



# CITY OF MANCHESTER

## PLANNING AND COMMUNITY DEVELOPMENT

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### MANCHESTER ZONING BOARD OF ADJUSTMENT PUBLIC HEARING / LIMITED BUSINESS MEETING MINUTES January 12, 2017 – 6:00 p.m. City Hall, Third Floor – Aldermanic Chambers

Board Members Present: Chairman Allen Hendershot, Vice Chairman Michael Dupre,  
Matt Routhier, Ray Clement

Alternates Present: Jose Lovell, Robert Breault, Anne Dalton

Absent: Thomas Puthota (Member)

City Staff Present: Michael Landry, Deputy Director of Building Regulations

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I. **The Chairman calls the meeting to order and introduces the Zoning Board Members and City Staff.**

II. **PUBLIC HEARING:**

(Tabled Cases)

1. **ZO-94-2016**  
**109 Valentine Drive, R-1B Zoning District, Ward 8**

Phuong Tu Thi Le proposes to create two (2) parking spaces on existing driveway and install a second driveway for an additional parking space in the side yard and seeks a variance from Sections **10.09 (B)** (four counts) and **10.09 (B)2** Parking Setbacks of the Zoning Ordinance, as per documents submitted through September 2, 2016.

***Michael Landry announced that case #ZO-94-2016 was a case originally heard back in October, 2016 and was tabled for a certified plot plan. He said the applicant has been unable to provide a certified plot plan up to this point and this case would be re-noticed and new abutter notices will be sent out when the applicant is ready. He said this case would not be heard this evening.***

2. **ZO-101-2016**  
**700 Hanover Street, R-1B Zoning District, Ward 4**

Ken Rhodes (Agent) proposes to build an addition to the existing nursing home for all expansion of kitchen, dining and activity rooms (no additional beds) and seeks a variance from Sections **6.03 (A)** Street Yard Setback, **6.04** Lot Coverage, **6.06** Floor Area Ratio, **8.18 (B)** Special Setback Distances, **8.27 (C)** and **8.27 (D)** Fences Walls, **10.06 (A)** Parking Layout, **10.07 (G)** Landscaping and **11.04 (F)** Expansion of Non-Conforming use Created by Variance, of the Zoning Ordinance, as per documents submitted through January 7, 2017.

Ted Lee said he is the owner and president of the Hanover Hill Health Care Center. He said he was appearing along with Ken Rhodes of CLD Consulting Engineers, Joan Eagleson of Lavallee Brensinger Architects and Lori McIntire who is the Administrator at the Hanover Hill Health Care Center.

Ted Lee said they are a 124 bed skilled and intermediate care facility and they have been there for fifty years. He said they have always strived for excellence and they are a five star rated facility through Centers for Medicare and Medicaid Services (CMS) which is a governing board for the state and federal branch of government. They have also earned the Reader's Choice Award for the Union Leader for the last three years as the best nursing home in the state. He said they strive for excellence at their facility and this segues into the project that they are doing now.

Mr. Lee said back in 1967 the building was approved for construction under a variance so every time they want to make a change to the outside at all they have to come back before the Board for a variance. He said he is sure if the Board Members looked at their folders they would see a stack full of variances, probably thirty or more, over the decades that they have been there to make changes and this is just one more addition. He said it is all in the pursuit of that quality and continuity of care and meeting the demands of health care and also the regulations.

Mr. Lee said the project encompasses expanding the dining area, kitchen area, activities area, adding a second elevator and an additional storage area. He said they have done their due diligence in sending out letters to all of the neighbors, inviting them into an open house to talk to them about the project. He said the Alderman for their Ward, Alderman Christopher Hebert, wrote a letter of support of the facility and the proposed project. Mr. Lee said he had copies of the letter that went out to the neighbors as well as a letter from the Alderman. He said this proposal was not causing any stress on the neighborhood, no new traffic, no additional employees and there are no additional beds being added.

Ken Rhodes of CLD Consulting Engineers said they have had the privilege of working with Hanover Hill Health Care in the past and they are excited to participate in the expansion for the food service area which is located toward the Tarrytown Road side of the property. He said this has created a number of variance calls.

Mr. Rhodes said all of the addition and work is on the Tarrytown Road side. Mr. Rhodes

referred to the plan and said the current building wall is here and steps back and there is a freezer behind a fence and then an area that goes around to the back and a lower patio. He said the opportunity has now come forward and as Mr. Lee said, the food service area is not serving the need of the residents and it needs to be expanded and modernized. What that has caused is access changes needed and there has been a small staff and service parking field off of Tarrytown Road that now has the opportunity to get in a little better shape and into a little bit more usable form. He said it has kind of morphed as a number of things out there have over time.

Mr. Rhodes said he would like to walk through the variance counts. He said he would be brief because the Board knows this property very well but he wanted to go through the counts for the general public and for the record give it an overview.

Mr. Rhodes said there are nine counts as Mike Landry listed. The first three are related to the table of uses. He said there is a side yard setback that is supposed to be about ten feet in this district and the current building is already four or five feet at the line. The building addition is just about a foot or two over just by internal needs. That creates that particular variance count. The next one is 6.04, maximum lot coverage. Currently all the green space on that property is 68.9% and the requirement is that you cannot exceed 70% and this proposal makes it 72% so that count is required. He said 8.18 (B), Special Setback Distances, again, along Tarrytown Road, this being a residential district, there are some very nuance portions of the Ordinance related to structures that have to be fifty feet away. Most of them are already in non-conformance as they exist, but it is better to put them on the record.

Mr. Rhodes said next two counts are related to retaining walls and fences on walls. There are two retaining structures being considered here along Tarrytown Road. Referencing the plan, Mr. Rhodes pointed out an area where the Ordinance allows four feet and said it wouldn't be four feet but it might be five or six feet in that particular area to tie the gradings together. Right behind where the dumpster pad will be reconstructed, that wall along the backside, may be about five or six feet. The Ordinance also requires that fences on top of walls should be no more than four feet in height, but to provide proper screening, six feet is the recommended and the design height and that will require a count.

Mr. Rhodes said the next two counts are related to the little parking field. He said 10.06 (A) is Parking Lot Aisle Width and the current paving is also closer than ten feet to the lot line. He said they have maintained about five feet of paving through there. The aisle width to get a proper parking space there is only 18½ feet where 20 feet would be required. The final count is 11.04 (F), the general one, the Expansion of the Non-Conforming Use. He said as Mr. Lee introduced, Hanover Hill Nursing Health Care Center has been there since 1967. This is a residential district and its' existence here for a long time has not been consistent with the R-1 District.

Mr. Rhodes said those are the counts and those are some of the reasons for the counts and he said he wouldn't walk through them but the five criteria generally are speaking to the

idea that for this expansion it improves the service ability of the site without requiring any more beds or anymore staff and puts no more pressure on the particular area.

Chairman Hendershot turned the hearing over to the Board.

Vice Chairman Dupre asked if the food expansion is just to service the residents and not for food delivery or outsourcing or catering. Mr. Lee said it was just for the residents.

Chairman Hendershot turned the hearing over to the public and invited those in favor of or in opposition to this application to come forward. No one came forward to this request.

Chairman Hendershot turned the hearing back over to the Board.

Chairman Hendershot said his only comment is that the Board asked the applicant when they were there previously that they just wanted information that was not a concept and actually had dimensions on it. He said what was submitted to the Board fits that bill and he has no problem with it.

***Vice Chairman Dupre made a motion to grant the following variance counts for case #ZO-101-2016, Sections 6.03 (A) Street Yard Setback, 6.04 Lot Coverage, 6.06 Floor Area Ratio, 8.18 (B) Special Setback Distances, 8.27 (C) and 8.27 (D) Fences Walls, 10.06 (A) Parking Layout, 10.07 (G) Landscaping and 11.04 (F) Expansion of Non-Conforming use Created by Variance, which was seconded by Raymond Clement. (Motion Carried)***

***Yeas: Hendershot, Dupre, Clement, Routhier, Lovell***

***Nays: None***

Upon a unanimous vote the variance was granted.

