

EXPANDED DRAFT MEETING SUMMARY
THIS IS NOT AN OFFICIAL TRANSCRIPT OF TAPE RECORDED PROCEEDINGS
THE INFORMATION CONTAINED HEREIN HAS NOT BEEN REVIEWED OR APPROVED BY THE NCPB

NASHUA CITY PLANNING BOARD
September 13, 2007

The regularly meeting of the Nashua City Planning Board was held on Thursday, September 13, 2007 at 7:00PM in the auditorium at City Hall.

Members Present: Ken Dufour, Chair
 Steve Farkas, Mayor's Rep
 Bob Canaway, Secretary
 Richard LaRose, Alderman
 William Slivinski, Vice Chair
 Hugh Moran
 Mike Lowe
 George Torosian
 Cynthia Overby (Alt)
 Peggy Trivilino (Alt) (Not voting or
 participating in discussion)

Also Present: Roger Houston, Planning Director
 Mike Yeomans, Deputy Planning Manager
 Chris Sullivan, Planner III

Approval of Minutes

July 26, 2007

MOTION by Alderman LaRose to approve the minutes of July 26, 2007, waive the reading and place on file.

SECONDED by Mr. Canaway

MOTION CARRIED (Mr. Lowe and Mr. Moran abstained)

August 9, 2007

MOTION by Mr. Moran to approve the minutes of August 9, 2007, waive the reading and place on file.

SECONDED by Mr. Farkas

MOTION CARRIED (Mr. Lowe and Alderman LaRose abstained)

Communications

Mr. Houston went over the following items that were received after the mailing went out.

Letter from HSI dated September 13, 2007 concerning a waiver request for Walgreen's, which is on the agenda tonight.

Notice from Nashua Regional Planning Commission of a meeting on Wildlife Habitat Protection Workshop on September 27, 2007.

Two communications were received. The first was received September 12, 2007 from the Town of Merrimack. They have declared the outlet mall of regional impact. Mr. Houston has sent the information to the traffic superintendent to review to see if there is any potential impact on the City of Nashua. The public hearing is September 27, 2007. The next communication is from an unknown person dated September 11, 2007 concerning MacMulkin.

A letter dated September 10, 2007 from Richard A. Cote on New Subdivision #3, 88 Bowers Street. In this letter Mr. Cote will be at the meeting and can explain his letter.

A letter to Ken Dufour dated September 12, 2007 from Diane Urquhart requesting recusal of Attorney Farkas.

Technical Review Meetings to determine regional impact for the next meeting.

REPORT OF CHAIR, COMMITTEE & LAISON

Mr. Lowe went over the following items:

There was a presentation on the Nashua Transit System update that the Board might want to look at.

O-07-120 and O-07-122 are still tabled.

Chairman Dufour went into the procedure of the meeting as follows:

After the legal notice of each site plan or subdivision is read by the Chair, the Board will decide that the application is complete and ready for the Board to take jurisdiction of the application. If so, the applicant or representative will be

given time to present an overview and description of their project. The applicant shall speak to whether or not they agree with recommended staff stipulations. The Board will then have an opportunity to ask questions of the applicant and staff.

The Chair will then ask for testimony from the audience. First anyone wishing to speak in opposition or with concern to the plan may speak. Come forward to the microphone, state their name and address for the record as well as write your name and address on the sign in sheet provided. This would be the time to ask questions they may have regarding the plan.

Next testimony will come from anyone wishing to speak in favor of the plan. This will also be the time for the applicant to address any issues or concerns raised by prior testimony.

The Board will then ask any relevant follow-up questions of the applicant if need be.

The Board asks that both sides keep their remarks to the subject at hand and try not to repeat what has already been said and to be courteous at all times.

Above all, the Board wants to be fair to everyone and make the best possible decision based on the testimony presented and all applicable approval criteria established in the Nashua Revised Ordinances for site plans or subdivisions. Chairman Dufour noted that the Planning Board does not make zoning decisions.

Zoning determinations are made by the Administrative Officer prior to the Board's legal public notice being sent to abutters.

After the public testimony is given the Board will discuss the issue and render their decision.

Chairman Dufour thanked everyone for their interest and, courteous attention and asked that everyone turn off his or her cell phones and pages.

Chairman Dufour explained that one of the cases that will be heard this evening is Ferson-Lake, LLC. This was remanded from the Court. The Board will not be taking testimony but addressing the issues of the Court as sent back and render a decision.

The following case will be heard first and then go back to the original agenda.

Other Business

2. **Ferson-Lake, LLC (Applicant) Thomas L. Jenkins, Jr. and Andrea J. Hardings (Owners) - On remand from Hillsborough County Superior Court that the Planning Board make specific findings in accordance with the requirements set forth in the Elderly Housing Use Code provision Sec. 16-81(c)(2) through (6) concerning a proposed site plan for a 5-unit elderly housing development with associated access, parking and site improvements; disapproved by the Board on August 10, 2006. 333 Lake Street & 3 Ferson Drive, Sheet 88 - Lots 7 & 27, Zoned "RA" - Urban Residence. (Tabled from the August 9, 2007 Meeting)**

MOTION by Alderman LaRose to remove from the table Ferson-Lake, LLC.

