said he looks at those separately from this one, and if those had benefits from the definition of elderly housing, maybe they were overlooked, or a mistake was made or whatever, but isn't bringing it into consideration for this project.

Mr. Shaw said that if the Board was looking at a project right down the road on Manchester Street, or in the immediate

neighborhood, and had much more or truly similar circumstances, he said it might be more reason to consider it, but even that, he's still not sure it would be sufficient, but there are too many differences already.

Mr. Currier said that another point of the appeal is the one lot, or one structure. He said it would boil down to paragraph (B)(1), which says that elderly housing that contains duplex or multi-family dwellings, is permitted as of right in the RA, RB, RC zones, subject to the requirements of this section; elderly housing in the form of single-family detached dwellings are permitted in the R40, R30, R18 and R9, RA, RB zoning districts. He said that what's before the Board is the argument, well, Mr. Falk and company has said that more than one principal structure is permitted, the appellants are saying no, that's incorrect.

Mr. Currier said that if this proposal meets the definition of elderly housing, he believes that there would be more than one principal structure permitted, but only if it meets the definition of elderly housing, it has to meet that for more than one principal structure to be permitted, that's how he interprets it.

Mr. Shaw said that he came up with a similar judgement on that.

Mr. Currier said that where the Board is at is backing up to this first thing the Board talked about, is the definition, this final category, to meet this test for elderly housing. He said that's the most important point here.

Mrs. MacKay agreed, it doesn't meet elderly housing, and anything else is moot, it doesn't matter, we have to go through the first hurdle first, and that's where she stopped, because in her humble opinion, it doesn't meet the criteria.

Mr. Shaw said that the Board should touch on the fact that there was a lot of discussion as well, and a lot of questions on the applicability of the State and Federal laws that have evolved and changed, and some of the references back from our Code to the RSA, and it references back to the Federal and State and so, part of the argument had been essentially that a lot of this criteria in our Code is actually moot and that this newer state code that's removed all that categorization pretty much now just kind of speaks to a much broader kind of definition, basically this statement, existence of significant facilities and

services, specifically designed to meet the physical or social needs of older persons, or if the provisions of such facilities and services not practical, that such housing is necessary to provide important housing opportunities for elder persons, that's in section 4 of the State code. He said that we are kind of being told we should consider that that change since we reference to the RSA that calls into question this categorization, so we just actually spent the first part of our time tonight, so, he didn't know if anyone has come to anything definitive in terms of their understanding of how these all play together, or don't play together, and what we're really left with as our criteria.

Mr. Currier said he's put thought into that, and said that the Board can look at and slice it two ways, one way is that if there are local codes that are more restrictive, we should be abiding by the local codes, that general rule pushes us more towards Nashua codes, however, the Nashua code also refers to the State codes, and the State codes refer to the Federal code, and in Tab 3, the Federal code of 1995 does a very quantified analysis of it, most of which is kind of fascinatingly summarized at the end, the housing for older persons self-certification, where there is a check-box sort of thing, so, he said he spent quite a bit of time looking at what is offered in our package here for this proposal, and said how many Federal ones, because that's the real quantification here, and this is in Tab 3, the second page on the left-most column at the bottom, it states housing provider provides significant facilities and services if it makes available directly or indirectly at least two facilities or services, and at least five categories described in paragraph D of this section, and then there are 12 categories, he said he'd take what's here and would package them and see if it meets the test. He said he came up meeting category one, but not two or three, or four. He said if you take this criteria of at least two facilities or services and at least five categories, he said he wasn't exceeding that threshold in the way he translated what was offered in this package back to these Federal guidelines, so, he said it certainly rises to this criteria somewhat, but, it wasn't passing muster. He said that one common thread was the kind of independent help, in other words, folks could get independent help and in each category there are some things like the bridge club, or card games, but there are many that are a higher test, at least weekly potluck dinners or more personal services or in-care facilities at the home, within the house, versus the

outside kind of maintenance. He said that when he looked at what is offered compared to this Federal, he said he didn't think it meets that bar. He said that what's offered doesn't match to each of these categories, so you kind of have to give a little license one way or another, it's not any sort of exact science.

Mr. Boucher said that he believed that Attorney Sokul summarized that in tab 10, and made his point about meeting those.

