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NASHUA CITY PLANNING BOARD
October 1, 2026

The regularly scheduled meeting of the Nashua City Planning Board was held on October 1, 2026 at 7:00PM in the 3rd floor auditorium in City Hall.

Members Present: Joe MacIntyre, Mayor's Representative
 Adam Varley, Vice Chair
 Dan Hudson, City Engineer
 Ald. Patricia Klee
 Larry Hirsch
 Benjamin Zoller

Also Present: Sam Durfee, Planning Manager
 Connor Muise, Deputy Planning Manager
 Scott McPhie, Planner I

APPROVAL OF MINUTES

September 17, 2026

MOTION by Mr. MacIntyre to approve the minutes, as amended.

SECONDED by Mr. Hudson

MOTION CARRIED 5-0-1 (Zoller abstained)

COMMUNICATIONS

- **A26-0166, 8 Merrit Parkway**
 - o Abutter Correspondence
- **A26-0167, 66 Concord St**
 - o Abutter Correspondence
 - o Supplemental documentation
 - o Revised staff report
- **A26-01, 181 East Hollis St**
 - o Postponed to the October 15, 2026 meeting
- **A26-0194, 8 Blue Hill Ave**
 - o Revised staff report
- **Revised tentative agenda**

REPORT OF CHAIR, COMMITTEE, & LIAISON

None

PROCEDURES OF THE MEETING

After the legal notice of each conditional, special use permit, site plan or subdivision plan is read by the Chair, the Board will determine if that the application is complete and ready for the Board to take jurisdiction. The public hearing will begin at which time 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 or 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. Please come forward to the microphone, state their name and address for the record. This would be the time to ask questions they may have regarding the plan. Next public testimony will come from anyone wishing to speak in favor of the plan. The applicant will then be allowed a rebuttal period at which time they shall speak to any issues or concerns raised by prior public testimony.

One public member will then be granted an opportunity to speak to those issues brought by the applicant during their rebuttal period. The Board will then ask any relevant follow-up questions of the applicant if need be.

After this is completed the public hearing will end and the Board will resume the public meeting at which time the Board will deliberate and vote on the application before us. The Board asks that both sides keep their remarks to the subject at hand and try not to repeat what has already been said.

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 conditional, special use permits, site plans and subdivisions. Thank you for your interest and courteous attention. Please turn off your cell phones and pagers at this time.

Per our legal charter, we have a quorum when five members are present. There may be some recusals this evening for certain board members, but as long as five members are sitting each case can be heard. At the discretion of the chair, the order of the cases can be rearranged.

NEW BUSINESS - CONDITIONAL USE PERMITS

A26-0194 Paul Francis Development Group, LLC (Owner & Applicant) requesting a Conditional Use Permit to convert a duplex to 2-unit condominium. Property is located at 8 Blue Hill Ave. Map E - Lot 216. Zoned A-Urban Residence (R-A). Ward 4.

NEW BUSINESS - SUBDIVISION PLANS

A26-0160 Paul Francis Development Group, LLC (Owner & Applicant) requesting a 2-unit condominium subdivision through the conversion of an existing residential property. Property is located at 8 Blue Hill Ave. Map E - Lot 216. Zoned A-Urban Residence (R-A). Ward 4. **(Withdrawn)**

MOTION by Mr. MacIntyre that the application is complete and the Planning Board is ready to take jurisdiction

SECONDED by Mr. Zoller

MOTION CARRIED 6-0

Connor Walsh, 8 Blue Hill Ave, Nashua NH

Mr. Walsh said he is the property owner. This is a duplex under one ownership, he would like to convert that to two condos. He doesn't plan any expansions or changes, he is ready to list it for sale. There is no impact to traffic or environmental safety. There is a condition regarding individual sewage disposal systems, but this is already on city sewer and water. There is no onsite private septic.

Mr. Hudson said there is one sewer service shared for the property, how will future maintenance be covered? Is there a set of condo documents that goes with that?

Mr. Walsh said yes, they have condominium documents drafted. The sewer service is considered a commonly owned utility. Each unit would be charged 50%.

SPEAKING IN OPPOSITION OR CONCERN

None

SPEAKING IN FAVOR

None

PUBLIC MEETING

Mr. Varley closed the public hearing and moved into the public meeting. He said this seems about as straightforward as it gets. He has no concerns. There are no waivers, so it is just a matter of conditional permit approval.

MOTION by Mr. MacIntyre to approve New Business - Conditional Use Permit A26-0194. The Board finds that the application meets the Approval Criteria under §190-133(F).

SECONDED by Ald. Klee

MOTION CARRIED 6-0

NEW BUSINESS - SUBDIVISION PLANS

A26-0167 Crimson Properties, LLC (Owner & Applicant) requesting a 2-lot subdivision. Property is located at 66 Concord Street. Map 27 - Lot 66. Zoned B Urban Residence (R-B). Ward 3. (Postponed to the October 1st, 2026 meeting by Applicant request)

MOTION by Mr. MacIntyre that the application is complete and the Planning Board is ready to take jurisdiction

SECONDED by Ald. Klee

MOTION CARRIED 6-0

Paul Chisholm, Civil Engineer, Keach Nordstrom Associates, 5
Commerce Park N Ste 201, Bedford NH

Mr. Chisholm introduced himself on behalf of the owner. With him tonight is Atty. Brad Westgate from Welts, White, & Fontaine, and owner Randy Turmel.

Mr. Chisholm said the project before the Board is relatively simple in concept, but there are a few important nuances to go over given the history and location of the property. The applicant is proposing to subdivide the subject lot into two parcels, with the intent to restore the existing home, raze the carriage house, construct a new carriage house in the existing style next to the home, and construct a new single-family home with a detached 2-car garage on the new lot.

Mr. Chisholm said the existing home contains just under 25,000-sqft of land, with frontages on Concord Street and Hall Ave. It is situated in the RB zone and the Historic District. The site is relatively flat, contains sandy soils, and city utilities. The existing residence is a 5-bedroom single family home, originally constructed in 1870. This home is in tough shape, and the restoration is underway. There are two curb cuts, one on Concord St and one on Hall Ave, and the two connect under a portico. The new lot would have frontage on Concord Street and be served by city utilities. Both lots will comply with minimum dimensional zoning requirements, no variances are required.

Mr. Chisholm said a specific architectural concept has been developed based on the existing building envelope and character of the surrounding neighborhood. The intent is to draw from the surrounding architectural elements that exist around it and the streetscape of Concord Street. Both homes will have a detached carriage style garage, with an opportunity to house a unit on the second floor.

Mr. Chisholm showed renderings of the existing residence and proposed new home. The existing home received Historic District Commission approval for renovation on July 27, 2026. We have asked staff to include the meeting minutes in the packet. This project did originally contemplate razing the historic structure and subdividing the lot into three new lots, the HDC did not support that and the applicant decided to move forward with a two-lot subdivision. The new home and carriage house will need Historic District Commission approval.

Mr. Chisholm said the staff report makes note of two cases that came before the Planning Board for subdivision. The first is from 1987 for 6 Manchester St and 10 French St, *Victorian Realty Group vs City of Nashua*. The second case is from 2008 for 1 Swart St, *Judith A. Guiterman Revocable Trust vs City of Nashua*. The materials made available were the court decisions and meeting minutes, Atty. Westgate can address questions on the court cases.

Mr. Chisholm said the cases do not stand for the proposition that subdivision is not allowed on Concord Street, but rather that the Planning Board must look to section 190-138 in the Land Use Code when evaluating any subdivision. As noted in the Guiterman case, these criteria include that the subdivision must be compatible with the surrounding character of the neighborhood and preserve

the future character of the area. The subdivision must be consistent with the goals and objectives of the city's master plan.

Mr. Chisholm said in light of those cases if would like to provide some details about the Historic District and the trends and elements of this character, and how this proposal has its own unique character. He showed an overview of the Historic District, which spans a number of different zones from RA to RC and the downtown. There's a broad range of existing uses, including single family, multifamily, a variety of commercial uses, schools, and churches. There is also significant variation in lot dimensions.

Mr. Chisholm said the question is not whether a new lot can be created, but how can it be created while fitting into the surrounding area. He showed an aerial of the north end of the Historic District, from Manchester Street north. Just north of Stark Street, we believe there is a transition point between the larger lots to the north and the smaller lots to the south.