SECONDED by Mr. Torosian

MOTION CARRIED UNANIMOUSLY

Mr. Dufour explained the Board will now hear the case. No other case has had so much scrutiny and he will try this evening to structure in an organized manner and address each issue, discuss them, and then entertain a motion. He said before he does that he wants to note in the communications this evening they received a communication from Diane Urquhart in regards to a rescual issue by Mr. Farkas, which he had addressed at the last meeting. Having read this letter, Mr. Dufour said he wasn't sure if Ms. Urquhart wasn't sure if she was asking Mr. Dufour to rescues Mr. Farkas. Mr. Dufour said he cannot make that determination and so he will not try. Attorney Farkas gave Mr. Dufour a letter dated August 3, 2007 from corporation counsel, David R. Connell, in regards to disqualification standards for Ferson-Lake site plan application. This had been addressed to Atty. Farkas because he had sought direction from corporation counsel. Mr. Dufour read into the record the following:

You have inquired as to whether you are disqualified with respect to participating and voting on the above referenced case, which has been remanded by the Superior Court. Assuming you have no financial stake in the case, the standard of disqualification under RSA 673:14 and the Juror standard to which it refers to whether you have a relationship with the applicant or abutter such that you cannot fairly judge the case on its merits. A certain degree of friendship on the one hand or

antagonism on the other hand does not qualify you if you are capable of setting aside personal feelings and deciding this case impartially. It's a decision for the member to make. RSA 673:14 provides for possible advisory input from other members.

Mr. Dufour asked if anyone else had anything else to say in regards to this matter.

Mr. Dufour said that hearing none, they would go on with the case.

Mr. Dufour explained that the judge has sent this back because the Court didn't like the reasons that were used to deny it. The Court wants the Board to consider the standards in the Code, that being 16-81 c(2) through (6). The Board has received the complete record as it went to court and also a copy of 16-81 c (2) through (6). This evening the Board will take those five standards and discuss them one at a time. After that is finished, then they will do the motions. Mr. Dufour asked the Board to turn to 16-81 c (2) through (6) and read the following:

Six safety issues - 16-81 c addresses standards and reads:

Application subject to this section shall conform to the following standards:

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 as an accessory use.

Those standards, 2 through 6 will be discussed.

#6 - Safety Issues

The following requirements may be amended at the discretion of the Planning Board prior to final approval.

1. Each unit shall have address numbering of contrasting color to the structure, a minimum of 6 inches in size, and visible from the street and/or driveway.
2. 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 of 9 percent grade, designed to allow safe

access and support the weight of emergency vehicle. Shared driveway designs are subject to Board approval.

Mr. Dufour stated it talks about numbering the units in contrasting colors 6 inches in size. Does anyone have concerns that the applicant is not addressing that? No one.

Mr. Dufour asked in the case of shared driveways, is there any concerns that the applicant is not addressing that standard, that it will be properly marked? No one.

Mr. Dufour read 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, view sheds, adjacent uses and the surrounding neighborhood.

Mr. Dufour asked if anyone had any concerns or wishes to speak to the building design. Mr. Dufour said is anyone needs more time, they will be given. The initial vote on this was for denial. If that is still your decision the standards will have to be addressed.

Mr. Dufour went over standard #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 areas, 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.

Mr. Dufour asked if anyone on the Board had any concerns with pedestrian traffic. Mr. Dufour asked Staff that it was his assumption in light of this standard that the primary walkways and sidewalks will be ADA compliant, is that a correct assumption?

Staff replied that yes it is.

NCPB

September 13, 2007

Page 7

Mr. Dufour asked Staff if as part of this 5-unit development, they propose to have a recreational area in the basement, a common area.

Staff replied yes, that is what the record indicates.

Mr. Dufour stated that nowhere in the record was he able to determine whether that lower level rec room/function room/gathering room had provisions for ADA access.

Staff replied they could not attest to that one way or the other.

Mr. Dufour asked and they can only address what they knew as of 8/10/06, did anyone see anything in the record that notes that access to the lower level will be ADA compliant.

Mr. Slivinski stated that there was no mention of it.

Alderman LaRose stated that he didn't recall anything about it being ADA compliant. What he remembered was that if they had to make a common area, they would use the basement.

Mr. Slivinski said that he doesn't remember seeing any plans.

Mr. Dufour stated that as he recalled it, they have to look at this as the facts were presented. He did not see anywhere that they address ADA access to the common area.

Mr. Torosian asked if they were out of their bounds tonight to make stipulations?

Mr. Dufour explained that he had asked this of corporation counsel and the answer Mr. Dufour received was 2 through 6 you can also address the site plan criteria, but the Judge wants to hear how we applied the standards 16-81 c (2) through (6).

