A meeting of the Planning and Economic Development Committee was held on Tuesday, December 6, 2016, at 7:04 p.m. in the Aldermanic Chamber.

Alderwoman Mary Ann Melizzi-Golja, Chair, presided.

Members of Committee present:  Alderman-at-Large Brian S. McCarthy  
Alderman Tom Lopez  
Alderman Benjamin M. Clemons

Members not in Attendance:  Alderman-at-Large Daniel T. Moriarty, Vice Chair

Also in Attendance:  Alderman Richard A. Dowd  
Ms. Sarah Marchant, Director of Community Development  
Mr. Tim Cummings, Director of Economic Development

PUBLIC COMMENT

Attorney Brad Westgate, Winer & Bennett, LLP

When you take up the revisions to the proposed ordinance O-16-020 will you accept comments at that point?

Chairwoman Melizzi-Golja

Now would be the time to make those comments.

Attorney Westgate

I am here to speak for my client, Crimson Properties, LLC. and it’s principle Randy Turmel who is also here tonight.  I noticed that there had been a re-draft or some revisions to the proposed ordinance O-16-020 which I took a look at in the next 20 or 30 minutes so I would like to comment on those revisions.  Before doing that I wanted to give a sense of the perspective that I have had and Mr. Turmel has had regarding the proposed changes to the ordinance to begin with.  I still wish to note that the changes to the ordinance I felt would have a substantial and practical adverse effect on the development of 55 and older and 62 and older communities in Nashua.  The fundamental reason for that is that up until now the ordinance had been interpreted to not take the list of seven institutional types of examples as an exclusive list setting forth the only types of elderly housing that would be permitted in the city but the ordinance in its prior draft dramatically changed that list from examples to an exclusive list.  I see that in the revisions that are before us tonight that there has been some relaxation of that approach and I have some thoughts on that.  As the committee recalls the ordinance has a couple of elements to it that are to induce developers to build 55 and over and 62 and over housing in accordance with the very purposes for which the ordinance was established.  Those trade-offs with the 1,000 square foot maximum per dwelling unit put some density increases in various zones.  I think that anything that inhibits the development of 55 and over and 62 and over housing is contrary to the purposes for which the ordinance was originally adopted and it’s very clear in the ordinance itself that those were its purposes and it obviously limits housing options and the type of housing stock that the citizens of this city would have available to them but it also has a secondary effect of not allowing downsizing in certain circumstances and downsizing frees up existing housing stock for newer families that need the type of housing that the downsizing residents do not anymore.  Attorney Bolton forwarded to me a word version of the draft ordinance and I took it upon myself to make my own suggested revisions to it and I will hand it out.  I don’t expect the committee to read it on the run but I’ll tell you the philosophy of the approach that I took.  It interestingly comes together in some respects to some of the changes that I saw in the revisions tonight.  I went back to the ordinance that originally
exists, that is what is in the present land/use code with no changes made to it whatsoever. Let’s assume we are back in September. From that base I made these changes that you see in red and philosophically the approach I took was the following:

- Because the purposes of the ordinance and its bases comes out of RSA 354:A15, which is the housing for older persons statute in our RSA’s and it uses the term “housing for older persons” rather than “elderly housing.” I thought first of all what this should be is the ordinance governing housing for older persons under that statute, not an elderly housing ordinance. If the ordinance is created pursuant to that statute then let’s use the same term that the statute used.

- Secondly, on the second page and this is probably the fundamental change that I made is, I define housing for older persons to be as defined in the statute. That is close to what the revised draft that I saw tonight by Attorney Bolton has. His approach now is very similar to what I’ve done there. The approach he has taken is to add in an eighth category. The approach I would suggest is to eliminate all of the categories because why not have the definition of the housing merely be reflective of what the statute itself intends if the purpose of the ordinance is to implement the statute. I would respectfully suggest that all of the categories be stricken, not only for consistency with the statute but also because I think the ordinance has a bit of an apples and oranges effect. It really hasn’t dawned on me until very recently that when you look at the seven categories and I know we’ve talked about it before, they are really institutional categories; nursing homes, assisted living, community care retirement facilities and that sort of thing. Why should they be governed by the statute that is fostering 55+ and 62+ housing? It really doesn’t make sense that they be lumped into this. The institutional facilities aren’t just for elderly people yet if they are in this ordinance they are only going to be permitted pursuant to the provisions of this ordinance which talk about dwelling units and density when many of these institutional facilities don’t even have dwelling units, they have rooms. The other thing is that a number of institutional facilities service not only elderly people but people who are physically or developmentally disabled. Are we going to regulate those institutional facilities that have a combination of elderly people and disabled people under an elderly ordinance? Why aren’t they regulated independently outside of this provision of the land/use code like they were before the 2006 Land/Use Code was adopted? That’s my notion. The other couple of changes that I made are I kept the notion of the listing of significant facilities and services as you did in your original draft but I think the way to implement compliance had to be changed. The way it read in the present draft is that the applicant has to ensure that the community will also be in compliance. Well the developer is going to be gone at some point and the developer can’t assure that in perpetuity, that has to be governed by the self-management Board of Directors of the community. There is also no sense of quantity as to how many of the twelve that you provide are good enough. My concept is that half or more are good enough. Finally, the density chart has always been missing pieces, it never had a category for single-family units, and it had duplex and multi only. Some of the zones had density provisions and some didn’t so the ones that didn’t revert back to the regular density table in the land/use code. We’ve suggested a density approach that gives incentive to a developer but not go overboard if you will. In the nutshell that’s what I had thought through.

Now going to the changes that were made today in the draft ordinance that is before the committee. The first change, other than a notation of the rear-yard setback change on the first page, the first change really is on the second page under applicability it now reads “For purposes of this section, elderly housing means housing supportive service facilities that comply with the provisions of RSA 354-A:15. That is essentially the concept that I have talked about. I would stop there; I wouldn’t go with the categories any further. Now it reads
“examples of principal uses or structures that constitute elderly housing include: then you have your seven original categories and now you have a new eighth one which is Retirement Housing Services. These establishments offer convenient services with focus on attracting elderly residents so as to provide a social support system among residents and may consist of single-family detached units catering to those who desire to live independently. I think that's an attempt to permit self-managed 55 and 62+ communities since the interpretation now is that none of those fit within the seven examples. My only thought on that new category is that it not just use a single-family detached example but state that it may consist of single-family detached units, duplex units or multi-family units because if you already have in the principle use table permitted uses that talk about single-family duplex and multi, you have a density table that defines duplex and multi for density purposes, why not be consistent and have the self-managed example also use the term single-family detached duplex and multi-family units. That's also consistent with what the reality is in the city. Of the 55 or 62+ properties in the city presently perhaps all of them have an element of multi-family or duplex units. Hayden Green has duplex units, it has a 48-unit multi-family building and Walden Woods is multi-family and Mr. Turmel's Stinson Park has one duplex and Colliston Yard is a multi-family building. These are the types of facilities that have been built and they ought to be contemplated in that new example. Going further into the newest changes of the ordinance, there has been an add back on the fourth page under B (3) which is the provision that states that new projects have to have 30 units and the add back now is that in the case of redevelopment for commercial industrial sites without a recent sub-division or site plan approval, projects of not less than 10 units can be permitted. The major concern there is if the permitted use of elderly housing communities is primarily in the residential districts so you are not going to have the redevelopment of commercial and industrial sites very much in the residential districts so the redevelopment concept should not just be commercial and industrial sites being redeveloped but residential sites as well because the residential sites are in the district for which the permitted use is allowed, otherwise it doesn't go very far.

Alderman McCarthy

Residential sites in the residential zone will by nature will not be under control of a site plan or have been subjected to a sub-division.

Attorney Westgate

Well there certainly could be part of a site plan if they are over a two-unit property because anything over two units has to have a site plan approval and a sub-division of three years old and it does talk in terms of five years it has to pass for sub-division or site plan approval. I'm not too hung up on the notion of something that was recently approved being insulated from having this opportunity, I get that but what I don't get is that it's not going effect many properties because you are not going to have that many commercial and industrial properties for which this is going to be a permitted use to begin with.

Alderman McCarthy

The reason it is there is because we have GB districts near the downtown which have then been overlaid with multi-use districts so where you have sites where there was a substantial industrial presence in the downtown, it's gone and it's not coming back and that was what that provision was there to allow for.