Mr. Currier said that if you look at tab 10, on the second page, the following services and programs will be provided, a) programs desired to provide a social life for residents. He said to him, that means D (1). He said paragraph B meets D (2), being the Federal paragraph that we just talked about. He said that C is D (3), but then we get down to D, recreational programs, and to him, that's D (1) again. He said on point E, the services designed to assist residents with the maintenance and upkeep of buildings and grounds, that element would be met, and kept up, but that doesn't apply to category 4, the homemaker services, that's the difference between outside the house and inside the house, so he said he was disagreeing with Attorney Sokul on that paragraph E. He said that for paragraph F, he said that meets D (11), but is in disagreement with G, H and I. He said for G, regularly scheduled meetings will be held about nutrition, back care, vision care, breast cancer, vision care, breast cancer, prostate cancer, all of that would be done, but that's lining up with getting back to D (6), category six, health needs, and the Federal regulations say emergency and preventative health care programs, meetings about back care, nutrition, breast cancer, and it goes on, monthly blood pressure checks, flu vaccine shots, which they'll meet, periodic vision or hearing tests, staff or volunteers to pick up food from social services, buddy system of residents to do errands, emergency telephone network staff or volunteers, medical doctor facilities located within two miles of the facility, health care equipment pool for resident use. He said in totality, while some of those elements are offered as Attorney Sokul states in G, he said he's not feeling in totality it's meeting up to the spirit and intent of what's needed for those physical needs. He said he's struggling with what's being offered to meet with these Federal guidelines to go over that bar.

Mr. Shaw said that is still out of the formerly expired regulations, so it's kind of the spirit and intent of meeting

what used to be required, but is not sure even if the Board can find arguments about the checklist and scoring what all worked out, if it really matters, because this is technically not applicable any longer anyhow.

Mrs. MacKay said that there's nothing new yet, so you still have to use what's there.

Mr. Shaw said specific, there's other regs, they're way less specific about what needs to be done, so he said that brings him back to where should we really just be utilizing what we have codified in our Land Use Code.

Mr. Currier said that brings him in full circle also, because he agrees with Mr. Shaw in that he's spent time looking at what the State says, which relies heavily on what the Federal said, which is now expired, and looked back to the plain old six categories that we have, and they can be argued that they're more specific than State regulations, and then got more comfortable with those seven criteria, which the applicant is contesting right from the get-go. He said that he's relieved, he said he's never really dug into this before, but what it appears, he said he thought he'd find, is read with that criteria, we, being the City of Nashua, which was by somehow, like really different or out of line, and said he didn't think that was the case, he said that our State and expired Federal, they're getting at the same thing, and we do a pretty good job of articulating that in our book. He said he thinks we focus on our own Code book versus other criteria.

Mr. Shaw said that if we really address if there's agreement that the judgement under the seven categories, at least four of us already said that only one is potentially applicable, and then we zeroed in two statements, for the elderly or other persons who do not desire to live independently, the care typically includes room and board, supervision, assistance with daily living, such as housekeeping services. He said that to him, right now, the whole question pivots on that, and said he's with Mrs. MacKay in terms of not seeing that being met, and that this doesn't qualify as elderly housing as proposed.

Mr. Currier said that what our Code book used to say before it was revised in '07, and there was an additional category that was removed, under elderly housing classifications, it says that there is a congregate living services, assisted living services,

all of those seven are exactly the same, but there's another one, retirement housing services, these establishments offer minimum convenience services, but focus on attracting elderly residents, so as to provide a social support system among the residents. He said that is not in our Code, but it was in our Code, and thought it was interesting to see where we came from to wonder what the intent was, and the fact that that was dropped, he feels, was the effort to kind of raise the bar for more significant services provided.

Mrs. MacKay said that it's right, she thinks they raised the bar, they said it needs to be more, to be elderly housing, and generally it does.

Ms. Vitale said she went back to the appeal, where it provides significant facilities and services, designed to meet the physical and social needs of older persons, and put that thought into what is proposed, and the key word is the significant part, and then thought about all the services and physical needs and social needs, and said she doesn't see it. She said what's laid out and what is being shown as the buildings and layout and how they would function, the totalness of it, she said she doesn't see it.