?? asked if they will be taking an up and down vote, yes or no?

Mr. Dufour replied that they will go through all the standards and then entertain a motion for approval or denial and what ever side is the first side to make the motion, will speak to these standards.

Mr. Farkas stated he recalled him saying in regards to the discussion on whether or not there would be that access is that they had the either or condition which said either you provide

all this stuff or you send a letter that says you will comply with anything that the state office says you had to. They said that they would do that which included everything.

Mr. Torosian stated that if that is now the case now we would get into degrees of stipulation.

Mr. Farkas said it was a stipulation to something that they had already consented to on the record. What the state office required if they provided that access place, the meetinghouse, is what it said you had to provide adequate facilities. When we went through the facilities the state regulation is an either or requirement. You either provide it all and show us how you do it or you provide a letter that says you will comply with any and all requirements that the state office that administers that levies and they did provide that letter.

Mr. Canaway asked where does it say it in the code.

Mr. Farkas said it was right in the beginning and that was the letter they provided.

Mr. Dufour stated he didn't think it was in the code. That was an assertion made by the applicant that he would provide us with the letter from the Human Rights Commission stating that they would comply.

Mr. Farkas said that in the front end of the regulation it says you can do either or. And so they said they were going to do that. They provided us a letter saying they would comply and they would provide us with a letter from the State when they got it.

Mr. Moran stated he read the same letter that Mr. Farkas read.

Mr. Dufour said that they have to be careful in the interpretation of the letter because it basically if you interpret it as we will do whatever needs to be done then the Board has no function here.

Mr. Dufour went over #3 - Dwelling Unit Density - The proposed development shall conform to the density established in Table 81-2 below. A density bonus may also be granted for proposed development that also conforms to 16-83 inclusionary zoning.

Alderman LaRose asked if the parcel is less than 1 acre.

?? said that it is 21,000 square feet and more then complies.

Mr. Dufour explained #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 203.03, 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 may be submitted to the 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 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 New Hampshire RSA 354-A:15, and as the same may from time to time be amended.

Mr. Dufour said it talks about compliance, it talks about New Hampshire Right Commission and it talks about RSA 354-A:15. In the packet tonight this evening we have that. I would ask everyone to turn to it and bring any provisions up. I would like to address a couple. 354-A:15 IV(a) which deals with the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons or if the provision of such facilities and service is not practicable, that such housing is necessary to provide important housing opportunities for older persons. When you go to Section 302.03 and it talks about 55 and over housing, letter c talks about significant services and facilities specifically designed to meet the physical or social needs of older persons shall include but not limited to the following

1. Programs designed to provide social life for residents.
2. Continuing education programs of interest to residents.
3. Information and counseling services.

4. Recreational programs.
5. Homemaker services.
6. Services designed to assist residents with the maintenance and upkeep of building and grounds.
7. An accessible physical environment.
8. Emergency and preventative health care programs.
9. Congregate dining facilities.
10. Transportation to facilitate access to social services.
11. Referral services.
12. Services designed to encourage and assist residents to use the services and facilities available to them.

Now it goes on to say in (d) the housing facilities shall qualify for the exemption of housing or for older persons 55 or over if it provides significant services and facilities but does not provide all the features described in what I just read.

Mr. Dufour read (e) - housing shall qualify for the exemption as housing for older persons 55 or older if it is not practicable providing significant facilities and services designed to meet the physical and social needs of older persons and no other housing for older persons is available in the same geographic area.

The owner or manager of the housing facility shall demonstrate that the provision of significant facilities and services designed to meet the physical or social needs of older persons will result in depriving older persons in their relevant geographic area of needed and desired housing.

By not granting this waiver, if we make that determination, we have to conclude that it would result in depriving older persons in their relevant geographic area of needed and desired housing. Assuming that everyone has followed along, I want to go on to one other section. I went through and determined that in my mind these were the issues that needed to be addressed. Any other issues feel free to note them. To recap, we have a list of 12 things the applicant has to provide in a 55 or older housing. It goes on to say that if they don't provide all of them, but they provide some of them, then they can get this exemption. Then it goes on to say an exemption as housing for elderly person, if it

is not practicable for them to meet the standards, its okay as long as there is no other housing for older persons available in the same geographic area.

The commission shall find that the housing is eligible for exemption in (e) under the following conditions: In other words if they don't meet these standards, but there are no other housing, you are depriving those people of needed and desired housing, the applicant has to meet the following conditions:

1. The owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical or social needs of older persons either by the owner or by some other entity. In other words the owner, soon to be applicant, has endeavored to provide as many of these requirements as possible.
2. The amount of rent, if the dwellings are rented, or the price of the dwellings if they are offered for sale, makes the housing available for low and or moderate-income individuals.
3. The income range of the residents of the housing facility indicates the housing is used by moderate or low-income individuals.
4. There is a demand for housing for older persons in the relevant geographic area.
5. Similarly priced housing choices for older persons in the relevant geographic area are not otherwise available.
6. If similarly priced housing for older persons with significant facilities and services is not reasonably available in the relevant in the geographic area, then the housing facility shall not meet these requirements.