Mr. Chisholm showed an area of what he considers to be the neighborhood of this lot, stylistically. Within this area there are about 20-30 parcels. The subject lot is the largest. After the subdivision, the remnant parent parcel will remain in the average size of about 16,000-sqft, which is typical for lots in this neighborhood. The new lot will be a little bit smaller, but it is not the smallest in the district.

Mr. Chisholm said the blocks to the north and south of this property are similar situations that already exist. Lot 65-90 is a more narrow, smaller property sandwiched in between two corner lots. Lots 66-70 and 66-32 are also a bit narrower and smaller lots, each with less frontage than the proposed lot. While this proposal introduces a new lot, this pattern is not foreign to this section of Concord St.

Mr. Chisholm said taken together with these facts that distinguish it from the 1 Swart Street subdivision, this is fully compliant with the dimensional requirements. This isn't a 3-lot subdivision, something that tries to maximize the property and squeeze every last little thing out of it.

Mr. Chisholm said the existing carriage house was beyond repair and it has been razed and will replaced similarly as it had existed to the rear of the home.

Mr. Chisholm said the applicant has developed an architectural concept for the new residence that draws on the architectural components of the current home. It respects the existing development pattern along Concord St while allowing for the restoration and productive use of the property. The intent is not to introduce something incompatible in form to the neighborhood or Historic District, it is to make something compatible while reinvigorating a property in desperate need of redevelopment.

Mr. Chisholm said when reviewing a property, the Historic District Commission looks at the governing ordinances 190-22(A)(2)(b), which deals with the proposal's compatibility of exterior design, arrangement of textures, materials, and the setting. The HDC has already approved the applicant's proposed renovation of the existing house and reconstruction of the carriage house. The applicant feels comfortable being able to do the same thing in replicating that on the new lot as well.

Mr. Chisholm said in terms of abutters, there were a number of letters of support. That is a stark difference between the 1987 and 2009 subdivision cases, those had significant opposition. There are two waiver requests, as detailed in the staff report. There are full letters addressing those in the packet. We have reviewed the staff report and don't take exception to the recommended stipulations of approval.

Mr. Varley asked staff if the Board were to act favorably on this application, would the building have to go to the Historic District Commission for approval?

Mr. Durfee said correct.

Mr. MacIntyre said the view of the HDC starts a little earlier than he said. He is not on the HDC, he is only here to talk about the site and subdivision approval criteria. The building is historical, it's from 1898. He's pleased that they are rehabbing that building. One of the criteria is that the plan must be consistent with the goals and objectives of the master plan.

Mr. MacIntyre said when he saw the visuals of the proposed building, he didn't see anything else but a 21st century building. He doesn't see anything other than a pitched roof similarity, but it's not a huge diversion from the master plan. He finds it unfortunate that this lot will be subdivided because that whole frontage area of that street has a lot of big homes that makes almost a touring area for people who want to see Nashua

architecture. When you split that up, you've gone against the spirit of the geist of that place. But within the context of the approval criteria he can't do anything about it.

Mr. MacIntyre said he read the staff report, and they're following all the criteria of the ordinances and state laws. They have a favorable staff report to move ahead. But is there anything he's missing that is debatable for subdividing this land?

Mr. Durfee said he adequately captured it with the comment about approval criteria. The scope of this Board is limiting in a way, but we have also provided the Board with recent case law that has supported past denials of subdivisions within the district. The staff report remains neutral on this case; while the proposed lot meets dimensional regulations there is quite a bit of nuance here with the previous case law.

Mr. MacIntyre said he apologizes for misrepresenting the staff report.

Mr. Zoller asked if there are any big trees being removed from the lot. That vegetative buffer would be important for the neighbors.

Mr. Chisholm said his client is interested in preserving and maintaining as much as possible. There will be some things that are just going to have to go. There are two mature trees that exist on the adjacent property, they can't touch those. At the end of the day, the folks that do have to judge it are the HDC. That will change the shape and form of this. Keeping the trees is part of the charm of the property. On the subdivision plan there is an easement for sewer service, this section of Concord Street doesn't have any sewer lines. We tried to keep it away from buildings, and we will adjust it to save a tree.

Mr. Zoller asked if they engaged with a landscape architect.

Mr. Chisholm said not yet but that is the way to address it.

Mr. Zoller asked what the plan was for plantings, whether to enhance the frontage or screen it.

Mr. Chisholm said he's not a landscape architect but they will work with staff to make sure it is appropriate.

Mr. Zoller said there's a note on the plan for removal of sidewalk on Hall Ave, is that for utility work? Will the sidewalk remain?

Mr. Chisholm said correct. The intent here is to make use of the existing curb cuts for the driveways. Some areas will have to be cut to install utilities.

Mr. Zoller asked if there was any plan to refurbish the sidewalk, it is generally in disrepair.

Mr. Chisholm said we hadn't contemplated it. We received feedback from DPW that we haven't fully digested. It will be patched up in areas that's needed.

Ald. Klee said she is on the HDC, she was there for the first presentation but not there for the final approval. The owner made some substantial changes from the original plan to raze the home and subdivide three lots. He worked with the neighbors. She has been in this house and there are some gorgeous elements, but there's not one floor that's straight. The HDC cannot mandate any changes within the building. The owner compromised to two lots instead of three. The house that will go in will go under strong scrutiny of the HDC, it has to be in keeping of the character of the neighborhood. As long as he's maintained the historic character of the Frank Cook home, she doesn't see this as truly changing the character of the neighborhood. She thinks all the rules and regulations have been met for the subdivision.

SPEAKING IN OPPOSITION OR CONCERN

None

SPEAKING IN FAVOR

Letter from the following:

Alexandra Libby & Sareth Lork, 40 Courtland St, Nashua NH
Paul English, 7 Hall Ave, Nashua NH

PUBLIC MEETING

Mr. Varley closed the public hearing and opened the public meeting. The HDC will have the opportunity to review the character of the building itself. There are some cases, some precedent to consider, that the Board could deny this in terms of character of the neighborhood. He feels the applicant did a good job of illustrating that section of the neighborhood and demonstrated that there are a number of other lots that are similarly sized to the new lot

that would be created here. He would not call the new lot out of character with the neighborhood given what we see in the blocks north and south of this lot. He is comfortable with the determination that this is in the character of the neighborhood.

Ald. Klee said 70 Concord Street is a very old home as well, needs a little work. But it has a narrower frontage. If that is in keeping with the neighborhood, then this subdivision is as well. If this home were farther north she would have concerns about having a newer home put in. The HDC members are serious about keeping things as historical as possible, so she believes that this will be a more modest home. We also allowed a subdivision on Manchester St within the Historic District. These two streets are very different animals, but it's something we have already done.

Mr. MacIntyre said it's not a deal breaker for him, but the discussion for him is whether or not they want to make a subdivision on this lot, and secondarily whether this aligns with the goals and strategies of the master plan. That's debatable. Another one is unique aesthetic, architectural and visual character of nearby buildings shall be maintained, and the site plan shall be in harmony with the character. This is borderline. The Planning Board sometimes has to make tough calls. The guideline of staying to the rules and regulations is the real magna carta, but there will come a time where you'll have to make some decisions that are not necessarily black and white. In his view there's some grey in here, but the owner is doing what he is allowed to do. He hopes the HDC works to keep a good aesthetic on the new house.

Ald. Klee said the proposed location of the building is setback even further than 62 Concord St, so it is in keeping within the line of that. There's less frontage to that lot, there is also a parking lot alongside that. She considers this house to be the start of the true historic district. She doesn't see this subdivision as a big change. The carriage house has already been knocked down, this goes more toward that direction. This is her ward, she is very with the neighbors. The developer has talked to the neighbors, they might not like every part of it, they appreciate the changes he has made. She does not feel this is changing the character of the neighborhood.

Mr. MacIntyre said no one came in to oppose this application. If it was a little more resistance, he may be more willing to oppose it, but there isn't any.

Mr. Zoller said this new lot is not providing the least amount of frontage on Concord St. This is not the worst lot on the block in terms of frontage and size.

Mr. Varley said there are two waiver requests, we will have to address them first.

Ald. Klee said when you look at the public comment, the first one is a request to withdraw their opposition. The neighbors may not like it, but they're not opposed to it and are willing to work with the owner. The people in Ward 3 are not shy, they will speak.