3. **ZO-122-2016**  
**1111 Candia Road, IND Zoning District, Ward 6**

Richard Keller proposes to maintain additional parking in the IND zoning district and seeks a variance from Sections **10.06 (A) Parking Layout, 10.07 (D) Parking Maneuvering, 10.08 (A) Driveways Location, 10.08 (C) Driveways Width, 10.09 (A) Parking Setbacks**, of the Zoning Ordinance, as per documents submitted through November 25, 2016.

***Michael Landry announced that case #ZO-122-2016 was tabled at the December, 2016 ZBA Hearing for a certified plot plan of the new parking area. He said the applicant requested this case be postponed.***

***Raymond Clement made a motion to table case #ZO-122-2016, 1111 Candia Road in Ward 6 which was seconded by Matt Routhier. (Motion Carried)***

***Yeas: Hendershot, Dupre, Clement, Routhier, Lovell***

***Nays: None***

Upon a unanimous vote the variance was tabled.

(Current Items)

4. **ZO-01-2017**  
**38 Rockland Avenue, R-1B Zoning District, Ward 10**

Henry Peratto proposes to maintain driveway width of 48', front yard parking and 2 sheds in the rear yard within 4' of property lines and seeks an equitable waiver from Sections **8.29 (A)3** Accessory Structures and Uses (2 counts), **10.08 (C)** Driveways Width and seeks a variance from Section **10.09 (B)** Parking Setbacks, of the Zoning Ordinance, as per documents submitted through November 30, 2016.

Henry Peratto of 38 Rockland Avenue said he bought this two-family house in 2014 and converted it back to a one-family. The existing driveway was already there. He said this past summer he decided to re-pave the driveway and that was when he found out there was no variance for the driveway. He is here to maintain the driveway as it is because it has been the existing driveway for the last twenty or so years.

Chairman Hendershot turned the hearing over to the public and invited those in favor of or in opposition to this application to come forward. No one came forward to this request.

Chairman Hendershot turned the hearing over to the Board.

Raymond Clement said he was familiar with this property as he goes by it two to three times a day. He said the driveway has been like this for as long as he can remember and he has been in this neighborhood for over forty-five years.

Jose Lovell said he had a question about shed number two. He asked if that was a plastic shed. Mr. Peratto said it was plastic and he had it at his old house and since he can move it, he brought it to this house because that is where he stores his snow blower and his lawn mower. Mr. Lovell said he didn't see why it was within the setback and may have missed it in the application. He asked Mr. Peratto if it would be possible to move that shed. Mr. Peratto said he could move it and would have no problem with that.

***Jose Lovell made a motion to grant the following equitable waiver counts for case #ZO-01-2017, Sections 8.29 (A)3 Accessory Structures and Uses (1 count), and 10.08 (C) Driveway Width and a variance for count 10.09 (B) Parking Setbacks, which was seconded by Matt Routhier. (Shed number two to be removed from required setbacks) (Motion Carried)***

***Yeas: Hendershot, Dupre, Clement, Routhier, Lovell***

***Nays: None***

Upon a unanimous vote the variance was granted.

5. **ZO-02-2017**  
**1234 River Road, Ward, R-1A Zoning District, Ward 1**

John Cronin, Esq. (Agent) proposes to maintain 2 handicap spaces and allow 1 future parking space within the front yard area and seeks a variance from Section **10.09 (B)** Parking Setbacks, of the Zoning Ordinance, as per documents submitted through November 30, 2016.

Attorney John Cronin said he was appearing on behalf of the applicant. He said this was an interesting project and property located up on River Road. He said the property is owned by the State of New Hampshire and was formerly connected to the corrections facility. It was determined to be surplus property by the state and was offered to the public for sale. He said Chabad Lubavitch, who had planned to develop up near Southern New Hampshire University at the corner of Bicentennial Drive thought this particular facility matched its needs better and they were interested in repurposing it. They put the property under agreement, hired Joseph Wichert to do some planning and went forward to the Planning Board last month. Attorney Cronin said thankfully last month that project was approved and everyone seems to be excited about it.

Attorney Cronin said during the zoning review there were some parking spaces identified in the required parking setbacks. The parking spaces have existed and were placed there by the State and have been there for a number of years and they are on the plan.

Attorney Cronin said the first inquiry that he had for the Board under Bartlett v. Brookside is whether or not a variance is even required. Under the State Statutory Law and the City Ordinance, the question is not whether or not somebody got approvals for something, but whether or not it exists legally. These spaces as they currently exist have existed for many years. He said they were when they were constructed and they are now. To that extent, they do not believe that a variance is required. In the exercise of caution and expediency for this project, they did file a variance request in the event that the Board thought that a variance was necessary.

Attorney Cronin said he believes they meet the criteria for the variance and the five criteria are spelled out in their application and he will waive the reading of that in light of the large agenda tonight. He said he would also like to add that Will Kanteres, a real estate broker with a wealth of experience here in Manchester, was present in the audience. Attorney Cronin said if Mr. Knateres were to testify he would say that the variance if granted would not diminish the value of surrounding properties. Attorney Cronin said also in attendance tonight was Rabbi Krinski if the Board had any questions.

Chairman Hendershot turned the hearing over to the Board.

Vice Chairman Dupre said he understands the argument Attorney Cronin just made regarding the need for a variance for these existing parking spaces, but he said Attorney Cronin also made reference to a future parking space. He asked Attorney Cronin what that was about as he didn't see anything about that in the application. Mr. Dupre said that

really wouldn't fall into that purview. Attorney Cronin said he thought that count was called out to be in the side yard. He referenced the plan and said you could see the tail of them on the plan. He said he thought there were the existing two and his understanding was that there were potentially three that violated the specific and express terms of the Ordinance. He said you have the two out front with the handicap spot and then if you scale off that piece and look at it over at the bottom side of the plan, one of those may be partially in violation as well.

Chairman Hendershot turned the hearing over to the public and invited those in favor of or in opposition to this application to come forward. No one came forward to this request.

Chairman Hendershot turned the hearing back over to the Board.

Michael Landry asked Chairman Hendershot if he would like to address Attorney Cronin's threshold question. Chairman Hendershot said the Board is talking about the whole thing and they didn't have any other discussion about it.

***Raymond Clement made a motion to grant the following variance count for case #ZO-02-2017, Section 10.09 (B) Parking Setbacks, which was seconded by Vice Chairman Dupre. (Motion Carried)***

***Yeas: Hendershot, Dupre, Clement, Routhier, Lovell  
Nays: None***

Upon a unanimous vote the variance was granted.

6. **ZO-03-2017**  
**912 Somerville Street, R-2 Zoning District, Ward 7**

Michael Robinson proposes to add the sale of pizza to existing convenience store and seeks a special exception from Section **11.04 (E)** Expansion or Changes in a Non-Conforming use Created by Amendment to this Ordinance, of the Zoning Ordinance, as per documents submitted through December 19, 2016.

Michael Robinson of 8 Shepherd Hill Road, Bedford said he has owned the property at 912 Somerville Street since 1998. Mr. Robinson said it has been a convenience store supporting the neighborhood since the 1960's when it was Chappy's Superette. He said he is requesting to add pizza to the existing convenience and is seeking a variance to do so. He said he is not changing the exterior of the building or anything in the parking lot at all. Everything will be done inside and according to code. He said he personally doesn't see anything from the outside point of view that is going to change the appearance of the building. The building has fourteen off street parking spots which will support people coming and going into the convenience store, whom may or may not buy the pizza or sub sandwiches that will be offered.

Chairman Hendershot turned the hearing over to the Board.

Matt Routhier asked what portion of the existing building is going to be occupied square footage wise. Mr. Robinson said it would be less than 25% as that is the number that he needs to hit according to the criteria and that is what he is trying to maintain at this point. He said when he pulls the permits and gets the construction documents he will make sure he is within that guideline.