They don't get to be exempt if similarly priced housing for older persons with significant facilities and services are reasonably available in the relevant area, then the housing facilities shall not meet these requirements. If there are others out there that meet them, within the same geographic area that would service the people that will live in this area, then they shall not get an exemption, that's how I read them. This has been complex and hard for people in the audience to follow, we all have this paperwork and hope you have read through them. Now we can discuss. Do they comply?

Mr. Slivinski said he would like to bring up what they keep on saying and that I didn't see any proof of it. It's sort of like one of those assumptions that this site at that location is necessary because there is a demand right there to provide elderly housing at that particular site. I haven't seen anything that says there is demand that people are clamoring that this is necessary other than apple pie is good.

Mr. Dufour asked if Mr. Slivinski saw anything in the record that alluded to that?

Mr. Slivinski said no. He wasn't an expert on the record and read it over.

Mr. Lowe I have driven the whole area. The only elderly housing I could find is about 2 miles down Lake Street. It's on a side street. The question is what is near? What is elderly housing near? What do we consider near?

Mr. Dufour said in your mind you are thinking neighborhood, the standards address geographic area. I would contend that it doesn't even confine it to Nashua. It confines it to the region.

Alderman LaRose agreed with Mr. Dufour. There is elderly housing in the area. Davidson Landing, Will Street, Brooke Street.

Mr. Dufour asked if you are referring to 55 plus? There is a difference.

Mr. Torosian wanted to go back to Subsection e, the last sentence and the last part of that sentence which basically says are we depriving, or is the applicant depriving older persons in that relevant geographic area of needed and desired housing. Mr. Torosian said he thinks the answer is no.

Mr. Dufour asked why you said that.

Mr. Torosian said because of all the reasons you stated. The geographic area, are elderly people being deprived of housing.

Mr. Dufour said not to confuse elderly with what this is now, we are addressing a 5 unit subdivision that is 55 plus. If it was 62 plus, then that paragraph is real simple, there are no restrictions. Everybody has to be 62. The State says if it is 55 plus at least one person has got to be 55 and you have to meet all these different issues. Are you stating that it is your

belief that there is sufficient or there is available 55 plus inventory in this geographic area.

Mr. Torosian said yes.

Mr. Slivinski said with the type of facilities that this particular development is proposing, which is none.

Mr. Torosian said we are on the exemption. We basically determined that 1 through 12, the facilities are not provided. We have moved onto the exemption. Did they qualify for the exemption? That's what we are discussing now.

Mr. Dufour said that Mr. Torosian has come to the conclusion that there are not significant facilities from this 12 that are being offered on site. Is that correct?

Mr. Torosian said that's correct.

Mr. Dufour said that they have stated on the record that although there are none on site, there are other facilities in close proximity, such as hospitals, doctor's offices up and down the street.

Mr. Slivinski said that relates to all housing in the area. That's to say that any house then in the area because the hospital is down the street, the bus stop is there, and if they have treadmill in their basement qualifies for 55 and over housing.

Mr. Canaway said so it doesn't meet (d), which is the housing facility shall qualify for the exemption for housing if it doesn't provide the significant facilities. I think his contention as well as mine is that it does not meet the subsection (d).

Mr. Dufour said I think we have determined that they weren't providing significant services.

Mr. Dufour said the issue becomes now, are they exempt from that based on what they told us, a small development with a rec hall in the basement. There are services all around within a half a mile.

Mr. Canaway said that maybe somebody can show me where this code states that. I read that it shall qualify if it provides those services. Doesn't say if it is near those services.

Mr. Dufour asked Mr. Canaway if his concern is that even though they stated that it wasn't close by, that you don't see that in the code as an acceptable provision. The code doesn't address that.

Mr. Canaway said it doesn't address it and I am reading Section (d) refers to Section (c) and based on that it doesn't say nearby.

Mr. Farkas said we need to be careful in addressing this. I feel we may have gone down the wrong road. Right at the beginning, the precursor to this, that I talked about this before is it includes all these things if required by the New Hampshire Human Rights Commission. We have to be cautious on that one. Don't say because they don't have all of them or significant amount it doesn't apply, it doesn't qualify. That hasn't been determined by them at least in our record whether it is required or not. The problem is what the regulation sets up is a either or condition that they either comply with it all out of the chute then its not an issue or they say they will comply with everything that is required by the New Hampshire Rights Commission and we don't have what it is they are requiring yet. I think we need to address that differently.

Mr. Dufour said he didn't think they had gone astray, it has to comply with the Human Rights Commission. They have a set of regulations that I have read the pertinent issues as far as compliance that it relates to here and their regulations go on to say if they can't meet this, there are provisions for that, this is what they have to show. I think we can work within the perimeters of this and treat this case fairly.