MOTION by Mr. Hudson to approve the following waivers for New Business - Site Plan A26-0153:

- a. §190-282 (B) (9): To waive the requirement to show existing conditions within 1,000 feet of property boundaries;
- b. §190-221 (A): To waive the requirement to locate all utilities underground.

As per RSA 674:36(II)(N), RSA 674:44(III)(e), and §190-148(D), Strict conformity would pose an unnecessary hardship to the Applicant and the waiver would not be contrary to the spirit and intent of the regulations; and specific circumstances, or conditions of the land, and the waiver will properly carry out the spirit and intent of the regulations.

SECONDED by Mr. Zoller

MOTION CARRIED 6-0

MOTION by Mr. Hudson to approve New Business - Site Plan A26-0153. The Board finds that the application meets the Approval Criteria under §190-138(G) with the following conditions:

- a. All conditions from the approval letter will be added to the cover page of the plan.
- b. Any waiver(s) granted shall be listed on the plan. Should any waiver(s) be denied, the plan must be revised to comply with the applicable site plan regulations.
- c. The plan set shall be sealed and signed by a New Hampshire licensed land surveyor.

- d. All technical review comments listed in Section 5 of the Planning Board staff report shall be addressed to the satisfaction of the Planning Department.
- e. All comments in a Memo from Joseph Mendola, PE, senior staff engineer, will be addressed to the satisfaction of the Division of Public Works.
- f. All comments in an e-mail from Jeff Labrie, Fire Marshal's Office, will be addressed to the satisfaction of the Fire Department.
- g. Prior to the recording of the plan, the Applicant shall submit the recording fees required by the Hillsborough County Registry of Deeds for the plat to be recorded.
- h. Prior to the recording of the plan, a CAD file depicting the new lot line configuration shall be submitted to the Planning Department.
- i. Prior to the commencement of site work, a pre-construction meeting shall be held, and a financial guarantee, to be reviewed and approved by City staff, shall be in place.
- j. Prior to the issuance of a building permit, driveway plans shall be submitted and approved by the Engineering Department.
- k. Prior to the issuance of a Certificate of Occupancy, all relevant stormwater documents shall be recorded at the Applicant's expense.
- l. Prior to the issuance of a Certificate of Occupancy, all site improvements will be completed in accordance with the approved plan.
- m. Prior to the issuance of a Certificate of Occupancy, school impact fees shall be paid for the newly created residential lot, in accordance with Article VIII Impact Fees of the Nashua Land Use Code.

SECONDED by Ald. Klee

MOTION CARRIED 6-0

NEW BUSINESS - SITE PLANS

A26-0166 Merrit Place, LLC (Owner & Applicant) requesting site plan approval for a 44-unit townhouse development, with associated site improvements. Property is located at 8 Merrit Parkway. Map C - Lot 2544. Zoned Suburban Residence / Flexible Use Overlay District (R-30/FUOD). Ward 5. **(Postponed to the October 1st, 2026 meeting by Applicant request)**

Mr. Varley said this case is coming to us under somewhat unique procedural posture. He will let staff introduce that and how we carry out that process.

Sam Durfee, Planning Manager

Mr. Durfee said this case, or a very similar iteration, came before this Board September 5, 2024. The Planning Board approved it, it was subsequently appealed by the Superior Court, and it is currently under litigation by the Supreme Court. There is a principle in land use that is almost like double jeopardy. You can't apply for the same thing twice, unless there is a significant change in the request or there is material change in circumstances. It's known as the *Fisher vs Dover* analysis, a court case set this precedent.

Mr. Durfee said there are two prongs. The first is a significant change in what the project is. The answer quite obviously is no, the 2024 application was 44 townhouses, this one is 44 townhouses. It's a nearly identical layout.

Mr. Durfee said the second prong is a significant change in circumstances. There have been three bills that have amended RSA's 674:77 and 674:80, which deal with and specifically address the relief the applicant was required to seek in 2024. That relief, in the city's interpretation of the law, is no longer required. The relief required was for density, maximum story height, relief from multifamily prohibition on use, and age-restriction on the units. It is the city's interpretation that because of these changes to state law, that relief is not needed, therefore there has been a material change in circumstances. That prong of *Fisher vs Dover* would be satisfied. This is also explained in detail in the staff report.

Mr. Varley said the Board must make a determination on whether one or both of those criteria are met under the *Fisher vs Dover*

analysis. If we determine that they have not been met, then we would be precluded from taking jurisdiction on the case. If we conclude that one or both have been met, then we can take jurisdiction of the case and consider the case.

Mr. Varley said because the *Fisher vs Dover* explicitly contemplates that it is the applicant's burden to demonstrate this, we are going to hear from the applicant. We will also open it up to the audience to the extent that someone would like to speak on this issue. We are not going to accept testimony on the merits of this case at that time, that will come if the Board takes jurisdiction. At that point we would proceed with the normal public hearing. At this stage we are only accepting testimony on the *Fisher vs Dover* determination.

Paul Chisholm, Civil Engineer, Keach Nordstrom Associates, 5 Commerce Park N Ste 201, Bedford NH

Mr. Chisholm introduced himself on behalf of the applicant. He thinks the staff report sums up what the applicant believes and agrees. In the final motion from the Superior Court stemming from the 2024 approval, Judge Class said the appropriate remedy is legislative in nature, not judicial. That's exactly why we are back here, the legislation did change. HB-631 and HB-1588 amended RSA 674:80, those now require that municipalities must approve multifamily dwelling units on commercially zoned land. That is this exact situation. The language is simple, clear, and concise. We don't feel that you could interpret it any other way. This classifies as a material change of circumstances affecting the proposal and the applicant feels that the Board should take this site plan under jurisdiction.

Mr. Hudson said a caveat must be added. The Board only has to approve if there is adequate facilities, like sewer and traffic. We don't have to approve something that doesn't have adequacy of those features.

Mr. Varley said correct. The Board still has discretion to approve the project, but the issue being raised is whether the change in the law is significant enough that we can hear the case given that the plan is essentially the same.

Mr. Varley said he wants to note that there are two letters in the materials from abutters, Atty. Jeffrey Spear, who does speak to this issue in terms of whether the *Fisher vs Dover* test is met. The conclusion in the letter, contrary to the conclusion of staff

and the applicant, is that the law change is not sufficient. He wants to note this for the record. If anyone in the audience wants to speak just to this technical legal issue, that's fine.

SPEAKING IN OPPOSITION OR CONCERN

Santosh Salvi, 4 Azalea Ln, Nashua NH

Mr. Salvi said two letters have been submitted from his attorney Jeff Spear. Clearly there is no age restriction override in the law. There is no legal interpretation of HB-631 that justifies removing or overriding the age restriction clause in land use code 190-25(A)(2)(c). We cannot just automatically remove the age-restriction.

Mr. Salvi said the second thing is a strict statutory limit. HB-631 defines multifamily structure by unit count. If a structure has more than two, it is considered a multifamily. It does not alter resident occupancy age rules. We cannot override the restrictions. The 2025 Superior Court order reversing the age-restriction variance remains active and in force. The applicant currently holds no relief from the age restrictions.

Steve Bamwarth, 15 Houston Dr, Nashua NH

Mr. Bamwarth said he lives right across the street from where this would go in. He is also here representing the interest of his neighbors, we are a condominium association and he is the president. We are 14 single family homes on 7 acres, about 25 people. We fit in to what the zoning laws have said in this neighborhood, which is single family homes, low density, and we are an over-55 community. There is a master plan for Nashua.

Mr. Varley said the Board is only discussing the issue of whether there has been a substantial change in circumstances. The question is whether the Board can accept jurisdiction of the case.

Mr. Bamwarth asked Mr. Varley to speak up, he couldn't hear what was being said previously.

Mr. Varley said we are not talking about the merits of the case yet. If he would like to speak to the jurisdiction issue that's fine, but to the extent of speaking about the merits of the case we haven't taken jurisdiction yet. You will have that opportunity if we take jurisdiction of the case, we will take testimony on the merits.

Mr. Banwarth asked what he can talk about.

Mr. Varley said there is a test called the *Fisher vs Dover* test. Because the application is substantially the same as the application before the Board in 2024, and because the Board decision was overturned by the Supreme Court, we cannot heard the case tonight if the application is not materially different, or if there has been a material change in circumstances. The applicant and staff have argued that because the state law changed, there has been a material change in circumstances. That is what we are discussion right now, not the merits of the case.