Chairman Hendershot said Mr. Robinson is putting this in where it says "existing building" and it is not much of a plan. Mr. Robinson said if you are familiar with the store, it is a rectangular based store and when you walk in the cash register is on the right. Toward the back are walk-in coolers which are approximately 18'x19'. He said it would be in that area because the walk-in coolers are going to be removed.

Chairman Hendershot asked Mr. Robinson if he was going to change the signage on the outside because this request does not mention signage at all. Mr. Robinson said his plan right now is not to incorporate that into the signage. He said when the customers come in they will realize that there is pizza. Chairman Hendershot said Mr. Robinson didn't necessarily need a variance for the signage he was just wondering. Mr. Robinson said at this point he was not going to be changing the signage.

Vice Chairman Dupre said he hadn't had a chance to go inside the building. He asked Mr. Robinson if he did any kind of food prep on site now. Mr. Robinson said he did not as it is a straight convenience store right now. Vice Chairman Dupre asked Mr. Robinson how he was going to handle spoilage and how he handled spoilage presently. Mr. Robinson asked Vice Chairman Dupre is he was asking about the spoilage that comes to the pizza operation itself. Vice Chairman Dupre said it sounds like it was going to be pizza and sandwiches and that sort of stuff so there will be some waste. Mr. Robinson said the waste would be handled through the City as far as garbage pick-up. Vice Chairman Dupre asked Mr. Robinson if he was planning on getting a dumpster. Mr. Robinson said he was not planning on having a dumpster as that was the last thing he wanted to do. He said he would like to keep as it exists now with garbage pick-up. Vice Chairman Dupre asked Mr. Robinson how often his garbage is picked up. Mr. Robinson said once a week. Vice Chairman Dupre asked Mr. Robinson how many totes he presently had. Mr. Robinson said he had two on-site and if they needed to add a few more they would add a few more. Vice-Chairman Dupre asked Mr. Robinson if he had any varmint issues to which he said "no".

Raymond Clement asked Mr. Robinson if he was planning on having any type of seating inside. Mr. Robinson said absolutely not, this is strictly a take-out operation with no seating. Mr. Clement asked Mr. Robinson what his hours of operation would be. Mr. Robinson said the hours of operation for pizza and subs would be less than the convenience store because the convenience store opens up at 7:00 AM. He said the pizza part wouldn't open up until 11:00 AM and they would close at 8:00 PM on Sunday, Monday, Tuesday and Wednesday and on Friday and Saturday it would be 11:00 AM to 10:00 PM.

Matthew Routhier asked if this was going to be operated by someone other than the current person using that space. Mr. Robinson said yes it would. Mr. Routhier asked if they would have a separate lease. Mr. Robinson said that was correct.

Chairman Hendershot turned the hearing over to the public and invited those in favor of this application to come forward. No one came forward to this request.

Chairman Hendershot invited those in opposition to this application to come forward.

**Yvel Sylvain** of 891 Somerville Street said he lives right across the street from the property that Mr. Robinson is talking about. He said this place has been an issue for him being as simple as a convenience store. He said the parking lot is never clean and there is a lot of inconvenient traffic such as drug traffic in this area. He said he did speak to Mr. Robinson before the meeting and he said he was going to make some changes at the store but he is not so sure. Mr. Sylvain said it is going to be open until 11:00 PM. He said technically the store opens at 7:00 AM and they will have business until 10:00 PM when they close and they will probably leave at around 11:00 PM after clean-up. He said he doesn't see how he can deal with this.

Chairman Hendershot asked Mr. Sylvain if his opposition was that he thought it was going to increase traffic in the area. Mr. Sylvain said not only increase traffic, but the convenience store itself is a mess. There is a lot of garbage from the parking lot. There is a shed there that if it was his it would be long gone. This is not a clean environment and the neighbors are not satisfied with it. Mr. Sylvain said he mentioned to Mr. Robinson if he could at least add some cameras onto the store so they could monitor all the drug traffic in his parking lot so at least they would have some surveillance. He said Mr. Robinson did mention that he could address that. Mr. Sylvain said that is basically just a motion because he says he would address that but after he gets this variance, who knows.

Michael Robinson said he goes through that parking lot once a day or at least every other day and he has noticed in the past that the store has been tagged with graffiti multiple times and he is always on top of that. He said he is sensitive to the people who want to graffiti his building or want to do harm to the neighborhood and very aware of that. He said he has addressed the trash issue in the parking lot with the people who are operating the store and he is staying on top of that.

Mr. Robinson said as far as the drug traffic goes, he said he has heard this in the past and he doesn't know how to address the drug problem that is upon us in the City of Manchester or the State of New Hampshire or our nation. He said if that is one of those issues that needed to be addressed, he will address it because he plans on being actively involved in this operation. He said he would absolutely install extra cameras in the parking lot if those cameras can be used to stop illicit drug use. He is all for that. He said he doesn't want that scourge in that neighborhood. It is close to a school and should be addressed. The Police Department should address it and if it gets to be of a serious nature, he will address it with them. He said he doesn't think it is that serious. There is something

going on there from time to time but hopefully, with cameras and due diligence he will be able to address that.

Michael Robinson said as far as being open until 11:00 PM, they are not. He said the store closes at 10:00 PM. Mr. Robinson said as far as the shed goes, it needs work and he said he spoke to one of the neighbors who does handyman work for him and that is one of the things they are addressing.

Chairman Hendershot turned the hearing back over to the Board.

Matt Routhier asked if there was some way to enclose those trash cans to keep stuff from blowing out of them. Mr. Robinson said he could do that, absolutely. Mr. Routhier said he is very familiar with the store as he goes by it daily. He said with those totes, obviously, the lids blow open. He said he would like to make a recommendation that Mr. Robinson add some kind of enclosure to hide those as well as to minimize the trash that would blow out of them. Mr. Robinson said that would be no problem. He said he would make sure he makes that part of the permit when he applies for it. Chairman Hendershot asked if that would bring up another violation if it was part of the motion. Michael Landry asked if it was going to be on the parking lot side of the building. Mr. Robinson said yes. Mr. Landry said they are plenty far away from the lot line for that type of structure. He said they need a ten feet setback if it is attached to the building and if it is stand alone, they need four feet. Mr. Robinson said that should be plenty of room.

***Vice Chairman Dupre made a motion to grant the following variance count for case #ZO-03-2017, Section 11.04 (E) Expansion or Changes in Non-Conforming Use Created by Amendment to this Ordinance with the stipulation that a trash enclosure large enough to support two additional totes be added, which was seconded by Raymond Clement. (Motion Carried)***

***Yeas: Hendershot, Dupre, Clement, Routhier, Lovell***

***Nays: None***

Upon a unanimous vote the variance was granted.

7. **ZO-04-2017**  
**37-41 Manchester Street, CBD Zoning District, Ward 3**

Sophia Raymond (Agent) proposes a sexually oriented business within 500 feet of a church and seeks a variance from Section **8.19 (B) 2b** Sexually Oriented Business – Retail not permitted within 500 feet of a Church, of the Zoning Ordinance, as per documents submitted through December 20, 2016.

***Chairman Hendershot announced that Matt Routhier would be recusing himself from Case #ZO-04-2017. He said Robert Breault would sit in as a voting member.***

Sophia Raymond of 41 Suncook Valley Road in Chichester, New Hampshire said she is seeking a variance for an adult novelty store to be located at 45 Manchester Street. She said the reason she is here is because the proposed site is in close proximity to the church located in the old police station on Chestnut Street. She said the store is not what you first imagine when you hear that it is a sex shop. She said that is not really what it is. Their mission is actually to educate and empower healthy sexual relationships and self-confidence and self-love through intimate products, educational workshops in a comfortable and non-judgmental atmosphere. She said it will be a boutique style store, will be very clean, very inviting and there will be no nudity or pornography. There will be no flashy signs and the store front will be very classy. It will be frosted so the public will not be able to see in but it will allow enough light in to make it more comfortable within the store. She said anything that depicts any genitalia will actually be displayed in another area that is not in immediate sight line when you walk into the store to aid in the comfort. It is definitely a classier store than anything that has been seen recently or locally.