Mr. Slivinski said if this were to go back to the Human Rights Commission and the Human Rights Commission said no you have to build a basketball court, you have to do this and that, would they have to come back before the planning board for a site plan on any facilities? We know that we haven't seen anything other than a basement gymnasium.

Mr. Dufour said that if they are modify the structure they would have to.

Mr. Slivinski said that they might not even require a basement facility.

?? said they often don't when it is a small development.

Mr. Dufour said from his prospective as far as this letter is concerned that the applicant offered to provide a catchall, whatever they are required will do it. Mr. Dufour said he would want to see that letter before we rule on this case. The Commission is not set up to deal with these things.

Mr. Slivinski said that was a good point. I was going to go back to #5 and ask a question.

Mr. Dufour said he would like to stay with compliance and then go back to #5. Anyone else have anything?

Mr. Dufour said in regards to the compliance I would ask you to return to 302.03 (d), which says does it qualify for an exemption by providing significant services but not all? We have come to the conclusion I think, or Mr. Torosian has come to the conclusion, that they are not providing significant services. Letter (d) shall qualify for an exemption if not practicable and no other housing for older persons is available in the same geographic area. Is this applicable? Do we come to the conclusion that they can receive the exemption because there is no other housing of this type in the same geographic area?

Mr. Slivinski?? said there is no proof that the applicant has given us with regards to other housing that might be in the area to show that there is no other housing within 10 miles, 5 miles in the City of Nashua. It seems to me that he has to prove that case.

Mr. Dufour said that the record didn't address that. From his perspective he believed that if you treat the geographic area, if someone is looking for 55 plus housing and they live in Nashua and they need 55 plus housing, that is their desire, they want to live in that environment, within the geographic area Hudson, Litchfield, Pelham, Merrimack, they have other facilities. When I look at this I come to the conclusion that based on that particular item they have other options. The regs say give them the exemption in the event they are deprived of that type of housing and he concluded they are not. There are other facilities available to them. Might not be as quaint as this 5-unit project, but others are available. Then he goes on

to (f) - shall be eligible for exemption under (e) - saying that by not doing so you are depriving older persons in their relevant geographic area of needed and desired housing. It says shall be eligible for exemption under (e) if they are able to show the following conditions:

1. The owner has provided significant facilities and services designed to meet the physical and social needs of older persons. Has he provided significant needs? Is he addressing significant needs and services and facilities? In my estimation he is not.

Rent or price of dwelling makes the housing affordable for low or moderate-income individuals. Has that threshold been met? They are not priced for low or moderate housing.

?? recalled in the original discussion before the original plan was submitted I remember the applicant wanted a density exemption to offer that low income so they could have more density on the lot. That would be effective low income in our regulations.

Mr. Dufour asked if there is anything in the record that leads you to believe that the pricing on these units will be for low or moderate-income individuals. Does anyone recall? There is a demand for housing for older persons in the relevant geographic area. Is there a demand? In his estimation there is. Is there a supply? In his estimation there is. There is a demand but there is also a supply.

5. Similarly priced housing choices for older persons in the geographic area are not otherwise met. Has this been shown? They state that their units are below market value. Did they state that they were going to be below market or for low or moderate-income people.

6. If similarly priced housing for older persons with significant facilities and services is reasonably available in the relevant geographic area, then the housing facility shall not meet these requirements. What they are saying is they are entitled to an exemption and not to have to provide all of them and not entitled to have to provide a significant amount as long as other similar housing is not available in the same geographic area and if there is, then they don't meet the requirements for the exemption. That's found in 1302.3 f 6.

Mr. Lowe asked if we are looking at apples and oranges. We talk about elderly housing that's in the area but its not single family housing, its multi-family housing. That's the difference between the two.

Mr. Dufour said we are talking about 55 plus, not elderly housing. Its 55 plus, it doesn't say single detached, townhouse, cluster, multi, its talks about 55 plus. We have 55 plus housing in the geographic area. Some are detached, some are attached. What is 55 plus? Any approved developed occupied by one owner who is 55 plus that has met the standards.

Mr. Slivinski said to go to the next one day after 6, which is g.302.03.g. Basically says demonstrating only that significant services and facilities are expensive to provide shall not be sufficient to demonstrate the provisions of such services are not practical.

Mr. Dufour said he didn't think they weren't providing them because they were expensive. They just said for 5 units they weren't providing them.

Mr. Slivinski said that we have our loyalty to the City of Nashua and the neighbors. As we read this over, if we are the Human Rights Commission of NH, this doesn't qualify so it would get rejected that's the way I would read it taking it in the spirit of what 55 housing is about. How sure can we be that the New Hampshire Rights Commission is going to rule like that and where does our responsibility stop with the citizens of Nashua.

Mr. Dufour said that our responsibility is to the City and residents, but our charge is to enforce our laws. We can agree with a particular individual about a concern, but what does the law say. We have to address the law.