Mr. Banwarth said he supposes he was talking about the merits of the case, he couldn't hear in the back of the room. He doesn't think the mics are working.

Mr. Varley said understood. If the Board takes jurisdiction of the case, you will have an opportunity to speak to the merits.

Mr. Banwarth said thank you.

Unknown, No address given

Ms. Unknown said the Supreme Court did hear the case the other day, it is up with them at this point.

SPEAKING IN FAVOR

None

Mr. Varley said the issue before the Board is limited to whether we are able to accept jurisdiction on the case. We have heard from the abutters and have two letters from abutter counsel. The position in those letters is that there has not been a material change of circumstances. In contrast, staff and the applicant have taken the position that the changes in state law do constitute a material change of circumstances.

Mr. Varley said in his position as someone who has to perform statutory interpretation on a fairly regular basis, his perspective is that the changes in state law do constitute a material change of circumstances. In particular, the change to RSA 674-80 provide that notwithstanding any provision to the contrary, municipalities shall allow multifamily dwelling units. He understands the argument that is being made by abutters counsel

that it doesn't speak to the age-restriction, but in his view the fact that the statutory language opens with "notwithstanding any provision to the contrary", that is an indication that the Board cannot consider that underlying restriction as it relates to age-restricted housing.

Mr. Varley said there's a further provision later in the same statute that he feels reinforces that, where it says "multifamily dwelling units shall be allowed as a matter of right, and municipalities shall not enforce additional requirements unless expressly authorized by this section". To Mr. Hudson's earlier point, the statutory section does retain within the Board the ability to consider the merits of items such as infrastructure, roads, water, sewer, etc. The statute does not say that we must approve without discretion but he thinks it limits that discretion, and in his view we have a substantial change of circumstances that justifies taking jurisdiction.

Ald. Klee said she was up in Concord for a number of years and sat on municipality and county, it was very frustrating because they were changing laws left and right and taking more and more rights away from the city. This is a prime example. It doesn't mean we can't look at it, but the minute they put "shall" and "by right" in the law, they tie our hands. This is a substantial change to what it was, where they would allow us to put in something more stringent. They've taken that away, and she feels we do have to take jurisdiction whether we like it for not. We would be opening up a can of worms if we didn't.

Mr. MacIntyre said for the public, the Planning Board is highly reliant on the staff reports we get, which give a pretty good 360 degree view on the issues in front of us, including analysis for infrastructure and all the rules and regulations we must follow. They gave us a very extensive report this time, it was not a rush job. They worked hard and gave a very good report. You've heard Mr. Durfee's verbalization of why he thought the *Fisher vs Dover* was being met on a material change of circumstances. He supports his team on their analysis of this point. Secondarily, our vice chairman's comments were excellent. He has a unique experience on these things as an attorney, and that adds extra value to what the staff has already said before. He feels we have the jurisdiction to discuss this, then we'll get to the merits of the case and why you don't or do want this. If there are issues later downstream on RSA 674, we'll go at it. Do what your legal counsel tells you to do. This staff report was an extensive exercise.

Mr. Zoller said he's been keeping up with HB-631 and it seems that the precedent or reasoning for why it was passed, it was essentially to allow for residential in an area where you otherwise wouldn't allow for it. It seems very applicable to the site we are looking at. There are a few businesses, and now there would be residential proposed. He finds it incredibly apt. He would be supportive of the stance that circumstances have changed.

MOTION by Mr. MacIntyre that the application satisfies the *Fisher vs Dover* test, on the grounds that a material changes in circumstances has occurred given recent changes in state law, specifically HB-631 (2025) and HB-1588 (2026).

SECONDED by Mr. Hirsch

MOTION CARRIED 6-0

MOTION by Mr. MacIntyre that the application is complete and the Planning Board is ready to take jurisdiction

SECONDED by Mr. Hirsch

MOTION CARRIED 6-0

Mr. Chisholm said the plan before you tonight is a 44-unit townhouse development located at 8 Merrit Parkway. It is located in the Maplewood Mixed Use Village. The townhouse use is classified both in terms of the RSA's and state law and the Nashua Land Use Code as multifamily dwellings. This project is located on a 6.2 acre condo parcel within an overall 20 acre parcel located in the underlying R30 zone and the Flexible Use Overlay District. Within the FUOD there is a mixed use village, which allows all sorts of commercial uses. This is a parcel that has been left undeveloped and has remained so since the inception of the overlay 30-something years ago.

Mr. Chisholm said the property area is surrounded by development consisting of businesses on the property, adjacent residential neighborhoods on Houston Drive and Cherrywood Dr, community soccer fields, and so on. The 44 units will be constructed as a campus style development consisting of 11 buildings with 4 units each. This will have the full array of utilities including underground electric, sewer, water, cable, and gas. The units are designed to be high end and will have luxury finishes to support the surrounding land area and property types and values. Access to the site is off of Conant Rd to the north or Buckmeadow Rd to the south, and internally from Merrit Pkwy.

Mr. Chisholm said the project includes about 1,000-ft of new roadway, which will formally bring Mangerian Lane into existence and provide access to the new units. The new streets will be well landscaped with a variety of trees and shrubs as shown on the plan to create an aesthetically pleasing aura in tandem with the new street and unit lighting. There will be beefed up landscape buffer to the nearest residential structure which exceeds the regulations.

Mr. Chisholm said in the staff report there are letters from Pennichuck Water, DPW, and the Traffic Dept. stating that the site is suitable and capable of handling this development. There is adequate water supply, sewer capacity, and traffic is not a concern. In the context of other Board discretion items, there is one thing in these RSA's that also allow the Board to consider requiring in some portion or all the first floor to be commercial. Obviously, the applicant doesn't believe that makes sense in this case, that would make more sense for a garden style development. In this case we're on a property that already has commercial scattered about, that already exists here. Mixing in this residential will help support those commercial developments and existing businesses in the area, and we don't feel it makes sense for a townhouse development to have commercial on the first floor.

Mr. Chisholm said as with many site plans, we have submitted a waiver request to locate all existing features within 1,000-ft. This is an extremely typical waiver, like any other project, we survey and locate anything that is worthwhile and needed to make sure this design is compliant and can conform and that the engineering elements are up to snuff, this case is no exception. We did locate some features offsite, but not everything within that radius.

Mr. Chisholm said we have reviewed the staff report and take no exception to the conditions. We are happy to work with staff on any outstanding cleanup comments or concerns and address anything minor prior to submitting final plans. The only other component he would like to add is that with these uses now being allowed by right through state law, the applicant feels that this is a good way to develop this property. There are other ways to develop this property within the context of these laws, but this has been through it. It's been around for 6 years. We first came here in 2020 with a conceptual hearing showing a garden style building. Working with the Board and the city, it morphed into this project that you see today. The applicant maintains that this is a good

development for the property and looks forward to working with the Board as we finish up this process.

Mr. Varley said in anticipation of a comment repeated a lot in abutter letters, can you speak a little bit to the degree to which the development will require clearing of existing vegetation? You're leaving more of a buffer than is required, but can you speak generally to what degree of clearing will be necessary?

Mr. Chisholm said on the site plan we show the clearing as the tree line around the development. The area where things get into it the most is the stormwater management areas. Those are obviously required for a number of reasons, Alteration of Terrain permitting and city stormwater regulations. Those have a tendency to be in the lower lying areas of the site. The rear of the property to the east side, there's the brook that runs through on the other end. Water typically flows to the lowest point, and that's where that stuff is. There will be some clearing in those areas, we have limited it as much as possible. We've left buffers where we can. It's been minimized. We knew this would be a proposal that was scrutinized so we did our best to protect what needed to be protected while also providing what was needed for a proposal of this scale.

Mr. Varley asked in terms of the existing vegetation, what is a rough ballpark number? He's not holding him to it, but he anticipates that this will be an issue that will come up when we take testimony.

Mr. Chisholm said a lot of the site is cleared already. There's a chunk to the south and for the stormwater area. If he had to guess what percentage of the site that is, maybe 15%.

Mr. Varley said that's good enough for an estimate. None of the site work has to be done within a wetland buffer, correct?