Mrs. Raymond said the packaging of the products has been selected and is very classy and discreet to aid in the comfort as well. She said they will have a resource area because many of their clients will have been sexual abuse victims and they want to make sure that they connect with them. There will be an area dedicated to connecting them with resources from reporting sexual misconduct, support groups that they can connect with and a place that the community can come in and say "How can we get involved to be advocates as well". She said they would also like to provide workshops. The workshops might not necessarily be held with within the store because she is aware of how sensitive certain topics can be so they need to make sure that they are not being traumatized in any way. These workshops will range from health to how to. She said they will pull in trainers, educators and specialists in various fields pertaining to that topic. The topics will range from how to talk to teens efficiently about sex, how to rekindle the romance, how to have a healthy relationship after sexual trauma to how to cope if your partner has been a victim of sexual assault. These are things that they are trying to accomplish.

Mrs. Raymond said she has actually reached out to the church in question and they liked the idea and they see the potential. She said she has reached out to various members of the community and they do see that this could help in so many ways in helping the betterment of Manchester. She said she is not proposing a smut shop as it has been displayed recently with the media. It is a very classy, upscale place that will help the improvement of Manchester.

Chairman Hendershot turned the hearing over to the public and invited those in favor of this application to come forward.

**Patricia Blanchette** of 19 Morrison Street said Sophia Raymond is her sister. Ms. Blanchette said Mrs. Raymond has helped so many people throughout the years. She said her sister has done in home parties for a good fourteen years and has connected with so many people on so many different levels regarding so many different things regarding their sexuality. She said she thinks this store would be an amazing opportunity for this City for

all these resources to come out. She said she doesn't know of any single place in the City that has all these resources that her sister is looking to impose in the area. She thinks this should be granted.

Chairman Hendershot invited those in opposition to this application to come forward.

**Peter Ramsey** said he is the President and CEO of the historic Palace Theatre on Hanover Street. He is a resident of Manchester and said he has been at the Palace for many years now and said many hundreds of people have worked very hard over the years to improve downtown. He said it has gotten better at times and it has gotten worse at times but the good news from his point of view is that Manchester is in a bright side now. He said in the last couple of years there have been between fifteen to twenty million dollars invested on Hanover Street alone. The Palace Theatre is thriving and they had their best year ever last year. What most people don't know is they have a very active children's theatre with about five hundred children attending every week. He said there were one hundred and forty children at the Palace Theatre this very evening. He can see the proposed shop from the front door of the Palace and he is not sure it is appropriate for the neighborhood. He is not against what the applicant has stated but he thinks there are better places in the City for it. He said he would be happy to help Mrs. Raymond if she wants help. The challenge is that they have decided over the years that Hanover Street should be a tourism location for people to visit and feel safe. He said there are nine restaurants on Hanover Street and it is maybe the finest street in the City and in the State.

Mr. Ramsey said there are many, many people here tonight that have worked hard to make sure that has happened. He said we are not there yet but the good news is that there are two very exciting developments that are going to occur within a couple of months in addition to what has already been done which will should help Manchester. For example, a very subtle thing is the Palace Theatre, even though they are a non-profit institution and they do not make money every year they invest four thousand dollars a year on the lights in the trees. They weren't told to do it but they do it because they want people to feel safe when they come downtown. He said he is not being a prude, but he doesn't think this helps the downtown image of a place where people travel from all over northern New England to visit. He is proud to say that last year they had about a hundred and fifty thousand people visit the Palace and it is because Manchester is a great place to visit.

**Alderman Pat Long** of 112 Hollis Street said he is the Alderman in Ward 3. He said he applauds Mrs. Raymond for the business that she is running. He said he thinks there is a necessity for it and it is bigger than what he thought it could be so he applauds her for doing that service. He said the only issue he has is the variance being granted because if she outgrows it or for any other reason leaves, his understanding is that the variance stays with the building. He said he doesn't see anything wrong with her business because an appropriate place is an appropriate place. He said he does foresee some issues she may have with people of a certain nature wanting to maybe hang around there when they find out what kind of clientele she has, not that it is a bad clientele, but from his understanding,

it is a female clientele. That is his concern and his largest concern would be granting the variance and having it stick to the building once she left there.

**Norrie Oberlander** said she was wearing three hats this evening. She said she is the Vice Chair of Intown Manchester, the owner of 795 Elm Street, the Pembroke Building where the Thirsty Moose Tap House is located and she also rents a parking space from Phil Surra right next to Doogie's Bar. She feels that she is pro-business especially trying to wear the Intown hat. She said she doesn't want to repeat what Alderman Long said but she is concerned about the variance living on after this business. Most of all, she feels the name of the business does not reflect the business model. She said she really applauds support groups and thinks that is fabulous. She thinks it is great that it is going to be a high end boutique and she said she doesn't mind any part of the business model but she does feel like the name, which is what everybody sees when they walk by, "Provocative Indulgence" does not reflect the business model. That is all she really cares about as a neighbor and an owner in the area because she is trying to recruit luxury tenants for her apartments above the Thirsty Moose Bar. She said it just feels like another Forbidden Fruit. She said maybe she wouldn't be standing up there if it were a different name.

**Emily Surra** of 75 Princeton Drive, Hooksett, New Hampshire said she is the daughter of Phil and Sherry Surra who own 815 Elm Street. She said this is right in front of where the building would be next to Doogie's Bar. That parking lot is owned by her parents. She just wanted to touch base on what was already said regarding just the name. She said she really thinks it is a great idea to also have support groups for those who have been victims of sexual assault, however, the name as was mentioned, "Provocative Indulgence". She said if she was looking for help regarding assistance or a support group for sexual assault victims, she wouldn't think of Provocative Indulgence for herself or she wouldn't recommend it to a friend just based on the name. She said this is something she would recommend changing. She said also within the variance is the issue of being five hundred feet away from a church. She said she feels there are many places in Manchester that are open and available for rent that aren't where this business is proposed. She feels it is a very different kind of clientele coming into the City such as banks. She said her parents rent out office spaces and units for other businesses and she said she doesn't think it is very professional to have that right outside your window.

Chairman Hendershot asked Emily Surra what her comment was about the Church. Ms. Surra said it is an Ordinance already against having a sexual oriented business within five hundred of a church and she feels that shouldn't be broken especially when you have people of faith coming in. Chairman Hendershot asked Ms. Surra if she represented the church in any way. She said she did not, that was just her opinion. She said she represented SPS2 Realty, her parent's business.

**Larry Proulx** of 45 Commercial Street in Marblehead, Massachusetts said he owns the building at 55 and 57 Manchester Street which is one building removed from the proposed site of the variance. He said Manchester Street has been struggling tremendously. Hanover Street is a success story but Manchester Street is not. He said he thinks part of

what they need to do is to make Manchester Street and the area more suitable and appealing to people to live there. Although he doesn't know him, he applauds the developer of the Citizens Bank Building along this line and thinks having this proposed business in this location is a step in the wrong direction. He said the petitioner makes reference to products being packaged discreetly and not displayed but they are products never the less.

Mr. Proulx said this is being proposed as a sort of a consultation or a therapy enterprise and he wonders why it has to occupy a prime retail space and not be located in a building such as a doctor's office. People will find it, they don't have to walk by and see it. He said for the record, his first floor occupancy in his building could be considered a church. It is the Main Street Mission and by his way of thinking it is a church as they have Sunday morning services and bible study and that is only fifty feet from this location, not five hundred. He thinks they could find a better location and he doesn't think in the long run it would be helpful to solving Manchester Street's many problems.