Mr. Slivinski said it's all interpretation.

Mr. Dufour said that he disagreed with Mr. Slivinski that we can approve this development on the fact that before they start the Human Rights Commission will provide us with a letter that they have met the minimum standards. I urge you to stay away from the word minimum standards. What is now happening is that people who live in 55 plus are going to court and asking the court to rule that they have the right to sell their unit to anybody because the developer, applicant, condo assoc. has barely met minimum standards. I have come to the conclusion that this

development does not meet those standards. It doesn't even meet the minimum standards other than providing for a rec hall in the basement that may or may not be ADA compliant. I am going to vote to deny this plan because I feel it doesn't meet the standards. I think we were looking at this globally, we talked about getting elderly housing in the community, but this does not comply with the standards.

Mr. Dufour said there were other things that could have been said that weren't said that would have introduced new information. He didn't feel any new information has been provided. The Board has expanded on different provisions, we have talked about specific standards. The people who make the motion to deny did not address these standards. Now the Judge says address the standards. That's what we are doing. The Judge said to address the standards for 55 plus housing Sec. 16 81 (c) 2 through 6 and that's what we are doing.

Mr. Dufour felt that Mr. Canaway was taking words out of a letter that someone wrote and concluding that was the intent of the whole development.

Mr. Canaway said he wanted it on the record if it was part of the plan, or was not part of the plan.

Mr. Dufour said whoever makes the motion to approve or deny to consider the standards 2 through 6.

MOTION by Alderman LaRose to deny the application based on Section 16-81 c 2 through 6 application.

Section 16-81 (c) (2)

There is housing available in the area so this does not comply.

They are not showing any significant services to the 55 and older population living in these units.

Geographically there are available 55 and older units for Nashua residents

Section 16-81 (c) 2

MOTION by Alderman LaRose to deny based on 302.03 55 and over housing which is in the compliance of Sec. 16-81(c) 2 through 6.

Section 16-81(c) 2 does not meet based on 301:03

They are not providing significant services to the facilities specifically designed to meet the physical and social need of persons 55 and older as called for in (c) 1 through 12.

1. No design to provide a social life for residents.
2. No continuing education program of interest to residents.
3. No information or counseling services.
4. No recreational programs.
5. No homemaker service.
6. No services designed to assist residents with maintenance and upkeep of building and grounds.
7. Not an accessible and physical environment.
8. No emergency and preventive health care programs.
9. No congregate dining facilities.
10. No transportation to facilities access to social services are not being provided.
11. No referral services.
12. No services designed to encourage and assist residents to use services and facilities available to them.

Housing is available in the geographic area - Hudson/Merrimack/Litchfield are available to the residents.

No social services provided.

Housing priced at market value except for 1 unit that may be below market value.

There is a demand for this type of housing, but there is also a supply.

Dwelling density -

The do meet the dwelling density.

Pedestrian trail and traffic - there was no mention they would be ADA compliant.

There was mention of a common area in the basement, yet the Board is unaware if it is ADA compliant to get into.

Building Design -

The building design is not an appropriate scale and arrangement in light of the underlying zoning district to prominence of the site view sheds adjacent uses in the surround neighborhood.

Safety issues -

SECONDED by Mr. Canaway

Mr. Dufour went down the list for 302.03. He disagreed and didn't think that all of Alderman LaRose's motion is appropriate and grounds for denial. Mr. Dufour asked Alderman LaRose to amend his motion with the following changes.

Using building design as a reason for denial and in the compliance section consider that in Section (c) you eliminate numbers 1, 2, 3, 4, 5, and 6. Make the motion that the facility does not show significant facilities and services but that it does not meet the criteria for the exemption as noted Letter (f) in 303.03.

1. The owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical or social needs of older persons either by the owner or by some other entity - this is not the case.
2. The price of the dwellings if they are offered for sale makes the housing affordable for low and moderate-income individuals - this is not the case.
3. Income range of residents of the housing facility indicate the housing is used by moderate and low-income individuals - that has not been determined.
4. There is a demand for housing for older persons in the relevant geographic area - there is a demand, but there is also an inventory.
5. Similarly priced housing choices for older persons within the relevant geographic area are not otherwise available. They are available.

Mr. Torosian said the applicant did not demonstrate depriving older person in the relevant geographic area.

Mr. Dufour said that (f) 4 did address it.

Mr. Lowe said that they are meeting the compliance standards.

Mr. Farkas said that perhaps we are going too far. Our scope should be narrowed down to Section 16-81 2 through 6.

After discussion, Alderman LaRose will keep with the original motion he made.

MOTION CARRIED (7 to 2)

OLD BUSINESS - CONDITIONAL/SPECIAL USE PERMITS

None

OLD BUSINESS - SUBDIVISION PLAN

None

OLD BUSINESS - SITE PLAN

None

NEW BUSINESS - CONDITIONAL/SPECIAL USE PERMITS

None

NEW BUSINESS - SUBDIVISION PLANS

1. Kenneth & Lisa Gogan (Owners) - Application acceptance and proposed 1 year extension for lot line relocation plan. 5 Ashland Street & Lee Street, Sheet 64 - Lots 134 & 141, Zoned "RA" - Urban Residence.