Attorney Westgate

I see that and that's logical but I guess by in direction it sort of takes that opportunity away from the redevelopment of residential uses. The last change is significantly problematic and this is a change to the proposed definition of the rear-setbacks. This has a significant context that needs to be understood. First, this has nothing to do with modifying the elderly housing ordinance, this is an across the board change in how you define rear-setbacks. It would apply to every property in the city, developed or undeveloped. For example, it would render any property today that has a principle structure, not facing the public street, to be in non-conformance if the rear-yard setback was greater than the existing side-yard setback. Take commercial plazas
in the city, think of those that are built in a quadrangle effect, restaurants and banks might face the street but they might not. If you go in further into the plaza you will often see a horseshoe type of building or an L-shaped building. In the L-shaped building some of the store fronts are going to face into the parking lot and some of them will face the street. Any of those that face into the parking lot are going to render they are going to become non-conforming if they were complying with the side-yard setback with what developed but now aren’t compliant with the rear-yard setback. If you have multiple buildings on a site how do you apply this provision? Does it apply only if one of the buildings doesn’t face the street? Does it apply if all of the buildings don’t? Do all of them have to face the street? If one faces the street does that render the rest of them okay? This provision also applies to every property in the city and really I would respectfully submit shouldn’t be taken up in the context of the elderly housing ordinance because there are a lot of people in the city who would care about this more so than those who are interested in housing for older persons like commercial developers, property owners and property managers would all care as well as homeowners. You’ve also got a lot of circumstances where by the nature of the lot and its configuration, many are angled or have topographical concerns and sometimes you orient houses not straight facing the street but on an angle where you have a side garage arrangement and a side front door arrangement. When you have small lots in the city and they are in an odd shape you are going to essentially significantly change and reduce the building envelope with those lots which is problematic enough to begin with the smaller lots. You have condominium developments with multiple buildings and all the time when those are developed you are going to have some units facing the many street but many units will face the interior of the street. The rear of those units are now going to be made rear setbacks and not side setbacks. The setback definitions are numerous in the land/use code. They are set forth in a bunch of different places but they all pertain to the definition of lot line, front-yard, side-yard and rear-yard lines. Changing the setback definition to be tied into building orientation is a categorically different approach than having it tied into the lot lines. They have always been defined by orientation of the lot lines and never defined by the nature of the building on the lot. I am happy to see that the committee has embraced some of the notions of supporting and fostering the 55+ and 62+ approach on the self-managed arrangement. I think that by adding that eighth category, if the Board is going to go with the approach of categories again then I respectfully submit that they come out and be regulated elsewhere. Then you can contemplate single-family duplex and a multi-family in that example because it’s consistent with the other elements of your ordinance. I think a scope of potential redevelopment capability be added into that language but I would strongly urge the Board not to even consider the rear-yard setback re-definition. It is in opposite as to why we are here tonight’s and a lot of people would be interested and effected and a lot of properties would be put in non-conformity and it’s really not the right thing to do. Finally, I know there are developments where there are buildings that are rear facing if oriented on a side-yard only can have an effect on neighboring properties but the planning process can take care of those things. A sledge hammer approach such as this is not the way to go.

Mr. Tom Prieto, 41 Raymond Street

I am here in the context of my son’s project proposal at 122 Manchester Street and then I heard at the last meeting that his project was not going to be effected by this ordinance because the ordinance was submitted after he was vested. In the interest of having read the Master Plan I decided it is a good policy to look at the elderly housing as a necessity to this city. When I saw some of the changes I reflected back to some of my comments before this Board relative to the Master Plan. All ordinances need to be consistent with the Master Plan and for the reasons that Attorney Westgate gave this ordinance restricts independent living, market rate senior housing and it’s inconsistent with the Master Plan which made it very clear that elderly housing is going to be an area of significant concern for the City of Nashua. Remember that the Master Plan was put out about 16 years ago and they were very accurate in foretelling the need for senior housing. You don’t have to look very far to see the need for senior housing, the local Telegraph, the Union Leader and the NH Business Review came out with an article today about the desperate need for accommodating senior housing and this ordinance restricts senior housing. I also want to bring to our attention some of the practical issues. These proposed changes don’t reflect the reality on the ground and that is that most parcels that have street frontage have already been sub-divided. As the Master Plan called out, we have now become a city almost full build out and we are now in an infill location mode and a redevelopment mode. When you have infill and
redevelopment you don’t have the road frontage necessary to create rectangular lots with a minimum frontage of 75 feet. For the reasons that Attorney Westgate gave, particularly the one on the setback, that in fact throws almost every single non-road frontage parcel into non-conformity and is a very significant change that doesn’t bode well for Master Planning in general and doesn’t bode well for senior housing. When I put my conspiracy hat on I can see why the changes were put within the context of my son’s project because he had side-yard setbacks according to the regulations at 10 feet and I think Mr. Turmel’s project also has a 10-foot side setback so I can think that some of those issues that were placed on these ordinances were a reaction to those types of site plans than they were to a thoughtful overview on the effect on the city. While I have had real estate experience over my career I look at this and what’s good for the city and I always look at it within what the common good is and the common good right now is for senior housing and to that end the Master Plan called out that we have to be very careful to make sure that we also comply to the Fair Housing Act.

On November 10, 2016, just less than a month ago, the Department of Housing and Urban Development and the US Department of Justice issued, and I will leave this with you, Madam Chairperson, an introduction to local land use and practices in the application of the Fair Housing Act which has some relevance to what’s before us today, and has some overall relevance in the city. Under the Fair Housing Act, it does apply to land. That’s clear, but it talks about the protective classes. Elderly is not a protected class. We do have religion, sex and ethnicity, but it also talks about people that are disabled. I know in my son’s project there is going to be accommodations to make it physically accessible. We do think there are going to be individuals that have some disability, whether it’s seeing, walking, hearing. There are very specific items that are listed under the Fair Housing Act that label disabled people as a protected class. What it calls out in this document here is when does a land/use or zoning ordinance practice constitute an intentional discrimination in violation. It says when municipal zoning practices or decisions that reflect acquiesces to community bias may be unintentionally discriminatory even if the officials, themselves, do not personally share such bias. What are the implications to that? Some of the public testimony we heard at the last meeting indicated that 122 Manchester Street that there should be a couple of very expensive homes built there. We also heard testimony that infill locations like this shouldn’t be utilized. It should go into places like Hudson, Amherst where there is additional land. That I don’t think anybody has an over-bias but the discriminatory effects take place and the ordinance speaks to this. It says here that, and I don’t want to read, I’ll paraphrase: Even absent a discriminatory intent, local governments may be liable under the Act for any land use or zoning law or practice that has an unjustifiable discriminatory effect. Then it goes on and says multi-family may have discriminatory effects on persons because of their membership in a protected class. Many of these infill locations are going to be having multi-family. Many of them are going to have someone that has a disability because in the ordinance it requires that there be services for disabled persons, namely in the fact that you have to provide physically accessible ramps. You have to provide different features in your units so it can be accessible to people that have some kind of physical disability. Under the Fair Housing Act, those types of people, and I know a number of them who have expressed an interest in my son project, should be accommodated. What is also kind of unique, and I didn't anticipate that when I saw this, they talk about discrimination and it says the impact of municipal practice, whether as an ordinance, disproportionately impact minority residents compared to white residents, which I don't think is the case, or whether the practice perpetuates segregation in a neighborhood or a particular geographical area. What that means to me is when we talk about the common good; the common good is for everybody in the City of Nashua. They have the right to live anywhere that is suitable under the ordinance for them to reside, whether they have a disability or not. I think some of these comments that I have heard, and even from city officials, indicate to me that they don’t clearly understand because I hear the comments having this kind of project in a north end residence in an infill location is out of character with the neighborhood. Yet the ordinance, because of the bonus density issue obviously makes the north end as well as any other section of the city subject to this quote unquote bonus density. I don’t think there should be exemptions in certain areas because of segmentation in geographical areas because while we’ve seen housing go into locations in the tree streets and Salmon Brook, and we’ve seen them go into other locations in Nashua, I do think that those are excellent outcomes but I also think we should widely disperse this type of housing throughout the city. I recognize that change is disorienting. I always go back to whenever I’m faced with a change that I’m uncomfortable with, and it happens fairly frequently as I get older, I always touch-tone that and I say is this for the common good or am I being focused just in the my own world or should I look out for the common good. Based on the common good, I think this ordinance should be significantly rewritten or
even voted negative or at the very least, I think you should look at Attorney Brad Westgate’s suggestions particularly the one where he brings up this fact: Why are you regulating developmentally disabled persons or other people that have issues that live in a congregate care assisted living or nursing type of effect, lumping it in with the senior housing? As he usually does, he makes an impeccable legal, logical argument that I find to be refreshing. I think it bodes well if the committee would spend some time and review it before making your decision. I want to thank you all, and I wish you all a Merry Christmas. Thank you.