**Bill Binnie** said he is the builder and developer of 875 Elm Street, the Citizens Bank Building. Mr. Binnie said he wanted to in the strongest possible words oppose this particular store. He said this is really a sex store selling sex toys, which he is not against in any shape, manner or form except for the fact that it is within a hundred and fifty feet of the Palace Theatre which has hundreds of children. He said it is next to a building where they are, in all honesty, pulling as hard as they possibly can to change the direction of Elm Street. He said they do not need a red light district as a part of Elm Street or in the surrounding neighborhood and thinks we can do better. Mr. Binnie said he is happy as someone who works and lives in New Hampshire, to find an appropriate space with parking that addresses the petitioner's space needs. He said he thinks it can be done in the City and he would be happy to work with her directly himself, personally, to solve the problem of it.

Mr. Binnie said in his thirty-five years of business he has never publicly opposed someone else's building of anything. In fact, he has been turned down by more Boards than most of you have had hot suppers. He knows how much time and energy is involved to get up here and request something. He said he would also say to the Board personally that he trusts them and he trusts in the City, he is bullish in this City. This would be a huge step backwards for what they are trying to achieve in Manchester at this particular time. He said he is begging the Board not to support this.

**Kate Marquis** said she is fortunate enough to work and live in the City. She said she works right around the corner from this proposal in the Odd Fellows Building. She said she has seen the struggle on Manchester Street. Businesses come in and they go, come in and go. She said she has lived for almost twenty years and is originally from Maine. She said she is old enough and fortunate enough to have seen the rebuilding of the Old Port in Portland which has really hit the "boom" for Portland and for Maine, really.

Ms. Marquis said one of the first businesses that moved into the Old Port is a business called "Condom Sense". She said it is a high end boutique that is called CS Sense now and it has been around since 1992. It is awesome! It is clean, it's lovely and is not a smut shop and it started the "boom" for Fore Street, the most prominent street along with Exchange Street in the Old Port. People love that store. It has a big picture window which has lovely displays for every holiday. It is not what you think. Unfortunately, we are used to Forbidden Fruit which is kind of a hole and quite frankly could use some competition to clean it up.

Ms. Marquis said she is not for or against this, but she is seeing a little bit of a lack of vision of what it could be and how it could build up this area. She said it is next to a bar and you've got people getting drunk right next door and that's okay but talking about sex or having a place where people can go in and she said she can certainly admit when that store first opened in Portland, she would walk by as a high school student and giggle but we all grew up and it is what it is and it is still around twenty five years later doing well and keeping the renaissance of the Old Port going. Could that happen on Manchester Street? It is possible and if the variance doesn't get granted we will never know.

**Marlena LeDuc** said she lives at 336 Chestnut Street which is at the corner of Manchester Street and Chestnut Street which is very close to where the applicant is trying to open this business. She said she is completely for this because if you have ever spent time in that area of Manchester, you have seen where all of the people who have drug problems are standing around. The Serenity Place is right there and at all times there are thirty to fifty people outside smoking cigarettes and such. She said if you know anything about drugs it goes hand and hand with sexual abuse and along with being homeless and not having fees or a vehicle to get where you need to go, this would be in such close proximity to the Serenity House it would actually help a lot more with those type of people.

Ms. LeDuc said she does not agree with the name "Provocative Indulgence" because that does give it kind of a smutty vibe, but if the applicant were to change the name it would be better. She said she has known Sophia Raymond for twenty years and she has been involved with her business and her private parties and it has always been professional. Her business is not smutty at all and she thinks people are over-reacting a little bit to this. She thinks it is a good thing especially since Forbidden Fruit is about three blocks away. She thinks this will be a good thing for the community.

**Matt Mayberry** said he lives in Dover, New Hampshire. He said he comes before the Board to talk about not today, but tomorrow because once the variance is granted, the applicant could change her business model. Let's say Provocative Indulgence does not work and she has to make money. That could change. He said the Board would have opened up this Pandora's box of a sex shop. Slowly the discreet packaging becomes a little more overt and the pornography gets a little more racy. He addressed the Board and said once they grant this proposal, they cannot control her business model or if she sells her business who is the next person coming through. What if Forbidden Fruit says, I want to expand and I'm going to move because you've got a variance and this is right next to the Palace Theatre

and Hanover Street with a lot more foot traffic. He advised the Board to please not think about today. He said the Board does this every time they grant a variance. Once they open that door, they cannot close it and you cannot dictate their business model. We can hope that the business is a success but if it is not who is going to pay that price.

Chairman Hendershot turned the hearing over to the Board.

Raymond Clement said he thinks the business is what it is and we all know what the connotations are. You can wrap it up in a red bow but at the end of the day it still is what it is. He said Manchester doesn't need another shop like this as they already have one that was in before the zoning went in and we don't need another one in that area. He said he is not in favor of granting this request.

Chairman Hendershot asked if there was anybody present from the Zeal Church.

**Jessie Clinton** said he was the Pastor of the Zeal Movement which is the church that has been cited in a lot of the discussion. He said he has had some good dialogue with Sophia Raymond and he thinks there is a part of their operation and their motive that he thinks would be mutually beneficial for the folks that they help in the community related to things like sex trafficking and sexual abuse. He said he just arrived and he did not hear what Mrs. Raymond previously said but he thinks that was probably part of her dialogue. He said they did put a post on their Facebook Page specifically about ways that they are having conversation. He doesn't think they are formally for it or formally against it. It is just too soon and they are just beginning to have that dialogue. He said he was interested in coming and seeing what the folks in the community were saying.

Pastor Clinton said he had the opportunity to step into 875 Elm Street as they are having kind of their grand opening and he was down there with some of the Chamber folks. He said he got a handle from the business community and their perspective of what that means specifically with people that want to develop areas. Part of the role of the Church is they want to help prosper their community. He said they want to serve just as this Board serves. Part of it is helping with those who are marginalized, but at the same time they also want to understand what the thoughts are of the folks who are developing and building. He can honestly say that it was really a 50/50 split on this conversation. He said this is part of what the Church is going to officially say or not say, for it or against it, if anyone even cares what they think, this is part of his discovery as the lead Pastor of the Church. He said they want to understand what their business partners are saying in their neighborhood and it really was a 50/50 split with some of the people saying, no and this is why and this is some of the data that we see that shows why this isn't a good fit. Some people are saying that this is good and we should be able to have a space where we can help people in getting into the space of entrepreneurship and we shouldn't get in between that. It really was a mixed bag which kind of left him a little frustrated because he was really hoping to come away with something from this meeting with not just a great tour of 875 Elm Street which is unbelievable. He was hoping to be able to have something he would walk away that is going to help them in determining how they are going to work

along side Sophia Raymond in the process.

Pastor Clinton said the Church doesn't have an opinion one way or another. They are just wanting to understand how this goes. He said they are interested in what their City thinks. He said he thinks it is fair to say they aren't involved in the decision making as a Church. He said some people have the perspective that they are maybe intervening and that's really not it, they are actually having a great dialogue. Sophia Raymond has come to the Zeal Movement, the Church down at the old police station and they have had good conversation.

Pastor Clinton said they are still exploring that process along side with Mrs. Raymond and however it ends up they are going to still keep that dialogue going. Even if it doesn't end up being granted they still want to talk with her because she is a great individual and she has great passion. She wants to do something great for our community. It is one thing when people talk about wanting to help their community and it is another thing when people actually step in and do it. He said being one who serves in the community he finds that there are people who want to feel what's best for the neighborhood but we are the people who are rolling up their sleeves and getting it done. If this person wants to come in and has a heart to help people and he understands this is probably one percent of her operation and he gets that part of it, but maybe it is worth exploring what that means further.