MOTION by Alderman LaRose that the application is complete and the Planning Board takes jurisdiction of the application.

SECONDED by Mr. Moran

MOTION CARRIED UNANIMOUSLY

Ken Gogan, 5 Ashland Street

NCPB

September 13, 2007

Page 22

March 9, 2006 he received approval to do a lot line adjustment. The only condition he knew of at the time was demolish the pool and cabana prior to recording. Did not realize he had a one-year deadline. Just received a demolition this past week. Has not picked a plan yet and are asking for a one year extension.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No one.

SPEAKING IN FAVOR OF THE PLAN

No one.

MOTION by Alderman LaRose to grant a one year extension to Kenneth & Lisa Gogan for a lot line relocation at 5 Ashland Street & Lee Street.

SECONDED by Mr. Torosian

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS - SUBDIVISION PLANS

2. Liberty Westwood Development Corporation (Owner) - Application acceptance and proposed subdivision of 1 lot into 2. 100 Northwest Blvd., Sheet H - Lot 634, Zoned "PI" - Park Industrial.

MOTION by Mr. Lowe that the application is complete and the Planning Board takes jurisdiction of the application.

SECONDED by Mr. Torosian

MOTION CARRIED UNANIMOUSLY

Jim Petropoulos, Hayner/Swanson Inc.

Mr. Petropoulos is representing the applicant. The applicant wants to subdivide one lot into two lots. The property is located at 100 Northwest Boulevard. It is currently a 43.6-acre tract located in the PI Zone. To the north is the B & M railroad, to the west is Delta Education, to the south is the Bellevance Beverage facility and to the east is undeveloped land. A company has expressed interested in purchasing the

building, but they wish to purchase 35 of the 43 acres. The new lot will be serviced by a common access road.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No one.

SPEAKING IN FAVOR OF THE PLAN

No one.

MOTION by Mr. Slivinski to approve New Business #2 - Two Lot subdivision. Applicant Liberty Westwood Development Corporation, 100 Northwest Blvd, existing zoning is "PI" Park Industrial. It conforms to NRO 16-440(g) with the following stipulations and waivers:

1. Prior to recording the subdivision plan, the site plan notes for the Corning building, NR1981, shall be amended as required.
2. This site plan for the Corning Building is subject to compliance with the original conditions of approval, and as otherwise stipulated by the Planning Board.
3. The waiver request for plan scale, Sec. 16-1100, B37(a) is granted.

SECONDED by Mr. Lowe

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS - SUBDIVISION PLANS

3. Robert Winkler (Owner) - Application acceptance and proposed subdivision of one lot into two. 88 Bowers Street, Sheet 27 - Lot 55, Zoned "RB" - Urban Residence.

MOTION by Mr. Lowe that the application is complete and the Planning Board takes jurisdiction of the application.

SECONDED by Mr. Torosian

MOTION CARRIED UNANIMOUSLY

Jim Petropulos, Hayner/Swanson, Inc.

NCPB

September 13, 2007

Page 24

Mr. Petropulos asked that this case be deferred to the next meeting because there is a dispute in litigation between the applicant and an abutter to work out an agreement.

MOTION by Mr. Lowe to table to the next meeting New Business #3 - Two Lot Subdivision, first agenda item.

SECONDED by Mr. Farkas

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS - SITE PLANS

4. Walgreen's, The Flatley Company & OCW Retail - Nashua, LLC (Owners) - Application acceptance and proposed amendment to NR629 for revised site and lighting plan and acceptance or right-a-way easements for public use. 217 Daniel Webster Highway, Sheet A - Lot 702, Zoned "HB.

MOTION by Mr. Lowe that the application is complete and the Planning Board takes jurisdiction of the application.

SECONDED by Mr. Farkas

MOTION CARRIED UNANIMOUSLY

Steve Auger, Hayner/Swanson, Inc.

Mr. Auger is representing the applicant and Director Dick Kane is also representing The Flatley Company. They are seeking several minor revisions to the recently approved site plans including a sidewalk on Whitegate Road, a dumpster layout behind the building, and pole heights for lighting has been increased from 10' to 22'. Back in March the Board approved the demolition of Bickfords and the construction of a 15,600 square foot Walgreen's with drive through lane and 52 parking spaces.

Mr. Dufour asked if this application would supersede the previous plan?

Staff replied that the original site plan is still valid and these are modifications.

Mr. Dufour On the original staff report dated March 15, 2007 there were 11 stipulation/waiver requests. Have all those stipulations/waivers been incorporated into the plan?

Staff replied yes.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No one.

SPEAKING IN FAVOR OF THE PLAN

No one.