PRESENTATION

Chairwoman Melizzi-Golja

The next item on our agenda was a presentation. Unfortunately, Mr. Manoian had a work commitment so he called and cancelled. We will be rescheduling that.

COMMUNICATIONS

From: Roger L. Houston, AICP, Planning Director
Re: Nashua City Planning Board’s Unfavorable Recommendation – O-16-020

MOTION BY ALDERMAN CLEMONS TO ACCEPT AND PLACE ON FILE
MOTION CARRIED

MOTION BY ALDERMAN CLEMONS THAT THE RULES BE SO FAR SUSPENDED AS TO ALLOW FOR THE INTRODUCTION OF COMMUNICATIONS RECEIVED AFTER THE AGENDA WAS PREPARED
MOTION CARRIED

Chairwoman Melizzi-Golja

This was something I believe you received this afternoon from Alderman Deane regarding emails associated with the amendment O-16-020.

From: Alderman-at-Large David W. Deane
Re: Emails Associated to Amendments to O-16-020

MOTION BY ALDERMAN CLEMONS TO ACCEPT AND PLACE ON FILE
MOTION CARRIED

Chairwoman Melizzi-Golja

I should comment that I responded to Alderman Deane’s request so that will also be included in that email string, which I believe is 11 e-mails.

Alderman Lopez

Is it appropriate to receive the communication that we just received from Attorney Westgate as well?

Chairwoman Melizzi-Golja

Yes.

Alderman Lopez

I am slightly concerned that it's not labeled in any way as being prepared.
Chairwoman Melizzi-Golja

I have already labeled it and that it was presented this evening.

**MOTION BY ALDERMAN LOPEZ TO SUSPEND THE RULES, ACCEPT AND PLACE ON FILE THE PROPOSED ORDINANCE CHANGES TO O-16-020 RECEIVED FROM ATTORNEY WESTGATE**

**MOTION CARRIED**

Alderman McCarthy

I just wanted to comment on the memo from Alderman Deane that while in this particular case making all of those communications, which is a proposed amendment to the ordinance public is probably the best idea. Communications from our attorney to us are privileged communications and are not necessarily subject to disclosure to the public. In this particular case it makes sense but I would hate for anybody to think that there is communication that is in violation of the right-to-know law going on. It is essential that we be able to have confidential conversations with our attorney. Where we run into problems is if members of the Board start conversing over e-mail on items that are before it. Receiving communications from our attorney is something that is acceptable.

**UNFINISHED BUSINESS - None**

**NEW BUSINESS – RESOLUTIONS – None**

**NEW BUSINESS - ORDINANCES**

**O-16-025**

Endorser: Alderman Richard A. Dowd

**AMENDING THE ZONING MAP BY REZONING THREE LOTS ON AMHERST STREET FROM AIRPORT INDUSTRIAL (AI) TO HIGHWAY BUSINESS (HB)**

- Also assigned to the Planning Board; Favorable Recommendation Issued 12/1/16
- Public Hearing scheduled for 12/20/16 at 7:00 p.m. in the Aldermanic Chamber

**MOTION BY ALDERMAN CLEMONS TO TABLE PENDING THE PUBLIC HEARING SCHEDULED FOR DECEMBER 20, 2016, AT 7:00 PM IN THE ALDERMANIC CHAMBER**

**MOTION CARRIED**

**TABLED IN COMMITTEE**

**MOTION BY ALDERMAN CLEMONS TO TAKE FROM THE TABLE O-16-020**

**MOTION CARRIED**

**O-16-020**

Endorser: Mayor Jim Donchess

**CLARIFYING AND UPDATING THE ELDERLY HOUSING SUPPLEMENTAL USE REGULATIONS**

- Tabled pending Planning Board Recommendation; Unfavorable Recommendation Issued 11/17/16

**MOTION BY ALDERMAN MCCARTHY TO TABLE O-16-020**

**ON THE QUESTION**
I read over the changes and I read through Attorney Westgate’s proposal and clearly there is more that we need to digest there. I understand the motivation between taking the references to other forms of care out but I am concerned about what may happen with unintended consequences. If we remove those from this section of the ordinance it’s not clear to me that we aren’t removing the permission to build those facilities in Nashua at all and we need to make sure that’s not an unintended consequence of making that change. I agree with Attorney Westgate that the provision on the rear-yard setback being global to the ordinances is probably a fairly heavy hammer to use. I do want to point out that is the crux of the issue that was brought to us. When we talk about doing things for the common good I agree with that to the extent that when we can maximize the value of all of the properties in Nashua and get things that the community needs that is for the common good. When we do it in such a way that it detracts from the value of one property and enhances the value of the property adjacent to it, which is not for the common good. I’d like to look at something softer that allows the Planning Board; in a specific set of circumstances to examine the side-yard setback on a per case basis and say in this particular case it should be more than or somewhere between what the side-yard setback and rear-yard setback says. In a case where you have single-family homes that have to be oriented oddly or lots that are on corners, etc. it’s probably fine to leave it the way it is. In the case where you have a very large building that abut multiple residential properties next door, the Planning Board ought to have some flexibility to say that’s too close and it’s going to impact those neighbors and either require a larger setback that are buffering or some mitigation to the effects on the surrounding properties. That probably shouldn’t be in the elderly housing ordinance amendment. I am concerned about taking this stuff out of the use table but I think other than that a lot of what is in Attorney Bolton’s draft and what is in Attorney Westgate’s draft are pretty much the same in effect. I’d like to have some time to take a look at those and see if we can have a discussion with Attorney Bolton again on what the net effect is of those and come up with a draft that addresses some of the issues that we think need to be taken up because there are dead references to state regulations that don’t exist in the ordinance and those ought to be fixed. There is ambiguous language between the two usage sections and those ought to be fixed and in order to do that we need to look at both of those drafts and come up with something in the middle.

The O-16-020 that’s on our agenda is the original and we seem to be talking about a proposed amendment which hasn’t been put on the table yet so technically we should do that if we want to talk about the amendment. The other thing is if the amendment were to come onto the table, would that have to go back to the Planning Board for another examination because the ordinance is yet again changed significantly and having said that, I am concerned about keeping this ordinance on the table for too long because in essence it’s holding up development even though it’s not passed. It’s impacting projects that it probably shouldn’t because it’s not being taken up expediently.

Alderman Dowd, would you like to make a motion to amend it?

I would but I am not on the committee.

It makes no sense to make a motion to amend it with something that’s not what we want and bear in mind in committee we are not required necessarily to follow strict rules of procedure, the goal is to get it right and not by the book so I think the right thing to do is to spend another cycle looking at it with our attorney. I wouldn’t want to push this out past our next meeting but given what we received tonight was proposed amendments from the
people who opposed the ordinance in the first place; I would implicitly say that means they are okay with waiting until the next time for us to look at that set of amendments.

Alderman Clemons

When is our next meeting?

Chairwoman Melizzi-Golja

Tuesday, December 20th.

Alderman Clemons

Then we have a full Board on the 27th. So if we held this it would be until the end of the month but then it would have to go back to the Planning Board, is that correct? I struggle with whether or not we should just kill this legislation and start with something new. It got an unfavorable recommendation from the Planning Board and I respect their opinion on the matter and I’m not sure that the changes would change that just based on their number one concern which is that there is not enough research and information presented to substantiate the requirement for this change.

Alderman McCarthy

The amendments that we are proposing remove the section on which that is based. This is a completely different ordinance in effect because it doesn’t decrease the density that is allowed. What it is doing is actually fixing ambiguities in the existing law to make it easier for the Planning Board to do its job. I would contend that the right thing to do is to amend it to do that and send it back to them for a new opinion given that it is a substantially different piece of legislation. With regard to having another public hearing, I suspect given that what we are doing is less restrictive than what was proposed, we ought to ask Attorney Bolton but we probably do not need to have another hearing to take that up.

Alderman Wilshire

I have my reservations about the initial legislation but I like some of the suggestions that Attorney Westgate brought in. I would also like to let Attorney Bolton weigh in so I would be okay with this going out to the next meeting and going back to the Planning Board if it needs to so we can get it right.