Mr. Chisholm said correct, we specifically avoided it. The wetland buffer extends on the eastern property line, it's a 40-ft buffer. We are designing up to it but not into it.

Mr. MacIntyre said this is described as high end and it sure isn't affordable housing. This location, if it was, he's sure the neighborhood would be up in arms. Did they look at any of them to be offered in an affordable housing way?

Mr. Chisholm said no.

Mr. MacIntyre said there will be more projects that will, but he wanted to ask the question.

Ald. Klee asked staff if based on the numbers, inclusionary zoning doesn't kick in.

Mr. Durfee said inclusionary zoning is incentive driven. While the underlying district here has density requirements as identified in the staff report, the changes in the statute rendered by HB-1588, the way that 674:80 reads we cannot regulate density on a units per acre basis. Therefore there is no incentive for the applicant to utilize the inclusionary zoning ordinance. We cannot mandate it, that is against state law. It is incentive only, and the state law has taken away our ability to regulate on a per unit basis.

Ald. Klee said we've basically been shot in the foot for it, then.

Mr. Hudson said the wetlands are noted along the eastern property line. There is a peninsula of trees you're not going to clear around something else, is that wetland or not?

Mr. Chisholm said that was determine to be wetland.

Mr. Hudson asked if there is a corresponding buffer.

Mr. Chisholm said it's too small, so it doesn't have one. It's really just an existing stormwater area that was built a long time ago and never maintained. The state wetland bureau considers that a jurisdictional wetland. We had to avoid the area.

Mr. Zoller said their application included the Alteration of Terrain application. Did they receive any feedback from the NHDES on that yet?

Mr. Chisholm said it has been approved.

Mr. Zoller asked if there were any major comments worked through.

Mr. Chisholm said no. His firm does quite a few of those permits and we are used to the requirements. Obviously with any project people will have different opinions but this one went smoothly.

Mr. Zoller asked what the hours of operation for the adjacent businesses are. Will they affect the new residents? How compatible are the uses?

Mr. Chisholm said he doesn't know exactly when they are open. There are a couple of restaurants in there that are probably open a bit later. He thinks it may be a benefit for potential residents. At the end of the day the people who are buying this will know what it is and where it is. If anything should change in the future that would be a different animal, but we can't speculate what that would be.

Mr. Zoller said he would imagine there will be a decent pedestrian access from the units to the businesses.

Mr. Chisholm said absolutely. This is an incredibly walkable site and is connected to the trails in the southwest quadrant.

Mr. Varley said this is the time where the public can speak on the merits of the case.

SPEAKING IN OPPOSITION OR CONCERN

Gloria McCarthy, 65 Musket Dr, Nashua NH

Ms. McCarthy said she is here to propose the project. As a member of the Conservation Commission her concerns are about what will happen beyond the buffer. The units will bring lighting that is disruptive to wildlife, fertilizers and rodenticides that will not stop at the property line and can potentially harm wildlife, vegetation and water quality. Protecting conservation land is more than drawing a line on a site plan, we need to understand what will happen to the land beyond it.

Ms. McCarthy said as a nearby resident she is also concerned about the additional traffic this development will bring. Neighborhood traffic conditions have changed significantly. The middle school is now open, new homes have been built along Buckmeadow and Ridge Roads, Bishop Guertin is building a new sports complex, and Wise Owl Academy has expanded its business. There will be more students and staff crossing at that corner, particularly during pick up and drop off, and that is the road that will be leading into this complex.

Ms. McCarthy said the Zoning Board recently denied a project at 34 Buckmeadow Road, in part because of concerns about traffic and pedestrian safety, noting the limited sidewalks, narrow shoulders, and large numbers of children traveling by bicycle and scooter. That project was expected to generate 99 trips per day. According

to the applicant's traffic report, these units are expected to generate 322 daily trips, nearly four times as many. If 99 trips raised serious concerns with the Zoning Board, how can 322 daily trips be dismissed? Neither Conant Rd or Buckmeadow Rd have become less congested. They are busier. This proposal should be evaluated on current conditions.

Ms. McCarthy said she would like to address the applicant's repeated description of these as high-end townhouses. Where are the amenities normally associated with a high-end development? Other than some nice interior finishes, there are no plans for a pool, club house, fitness facility, courts, or other comparable amenities. Even the upscale elevators shown on earlier plans have been removed. This neighborhood has respectfully requested a development compatible with the surrounding community. Approximately 250 emails in opposition have been sent to you about this and the density since the initial plans were presented in 2021. As a compromise, we are hoping for a number of single-family homes, similar to those at Westchester Colony Club, combined with perhaps some duplex townhouses rather than four-units, along with some actual upscale amenities. This would be more visually appealing, provide an assortment of housing styles and price points, and upgrade the overcrowded, featureless row-house look that is currently proposed. Would you want someone from unit B-13 looking into your unit at C-11?

Ms. McCarthy said HB-631 allows residential units in commercial zones, but allowing development does not mean every available space needs to be filled to the maximum possible density. She appreciates the care and deliberation the Board took with 66 Concord St and their concern for how the building will fit into the neighborhood. She hopes that the Board will take the same care with this and the surrounding neighborhood which is not shown on the plans. Just because you can make something more dense doesn't mean you should. Please deny this application in its current form.

Ms. McCarthy said Mr. Banwarth was right, we can't hear some of your conversation in the back of the room.

Mr. Varley said there is plenty of room up by the stage, if it's easier to hear up front.

Steve Bamwarth, 15 Houston Dr, Nashua NH

Mr. Banwarth said he lives across the street from where this development would go in. He is in a condominium community of 14

single family homes on about 7 acres. Everyone that bought their home believed that was the type of neighborhood they were getting into. Maplewood had single family homes, not multifamily. What's being proposed does not agree with what the people who bought their homes thought they would be buying.

Mr. Banwarth said the master plan has a map, and southwest of downtown Nashua is allow yellow, which is medium density homes, 1.5-5 units per acre, which our community meets. What's being proposed is about 7 units per acre, which is high density. The master plan is something that should be followed, it's there for a reason. It's part of Nashua's future. To not follow it would be a mistake. The residents in his community don't feel like we should be faced with a development that's going to have more than 100 people living there, 75 or more cars. It's going to be a huge change and not what we moved in understanding would be there in the neighborhood. He asks the Board to look at the master plan, if this goes in you'll have to change the map to higher density.

Santosh Salvi, 4 Azalea Ln, Nashua NH

Mr. Salvi said he has lived in this neighborhood since 1997, he has seen this develop right from the dirt road. His kids have gone to Wise Owl, his mother in law used to walk them there. He's not sure after this 44 unit development that grandparents will be able to walk kids to school. Wise Owl is expanding, and with this 44 units you are putting 99 more cars over there. On top of that, he had a meeting with the Mayor and Mr. Durfee because we are getting so many complaints. We have an intersection, there is a stop sign at the Main Dunstable/Gilson Rd and at Buckmeadow Rd. We have many accidents and speeding because the Main Dunstable Road is a state highway which goes at certain speeds. Already we have a lot of elderly and young kids that cannot cross the road, and on top of that we are adding 44 multifamily units.

Mr. Salvi said this is the last parcel in this neighborhood, we are changing the characteristic of the neighborhood for the last parcel. Basically the entire community is fighting with the city for the last 8 years. We are collecting money from each house to pay for an attorney. We feel like after taxes we are being surcharged on top of it. There are many families like there, there are 250 families who are living there peacefully. The Board is putting their day to day life at a different state and more stress.

Mr. Salvi said the other thing he wants to talk about is the intention of HB-631. There are many unused commercial spaces, like

a warehouse, manufacturing plant, businesses that are not doing well. Those spaces are not utilized for anything else, and we have some housing crisis. We need affordable housing. That is the reason for HB-631, we need to build more multifamily affordable housing. With this development that intention is not being shown. We are creating the high end multifamily housing out of this. He does not understand.

Mr. Salvi said the basic thing on top of it is that we are basically kicking out the elderly housing from this neighborhood. We have 21 families living there across the road on Houston Dr as their last house. They came to Nashua for some kind of peace that they can enjoy walking on the street, they find that place to be peaceful. We are ruining that by developing the last parcel. You are changing the lives of 400+ Nashua residents. He is not happy with that.