MOTION by Mr. Slivinski to approve New Business - Site Plan #4, Walgreen Pharmacy, The Flatley Company, owner, revision for site improvements and lighting at 217 Daniel Webster Highway, "GB" - General Business. It conforms to NRO 16-450(d) with the following stipulations and waivers:

1. The waiver request for lighting, Section 16-236(a) &(c), Luminare Design Factors is granted.
2. All prior conditions of plan approval shall remain in full force and effect.
3. Public sidewalk and right-of-way easements shown on this plan are accepted on behalf of the City of Nashua for the uses stated.

SECONDED by Mr. Alderman LaRose

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS - SITE PLANS

5. DeMoulas Supermarkets, Inc. (Owner) - Application acceptance and proposed amendment to NR1814 to show a 3,240 square foot building addition and associated site improvements. 8-20 and 22-44 Northwest Blvd., Sheet I - Lots 32 and 33, Zoned "GB" - General Business.

MOTION by Mr. Torosian that the application is complete and the Planning Board takes jurisdiction of the application.

SECONDED by Mr. Moran

MOTION CARRIED UNANIMOUSLY

Steve Auger, Hayner/Swanson, Inc.

Mr. Auger is representing the applicant along with Gerald Prunier, Esq. The site is Lot 33, Map I. It is 8.6 acres. It is one half of Northwest Plaza. The site is zoned "GB" - General Business and is abutted on all four sides by retail and industrial parcels. Market Basket is expanding their store in two areas. There are currently two curb cuts and one of them will be relocated. The applicant is asking for a waiver from the requirement to construct 13 spaces because the construction is only for employees. They do have space in the back of the store that could be used in the future if needed.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No one.

SPEAKING IN FAVOR OF THE PLAN

No one.

MOTION by Mr. Canaway to approve New Business - Site Plan #5 Northwest Plaza (applicant) and DeMoulas Supermarkets, Inc. (Owner), 8-20 and 22-44 Northwest Blvd construct 3,240 square foot expansion, zoned "GB" - General Business. It conforms to NRO 16-450(d) with the following stipulations and waivers:

1. Prior the plan being final approval from the Division of Public Works of the engineering documents shall be obtained.
2. Prior to a building permit being issued, any final drafting corrections shall be made on the plans.
3. Prior to any work being conducted, a pre-construction conference shall be set up with the Planning Department.
4. The request for the waiver of Section 16-580 Applicability is granted.
5. Prior to the issuance of a building permit the applicant shall work with the Engineering Department on the test pit.
6. In the event that the applicant increases the retail floor space, the plan would be required to return to the Planning Board for approval.

SECONDED by Alderman LaRose

MOTION CARRIED UNANIMOUSLY

OTHER BUSINESS

- 1. Review of tentative agenda to determine proposals of regional impact.**

None

MOTION by Mr. Slivinski that there are no issues of regional impact.

SECONDED by Mr. Moran

MOTION CARRIED UNANIMOUSLY

- 3. Referral from the Board of Alderman on proposed O-07-122, amending the "Land Use Code" sign regulations. (Tabled from the July 26, 2007 Meeting)**

MOTION TO REMOVE FROM TABLE

None

- 4. Referral from the Board of Alderman on proposed O-07-129, amending the "Land Use Code" by amending the provisions permitting games of chance as defined in RSA 287-D in certain zoning districts.**

MOTION by Mr. Torosian to table O-07-129

SECONDED by Mr. Lowe

MOTION CARRIED UNANIMOUSLY

- 5. Lorden Subdivision Acceptance of Right-of Way.**

SPEAKING IN OPPOSITION OR WITH CONCERNS

No one.

SPEAKING IN FAVOR OF THE PLAN

No one.

MOTION by Mr. Torosian to approve Other Business #5 - the right-of-way is acceptance with the following stipulation:

The right-of-way dedication shown in this plan is accepted on behalf of the City of Nashua for the use stated.

SECONDED by Mr. Lowe

MOTION CARRIED UNANIMOUSLY

DISCUSSION ITEMS

Mr. Dufour explained the duties of alternate members of the board. We are notified ahead of time if we are going to be here or not. Staff knows if there is a shortage they typically notify the alternates. Alternates are always welcome to the meeting. If Mrs. Overby hears a case at a particular meeting, at the next time there is an opening another alternate would be voting. If it were tabled to the next meeting then it's only right for the alternate to continue to hear the case. If all members are present, then there is no need for an alternate. You can come to the meeting and sit along with staff

Other

None

MOTION TO ADJOURN by Mr. Torosian at 10:00 p.m.

APPROVED: _____
Ken Dufour, Chair, Nashua Planning Board

TAPES OF THIS MEETING ARE AVAILABLE FOR LISTENING DURING REGULAR OFFICE HOURS.

COPIES OF TAPES MAYBE MADE AVAILABLE UPON 48 HOURS ADVANCED NOTICE AND PAYMENT OF THE FEE.

Taped Meeting