Mr. Boucher said that if we look at those six items that we've been focusing on, without looking at what's around it, he had a difficulty with that. He said he keeps going back to the first paragraph in Section 190-42, he said that we all have an interpretation of what that says, in looking at it from his responsibility in the appeal, he looked back and determined what he is looking at. He said that we're looking at the spirit of the ordinance in a variance request. He said he's looked at the Office of Energy and Planning in interpreting the ordinance, and for an appeal, it says that the Board must confine its review to the language in the ordinance. He said he looked at the Federal law, and the State regulations, and that seems to be way looser, maybe because it's more broad. He said he's reviewed the first paragraph, and he said he's made a connection to how this is applicable to this case, and what's confusing about this is the last category we were talking about, elderly persons who do not desire to live independently, he said he went back to that paragraph 4, and is trying to interpret this ordinance, and what it says is to look at the literal meaning of the ordinance, but is having difficulty with that. He said this is example that principal uses and structures that constitute elderly housing,

and it goes back to the table in Section 42-1, and is concerned that this is just another example. He said it states that it recommends housing for elder persons provide the diverse and special needs of this group, including an aids for meeting function rooms or recreation facilities attempting to foster the housing alternatives for older persons with supporting facilities and services. He said that if he looks at the definition of elderly housing and reads what is in the Office of Energy and Planning, to him, he feels it's applicable to this application. He said he's not comfortable saying in summary that some of these items are not applicable at all, but is not comfortable in saying this is specifically a yes or a no. He said he's looking at the whole ordinance and trying to understand what the writers were trying to do in this ordinance, what is the intent of the ordinance, and can agree with the administrative decision is on this.

Mr. Shaw said in Table 42-1, the skilled nursing services or nursing care facilities, that's classically describes a nursing home that many of us might have grown up with that concept, and that used to be the only kind, and there were very few kinds of elderly housing. He said that there are about a dozen or so bullets, some points that are being made after that, a few of them are statements about the intent, the intent is to foster the development of housing for older persons while detailing local planning standards and promoting consistency with land use policies and the Master Plan and the land use laws and regulations. He said another one is to regulate the intensity and mix of the different types of dwelling units required to meet the needs of these citizens so as to provide ample outdoor and livable space and to retain a sense of personal identity, intimacy, and human scale within the development. He said another one is that the intent is to review the bulk, height and spacing of buildings, and the traffic circulation and parking pattern within the development to ensure that the adequate light, air, privacy, landscaping, and open space for passive and active recreation are provided with the development, and then it goes on and talks about a little more about the City of Nashua finds and determines and declares that, and there are several statements about 55 and over persons, and the Master Plan recommendation that cites the increased need for elderly housing. He said he wanted to go back to the seven categories and perhaps because it flips pages on this printout, and if you go back to this category called homes for the elderly, the very first statement, is this U.S. industry comprises establishments

primarily engaged in providing residential and personal care services, so it's in the very first part of the description, then, the parenthetical statement says without on-site nursing care, and then it says for, and it says one or the other, he said it's interesting because it's not just residential, it's residential and personal care services is what is highlighted in that description.

Mr. Currier said he wants to go over this thoroughly, and go over all the points, and asked if there are any stones unturned here before we make a motion.

Mr. Currier said he feels in line that this does not meet that criteria, he focused on the homes for the elderly, the last one, and in aggregate, the elderly or other persons who do not desire to live independently, that is where the struggle is with this application, while there is some elements of this criteria that is met but in aggregate, it doesn't rise to the level. He said he feels that there are four of us that feel it does not meet it, and one that does, and that's why there is five of us here.

MOTION by Mr. Shaw on the appeal of the administrative decision as advertised that a proposed elderly housing development located at 122 Manchester Street will provide significant facilities and services designed to meet the physical and social needs of older persons.

Mr. Shaw said that the Board finds that the proposal does not meet the sufficient criteria to qualify as elderly housing, the Board considered the testimony from everything from the Federal, State and applicable local code, and in considerations for elderly housing developments such as Hayden Green and Stinson Park that in recent times were instituted as elderly housing, and questions about the applicability of this as well from the redevelopment or development perspective regarding the total number of units, but ultimately the Board's focus is with our Code, Section 190-42, under Section A, Applicability, specifically Table 42-1, the elderly housing classifications categories and definitions, the Board considered all seven categories that are listed and believes that there is only one that has some applicability, that is the seventh one entitled homes for the elderly, but on closer inspection, and consideration, the description that the, quote from the Code, establishments primarily engaged in providing residential and personal care services, i.e. without on-site nursing care

facilities, for the elderly or other persons who do not desire to live independently, and the care typically includes room, board, supervision and assistance in daily living such as housekeeping services, and the Board, in reviewing what has been proposed believes that while there are some services and some offerings that will be provided, very little of this is elderly specific and might be found in any sort of a multi-unit type of facility that caters to a group of people, but specifically, that addressing the independent living but also providing care is simply not met with the proposal that the applicant originally made.