Pastor Clinton said one of the questions he has specifically for what she is doing is that he knows Mrs. Raymond wants to make it more high end. He said he is sure that language has probably come up as far as what the space and not just making it smutty which is the language we have been hearing. She wants to make it high end with nice hard wood floors and a white boutique kind of space, chic, as they would say. He said it would be fair to ask what her budget is for something like this. He said you have an idea of what you want to do. He knows as building up Zeal space, they did that pinching pennies and it cost them \$75,000. It looks great on the inside but it costs a lot of money to fit up these places and one of the things they would be interested in is what their budget looks like. That is going to be a major factor for anyone who understands brand, you know what the look and feel is going to be and that is going to be majorly influential to what people perceive what you are going to be. There are some organizations who don't have a lot of money and you can see what that looks like as that is part of their brand. He thinks that is something to explore as well. Those are his thoughts on it and the Church is not for or against this proposal.

Michael Landry advised Chairman Hendershot that he had three letters that he would like to distribute to the Board Members and asked Chairman Hendershot if he could quickly summarize them and get the authors on record.

Chairman Hendershot said he had three letters which are all basically in support of this application. The letters are from Brenda Noiseux, Elizabeth Ropp and Jessica Goodhue who are all from Manchester.

Chairman Hendershot turned the hearing back over to the Board.

Chairman Hendershot said first of all there seems to be a misconception as far as he is concerned, that this business is not allowed or that the City of Manchester does not have provisions for these kinds of shops. Article 8, supplementary regulations for specific uses out of the zoning manual specifically talks about this. He read for the record:

***“It is the intent of this section to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the City of Manchester. The provisions of this section have neither the purpose nor the effect of imposing limitation or restriction on the content of any communicative materials, included sexually oriented materials; and, it is not the intent nor the effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market”.***

Chairman Hendershot said we do not ban sex shops in Manchester. What we do is put limitations on them, restrictions on where they can be and where they can be next to. He said he would list all of them. They can't be in a residential zone so the applicant can only be in the CBD Zone. It cannot be near a church, it has to be 500 feet away. It cannot be near the City boundary line or within 250 feet of City Hall or the City Library or any public park. That is it. He said the applicant violates one of those and that is Section 2, number B, a church. It can't be within 500 feet and this is within 375 feet. That church is down the block, around the corner, take another left and it is in the back of the old police station. He said it is in his estimation nowhere near the neighborhood of this shop. The reason it is within 500 feet is that the rules call for a straight line right through buildings. Actually, if you had to walk to the church, it is well over 1,000 feet.

Chairman Hendershot said the spirit of this Ordinance is to keep red light districts from developing. This is not the case. They are not developing a red light district with one retail shop that is permitted by statute in the City of Manchester as long as it doesn't violate one of those four things. If it does violate, the applicant can come before the Board of Adjustment and they can decide whether 375 feet is within the spirit of the Ordinance. He said he personally thinks that the CBD zone has been set up for diversity and he thinks diversity is good in the City. We are not going to have a completely same kind of homogenous neighborhood. The applicant has a legitimate business plan with a retail business but she is just 125 feet too close to a church. He said his feeling is that this church is really quite a bit further than that if you have to walk it and not just go in a straight line. Also, the church itself is the only issue here tonight and they didn't have a problem with it. Chairman Hendershot said he did not have a problem with this particular proposal.

Robert Breault said he didn't personally have a problem with the concept of her shop. He said he did have a problem with what could happen with the prolonged variance on that space as the variance goes with the property. Once the Board approved this, it would stay.

If the applicant chooses to relocate her shop elsewhere and expand or whatever, that location remains a sexually oriented shop allowed by this variance.

Chairman Hendershot agreed with Mr. Breault but said also, if this particular shop was 125 feet further away we wouldn't even be here tonight. If the Board votes against this proposal, this does not mean there won't be a sex shop in downtown Manchester. They will just have to find a place that is not within 250 feet of City Hall, 250 feet of a park or 500 feet from a church. We do not prohibit sex shops in the City of Manchester. He said he thinks that church is within the spirit of the Ordinance, is basically 75% of the way and the church doesn't have a problem and if you walk it, you are going to have to walk almost two and a half blocks to get there. It is not really part of this neighborhood, it is in the old police station.

Vice Chairman Michael Dupre said he appreciates what Raymond Clement and Robert Breault are saying and he does agree with them. He said he thinks what the applicant is doing, her business model is fantastic. He is concerned if something like this is approved at this point where they are less than the 375 feet away, somebody else down the street wants to open something that maybe is not as upscale as the applicant. They will say well, you approved her, you've got to approve me and it is, as somebody previously used the term, Pandora's box. It is almost Pandora's box for the neighborhood and he doesn't want to see that happen. The best way to equate is you put in a restaurant in the middle of a residential neighborhood and well it is a small restaurant and somebody else wants to put in a restaurant and suddenly the street that was all residential becomes a series of restaurants. He said he doesn't think that is fair for everybody else around there.

Jose Lovell asked if there was a way to restrict the variance after this business is gone. He asked if the variance would be forever with the building. Michael Landry said it runs with the land until it is abandoned. If the use is established and someone sees the value in that and they scoop it right up and continue the use it would run with the land. Jose Lovell asked if there was a way to put on a stipulation that would control that. Michael Landry said there wasn't.

Jose Lovell said he agrees with Chairman Hendershot when he said it is not too far from being allowed by statute and again, it is regarding the distance from the church and the church didn't have an issue with it. He said he thinks education on this kind of thing is great. He thinks it sounds like a pretty good idea and he is for it.

Raymond Clement asked why City Hall didn't want a sex shop any closer than 250 feet. He asked if it was because of the stigma. Chairman Hendershot said it was four hundred and some feet to City Hall. Raymond Clement said he understood that but City Hall would not want it within that 250 feet and he asked why that was. He said it is because there is a certain stigma associated with that business whether it is right or wrong. He said a lot of people look at it that way. If you have it there it promotes other things in their minds. He doesn't think it is a good location to have this in that part of the City. He said we are trying to develop into a better place to be and have apartments and more stores and stuff like

that and this is not an appropriate fit for that.

Chairman Hendershot said whether he thinks it is appropriate or not, that is what the zoning law is. The Board gives variances and that is what they do. The Board does not make up the moral judgment on what the variances are either. Raymond Clement said well then, it is within 500 feet of a Church. Chairman Hendershot said and the Church doesn't care.

Jose Lovell said he feels the majority of what the Board heard today is that the opposition seems to basically be due to visibility like the gentleman from the Palace Theatre said with children being around and other folks thought the name maybe didn't fit what the business model was supposed to be. He said he wonders if there are some changes that could be made if the applicant so chose to make some of these folks happier. Chairman Hendershot said the applicant certainly didn't have to give up if this is voted down. She could just find a location that meets those four criteria.

Sophia Raymond said in regard to the name change, that was something she wanted to bring up today because the name was developed about ten years ago when the vision of the store was just a beautiful upscale novelty store catering to women. In the past year or so, this has developed to so much more and as it has developed they have realized that the name is not conducive to what they are trying to portray. She said she was prepared to come in and address that and one of the names that they were thinking of is "embrace" which is something more community friendly that still encompasses what they are trying to do in all aspects.

Mrs. Raymond said in regard to the variance, as the Board knows as they pointed out, the restrictions are very limiting. She is limited to the CBD district plus all those areas which she is not allowed within. This is the only space that she has come across in over a year that only has one grievance and it is a Church down the block and around the corner. She said she wanted to make the Board aware of something they may or may not know. There is someone else looking to open an adult novelty shop and she is pretty sure it is not along the lines of what she is looking for. If for some reason that Church moved, which she hopes if for amazing reasons because they do really good things for the community, this adult novelty shop will not need a variance. They will be able to just move in and do what they want. That might be something to think about. She said if she is in that space, it would really limit the space that he could get into even more where he virtually could not be in Manchester.

Chairman Hendershot said Mrs. Raymond was correct. If that Church wasn't there, Mrs. Raymond wouldn't be here before the Board this evening.

***Raymond Clement made a motion to deny the following variance count for case #ZO-04-2017, Section 8.19 (B) 2b Sexually Oriented Business – Retail, not permitted within 500 feet of a Church, which was seconded by Vice Chairman Dupre. (Motion Carried)***

**Yeas: Dupre, Clement, Routhier**  
**Nays: Hendershot, Lovell**

Upon a split vote the variance was denied.