Mr. Salvi said he understands that every business needs to make money. The developer bought the land from Hannaford with the intention of building elderly housing. He is fine with building duplexes or attached townhouses so the characteristics would never change and people could live peacefully. He asked the Mayor if it was possible to buy that land and try to make a park or winter activity there. But the land belongs to the builder, he as the right to keep it or sell it. We cannot force that.

Mr. Salvi said after going through all this, every day he is getting so many emails as a state representative from the community requesting him to do something about this. He has six intelligent people in front of him trying to go through the stuff and take the right decisions. He is expecting the Board to not just read the law, but to interpret the law for the benefit of the public. He asked the Board to follow the process and do something good for the Nashua community.

Jessica Taylor, 33 Gilson Rd, Nashua NH

Ms. Taylor said she is in opposition to the proposed 44-unit townhouse development at Merrit Pkwy. Living, commuting, and interacting with this area every single day and having grown up and visiting this area every weekend, she knows that there are many reasons to discourage this development. The southwest quadrant of Nashua is a gem. You are bound to walk along Buckmeadow and adjacent neighborhoods and come across some bird, plant, or animal. Just recently the 34 Buckmeadow Rd storage facility was denied by the Zoning Board. The Zoning Board brought up an excellent point in regards to the concentration of this area.

Adding to the traffic poses a danger to the students coming in and out of McCarthy Middle School.

Ms. Taylor said it takes one drive on Conant, Main Dunstable, Buckmeadow or Gilson Rd to see that walking and biking is a prevalent form of transportation and recreation, much of that coming from the school and involving families. Kids hang out at Captain's Corner, walk to the soccer fields, and families use the trails and Yudicky Park. That should be the focus when improving this area. Not squeezing as many people into the area as possible. Any resident of this area knows this and observes this every day, this observation should be a huge part of the decision to completely alter a fantastic neighborhood.

Ms. Taylor said she is fairly new to being aware of this proposed project considering how long it has been fought against, and she is still educating herself on what has gone on. But the apparent fact is that you can't keep rehashing something and expect a different result. No matter how many times this is brought to the table the residents that this affects are against it every time. If this proceeds there is no going back. Nature will be pushed out, kids will be discouraged from walking or biking due to safety, and more accidents will occur. That concept is a stark contrast to the beauty, character, and interaction that this neighborhood provides now. The neighborhood cannot sustain nor does not want more residents and traffic.

Raymond Joncas, 1 Houston Dr, Nashua NH

Mr. Joncas said the number of vehicles that will be over there are 88+. You can an entrance and an exit there, it's all going to go on Conant or Main Dunstable. There's backups on Main Dunstable now, with 88 more cars it'll back up as far as Westgate Crossing. He doesn't know where those cars are going to park, plus guests, delivery trucks, there will be no room to park.

Mr. Joncas said he is concerned about blasting. There's plenty of rock over there. Where seven of the units are going you'll have to remove 100% of the vegetation. That's a lot of vegetation, and the deer come right through there.

Letters from the following:

Nichole Gilliam, 481 Main Dunstable Rd, Nashua NH

Staisha Momaney, 3 Gilson Rd, Nashua NH

Atty. Jeff Spear, 45 S. Main St, Concord NH

Raymond Joncas, 1 Houston Dr, Nashua NH
Steve Banwarth, 15 Houston Dr, Nashua NH
Christina Gu, 4 Hollyhock Ave, Nashua NH
Denise Muccioli, 9 James Pl, Nashua NH
Gloria McCarthy, 65 Musket Dr, Nashua NH
Cindy Fletcher, 11 Jennifer Dr, Nashua NH
Jill & Tim McGuinness, 10 Cold Brook Cir, Nashua NH
Debbie Dufresne, 20 Colonial Ave, Nashua NH
Yvon & Linda Girard, 14 Autumn Glen Cir, Nashua NH
Dr. Amy Haas, 25 Merrit Pkwy U-4, Nashua NH
Jessica Taylor, 33 Gilson Rd, Nashua NH
Marnie Crowley, 3 Hibiscus Way, Nashua NH
Lori Bush, 28 Carlene Dr, Nashua NH
Sara Ziatz, 111 East Glenwood St, Nashua NH
Lincoln Brown, 21 Carson Cir, Nashua NH
Martha Bergstrom, 5 Whitford Rd, Nashua NH
Erika Vacher, 6 Cold Brook Cir, Nashua NH
Edward Raye, 6 Houston Dr, Nashua NH

SPEAKING IN FAVOR

None

APPLICANT REBUTTAL

Mr. Varley said the comments we heard were about impact on wildlife, vegetation, traffic, density, character of the neighborhood, and blasting.

Paul Chisholm, Civil Engineer

Mr. Chisholm said at the end of the day, the law is the law. Multifamily housing is allowed by right on this property, and that's being proposed.

Mr. Chisholm said in regards, to traffic, the city has specific criteria for traffic analysis. An appropriate level of analysis was provided. That analysis was reviewed. There's a letter from Traffic Engineer Wayne Husband in the staff report speaking to that, and that there is sufficient capacity.

Mr. Chisholm said in terms of wildlife, that coordination happens through the Alteration of Terrain permitting process. That's not just with NHDES, that's with Fish and Game. All of that happened, we received the permit. There weren't concerns there to the level that the project could not move forward.

Mr. Chisholm said in terms of blasting, yes there is definitely some outcroppings that will have to be hammered out. The design was an attempt to limit that to the maximum extent possible. There are specific laws about blasting that are above his paygrade but anything that has to be done has to follow specific protocols. This isn't the wild west, you can't just go blast wherever you want. All of those things will happen the way they're supposed to.

Mr. Varley asked him to speak to the density of the development and the character of the neighborhood in relation to the surrounding uses. In terms of traffic, he would like to hear more detail on the Traffic Impact Report and the implications.

Mr. Chisholm said the way it works is the Institute of Traffic Engineers is a recognized organization that publishes data. This data is derived from actual developments that exist out there, and they basically create these general calculations that apply to specific types of development. There's a couple hundred uses in that book. The specific metric applied here is #220, multifamily attached. In terms of that, we've taken the size of the development by unit count.

Mr. Chisholm said there's certain thresholds that the city has that trigger further analysis outside of calculating the impact. The first is adjacent roadway peak hour traffic in the morning and afternoon. The threshold for that is 75 trips per hour, the peak for a 44-unit townhouse development is 24.6 peak trips per hour during the PM condition. The morning peak is 20.2 trips. For the development peak hour the threshold is 100 trips per hour, and is the morning, afternoon, and Saturday; the maximum this development got was 30.8 trips. During a full 24-hour period, it was calculated to be 358 trips on a Saturday. During the weekdays it's 322. The threshold for 24-hours is 1200 trips. We're under those thresholds any way you can slice and dice through the analysis.

Mr. Zoller asked about site lighting and photometrics. Looking at the lighting plan he doesn't see anywhere that lists whether the fixtures are dark sky compliant. Would the applicant be open to that?

Mr. Chisholm said there's certainly an intent to provide that. We don't want to overlight it, this is a residentially scaled lighting design. This isn't a commercial development, you don't want to have lights throughout. We work with a lighting consultant, Exposure, and we worked together to come up with the best game

plan for this site. You'll see on Mangerian there are a couple of residential style street lights and there's unit lighting as well. He is fine with a condition that the lighting be dark sky compliant.

Mr. Zoller said he's not sure if we are required to hold him to that, but it is a recommendation.

Mr. Chisholm said it may be required under the land use code.

Mr. Durfee said we don't have the words "dark sky lighting" in the code but the intent of downcast lighting, those sorts of terms are. The effect is the same.

Mr. Zoller said he thinks it's a national standard that certain fixtures can conform to. It's important for the public to know you thought through that.

Mr. Chisholm said not for nothing, the residents living here would be the ones mostly affected. That's what we were looking at first, but that bleeds to anything outside the development.

Mr. MacIntyre said one of the things the public mentioned was the idea of the master plan. It's a blueprint, it's not made by the Planning Board, it's made by a whole conglomeration of people from professionals, staff, city volunteers, you name it. It's not a Planning Board published document, it's the city of Nashua who did it, but we should follow it as much as we can. He is cognizant of that and tries to make that a point every time we have these meetings.