Alderman Clemons

I would certainly not support the legislation with the new setback rule in there. I live across the street from the Salmon Brook property and I wasn’t 100% happy with it but I also respect people’s rights to build on their property and we do need elderly housing. I think we need to be more open to these projects and look at them on a case-by-case basis. By putting in something that is so restrictive I think we are getting away from being able to do that.

**MOTION CARRIED**

Chairwoman Melizzi-Golja

We will make sure that Attorney Bolton is aware of that and will have this information to reflect upon.

**GENERAL DISCUSSION** - None
PUBLIC COMMENT

Mr. Prieto

My only comment is I don’t think it’s fair to hold up a project even though it’s not one of our projects. Why don’t you just kill the bill and then reintroduce it so the project that’s being held in abeyance now can move forward while there is a thoughtful process that’s not under a gun. I think elderly housing is a critical component for the city and should be moving forward and I do think that it’s unfair to hold off a project. It would be a good policy for economic development and for the City of Nashua.

Alderman McCarthy

Our rules do not allow us to take up the same piece of legislation a second time in a term and also we would run into exactly the same issue when the new one was introduced.

REMARKS BY THE ALDERMEN - None

POSSIBLE NON-PUBLIC SESSION

ADJOURNMENT

MOTION BY ALDERMAN CLEMONS TO ADJOURN
MOTION CARRIED

The meeting was declared adjourned at 8:01 pm.

Alderman MaryAnn Melizzi-Golja
Committee Chair
MEMORANDUM

Date: November 23, 2016

To: Ald. Brian S. McCarthy, President, and Board of Aldermen
    Ald. Mary Ann Melizzi-Golja, Chair and Planning & Economic Development Committee

From: Roger L. Houston, AICP, Planning Director

RE: Referral from the Board of Aldermen on proposed, O-16-020, clarifying and updating the elderly housing supplemental use regulations.

At the Nashua City Planning Board's regularly scheduled meeting of November 17, 2016 the Planning Board voted unanimously to make an unfavorable recommendation on O-16-020. With following recommendation:

1. There is not enough research and information presented to substantiate the requirement for this change.
2. The change potentially discourages 55+, independently-managed community development.
3. The Planning Board currently has the opportunity and authority to review individual projects under the current Board procedures to deal with these types of situations.

If you have any questions concerning this notification, please contact me at 589-3112.

cc: Mayor Jim Donchess
    Susan Lovering, Legislative Assistant
    Patricia Piecuch, City Clerk
    Adam Varley, Chair, NPCB
    Sarah Marchant, Community Development Director

RLHeW
Alderman Michelle Melizzi-Golja,

I respectfully request that all the emails associated amendments to O-16-020 be made part of the PEDC agenda. I believe Sue Lovering was on distribution of the ten emails. Thank you.

David Deane

Sent from my iPhone

On Dec 6, 2016, at 12:02 PM, Lovering, Susan <SusanL@nashua.gov> wrote:

I have posted the attached revised PEDC agenda to the website and filr app, which removes Alan Manolian’s presentation and includes the most recent proposed amendment to O-16-020 submitted by Atty. Bolton.

Thanks,
Sue

From: Mary Ann Melizzi-Golja [mailto:melizzigolja@gmail.com]
Sent: Monday, December 05, 2016 7:23 PM
To: Lovering, Susan; Houston, Roger; Marchant, Sarah; Clarke, Dorothy; Falk, Carter; Donchess, James; Kleiner, Kimberly
Subject: Re: Elderly Housing Ordinance, O-16-020

Hello,

If possible could this be sent to the Board by noon tomorrow so the committee members have an opportunity to review it prior to the meeting and it can be posted online for interested parties to read prior to the meeting.

Thank you!
Mary Ann

On Mon, Dec 5, 2016 at 10:48 AM, Bolton, Steve <BoltonS@nashua.gov> wrote:

Following the most recent meeting of the planning and economic development committee meeting, I consulted with Aldermanic President McCarthy as to revisions to the submitted proposal. Attached please find the result.
Steve Bolton

Steven A. Bolton
Corporation Counsel
City of Nashua

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--
Mary Ann Melizzi-Golja
City of Nashua, Alderwoman-Ward 8
2 Amble Rd., Nashua, NH 03062
melizzigolja@gmail.com
(603) 888-9765
<PEDC-DEC. 6-REVISED.pdf>
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ORDINANCE

CLARIFYING AND UPDATING THE ELDERLY HOUSING SUPPLEMENTAL USE REGULATIONS

CITY OF NASHUA

In the Year Two Thousand and Sixteen

The City of Nashua ordains that Part II “General Legislation”, Chapter 190 “Land Use”, Part 2 “Zoning Districts and Supplemental Use Regulations”, Article VI “Supplemental Use Regulations”, Section 190-42 “Elderly housing” of the Nashua Revised Ordinances, as amended, and Section 190-16 H be hereby further amended by adding the new underlined language and deleting the struck-through language as follows:

“§ 190-42. Elderly housing.

Purpose: To recognize that housing for older persons provides for the diverse and special needs of this group, including the needs for meeting/function rooms and recreational facilities, and attempt to foster development of housing alternatives for older persons with the basic supportive facilities and services.

• The development of housing for older persons may allow residents the opportunity to enjoy the rights and privileges of ownership and maintenance of private property within the City of Nashua.

• It is a community goal to promote development of housing for older persons that provides facilities and service offerings typically demanded by this group, and it is also a goal to promote proximity of such development to support services (shopping, medical services, transportation, etc.) necessary to meet the needs of these residents.

• Housing developed in this section must be established and maintained in compliance with all applicable state and federal laws with respect to such housing and/or medical care, including the Fair Housing Act, as amended, 42 USC § 3601 et seq., and NH RSA 354-A:15 and the NH Code of Administrative Rules, Hum 300 et seq.

• Pursuant to RSA 354-A:15, II and III, it is recognized that prohibitions against housing discrimination do not apply to housing for older persons, which conforms to all applicable rules and regulations.

• The intent is to foster development of housing for older persons while detailing local planning standards and promoting consistency with land use policies in the Master Plan and the land use laws and regulations.

• The intent 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 
ORDINANCE

The City of Nashua finds, determines and declares that:

- There is a recognized need within the City for suitable and appropriate housing for older persons.
- Older persons are exclusively people age 55 and older.
- According to Demographic Element of the Master Plan the number and proportion of persons 55 years or older will increase significantly during the next several decades, thereby creating an increased demand for elderly housing.
- Housing for older persons can be developed to provide housing opportunities for this group and at the same time not detract from the low-density settlement patterns defined by significant open space and a rural community character described in the Master Plan.
- It is recognized that exclusive zoning for persons 55 or older promotes the general health and welfare.

This section implements the following Master Plan recommendation:

- Due to the likely increase in demand for elderly housing, both for independent living and managed care facilities, it is recommended that the Zoning Ordinance be examined and revised, if necessary, to ensure that adequate opportunities to develop elderly housing are available. This is especially important given the projected increase in the senior population over the next 10 to 20 years.

A. Applicability.

(1) For purposes of this section, "elderly housing" means any of the housing categories and supportive service facilities described in Subsection A(2) below that comply with the provisions of RSA 354-A:15 (Housing for Older Persons).

(2) Examples of uses or structures that constitute elderly housing include:

**Table 42-1**

<table>
<thead>
<tr>
<th>Category and Definition</th>
<th>LBCS</th>
<th>Function</th>
<th>NAICS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Congregate living services:</td>
<td></td>
<td></td>
<td>1220</td>
</tr>
<tr>
<td>Funded through the 1978 Congregate Housing Services Act, many of these establishments serve meals and other services in low-income and federally subsidized housing. Now, many establishments provide such services to other nonsubsidized housing facilities. Services include housekeeping, laundry, transportation, recreational programs, and other convenience services.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Table 42-1
Elderly Housing Classifications

<table>
<thead>
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</table>

**Assisted living services:**
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, grooming, bathing, etc. These establishments may be located in single-family homes and share the house with the care provider's family.

**Life care or continuing care services:**
This subcategory comprises church or social welfare organizations running retirement centers. Residents turn over some or 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.

**Community care facilities for the elderly:**
These establishments are primarily engaged in providing residential and personal care services for (1) the elderly who are unable to fully care for themselves and/or (2) the elderly who do not desire to live independently. The care typically includes room, board, supervision, and assistance in daily living, such as housekeeping services. In some instances these establishments provide skilled nursing care for residents in separate on-site facilities.