Mr. Shaw said that he moves that the administrative decision was incorrect and that this is not qualifying as elderly housing.

SECONDED by Mr. Currier.

Mr. Currier said that he has greatest respect for Mr. Falk and Corporation Counsel, and this wasn't easy to overrule that, because those two are very experienced, but is feeling that this case, he is overruling it and is not taking this action lightly, and doesn't happen often.

Mr. Shaw sentimented too, and staff does a lot of in-depth work, there was a lot of scrutiny and testimony, and it wasn't easy to get to this decision.

Mrs. MacKay concurred.

MOTION CARRIED 4-1. (Mr. Boucher).

MISCELLANEOUS:

REGIONAL IMPACT:

The Board determined that there are no cases that involve regional impact.

MINUTES:

January 10, 2017:

MOTION by Mr. Currier to approve the minutes as presented, waive the reading, and place the minutes in the file.

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
April 11, 2017

A public hearing of the Zoning Board of Adjustment was held on Tuesday, April 11, 2017 at 6:30 PM in the Auditorium, 229 Main Street, at City Hall.

Members in attendance were:

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

Carter Falk, AICP, Deputy Planning Manager/Zoning

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

REHEARING REQUESTS:

122 Manchester Street:

Mr. Currier asked the other members about tabling the rehearing request until the next meeting, where there is an expectation of having a full Board.

Mr. Boucher said as long as it doesn't go against any of the rules of operation he's ok with it, and said that it's important that we're all here with the full benefit to the public.

Mr. Falk said that even the action of tabling the request is still an action, so it should be ok to table.

Mrs. MacKay said that she's fine with it being tabled, and said that she intends to recuse herself from the case.

Mr. Boucher said that if Mrs. MacKay recuses, there would be only two members anyways.

MOTION by Mr. Currier to table the rehearing request for 122 Manchester Street to a date certain of April 25th, with the expectation of having a full Board, and it's the fairest decision for the applicant.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 3-0.

1. **John J. Flatley Company (Owner) Expose Signs & Graphics (Applicant) 15 Tara Boulevard (Sheet A Lot 995) requesting the following variances: 1) to exceed maximum ground sign area for an existing sign, 150 sq.ft permitted, 256 sq.ft granted by Zoning Board on 5-12-15, permit issued for 239 sq.ft - an additional 36 sq.ft panel proposed; and, 2) to allow proposed sign panel for an off-premise site at 200 Innovative Way for use to be determined later. PI Zone, Ward 8. [TABLED FROM FEBRUARY 14, 2017 MEETING] [POSTPONED TO APRIL 11, 2017 MEETING]**

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay

Kevin Walker, John J. Flatley Company, 10 Tara Blvd, Nashua, NH.
Mr. Walker said that the original request was an increase of 17 square feet on the previously approved 256 square feet. He said that what was actually built on the sign was 239 square foot sign. He said that after the last meeting, the Board's request was to look at keeping the sign as is, at 239 square feet, with no increase to the sign, and seeing if there could be a Homewood Suites sign and the restaurant sign in the same box that is there now, with no change to the sign area.

Mr. Walker said that the restaurant sign will fit into the box that is there now. He said that the hotel approved the new sign layout, so the sign face size will remain the same. He referred the Board to the proposed sign, which has a black horizontal line for the restaurant on the bottom of the sign.

Mr. Falk said that the applicant had two variance requests, and the first one would go away, since the size of the sign would not change. He said they'd still need the variance for the off-premises sign.

MOTION by Mr. Currier to approve the special exception on behalf of the owner as advertised. Mr. Currier said that the request is listed in the Table of Uses, Section 190-32.

Mr. Currier stated that the use will not create undue traffic congestion or unduly impair pedestrian safety. He said it will not overload public water, drainage or sewer or other municipal systems.

Mr. Currier said that all of the special conditions will be fulfilled, per testimony. He said that it will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of the residents.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 5-0.

MISCELLANEOUS:

REHEARING REQUESTS:

122 Manchester Street:

Mr. Currier said that it was tabled from the April 11, 2017 meeting. He said that the applicant, Attorney Sokul submitted an e-mail requesting that the request be postponed to the May 23rd meeting. He said that the Board will table the request to the May 23rd meeting.