Chairman Hendershot asked Michael Landry if Sophia Raymond would be able to return to the Board for a re-hearing. Michael Landry said she could certainly ask for a re-hearing or appeal to Superior Court. Mr. Landry said Mrs. Raymond could contact the Planning and Community Development Office and ask for him and he would explain that process to her.

8. **ZO-05-2017**  
**40 Lake Avenue, CBD Zoning District, Ward 3**

Richard R. Lundborn, P.E. (Agent) proposes to construct a commercial surface parking lot within 1,000 feet of the Civic Center site and erect a free-standing sign and seeks a variance from Section(s) **5.10 (I)8** Commercial Surface Parking Lot and **9.09 (D)** Signs, of the Zoning Ordinance, as per documents submitted through December 21, 2016.

***Chairman Hendershot announced that he and Robert Breault would be recusing themselves from case #ZO-05-2017. He said that Vice Chairman Dupre would take over as Chairman for this case. He said Ann Dalton would sit in as a voting member.***

Richard Lundborn of CLD Consulting Engineers said he was the Civil Engineer for the project and along with him was one of the managing partners of the joint venture who has been working on this, Mr. Dick Anagnost. He said they are here for a variance to Section 5.10 (I)8 to allow parking within a thousand feet of the Civic Center within the Central Business District. Mr. Lundhorn said Mr. Anagnost would discuss this variance and he would discuss the sign variance.

Dick Anagnost said he is the co-developer with the Botnick family and said Mark Botnick was present this evening along with Scott Schubert, director of development at the Anagnost Companies. Mr. Anagnost said to address the first variance with respect to the parking lot the Planning Board has approved their project for Marriot Residence Inn on Central Street with their parking lot bordering on Lake Avenue. The Overlay District does not allow a separate parking lot as a separate use.

Mr. Anagnost said the site itself presents a challenge with respect to both financing and development as a result of the lot consolidation that would take place between the four lots. Referring to the plan, he said there are the two lots on Lake Avenue and the two on Central Street where the building is located and the abandoned colored portion of Litchfield Lane which he presented to the Board. The challenge is with respect to the clean-up of the environmental problems on this site. He said currently on the Central Street side there are four tanks that still need to be removed and there is a significant amount of contaminated soil that also needs to be removed so construction can progress forward. These have already been vetted with NH DES and there are funds put aside from the government in order to clean up those two lots. The challenge comes with Litchfield

Lane. If all four lots are consolidated, Litchfield Lane poses an issue with respect to the contamination and the reason that it does is because there is a high powered electrical line that runs underneath Litchfield Lane that feeds the SHNU Arena and there is a major sewer line that also runs down Litchfield Lane and they are called out on the plan. He said the contamination is below the water level and below both of those utilities. They have contacted Public Service and they don't want them to touch it and the City of Manchester Highway Department has essentially said proceed at your own risk but you will probably be replacing that entire line if you attempt to excavate below it.

Mr. Anagnost said with respect to their environmental reports, they don't believe that they could get deep enough to remove all of the contamination from under those utilities anyway to complete the removal to get a clean bill of health. What the Board would essentially be doing by allowing the lot consolidation to go forward and not granting them a variance there would remain a contaminated belt through the middle of cleaned up properties and therefore render the entire property dirty again even after they have made the efforts to remove the contamination on the lots on Central Street.

Mr. Anagnost said the parking lot is designated and specific to the hotel use. He said they will put documentation in place that says that it can't be used for anything else. If in fact the consolidation goes forth, their efforts to clean up the contamination that has already been approved by The Department of Environmental Services will be thwarted at the financing level because essentially, they would be attaching a contaminated piece of property to a clean piece of property.

Vice Chairman Dupre said this case is very similar to the Sylvania project that Mr. Anagnost came to the Board for a couple of months ago. Mr. Anagnost said it is exactly the case. Vice Chairman Dupre briefly summarized the Sylvania case briefly with the Board Members who were not present during that hearing. He explained that they have all this property but they need to finance the Litchfield Lane piece separate from the other pieces because Litchfield Lane is contaminated.

Mr. Anagnost said once they clean up the Central Street Side where the building will be located, you would have a clean bill of health on that property but you would still end up with a contaminated property designation because they can't get to the contamination under Litchfield Lane because of the utilities. Vice Chairman Dupre asked Mr. Anagnost what the contamination was under Litchfield Lane. Mr. Anagnost said it is #6 heating oil. He said it is like mud. Vice Chairman Dupre asked Mr. Anagnost what that was from. He said it is from the heating plants from previous buildings that were on the site. Vice Chairman Dupre asked Mr. Anagnost if he had any idea how much was down there. Mr. Anagnost said they have quantities but the problem is that it is below the water table so even when they were to go forward and clean the two lots on Central Street, they have to dig down below the water table and shore up the side so that Central Street doesn't fall in, pump it out, remove the contamination and then replace it with clean soils and compact it. The issue is that there is no way to do that underneath the utilities so therefore, unless they take out the high power electrical line and the water line, and dig down and do the

same and then replace those and even then, they are not sure they will get it all. They would have Litchfield Lane contaminating the middle of a clean site.

Vice Chairman Dupre asked Mr. Anagnost if they were planning doing any screening around the parking because he didn't see anything on the plan. Mr. Anagnost said there is a fence that goes around the property. Vice Chairman Dupre asked Mr. Anagnost if they would have one when they are done just to keep themselves enclosed. Mr. Anagnost said that was correct. He said they have all of the historic lights and everything that the Planning Board wanted that is approved to meet the district requirements. The only issue they have is the consolidation of parking. He said they couldn't operate the hotel without the parking anyway. It is one or the other, it is just that the Overlay District doesn't allow parking on a separate lot and it would remain as a separate lot because of the virtue of what is happening on Litchfield Lane.

Richard Lundborn said the other variance that is being sought is to section 9.09 of the Sign Ordinance in Manchester. He said in the Central Business District stand-alone signs aren't allowed. Roof mounted signs are allowed and building mounted signs are allowed and there are some very sizable roof mounted signs. Also, in the Central Business District within relatively quick walking distance of the property there are a number of signs that are stand-alone signs, either pylon, monument or a combination of all of the above. The intent of the Ordinance limiting the signs, at least in brief conversations with Planning Staff was that originally, most of the buildings within the Central Business District are the lots and they occupy pretty much the vast majority of the property so there is no room for a monument sign or a stand-alone sign. Thus, it would help keep the feel of the downtown consistent. This project is unique as it fronts on three different streets and by forcing the building all the way to Central Street, the Hotel demand is only so much so to occupy all four lots with a hotel is not feasible. He said they obviously end up with frontage that is not occupied by a building and then they have room for the sign. Unlike many of the other parcels of land within the Central Business District, they have the ability to place a sign and it won't impinge upon the building, still meeting the intent of the Ordinance which was to have it up on a street frontage which is in this case, Central Street.

Richard Lundborn said the FairPoint building has a monument sign because they did have enough area out in front of their building when they put it in off to the side. TD Bank Building has a sign as well and even though the law firm next door has a very small monument sign, it is a stand-alone sign. He said these signs do occur within the Central Business District but not often and in this case they felt it was merited to come in and request a variance.

Dick Anagnost said the other thing is being up on the block and still having all of the historical buildings remain on Elm Street, it will be a way finding sign as well to direct people coming up off the Granite Street Bridge to where the parking would be located for the hotel. Even though you might be able to see the structure of the hotel, you won't see the sign from there. What it does is take people off of Elm Street and bring them up Lake

Avenue and into the parking lot where they can enter the hotel and park their cars.

Richard Lundborn said it will allow folks to understand that it is no longer a public parking lot if there is a sign that says "Marriot Residence Inn" right at the entrance whereas today obviously it is a lot that anyone can use if they pay. Dick Anagnost said the sign also ties into the fenced enclosure which was previously discussed. He said it is part of that whole circulation and enclosing of the site.