**Continuing care retirement communities:**
These establishments primarily engaged in providing a range of residential and personal care services with on-site nursing care facilities for (1) the elderly and other persons who are unable to fully care for themselves and/or (2) 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.

**Skilled nursing services or nursing care facilities:**
This subcategory comprises establishments that provide twenty-four-hour skilled nursing care. Included are nursing homes and convalescent hospitals for the elderly.

**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 (1) the elderly or other persons who are unable to fully care for themselves and/or (2) the elderly or other persons who do not desire to live independently. The care typically includes room, board, supervision, and assistance in daily living, such as housekeeping services. These establishments may include assisted living facilities without on-site nursing care facilities, homes for the aged without nursing care, homes for the elderly.
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<tr>
<td>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.</td>
<td></td>
<td></td>
</tr>
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<td>(3) Accessory uses for elderly housing may include activity centers for the elderly, senior citizens' centers, or senior citizens activity centers engaged in providing nonresidential social assistance services to improve the quality of life for the elderly, persons diagnosed with mental retardation, or persons with disabilities. These establishments provide for the welfare of these of individuals in such areas as day care, nonmedical home care or homemaker services, social activities, group support, and companionship. (Reference: NAICS 624120)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

B. Where permitted.

(1) Elderly housing that contains duplex or multifamily dwellings is permitted as of right in the D, R-A, R-B or R-C Zoning Districts subject to the requirements of this section. Elderly housing in the form of single-family detached dwellings are permitted in the R-40, R-30, R-18, R-9, R-A and R-B Zoning Districts.

(2) The provisions of this division shall apply only to applications consisting of dwelling units of less than 1,000 square feet each.

(3) The provisions of this division shall apply only to projects consisting of more than 30 units except that in the case of redevelopment of commercial or industrial sites not having been granted a subdivision or site plan approval within the previous five (5) years the provisions of this division shall apply to projects of not less than ten (10) units, in the case of new development, and more than 10 units in the case of redevelopment of sites which have not received a site or subdivision plan approval in the previous five years.

(4) Any project approved under the provisions of this division shall include common area of not less than 15 square feet per dwelling unit and shall include space which is devoted to providing common services for residents.

C. Standards. Applications subject to this section shall conform to the following standards:

(1) Permits and phasing. The Planning Board shall approve a site plan if it complies with the standards established below. A building permit shall be obtained for each dwelling unit and each accessory use.

(2) Compliance. The applicant shall certify at the time of an application before the Planning Board that a development will comply with all applicable rules and regulations established by the New Hampshire Human Rights Commission, for age discrimination in housing, requiring, if required by the Human Rights Commission, that every development shall provide significant facilities and
services specifically designed to meet the physical and social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons, as set forth in NH Administrative Rules Hum 302.03, as the same may from time to time be amended. Furthermore, while the Planning Board will not define what constitutes Examples of significant facilities and services specifically designed to meet the physical and social needs of older persons include, but are not limited to, the following:

(a) Programs designed to provide a social life for residents;
(b) Continuing education programs of interest to residents;
(c) Information and counseling services;
(d) Recreational programs;
(e) Homemaker services;
(f) Services designed to assist residents with the maintenance and upkeep of building and grounds;
(g) An accessible physical environment;
(h) Emergency and preventive health care programs;
(i) Congregate dining facilities;
(j) Transportation to facilitate access to social services;
(k) Referral services; and
(l) Services designed to encourage and assist residents to use the services and facilities available to them.

The applicant must provide assurances and demonstrate to the Planning Board how the applicant will ensure that the proposed significant facilities and services will continue into the indefinite future and that the elderly housing will continue to comply with this subsection.

Information that may be required by the Human Rights Commission in evaluating an application may should also be submitted to the Planning Board, including a description of any applicable provisions of state statutes and the Human Rights Commission administrative rules and regulations, and whether there are requests for exemptions. In the event the foregoing fifty-five-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 New Hampshire RSA 354-A:15, and as the same may from time to time be amended.

(3) Dwelling unit density. The proposed development shall conform to the density established in Table 42-2 below. A density bonus may also be granted for proposed developments that also conform to § 190-48 (inclusionary zoning).

<table>
<thead>
<tr>
<th>Zoning District</th>
<th>Duplex or Multifamily (dwelling units per acre)</th>
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<tbody>
<tr>
<td>R-40</td>
<td>—</td>
</tr>
<tr>
<td>R-30</td>
<td>—</td>
</tr>
<tr>
<td>R-18</td>
<td>—</td>
</tr>
<tr>
<td>R-9</td>
<td>—</td>
</tr>
<tr>
<td>R-A</td>
<td>8</td>
</tr>
<tr>
<td>R-B</td>
<td>12</td>
</tr>
<tr>
<td>R-C</td>
<td>20</td>
</tr>
<tr>
<td>D</td>
<td>20</td>
</tr>
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(4) Pedestrian traffic. The use of interconnecting walkways, trails and natural walking paths shall be an integral part of the design of any development to facilitate access between common area, groups of dwelling units and open space areas. Easements shall be requested where trails or potential trails on abutting lands may allow for a local connection. Appropriate timing and restrictions may apply. Primary walkways and sidewalks shall meet Americans with Disabilities Act (ADA) requirements. Trails and natural walking paths are exempt from this requirement, but the Board encourages maximizing accessibility to residents.

(5) Building design. Architectural renderings of a typical unit and all accessory buildings shall be provided which the Planning Board will evaluate in accordance with the site plan regulations to confirm that proposed development is an appropriate scale and arrangement in light of the underlying zoning district, the prominence of the site, views, adjacent uses and the surrounding neighborhood.

(6) Safety issues. The following requirements may be amended at the discretion of the Planning Board prior to final approval:

(a) Each unit shall have address numbering of contrasting color to the structure, a minimum of six inches in size, and visible from the street and/or driveway.

(b) In the case of shared driveways, a permanent marker (preferably granite) shall be visible from the street and shall depict by diagram, the location and the number of each dwelling unit. Additional markers shall be placed at any split in the shared portion shall be a minimum of 16 feet in width, a
ORDINANCE  O-16-020

maximum grade of 9%, designed to allow safe access and support the weight of emergency vehicle. Shared driveway designs are subject to Board approval."

§190-16 H  Rear Setbacks. Rear setbacks shall be measured from the rear property line. Notwithstanding the foregoing if any principle structure is oriented such that it does not directly face a public street, the rear setback shall be measured from the property line opposite the front of the structure.

All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

This ordinance shall become effective at the time of passage.
<table>
<thead>
<tr>
<th>From:</th>
<th>Marchant, Sarah</th>
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<tr>
<td>Sent:</td>
<td>Monday, December 05, 2016 11:53 AM</td>
</tr>
<tr>
<td>To:</td>
<td>Bolton, Steve; Board of Aldermen; Lovering, Susan</td>
</tr>
<tr>
<td>Cc:</td>
<td>Houston, Roger; Clarke, Dorothy; Falk, Carter; Donchess, James; Kleiner, Kimberly</td>
</tr>
<tr>
<td>Subject:</td>
<td>RE: Elderly Housing Ordinance, O-16-020</td>
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Steve,

This does not include the provision for detached units for those who desire to live independently. I thought that was to be added as well?

Sarah
Sarah Marchant, AICP
Community Development Division Director
603.589.3075

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From: Donchess, James  
Sent: Monday, December 05, 2016 2:25 PM  
To: Marchant, Sarah; Bolton, Steve; Board of Aldermen; Lovering, Susan  
Cc: Houston, Roger; Clarke, Dorothy; Falk, Carter; Kleiner, Kimberly  
Subject: RE: Elderly Housing Ordinance, O-16-020

Yes, let’s add that provision. Jim

Mayor Jim Donchess  
City of Nashua, NH  
(603) 589-3260

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Sent: Monday, December 05, 2016 11:53 AM  
To: Bolton, Steve <BoltonS@nashuanh.gov>; Board of Aldermen <BOA@nashuanh.gov>; Lovering, Susan <Susank@nashuanh.gov>  
Cc: Houston, Roger <Rogerit@nashuanh.gov>; Clarke, Dorothy <DoryC@nashuanh.gov>; Falk, Carter <CarterF@nashuanh.gov>; Donchess, James <DonchessJ@nashuanh.gov>; Kleiner, Kimberly <kleinerK@nashuanh.gov>  
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Steve

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603.589.3078

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To: Bolton, Steve; Donchess, James; Board of Aldermen; Loevering, Susan
Cc: Houston, Roger; Clarke, Dorothy; Falk, Carter; Kleiner, Kimberly
Subject: RE: Elderly Housing Ordinance, O-16-020

Nope, just the discussion we had in the Mayor's Office. In that discussion we were going to pull the from last "category" but add the ability to live independently in detached units.