MOTION by Mr. Currier to Table the rehearing request to the May 23, 2017 meeting.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 5-0.

MINUTES:

3-28-17:

MOTION by Mr. Currier to approve the minutes as presented, waive the reading, and place the minutes in the file.

SECONDED by Mr. Lionel.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 3-0.

REGIONAL IMPACT:

Mr. Falk said that there is an extra week in the schedule, and the Agenda is not set. He said that there are about seven cases, and once the Agenda is determined, he will e-mail a copy to the Board members.

**** 10-minute recess ****

REHEARING REQUESTS:

122 Manchester Street:

Mr. Currier said that there are four questions that by law, we discuss. He said the first question is if there was any procedural error, including improper notice, denying someone the right to be heard, etc.

Mr. Boucher said I don't think so, no.

Mrs. MacKay said no.

Mr. Currier said he doesn't think so, he said that the Board allowed everyone who wanted to speak to speak, extending some testimony where the Board felt it was appropriate because it was such a deep case, the notice by the City to all the abutters, I think, was thorough, all the abutters were notified, so, I concur that there wasn't any procedural error.

Mr. Currier said going on to question two, and asked if it was an illegal decision, in other words, did the Board fail to completely address each of the points of law required for the variance.

Mr. Boucher said that he's deep in thought right now.

Mr. Currier said he thought the Board spent a lot of time discussing the points of law, Mr. Sokul makes the argument that we get it wrong, or got it wrong, and that, to summarize his arguments, that the Federal law is, and the State law is not as clear as the Nashua law, and that for that reason, in his

argument, he thinks that we have gotten it wrong, and also he speaks to the point number seven, and opened up the Code book, that homes for the elderly, point number seven, he's highlighted the elderly or other persons who are unable to fully care for themselves, the elderly or other persons who do not desire to live independently, the care typically includes room, board and supervision and the assistance in daily living, such as housekeeping services. He said in his opinion, that element of number seven was what the Board discussed a lot, and, believes Mr. Sokul is saying that it's not cut and dry, and the bar isn't that high, and that by us, or me, believing that it has to meet that test, is an illegal decision. He said he hears his point then, and hears it now in the rehearing request, but believes that this Board, and my role on this Board, is to interpret the Codes that are here in front of us, and believes that the definition of elderly does meet that test, there's another point that he makes in the rehearing request that ties into this question, and that is the point of the other two elderly housing, or over 55 that were approved by the City of Nashua, and said his feeling of that is if he was asked if they meet elderly housing by these regulations, he said they do not, yet they were approved, but they never came to the Board, so, I see that two wrongs don't make a right, while those were approved, he said in his opinion he shouldn't be approving this, he said he sticks with this definition of number seven, and feel it needs to meet that test, so, that's a long way of saying, that while he thinks the applicant, Attorney Sokul is making the argument that it's an illegal decision, he said he doesn't believe it was an illegal decision, and believes that we addressed all the points of law, and that's where I'm at on this one. He said he's looking for two other opinions on question number two.

Mr. Boucher said he was the lone dissenter on that vote. He said again, when he looked at this, he said he's trying to look at it from a different point of view, but struggle with the legal decision, but still stands in the same position he was on the night that we made the decision. He said he probably has a full opposite view of what you (Mr. Currier) just said, and that's why we're here. He said that what he struggles with in the rehearing request is the illegal decision and asked to refresh his memory, or help me again, when we say, when we refer to as an illegal decision, you know, decisions can be made, and not everybody agree with it, and still be legal, or are we talking a legal decision, like we completely did something that

was not correct from this point of view, so help me with that a little bit.

Mr. Currier said his thought on that is that he thinks you encapsulated first of all, the meeting pretty well, in that there were four who felt it doesn't meet the definition of elderly housing and the center, or yourself, that felt it does meet the test of elderly housing. He said that was the way things panned out on the night we voted on this, and it's always a struggle when a dissenter is now confronted with a rehearing request, because your passionate opinion was that it is elderly housing, mine isn't, we differ on that, so then you ask, was it illegal, he said his answer on that is that often times he's been a dissenter on a rehearing request and the way he answers that is that if he thinks it is completely out of whack, then maybe it's illegal, but if he feels that the discussion was within the realm of reasonableness, that the different Zoning Board members can come into play with, and something wasn't completely out to lunch, then, he said his experience when he's the dissenter on a rehearing request, if he feels that the opinions are reasonable that somebody comes up with, even though he disagrees with them, he feels it's legal if it was just a gross misinterpretation or something out to lunch, he said he guessed that could be illegal. He said he doesn't know if he ever felt an illegal decision was made, and can't remember as he sits here. He said that illegal is a pretty strong word, but that's the word that is there before us.