Mr. MacIntyre said the southwest quadrant of Nashua was the last frontier of home development. Not high rises, but available land. The southwest quadrant was the last area. It's not going to make me or anyone else feel good about it, but if there's land to be developed in the city and it tends to be over there, this is what's going to happen. It's not the same place you grew up in, he lived on Conant Rd as a kid. It's not the same place going forward. He thinks this is the area where the potential for new home development can happen, correct?

Mr. Durfee said he doesn't entirely agree with that. The master plan has some very specific areas for redevelopment. There is land, raw land, greenfield development, and this is one of the last parcels of that. Obviously the southwest quadrant, being more rural in nature, larger lot sizes, yes there is an opportunity for

subdivision and thickening up density. But to speak to the master plan, it does have very intentional areas we wish to develop.

Mr. MacIntyre said he is aware that there are site all across the master plan we want to do various developmental approaches. He was mostly talking about green field undeveloped land. He thinks that the public needs to be aware of that, there is potential downstream for more development to come. Under R30 zoning, does this style of development violate the ordinance?

Mr. Durfee said yes, it does. The underlying R30 zoning district regulates the use and lot sizes. But the Flexible Use Overlay District allows commercial uses. And so these state bills have preempted our ability to regulate and plan in the way that the master plan and zoning ordinance contemplate for this area. Our hands are tied to a degree.

Mr. Durfee said this does not take away from the Board its site plan approval criteria. Those are the metrics against which you can evaluate this site plan. What it takes away is all the relief that this project had to receive in 2024. We cannot regulate density, the number of stories. We can regulate height, that is limited to 35-ft in this district. This buildings are 34-ft. Our ordinance does not allow multifamily, they had to ask for relief for that before; HB-631 takes that away. The elderly restriction, while there is some debate how HB-631 addresses that, he thinks Mr. Varley was very accurate in his characterization on how HB-1588 in restricting our ability to impose additional requirements. Age restriction is an additional requirement that is not specifically allowed by RSA 674:80.

Mr. Durfee said yes, it does violate our zoning, but state law has told us that does not matter. This project has to be permitted by right, but that does not remove the Board's discretionary judgement as it relates to the site plan approval criteria.

Mr. MacIntyre said he views his role as encouraging difficult questions and discussion rather than everything by the numbers. In regards to discretion, does that mean via the site plan approval criteria, he can apply his discretion on whether or not this type of development is meets the unique structural and visual character of the nearby neighborhood?

Mr. Durfee said yes, you're asking the right questions. Now we're entering the realm of where these approval criteria intersect with the state preemption. Is multifamily out of character? It might be

subjective, but there is no multifamily in this area. However, since state law says we have to allow it, he would advise the Board to exercise caution that the nature of the use is out of character and to deny the site plan because of it. Because the state has changed the law, he doesn't believe this would be viable reason to deny.

Mr. Durfee said there is an additional section of RSA 674:80 that was added by HB-1588 that any owner improperly denied an application, or who is subjected to requirements beyond those allowed in this section, and who is therefore required to file suit against a municipality to exercise their property rights thus recognized, shall be reimbursed reasonable attorney fees incurred as a result. The legislation is encouraging developers to file suit against municipalities who do not adhere to the state law. He has never seen such a statement in state law. He thinks the intent is very clear and is giving a warning to municipalities to read very the plain language in this statute as it applies and therefore allows a use that may be out of character with the neighborhood. He advises the Board to use caution in stretching their interpretation of these approval criteria in a way that may violate the new law.

Mr. MacIntyre said given that, he believes that the Board has to follow the state law and that can be under interpretation of others. In a sense, he feels his hands are tied in anything that would give him discretion the way the new laws are in place.

Mr. MacIntyre said he didn't see anything in the staff report that said there were conservation sensitivities here that would make him concerned.

Mr. Durfee said typically the interaction between Planning Board and Conservation Commission boils down to whether there is work proposed within a wetland buffer. That follows a Conservation Commission recommendation and Zoning Board special exception. That's a prerequisite before site plan application. That hasn't happened because there is no work proposed in the wetland buffer.

Mr. MacIntyre said he hasn't heard from the mayor of any exception to this. He hasn't heard from any aldermen on any exception to the development. We've heard a lot from the public, but from the legislators representing the public, he has not had that guidance or warning.

Ald. Klee said when she looks at RSA 674:80, that last section will encourage people to sue us. We need to be cautious in our changes. While our hands are tied, we can still do things. If she is correct, RSA 674:80:I, items a-c are the only stipulations that would allow us to say no to this. One of them is road infrastructure, requiring a traffic impact study to ascertain the potential impacts to the existing traffic condition in the vicinity of the project, including but not limited to increased vehicular traffic, availability of sidewalk infrastructure to ensure pedestrian safety. Basically, this talks to a traffic study. She knows that numbers were given and everything was met, but when does that review happen and is it before these other places moved in? The Zoning Board turned down another business.

Mr. Chisholm said the city has set criteria for when a traffic study is required and not. We've submitted it as part of the application, it's been reviewed, there is a letter from Engineer Husband that speaks to that. It also speaks to a study done by another consultant fairly recently, looking at the intersection of Main Dunstable and Buckmeadow. There is no formal traffic study because it hasn't risen to that level. But there have been other studies in the area that are recent.

Ald. Klee said we will get to a point where traffic is saturated and the last person on the totem pole going to be no, you tip things over the balance. She understands how the residents feel. She has felt the impact of growth within her ward, where 7 acres of green space were cleared. It was very frustrating and changed the entire environment. The other two items are the water infrastructure required, she saw the letter from Pennichuck, and the sewage infrastructure. That too seems to be addressed. She is sorry to say that what may be a little additional will cause a safety issue. She had an accident at Captain's Corner, someone who didn't stop. The traffic is getting worse. She personally feels this will have a traffic impact.

Mr. Hudson said there's been some discussion about traffic and pedestrian safety. There is a letter in the packet from Senior Traffic Engineer Wayne Husband. The pertinent quote is that there is more than sufficient capacity available along the existing roadway networks to accommodate an additional 44 residential dwelling units at 8 Merrit Parkway. He agrees with Mr. Husband on that point. He doesn't know if it's so much traffic volume, this is a small incremental change to the area. There have been other developments that have had much more significant impact to traffic, much higher volumes. Frankly, a grocery store would be much higher

volume than what is proposed currently. He understands that we have an epidemic of bad driver behavior throughout the city, people driving too fast or not stopping where they should. It's beyond the responsibility of this project to address that. But the Board is free to disagree with Engineering as they see fit and can request an additional traffic study should you seek. Mr. Husband does reference some recent studies, there was one done for the McCarthy Middle School, and the Gilson Rd proposal for Bishop Guertin. The study affirmed that the traffic that has resulted is consistent with the previous study. But we have been getting concerns about the intersection of Main Dunstable and Buckmeadow, the current traffic conditions don't warrant converting it to an all-way stop intersection. That would be the next measure. The warrants for traffic signal aren't met, the traffic level doesn't rise to that level. There have been crashes, the frequency we've seen isn't high, but we have seen some relatively severe ones. That's a function of the bad driver behavior and people not following the rules of the road. The small incremental traffic doesn't warrant any change in that regard.

Mr. Hudson said in terms of pedestrian travel, there are walkways within the development, which are private. There are some additional ones proposed. He doesn't find these conditions will change there necessarily. He can understand that people want more sidewalks, but those come at a maintenance requirement and we can't provide that everywhere. We have trouble keeping what we currently have maintained. Adding additional sidewalks would be nice to have, but not within the scope of the project nor necessarily warranted by this proposal and the level of traffic that's part of this development.

Mr. Varley said living down the street from this proposed development, the sidewalk infrastructure here is pretty good. Around this site you have sidewalk that connects to Main Dunstable, Cherrywood, and Gilson. Relatively speaking, there's a lot of areas in the city where the sidewalk infrastructure is more deficient.

Mr. Hudson said he wants to highlight a couple of things the city has done to improve safety in this area. We put in a flashing beacon crossing at the intersection of Main Dunstable. We put up flashing stop signs, we cleared the sight line on Buckmeadow. We broke out the left and right turn lanes on Buckmeadow because the majority of the traffic turns right. This proposal has proposed another flashing beacon as offsite mitigation up at Buckmeadow Rd. We have heard the concerns, we are trying to take measures to improve things.

Mr. Hudson said there were questions about parking onsite, can you address the adequacy of parking?