Sarah

Sarah Marchant, AICP
Community Development Division Director
603.589.3075

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To: Donchess, James; Marchant, Sarah; Board of Aldermen; Loevering, Susan
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Mary Ann Melizzi-Golja
City of Nashua, Alderwoman-Ward 8
2 Ambie Rd., Nashua, NH 03062
melizzigolia@gmail.com
(603) 888-9765
Herewith please find a further revised version of the proposed ordinance related to elderly housing. This adds a specific reference to including single family detached units.

Steve

Steven A. Bolton
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- Due to the likely increase in demand for elderly housing, both for independent living and managed care facilities, it is recommended that the Zoning Ordinance be examined and revised, if necessary, to ensure that adequate opportunities to develop elderly housing are available. This is especially important given the projected increase in the senior population over the next 10 to 20 years.

A. Applicability.

(1) For purposes of this section, "elderly housing" means any of the housing categories and supportive service facilities described in Subsection A(2) below that comply with the provisions of RSA 354-A:15 (Housing for Older Persons).

(2) Examples of pPrincipal Examples of uses or structures that constitute elderly housing include: include:

Table 42-1
Elderly Housing Classifications

<table>
<thead>
<tr>
<th>Category and Definition</th>
<th>LBCS</th>
<th>Function</th>
<th>NAICS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retirement housing services</td>
<td></td>
<td></td>
<td>12120</td>
</tr>
</tbody>
</table>

These establishments offer convenience services but focus on attracting elderly residents so as to provide a social support system among residents and may consist of single family detached units catering to those who desire to live independently.

Congregate living services:
ORDINANCE

Table 42-1
Elderly Housing Classifications

Category and Definition
Funded through the 1978 Congregate Housing Services Act, many of these establishments serve meals and other services in low-income and federally subsidized housing. Now, many establishments provide such services to other nonsubsidized housing facilities. Services include housekeeping, laundry, transportation, recreational programs, and other convenience services.

Assisted living services:
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, grooming, bathing, etc. These establishments may be located in single-family homes and share the house with the care provider's family.

Life care or continuing care services:
This subcategory comprises church or social welfare organizations running retirement centers. Residents turn over some or 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.

Community care facilities for the elderly:
These establishments are primarily engaged in providing residential and personal care services for (1) the elderly who are unable to fully care for themselves and/or (2) the elderly who do not desire to live independently. The care typically includes room, board, supervision, and assistance in daily living, such as housekeeping services. In some instances these establishments provide skilled nursing care for residents in separate on-site facilities.

Continuing care retirement communities:
These establishments primarily engaged in providing a range of residential and personal care services with on-site nursing care facilities for (1) the elderly and other persons who are unable to fully care for themselves and/or (2) 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.

Skilled nursing services or nursing care facilities:
This subcategory comprises establishments that provide twenty-four-hour skilled nursing care. Included are nursing homes and convalescent hospitals for the elderly.

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 (1) the elderly or other persons who are unable to fully care for themselves and/or (2) the elderly or other persons who do not desire to live...
### Ordinance

**Ordinance 0-16-020**

**Table 42-1**  
Elderly Housing Classifications

<table>
<thead>
<tr>
<th>Category and Definition</th>
<th>LBCS</th>
<th>Function</th>
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</tr>
</thead>
<tbody>
<tr>
<td>independently. The care typically includes room, board, supervision, and assistance in daily living, such as housekeeping services. These establishments may include assisted living facilities without on-site nursing care facilities, homes for the aged without nursing care, homes for the elderly</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(3) Accessory uses for elderly housing may include activity centers for the elderly, senior citizens' centers, or senior citizens activity centers engaged in providing nonresidential social assistance services to improve the quality of life for the elderly, persons diagnosed with mental retardation, or persons with disabilities. These establishments provide for the welfare of these of individuals in such areas as day care, nonmedical home care or homemaker services, social activities, group support, and companionship. (Reference: NAICS 624120)

**B. Where permitted.**

1. Elderly housing that contains duplex or multifamily dwellings is permitted as of right in the D, R-A, R-B or R-C Zoning Districts subject to the requirements of this section. Elderly housing in the form of single-family detached dwellings are permitted in the R-40, R-30, R-18, R-9, R-A and R-B Zoning Districts.

2. The provisions of this division shall apply only to applications consisting of dwelling units of less than 1,000 square feet each.

3. The provisions of this division shall apply only to projects consisting of more than 30 units except that in the case of redevelopment of commercial or industrial sites not having been granted a subdivision or site plan approval within the previous five (5) years the provisions of this division shall apply to projects of not less than ten (10) units in the case of new development, and more than 10 units in the case of redevelopment of sites which have not received a site or subdivision plan approval in the previous five years.

4. Any project approved under the provisions of this division shall include common area of not less than 15 square feet per dwelling unit and shall include space which is devoted to providing common services for residents.

**C. Standards.** Applications subject to this section shall conform to the following standards:

1. Permits and phasing. The Planning Board shall approve a site plan if it complies with the standards established below. A building permit shall be obtained for each dwelling unit and each accessory use.
(2) Compliance. The applicant shall certify at the time of an application before the Planning Board that a development will comply with all applicable rules and regulations established by the New Hampshire Human Rights Commission, for age discrimination in housing, including, if required by the Human Rights Commission, that every development shall provide significant facilities and services specifically designed to meet the physical and social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons, as set forth in NH Administrative Rules Hum 302.03, as the same may from time to time be amended. Furthermore, while the Planning Board will not define what constitutes examples of significant facilities and services specifically designed to meet the physical and social needs of older persons include, but are not limited to, the following:

(a) Programs designed to provide a social life for residents;
(b) Continuing education programs of interest to residents;
(c) Information and counseling services;
(d) Recreational programs;
(e) Homemaker services;
(f) Services designed to assist residents with the maintenance and upkeep of building and grounds;
(g) An accessible physical environment;
(h) Emergency and preventive health care programs;
(i) Congregate dining facilities;
(j) Transportation to facilitate access to social services;
(k) Referral services; and
(l) Services designed to encourage and assist residents to use the services and facilities available to them.

The applicant must provide assurances and demonstrate to the Planning Board how the applicant will ensure that the proposed significant facilities and services will continue into the indefinite future and that the elderly housing will continue to comply with this subsection.

Information that may be required by the Human Rights Commission.
ORDINANCE O-16-020

including a description of any applicable provisions of state statutes and the Human Rights Commission administrative rules and regulations, and whether there are requests for exemptions. In the event the foregoing fifty-five-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 New Hampshire RSA 354-A:15, and as the same may from time to time be amended.

(3) Dwelling unit density. The proposed development shall conform to the density established in Table 42-2 below. A density bonus may also be granted for proposed developments that also conform to § 190-48 (inclusionary zoning).

<table>
<thead>
<tr>
<th>Table 42-2 Elderly Housing Density</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zoning District</td>
</tr>
<tr>
<td>R-40</td>
</tr>
<tr>
<td>R-30</td>
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<tr>
<td>R-18</td>
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<tr>
<td>R-9</td>
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<tr>
<td>R-A</td>
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<td>R-B</td>
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<tr>
<td>R-C</td>
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<tr>
<td>D</td>
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</tbody>
</table>

(4) Pedestrian traffic. The use of interconnecting walkways, trails and natural walking paths shall be an integral part of the design of any development to facilitate access between common area, groups of dwelling units and open space areas. Easements shall be requested where trails or potential trails on abutting lands may allow for a local connection. Appropriate timing and restrictions may apply. Primary walkways and sidewalks shall meet Americans with Disabilities Act (ADA) requirements. Trails and natural walking paths are exempt from this requirement, but the Board encourages maximizing accessibility to residents.

(5) Building design. Architectural renderings of a typical unit and all accessory buildings shall be provided which the Planning Board will evaluate in accordance with the site plan regulations to confirm that proposed development is an appropriate scale and arrangement in light of the underlying zoning district, the prominence of the site, viewsheds, adjacent uses and the surrounding neighborhood.