Mr. Boucher said that when he looks at this, sometimes what he tries to do is look at it, as did we not do anything in question one, right, that would cause this to be an illegal decision, so he doesn't know if it's really tied. He said his struggle is, is thinking the same way as you can, so, he can look at this as though he does not agree with, and was very specific about one portion of the, and that's why he dissented, though he doesn't agree, he doesn't think that he believed that there was something illegal about the decision that was made. He said he doesn't see it, it's not hitting him in the face.

Mr. Currier said that he wanted to jump in, one of the points that Attorney in the rehearing request, and maybe you can argue it could this be illegal, was about the email, or text or whatever it was that was sent, and you might say that the charge, or the discussion in the rehearing request was, was it a preset decision, was the Board doing the bidding of the Mayor,

and wanted to speak about that, because, he can only speak for himself, he said he certainly had no idea where anybody else stood on this decision coming into the meeting. He said he didn't' discuss it with anybody else, and didn't discuss it, nor does he regularly talk with the Mayor, and certainly had no idea where he stands before or after the case on this case. He said the first and only thing he knew was that when he read it in the rehearing request he guessed it was, and is only speaking for himself. He said for himself, he wasn't doing anybody's bidding, or discuss it with anyone, he said his opinion was what he formed from reading over and over Section 190-42, and the merits of the case, and is only speaking for himself, and asked as Chair that we each address that, because it's actually kind of alarming to him, it's embarrassing, and it sounds that the Board is doing the bidding of the Mayor, that wasn't from him, he'd like Mr. Boucher to kick off first again, with his thought on that.

Mr. Boucher said that his opinion is, and again, we don't talk to one another about the cases before we come to the Board, so it's not like he was polling everybody or asking what happened, he said he just read what he read. He said he generally thinks that we're all good people, and doesn't think that there is any malice that's done on purpose, and does believe in this case, or any case, that it's all about perception, right, so we don't do things, generally people are not doing things to hurt each other or to create undue tensions, or to do these things, but it's just a perception of it, right, and he believes that, he does not have any contact with the Mayor, and the Mayor doesn't talk to him about anything, so he has no idea about any of this, so, his opinion is, perception is there, and that's what the public would see, that does not mean that he believes that anybody was in collusion, that is not for him to judge. He said all he can say is what he sees at face value. He asked how does this affect if this is truly something that would effect it, then it would have been a three, then if you eliminate that, if you throw that in the mix, there was five voters here, so that could have went to 3-2, so it still would have ended the way it did, if there was no other means of conversation, so, he said that there's no information other than what was in the text, but from sitting from the outside of this Board looking in, there's got to be questions, that's a natural reaction to the question, so, does that rise to saying hey, just that in itself should have a rehearing to be fair and impartial, he said he doesn't know, he can see it going both ways. He said he makes no judgements,

knows Mrs. MacKay and the Mayor to be, the only interaction he has with them is professional and honest, but again, is not looking at it any deeper than that.

Mrs. MacKay said that first off, she said she didn't know a thing about 122 Manchester Street until she got the packet. She said she never spoke to the Mayor, and never knew his opinion, there was no coercion, there was no request that she absolutely vote how he wanted, she said her determination, her decision, was made based upon information that came here, it was based on information that everybody said, it was based on information from not one, but two attorneys, we had the benefit of hearing both sides, not just one, and as for the text, she stands by what she said. She said that the Zoning Board absolutely did its job. She said it's an honor and a privilege to serve with each and every one of you, and to be a part of such an intricate, well-vetted case was amazing, and the fact that she did do the text, sometimes she sees the Mayor afterwards because the Alderman would still be meeting, and in her capacity as the Chair of the Nashua delegation, she said that she does encounter the Mayor, but on legislative issues. She said she files legislation on behalf of the City of Nashua. She said that is separate and apart, but that relationship is existing, he is someone she's known for years, but, did she text him for any other reason than to say well done, good job, it was after a public decision, it was in the public domain, it was on tv, there was no malice or forethought, there was no nefarious covert reasons, it probably was just, when you go to Market Basket, and you come through the checkout, and the checkout person is really kind to you, and the person bagging is wonderful, she's the guy who goes to the manager and says well done, I'm glad you've hired those people, it made my experience really good, and I'll come back. She said basically in her head, this was the same thing, this was well done, it was just amazing. She said that in her capacity in Concord, we are very open, very transparent, and that would be a determination that would have gone back to the Chair and Vice Chair of the committee. She said it was the natural order of things that get done, and how they get done in her world. She said it meant nothing more than what it says, it was no more, no less. She said she doesn't know what else to say, other than does she think she did anything wrong, no. She asked if she would do it again, yeah probably not because it caused a firestorm and made a lot of people wondering about things, and so, for that reason, no, but for the reason of did she do something intrinsically