Mr. Chisholm said every unit is designed to have a garage space and parking space in the driveway. That meets the requirements. We have a parking calculation for the overall mixed use development, the commercial and residential are offsetting uses. The land use code contemplates this, the shared parking analysis applies here. We feel comfortable with it and it has met the requirements.

Ald. Klee said the parking available by the businesses, do you have agreements that cars parking there won't be towed?

Mr. Chisholm said it's a community thing, this is an existing condominium development that is privately regulated. The parking is set up for everything, this is another level of that.

Mr. Varley said we have already concluded the public testimony component of the hearing. We used to allow a one-person rebuttal, it got confusing. To recap the procedure, we heard from the applicant, we allowed public testimony for anyone who wanted to speak, we heard rebuttal from the applicant and gave the Board opportunity to ask questions on the rebuttal. Unless the Board has additional questions, he will close the public hearing.

PUBLIC MEETING

Mr. Varley closed the public hearing and opened the public meeting. The Board reserves the right to reopen the hearing if necessary.

Ald. Klee said she did not vote for the Bishop Guertin fields, and ordinarily would not vote for this. She will because of the new regulations and she feels that our hands are tied. She has anxiety about the applicant suing the city, if we don't cross every t and dot every i the taxpayers are on the hook. Those three items she stated are the only exceptions. Her heart goes out to the residents. Elections count, and they matter.

Mr. MacIntyre said there's nothing that stops the neighbors or the abutters from suing the city.

Mr. Varley said we should be cautious in relation to the changes in state law. But the Board should make their decision on the merits of the case and whether the proposal meets the site plan criteria, not a fear of lawsuit and attorney fees. We have a duty

to make a decision based on the application before us and the requirements.

Mr. Varley said because traffic was such a consistent comment, one of the things he heard from the applicant was that the traffic trips were significantly under the requirements to trigger a traffic study. That is significant, that is one of the items where the Board still retains discretion. It's reasonable for the Board to not exercise that discretion, the applicant is only at about 30% of the requirement. We have dealt with that incremental increase in traffic other places, no one wants more traffic, but we have to ask if it is significant enough that it warrants further study or action. He doesn't see that we can say that based on the figures presented.

Mr. Hirsch said he voted for this in 2024. This project is a lot more attractive than a potential commercial development there. A grocery store would have far more impact there. It's a good project.

Mr. Varley said that's not just a hypothetical, Hannaford owned this property prior to the applicant. They could have come before the Board for a smaller grocery store. The traffic impact would have been substantially higher, and that would have been permitted regardless of the changes to state law. This is a pretty modest development plan that is much less impactful than it could be. He remembers the original propose in 2020, it was way too big.

Mr. Hirsch said it was terrible.

Mr. Varley said he doesn't think it was a good plan for the site. To the applicant's credit, he took that feedback and came up with a very different plan, one that ultimately came in front of the Board.

Mr. Zoller said in regards to the FUOD and the intention of the mixed use village, this would allow for more mixed use. That is the underlying idea, businesses and residences that mutually benefit each other. There is a walkability aspect to this as well. Even though we're not proposing a commercial aspect here we are looking at a mixed use type environment. The applicant is trying to conform to the overlay district.

Mr. Varley said if we make a motion, we will need to act upon the waiver request first. This is a standard waiver from existing

conditions. If the Board acted favorably on a waiver, we would then need to consider final site plan approval.

MOTION by Mr. Hudson to approve the following waivers for New Business - Site Plan A26-0166:

- a. §190-279(EE): To waive the requirement to show existing conditions on adjacent properties "as appropriate".

As per RSA 674:36(II)(N), RSA 674:44(III)(e), and §190-148(D), Strict conformity would pose an unnecessary hardship to the Applicant and the waiver would not be contrary to the spirit and intent of the regulations; and specific circumstances, or conditions of the land, and the waiver will properly carry out the spirit and intent of the regulations.

SECONDED by Mr. Hirsch

MOTION CARRIED 6-0

MOTION by Mr. Hudson to approve New Business - Site Plan A26-0166. The Board finds that the application meets the Approval Criteria under §190-146(D) with the following conditions:

- a. Technical review comments 6.1 - 6.4 in the Planning Staff Report shall be addressed to the satisfaction of the Planning Department.
- b. Technical review comments 6.5 - 6.7 in the Planning Staff Report shall be addressed to the satisfaction of the Fire Marshal's Office.
- c. Any waiver(s) granted shall be listed on the plan. Should any waiver(s) be denied, the plan must be revised in order to comply with the applicable site plan regulations.
- d. All conditions from the Planning Board decision letter will be added to the plan.
- e. The Applicant shall make a \$7,500 contribution to the nearest corridor account.
- f. The Applicant shall work with the Planning Department to incorporate a public trailhead for access to the path over the existing sewer easement in the eastern portion of the site. The associated public access easement, to the extent it

will be required, shall be submitted to the Planning Department for review and approval.

- g. The plan set shall be sealed and signed by a Professional Engineer licensed in the State of NH. The seal and signature of a NH licensed Wetland Scientist shall appear on any plan sheet which depicts wetlands or wetland buffers.
- h. The architectural plans shall be stamped by an Architect licensed in the State of New Hampshire.
- i. Prior to the issuance of a building permit, an electronic copy of the plan will be submitted to the Planning Department.
- j. Prior to the issuance of a building permit, stormwater documents, in accordance with §190-217, will be submitted to the City for review and approval.
- k. Prior to the issuance of a Building Permit, the Applicant shall identify which Planning Board approval it intends to utilize as the basis for the Building Permit. The Applicant may proceed under the approval associated with the 2024 application, subject to resolution of the pending appeal of that approval, or may proceed under the approval granted pursuant to this application, if approved. The Applicant shall not proceed under both approvals concurrently, and any Building Permit shall be based upon a single operative Planning Board approval.
- l. Prior to the commencement of site work, a pre-construction meeting shall be held and a financial guarantee, to be reviewed and approved by City staff, shall be in place.
- m. Prior to the issuance of a building permit, the applicant shall provide documents establishing a condominium association, which will be responsible for maintaining all property in common ownership. The documents will be submitted to the Planning Department and Office of Corporation Counsel for review.
- n. Four-months prior to the first request for a Certificate of Occupancy, the Applicant shall provide the Planning Department with a draft of the Declaration of Condominium documents for review and comment.

- o. Prior to the issuance of the first Certificate of Occupancy, all condominium documents shall be recorded at the Applicant's expense.
- p. Prior to the issuance of the first Certificate of Occupancy, the Condominium Site Plan shall be recorded at the Registry of Deeds, at the Applicant's expense. The Applicant shall provide the Planning Department with checks, payable to the Hillsborough Country Registry of Deeds, for the necessary recording fees.
- q. Prior to the issuance of the first Certificate of Occupancy, all stormwater documents, in accordance with §190-217, shall be recorded at the Applicant's expense.
- r. Prior to the issuance of the first Certificate of Occupancy, the public access easement associated with the trailhead, to the extent an easement will be required, shall be recorded at the Applicant's expense.
- s. Prior to the issuance of the first Certificate of Occupancy, all site improvements shall be substantially completed, in accordance with the approved plan, provided that any paving may be completed to base course and landscaping may be completed as seasonally permitted; and further provided that a financial guarantee will be required for any work remaining.
- t. Prior to the issuance of the final Certificate of Occupancy, all on- and off-site improvements will be completed.
- u. Prior to the issuance of the final Certificate of Occupancy, an as-built plan locating all driveways, buildings, utilities, and site landscaping shall be completed by a professional engineer or a licensed land surveyor and submitted to the Engineering and Planning Departments. The as-built plan shall include a statement that all construction was completed in accordance with the approved site plan and applicable local regulations.

SECONDED by Mr. Hudson

Mr. MacIntyre requested a rollcall vote.

Yes: Varley, Zoller, Klee, Hirsch, MacIntyre, Hudson

No: None

MOTION CARRIED 6-0

OTHER BUSINESS

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

MOTION by Mr. MacIntyre that there are no items of regional impact

SECONDED by Mr. Hirsch

MOTION CARRIED 6-0

DISCUSSION ITEMS

None

MOTION to adjourn by Mr. Zoller at 9:44 PM

MOTION CARRIED 6-0

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Kate Poirier - Taped Hearing