(6) Safety issues. The following requirements may be amended at the discretion of the Planning Board prior to final approval:

(a) Each unit shall have address numbering of contrasting color to the structure, a minimum of six inches in size, and visible from the street and/or driveway.
ORDINANCE O-16-020

(b) In the case of shared driveways, a permanent marker (preferably granite) shall be visible from the street and shall depict by diagram, the location and the number of each dwelling unit. Additional markers shall be placed at any split in the shared portion shall be a minimum of 16 feet in width, a maximum grade of 9%, designed to allow safe access and support the weight of emergency vehicle. Shared driveway designs are subject to Board approval.”

§190-16 H Rear Setbacks. Rear setbacks shall be measured from the rear property line.
Notwithstanding the foregoing if any principle structure is oriented such that it does not directly face a public street, the rear setback shall be measured from the property line opposite the front of the structure.

All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

This ordinance shall become effective at the time of passage.
Attorney
Is this Public information? Please advise.
David Deane

Sent from my iPhone

On Dec 6, 2016, at 10:16 AM, Bolton, Steve <BoltonS@nashuanh.gov> wrote:

Herewith please find a further revised version of the proposed ordinance related to elderly housing. This adds a specific reference to including single family detached units.

Steve

Steven A. Bolton
Corporation Counsel
City of Nashua

The information contained in this communication is confidential and privileged proprietary information intended only for the personal and confidential use of the individual or entity to whom it is addressed. If you are not the addressee indicated in this message (or an agent responsible for delivery of the message to such person), you are hereby notified that you have received this communication in error and that any review, dissemination, copying or unauthorized use of this message is strictly prohibited. In such case, you should destroy this message and notify the sender by reply email.

<20161206 proposed further amendment(O-16-020) Clarifying and updating the elderly housing supplemental use regulations.docx>
Lovering, Susan

From: Bolton, Steve
Sent: Tuesday, December 06, 2016 11:07 AM
To: Deane, David
Cc: Board of Aldermen; Lovering, Susan; Donchess, James; Kleiner, Kimberly; Marchant, Sarah; Houston, Roger; Falk, Carter
Subject: RE: elderly housing legislation

Yes, it can be disseminated to the public.

Steve

Steven A. Bolton
Corporation Counsel
City of Nashua

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From: David Deane [mailto:ddeane02@qmail.com]
Sent: Tuesday, December 06, 2016 10:42 AM
To: Bolton, Steve
Cc: Board of Aldermen; Lovering, Susan; Donchess, James; Kleiner, Kimberly; Marchant, Sarah; Houston, Roger; Falk, Carter
Subject: Re: elderly housing legislation

Attorney
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<20161206 proposed further amendment(O-16-020) Clarifying and updating the elderly housing supplemental use regulations.docx>
I have posted the attached revised PEDC agenda to the website and Filr app, which removes Alan Manoian’s presentation and includes the most recent proposed amendment to O-16-020 submitted by Atty. Bolton.

Thanks,
Sue

From: Mary Ann Melizzi-Golja [mailto:melizzigolja@gmail.com]
Sent: Monday, December 05, 2016 7:23 PM
To: Bolton, Steve
Cc: Board of Aldermen; Lovering, Susan; Houston, Roger; Marchant, Sarah; Clarke, Dorothy; Falk, Carter; Donchess, James; Kleiner, Kimberly
Subject: Re: Elderly Housing Ordinance, O-16-020

Hello,

If possible could this be sent to the Board by noon tomorrow so the committee members have an opportunity to review it prior to the meeting and it can be posted on-line for interested parties to read prior to the meeting.

Thank you!
Mary Ann

On Mon, Dec 5, 2016 at 10:48 AM, Bolton, Steve <BoltonS@nashuanh.gov> wrote:

Following the most recent meeting of the planning and economic development committee meeting, I consulted with Aldermanic President McCarthy as to revisions to the submitted proposal. Attached please find the result.

Steve Bolton

Steven A. Bolton
Corporation Counsel
City of Nashua
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Mary Ann Melizzi-Golja  
City of Nashua, Alderwoman-Ward 8  
2 Amble Rd., Nashua, NH 03062  
melizzigolja@gmail.com  
(603) 888-9765
Hello Alderman Deane,

I was planning to have the rules suspended to include the email string and attachments as communication.

Mary Ann

On Dec 6, 2016 3:46 PM, "David Deane" <ddeane02@gmail.com> wrote:
Alderwoman Melizzi-Golja,

I respectfully request that all the emails associated amendments to O-16-020 be made part of the PEDC agenda. I believe Sue Lovering was on distribution of the ten emails. Thank you.
David Deane

Sent from my iPhone

On Dec 6, 2016, at 12:02 PM, Lovering, Susan <SusanL@nashuanh.gov> wrote:

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Mary Ann Melizzi-Golja  
City of Nashua, Alderwoman-Ward 8  
2 Amble Rd., Nashua, NH 03062  

melizzigolja@gmail.com  
(603) 888-9765  

<PEDC-DEC. 6-REVISED.pdf>
ORDINANCE

CLARIFYING AND UPDATING THE ELDERLY HOUSING SUPPLEMENTAL USE REGULATIONS

CITY OF NASHUA

In the Year Two Thousand and Sixteen

The City of Nashua ordains that Part II “General Legislation”, Chapter 190 “Land Use”, Part 2 “Zoning Districts and Supplemental Use Regulations”, Article VI “Supplemental Use Regulations”, Section 190-42 “Elderly housing” of the Nashua Revised Ordinances, as amended, be hereby further amended by adding the new underlined language and deleting the struck-through language as follows:

“§ 190-42. Elderly housing. Housing for Older Persons.

Purpose: To recognize that housing for older persons provides for the diverse and special needs of this group, including the needs for meeting/function rooms and recreational facilities, and attempt to foster development of housing alternatives for older persons with the basic supportive facilities and services.

- The development of housing for older persons may allow residents the opportunity to enjoy the rights and privileges of ownership and maintenance of private property within the City of Nashua.
- It is a community goal to promote development of housing for older persons that provides facilities and service offerings typically demanded by this group, and it is also a goal to promote proximity of such development to support services (shopping, medical services, transportation, etc.) necessary to meet the needs of these residents.
- Housing developed in this section must be established and maintained in compliance with all applicable state and federal laws with respect to such housing and/or medical care, including the Fair Housing Act, as amended, 42 USC § 3601 et seq., NH RSA 354-A:15 and the NH Code of Administrative Rules, Hum 300 et seq.
- Pursuant to RSA 354-A:15, II and III, it is recognized that prohibitions against housing discrimination do not apply to housing for older persons, which conforms to all applicable rules and regulations.
- The intent is to foster development of housing for older persons while detailing local planning standards and promoting consistency with land use policies in the Master Plan and the land use laws and regulations.
• The intent 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.

• 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.

The City of Nashua finds, determines and declares that:

• There is a recognized need within the City for suitable and appropriate housing for older persons.

• Older persons are exclusively people age 55 and older.

• According to Demographic Element of the Master Plan the number and proportion of persons 55 years or older will increase significantly during the next several decades, thereby creating an increased demand for elderly housing.

• Housing for older persons can be developed to provide housing opportunities for this group and at the same time not detract from the low-density settlement patterns defined by significant open space and a rural community character described in the Master Plan.

• It is recognized that exclusive zoning for persons 55 or older promotes the general health and welfare.

This section implements the following Master Plan recommendation:

• Due to the likely increase in demand for elderly housing, both for independent living and managed care facilities, it is recommended that the Zoning Ordinance be examined and revised, if necessary, to ensure that adequate opportunities to develop elderly housing are available. This is especially important given the projected increase in the senior population over the next 10 to 20 years.

A. Applicability.

(1) For purposes of this section, “housing for older personselderly housing” means any of the housing categories and supportive service facilities described in Subsection A(2) below that complies with the provisions of RSA 354-A:15 (Housing for Older Persons).