wrong, or horrible, no she did not. She said that for the determination and the decision, again, we heard from two attorneys, not just one, and wondered if staff had the opportunity to hear both sides, would the decision they made be the same. She said that there's all those thoughts that go through your mind, but the decision she made was made right here at the time of the hearing, and took everybody's input into consideration, the attorney's, the owners of the property, or the applicants, the neighbors, fellow Board members, Carter, everybody's comments carried equal amount of weight, and that's how the decision was made, not because she had any other information coming in. She said she came in just as blind as anyone else, and did not know a thing.

Mr. Currier said that the topic of the email was, he said he was really trying to have all five of us here, and it backfired, by sending it to a date when we thought someone would be here and we actually have less here than would have been here if we had it earlier, and it's a lesson learned for me. He said that here we are, there's three of us, and in absentia of the other two voting members, Ms. Vitale and Mr. Shaw, he said that as he sits here, his opinion that is that there was no collusion between them, he said he's worked with them for many years, but that's just his opinion, he said he's not feeling that there was an injustice or bidding being done on those two, but that's just opinion.

Mr. Currier said let's move on to the third question.

Mr. Boucher said just a comment, again, this has nothing to do with any personal views or anything, but as he thought about it, and again, my opinion, because of what he thought was not an indication of anybody's forethought or malice, but the perception from the public. He said he's one to think that, not in every case, but it's applicable here, where just the perception of it and the importance of this Board, would it be more harm in rehearing it, or less harm in rehearing it, based upon the fact that there could be a perception, and that's not a perception pointed at Mrs. MacKay, it's just the general perception that even though we can sit here and prove that that's not the case, just the idea that may linger. He said in his view, to put that completely to bed, and to say, you know what, we're not even going to take a chance, you know, it would be, it would serve better to rehear it, rehear the case, and maybe the same outcome comes out, but rehear the case, in light

of what the perception may have been for the original decision. He said he's not arguing whether or not the decision at this point is legal or illegal, he's just saying it's about perception, and maybe what he's saying has nothing to do with the law or the legality of it, it's just again, his opinion, so he wanted to put that out there.

Mr. Currier said to follow up on that, in knowing that he was not pre-dispositioned one way or another on this, and hearing the testimony from you two, certainly the rehearing request before us is to nix a member and rehear the case, and like you, doesn't see the benefit to that, sure, mathematically, we had a 4-1 vote, and one of the fours is being requested to step down, but mathematically, that would help the applicant if you do the simple math, but doesn't find value in that, he said if we hear the case again, we'll be hearing the exact same information from both parties, and essentially, if you recuse yourself, if you have the right not to anyway, and, if there is another member pulled in, he said he just doesn't see value in that, it's a huge burden and cost across the board, and doesn't find value in it.

Mr. Currier said that moving on to question number three, he asked if the request for rehearing contain any new information not presented or available to the Board at the original public hearing - thoughts on that. He asked if Mrs. MacKay could kick that off.

Mrs. MacKay said if we're looking at the merits of the case, no, she said she didn't think it does.

Mr. Boucher said again, he's in a different position, so, in general, he'd say could possibly be, because there is some definition that wasn't there before, but again, that's his opinion, so he said he doesn't know what that rises to, but, just making that comment.

Mr. Currier said his thought on question number three is in the rehearing request, there are several key points on the top of page number 7, there's a point about a housing community can only demonstrate three factors, that is a criteria which was argued in the very beginning, it's reiterated here, but that was argued before, and then down a paragraph under the current State law, that, he feels was argued in the very first presentation, the Federal law, the State law, and thought it was being re-

represented here without new information, he thought the information was very complete and thorough on the first go-round, and then on page 8, in the middle, about that 122 would comply with all Federal and State laws and the applicant has demonstrated such compliance, again, that's a strong point on behalf of the rehearing request, but it's not new information, and still disagrees with it, it needs to come up as part of the rehearing request, but doesn't find it as new information. He said that even point number five, about staff is treating them differently you might say, than the other two, that argument was discussed before, and thinks that the Board, certainly in his opinion, and the majority was that if two mistakes were made before, that doesn't mean that the Board, I feel that this should be defined as elderly housing now, and those others probably should have been, but they weren't, but said in his mind, that wouldn't change his opinion that this is elderly housing when he doesn't think it meets it. He said that's kind of the long way of him saying that he doesn't think that there is any new information here, it's just a re-stating of what was argued very thoroughly the first time.

Mr. Currier said question number four, is there anything else anybody wants to say on question number three?

Mr. Currier said on question number four, is there anything that would/could cause the Board to make a different decision, does anybody want to kick that off. He said if not, he'll kick it off.

Mr. Boucher said he really doesn't have anything to say about that.

Mr. Currier said somebody's got to go first, it'll be me. He said he didn't find anything new in the rehearing request that would cause me to make a different decision, the biggest element of newness here was the communication with the Mayor, and in his mind, Mrs. MacKay has spoken to that, so there's nothing here that would cause him to make a different decision, or the Board to make a different decision in my opinion. He asked if anyone would like to jump in on question number four, please.

Mrs. MacKay said she didn't think so either, she said she has spoken to that text, and did nothing wrong and would not recuse myself today and won't recuse herself tomorrow.

Mr. Boucher said he thinks he made his opinion known, what his thoughts are, again, it's not a judgement, it's just what he thinks, so, I probably have a different view on that, so, again, could see cause for the things that I talked about.

Mr. Currier said that we've kind of batted around the four questions, and in summary, as he's answered the four questions, he feels that the Board should not rehear the case, we've discussed the four questions, and you know what my opinion is on the four of those, and in summary, don't feel that we should rehear the case. He said he's trying to encapsulate how we feel as a summary, and wants to know how you two feel as a summary of how you feel about the rehearing request overall.

Mr. Boucher said we're going to take a vote, so, I know the position we're in right now. He said a 2-1 won't do anything, and we'll be here all night, and if that's what it has to be, that's what it is. He said what he'd like to do is, is it sounds as if both of you are going to deny the rehearing request, right, and that's what it appears to be. He said he would just like to reiterate in the motion that a general reason why he's going to agree to deny the rehearing request, but make clear that he has positions that don't align with the general Board, and it sounds convoluted, but at this point this will move it on to the Court, because it does a disservice to keep it here, and it's very clear that if I hold onto this, nothing's going to happen, unless we keep tabling this, but that's not the way the process is designed, so, my position will be, most likely, to agree for denying the rehearing request, but make it clear that I have reservations on a couple of things, just for the record.

Mr. Currier said so noted. He said with that, he'll hazard a motion.

MOTION by Mr. Currier to deny the rehearing request at 122 Manchester Street, the motion is made by summarizing the four questions and that there was no procedural error, the decision was not illegal that the Board made, the rehearing request does not contain any new information not presented or available for the Board at the Public Hearing, and there is nothing that would/could cause the Board to make a different decision, so based upon the discussion we had on the four questions, the motion is to deny the rehearing request.

SECONDED by Mrs. MacKay.

Mr. Boucher said he will support the denial for the rehearing request, but for the record, will say that he has reservations or concerns about the topic of the illegal decision, in other words, believes that in a couple of these, we ticked through that there is some more items that more definition that believe could be pertinent, and spent some time talking about perception and what that means to this Board, again, it is not a personal indication on anyone on this Board, it's just his feeling from the public view of this Board, so, again, I state those items that I talked about before, and with reservation, I will go with the denial of the rehearing request for the record.

MOTION CARRIED UNANIMOUSLY 3-0.

Mr. Currier said that there is no other business to attend to, as it's been covered already this evening.

ADJOURNMENT:

Mr. Currier called the meeting closed at 8:37 p.m.

Submitted by: Mrs. MacKay, Clerk.

CF - Taped Hearing