(2) Examples of principal uses or structures that constitute elderly housing include:

<table>
<thead>
<tr>
<th>Category and Definition</th>
<th>NAICS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Congregate living services</td>
<td>1229</td>
</tr>
</tbody>
</table>

Table 42-1
Elderly Housing Classifications

Function NAICS

<p>| LBCS | 1229 |</p>
<table>
<thead>
<tr>
<th>Category and Definition</th>
<th>LBCS Function</th>
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<td>Funded through the 1978 Congregate Housing Services Act, many of these establishments</td>
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<td>many establishments provide such services to other nonsubsidized housing facilities.</td>
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<tr>
<td>Services include housekeeping, laundry, transportation, recreational programs,</td>
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<td>and other convenience services.</td>
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<td><strong>Assisted living services:</strong></td>
<td>1230</td>
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<tr>
<td>These services are provided by board-and-care establishments, such as adult foster</td>
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<td>care homes and adult care group homes. Services include daily activity assistance,</td>
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<td>such as dressing, grooming, bathing, etc. These establishments may be located in single</td>
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<td>family homes and share the house with the care provider's family.</td>
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<td><strong>Life care or continuing care services:</strong></td>
<td>1240</td>
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<td>This subcategory comprises church or social welfare organizations running retirement</td>
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<td>personal care, convenience care, and some health care. Terms used for such establishments</td>
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<td>are endowment facilities, founders care facilities, etc.</td>
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<tr>
<td><strong>Community care facilities for the elderly:</strong></td>
<td>62331</td>
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<tr>
<td>These establishments are primarily engaged in providing residential and personal care</td>
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<tr>
<td>services for (1) the elderly who are unable to fully care for themselves and/or (2) the</td>
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<tr>
<td>elderly who do not desire to live independently. The care typically includes room,</td>
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<td>board, supervision, and assistance in daily living, such as housekeeping services.</td>
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<td>In some instances these establishments provide skilled nursing care for residents in</td>
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<tr>
<td>separate on-site facilities.</td>
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<tr>
<td><strong>Continuing care retirement communities:</strong></td>
<td>623311</td>
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</tr>
<tr>
<td>These establishments primarily engaged in providing a range of residential and personal</td>
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<td>care services with on-site nursing care facilities for (1) the elderly and other</td>
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<tr>
<td>persons who are unable to fully care for themselves and/or (2) the elderly and other</td>
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<tr>
<td>persons who do not desire to live independently. Individuals live in a variety of</td>
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<td>residential settings with meals, housekeeping, social, leisure, and other services</td>
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<td>available to assist residents in daily living. Assisted living facilities with on-site</td>
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<tr>
<td>nursing care facilities are included in this industry.</td>
<td></td>
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</tr>
<tr>
<td><strong>Skilled nursing services or nursing care facilities:</strong></td>
<td>1250</td>
<td>623110</td>
</tr>
<tr>
<td>This subcategory comprises establishments that provide twenty-four-hour skilled</td>
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<td>nursing care. Included are nursing homes and convalescent hospitals for the elderly.</td>
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<tr>
<td><strong>Homes for the elderly:</strong></td>
<td>623312</td>
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<td>This U.S. industry comprises establishments primarily engaged in providing residential and personal care services (i.e., without on-site nursing care facilities) for (1) the elderly or other persons who are unable to fully care for themselves and/or (2) the elderly or other persons who do not desire to live independently. The care typically includes room, board, supervision, and assistance in daily living, such as housekeeping services. These establishments may include assisted living facilities without on-site nursing care 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.</td>
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(3) Accessory uses for elderly housing may include activity centers for the elderly, senior citizens' centers, or senior citizens activity centers engaged in providing nonresidential social assistance services to improve the quality of life for the elderly, persons diagnosed with mental retardation, or persons with disabilities. These establishments provide for the welfare of these of individuals in such areas as day care, nonmedical home care or homemaker services, social activities, group support, and companionship. (Reference: NAICS 624120)

B. Where permitted.

(1) Elderly housing for older persons that contains duplex or multifamily dwellings is permitted as of right in the D, R-A, R-B or R-C Zoning Districts subject to the requirements of this section. Elderly housing for older persons in the form of single-family detached dwellings are permitted in the R-40, R-30, R-18, R-9, R-A and R-B Zoning Districts.

(2) The provisions of this division shall apply only to applications consisting of dwelling units of less than 1,000 square feet each.

(3) The provisions of this division shall apply only to projects consisting of more than 30 units in the case of new development, and more than 10 units in the case of redevelopment of sites which have not received a site or subdivision plan approval in the previous five years.

(4) Any project approved under the provisions of this division shall include common area of not less than 25+5 square feet per dwelling unit and shall include space which is devoted to providing common services for residents.
C. Standards. Applications subject to this section shall conform to the following standards:

(1) Permits and phasing. The Planning Board shall approve a site plan if it complies with the standards established below. A building permit shall be obtained for each dwelling unit and each accessory use.

(2) Compliance. The applicant shall certify at the time of an application is submitted to the Planning Board for site plan approval for housing for older persons, the applicant shall demonstrate how the development will comply with the applicable provisions of RSA 354-A:15 and all applicable rules and regulations established by the New Hampshire Human Rights Commission, for age discrimination in housing, if any, including, if required by the Human Rights Commission, that every development shall provide significant facilities and services specifically designed to meet the physical and social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons, as set forth in NH Administrative Rules Hum 302.03, as the same may from time to time be amended. Furthermore, while the Planning Board will not define what constitutes significant facilities and services, information that may be required by the Human Rights Commission in evaluating an application maybe submitted to the Planning Board, including a description of applicable provisions of the Human Rights Commission administrative rules and regulations, and whether there are requests for exemptions. In the event the foregoing fifty-five-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 New Hampshire RSA 354-A:15, and as the same may from time to time be amended.

With respect to housing that qualifies for housing for persons 55 years or older, if significant facilities and services are required therefor by RSA 354-A:15, IV, such significant facilities and services include, but are not limited to, the following:

(a) Programs designed to provide a social life for residents;

(b) Continuing education programs of interest to residents;

(c) Information and counseling services;

(d) Recreational programs;

(e) Homemaker services;

(f) Services designed to assist residents with the maintenance and upkeep of building and grounds;
(g) An accessible physical environment;
(h) Emergency and preventive health care programs;
(i) Congregate dining facilities;
(j) Transportation to facilitate access to social services;
(k) Referral services; and
(l) Services designed to encourage and assist residents to use the services and facilities available to them.

If significant facilities and services are so required (for housing for persons 55 years or older), then the governing body of the particular housing for persons 55 or older community (e.g. a homeowners' association), directly or indirectly, shall provide at least half of the facilities and services itemized above or such other qualifying significant facilities and services.

(3) Dwelling unit density. The proposed development shall conform to the density established in Table 42-2 below. A density bonus may also be granted for proposed developments that also conform to § 190-48 (inclusionary zoning).

Table 42-2
Elderly Housing Density
(Dwelling Units per Acre)

<table>
<thead>
<tr>
<th>Zoning District</th>
<th>Single-family</th>
<th>Duplex</th>
<th>Multifamily</th>
</tr>
</thead>
<tbody>
<tr>
<td>R-40</td>
<td>6</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>R-30</td>
<td>6</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>R-18</td>
<td>6</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>R-9</td>
<td>6</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>R-A</td>
<td>6</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>R-B</td>
<td>6</td>
<td>8</td>
<td>12</td>
</tr>
<tr>
<td>R-C</td>
<td>6</td>
<td>8</td>
<td>12</td>
</tr>
<tr>
<td>D</td>
<td>0</td>
<td>0</td>
<td>40</td>
</tr>
</tbody>
</table>

(4) Pedestrian traffic. The use of interconnecting walkways, trails and natural walking paths shall be an integral part of the design of any development to facilitate access between common area, groups of dwelling units and open space areas. Easements shall be requested where trails or potential trails on abutting lands may allow for a local connection. Appropriate timing and restrictions may
apply. Primary walkways and sidewalks shall meet Americans with Disabilities Act (ADA) requirements. Trails and natural walking paths are exempt from this requirement, but the Board encourages maximizing accessibility to residents.

(5) Building design. Architectural renderings of a typical unit and all accessory buildings shall be provided which the Planning Board will evaluate in accordance with the site plan regulations to confirm that proposed development is an appropriate scale and arrangement in light of the underlying zoning district, the prominence of the site, viewsheds, adjacent uses and the surrounding neighborhood.

(6) Safety issues. The following requirements may be amended at the discretion of the Planning Board prior to final approval:

(a) Each unit shall have address numbering of contrasting color to the structure, a minimum of six inches in size, and visible from the street and/or driveway.

(b) In the case of shared driveways, a permanent marker (preferably granite) shall be visible from the street and shall depict by diagram, the location and the number of each dwelling unit. Additional markers shall be placed at any split in the shared portion shall be a minimum of 16 feet in width, a maximum grade of 9%, designed to allow safe access and support the weight of emergency vehicle. Shared driveway designs are subject to Board approval.”

This ordinance shall become effective at the time of passage.