Dick Anagnost addressed Vice Chairman Dupre and said he knows that he had a correlation between 655 South Willow Street and this property and he just wanted to make the distinction that at 655 South Willow Street they were sub-dividing it off and in this case they are trying not to add it to it. Vice Chairman Dupre said he understood and it was just the whole scenario of having something underground that was a mess. Mr. Anagnost said they are trying not to put it onto the lot here because the Planning regulations force them to consolidate as a result of the Overlay District zoning. They are trying not to add it to the lot, they are trying to leave it where it is.

Michael Landry said to Dick Anagnost that he understood the desire not to merge all of the parking lot into the hotel lot, but said the parking lot as shown is on two lots and he asked if those two lots were going to be merged together. Mr. Anagnost said they could be but that was not of consequence. The real consequence is merging the two lots on Lake Avenue to the two on Central Street. Mr. Anagnost said by virtue of the hotel being on both lots, the two on Central Street get merged anyway, so he is assuming those two get merged, they don't want the four to be merged together.

Vice Chairman Dupre turned the hearing over to the public and invited those in favor of or in opposition to this application to come forward. No one came forward to this request.

Vice Chairman Dupre turned the hearing back over to the Board.

Vice Chairman Dupre said this is pretty straight forward and said he understood what the applicant is trying to do. He said he thinks it is going to be a great improvement to the area.

***Raymond Clement made a motion to grant the following variance counts for case #ZO-05-2017, Sections 5.10 (I)8 Commercial Surface Parking Lot and 9.09 (D) Signs, which was seconded by Jose Lovell. (Motion Carried)***

***Yeas: Dupre, Clement, Routhier, Lovell, Dalton***

***Nays: None***

Upon a unanimous vote the variance was granted.

***Chairman Hendershot and Robert Breault returned to the Board.***

9. **ZO-06-2017 (Subsequent Application)**  
**138-146 Londonderry Turnpike, R-1A Zoning District, Ward 6**

Jason M. Craven, Esquire, (Agent) proposes to allow offices of health care practitioners and outpatient health care and seeks a variance from Section **5.10 (H-2)1** Offices of Health Care Practitioners and Outpatient Health Care, of the Zoning Ordinance, as per documents submitted through December 22, 2016.

10. **ZO-07-2017**  
**138-146 Londonderry Turnpike, R-1A Zoning District, Ward 6**

Jason M. Craven, Esquire, (Agent) proposes to allow banking, financial, real estate and insurance offices and other business and professional offices and seeks a variance from section(s) **5.10 (H-1)1** Banking, Financial, Real Estate and Insurance Offices and **5.10 (H-1)2** Other Business and Professional Offices, of the Zoning Ordinance, as per documents submitted through December 22, 2016.

***(The Board initially will decide whether ZO-06-2017 is barred as a subsequent application, then deliberate ZO-06-2017 and ZO-07-2017 together)***

Michael Landry addressed Chairman Hendershot and said the next two applications are a pair of applications that deal with a pair of lots. Mr. Landry advised the Board that before they open up the hearing for the first application, the Board should discuss whether or not it represents a subsequent application for that property. Back in 1984, there was a variance request that was denied to allow the first floor of the existing residence to become a dental office which is the same use that is being asked for here. That variance was denied so it is up to the Board now to determine whether or not this subsequent application represents a significant enough material change so that the Board can hear it.

***Chairman Hendershot made a motion to close the public hearing and open a limited business meeting which was seconded by Raymond Clement. (motion carried)***

***Yeas: Hendershot, Dupre, Clement, Routhier, Lovell***

***Nays: None***

Vice Chairman Dupre said the Board is talking about something that was denied thirty somewhat years ago and a lot has changed. They are talking about re-developing the property so he thinks it is a different use and that is his opinion.

Raymond Clement said that whole area now is located with restaurants, service stations and all types of business establishments. He said he thinks the area has changed quite a bit since that last variance request and he thinks this is a different application than the original one was.

Robert Breault said he agreed with what Vice Chairman Dupre and Raymond Clement said but said it sounds like the intent is to merge these two lots and change the whole

appearance of this development from one that would have been a house with a dental practice to a more substantive structure and add something a little more appealing to the area. The whole area as you travel up into Hooksett is all commercial now. It is a corridor for commercial businesses.

Chairman Hendershot said he didn't have a problem with the 1984 denial but asked the Board if they care that they are looking to give a blanket variance for just about anything on that lot such as bank, financial, real estate, health care, etc. with no plans or building types or how big it is going to be and cause as far as congestion or anything else.

Vice Chairman Dupre said he thought Chairman Hendershot brought up a lot of valid points and he thinks that is something that when they leave the business meeting and go back to public they should definitely note that because this does seem like a blank slate here but before the Board moves forward, they need to decide whether to hear it or not. Chairman Hendershot said that is why he brought that up because the Board could say they don't want to hear it now as a subsequent application based on that or does the Board want to hear the case and then talk about it. Vice Chairman Dupre said he thinks the Board first needs to decide whether they will hear the subsequent application and then maybe if they say they are going to hear it the Board could consider tabling the case at that point until they come back with something a little more definitive about what they are doing.

Robert Breault asked Michael Landry if the re-development of this property require permits and planning review and so on. Michael Landry said it absolutely would require site plan review by the Planning Board and it would most likely require another trip to the Zoning Board. He said he doesn't believe they can create a parking field on a corner lot without violating the front yard prohibition against parking.

Michael Landry suggested to Chairman Hendershot that the Board go on record with the consensus to say that enough has changed and this is a materially different subsequent application and it is not barred.

Chairman Hendershot went on record to say that the Board doesn't feel that it is a re-application of the same denied variance.

***Vice Chairman Dupre made a motion to accept the subsequent application for case #ZO-06-2017, which was seconded by Raymond Clement. (Motion Carried)***

***Yeas: Hendershot, Dupre, Clement, Routhier, Lovell***

***Nays: None***

Upon a unanimous vote, the Board agreed to hear case #ZO-06-2017.

***Vice Chairman Dupre made a motion to close the limited business meeting and re-open the public hearing which was seconded by Matt Routhier. (motion carried)***

**Yeas: Hendershot, Dupre, Clement, Routhier, Lovell**  
**Nays: None**

Attorney Jason Craven said he was an attorney in Manchester and along with him was Keith Martel who is the trustee of the Kathleen Martel Trust that owns 138 Londonderry Turnpike. Attorney Craven said as has been mentioned in the business meeting, these two properties are in the R-1A district and front on Londonderry Turnpike. Every other lot from Wellington Road to Massabesic Circle along the Londonderry Turnpike is zoned B-2 and as many mentioned, there are several restaurants, Dunkin Donuts and other retail and business type uses being made of these Londonderry Turnpike fronting lots. Attorney Craven said Mr. Martel has an opportunity to purchase the lot next door which is the lot actually abutting the route 101, exit 1 ramp so he owns the one that is on the corner of Lakeside Avenue and Londonderry Turnpike. He would like to get both of those under common control in order to develop them into a business use.

Attorney Craven said to try to address some of the concerns that were expressed, the reason they are here at this time is that they do not have a user or a plan as to how the property would be developed beyond the types of uses that they are looking at, effectively, a professional office building. In order to move forward with purchasing 146 Londonderry Turnpike, they need to know that they at least have the opportunity to come back before this Board and the Planning Board as necessary and the Building Department in order to make the development happen once they know what the user is. The concept that they are moving on is if they can get these properties under common control, they would like to merge the lots and then market them to find a user that they would then develop this professional attractive office building for which would require them to come back to the City again. He said he suspects from his discussions with Mr. Landry and Mr. Gagne of the Planning and Community Development Department that they are going to be back before this Board with the actual development as to signage and parking and things like that no matter how they structure it because they are still in the R-1A zone.

Attorney Craven said the reason they are coming at it from this approach as opposed from working to try and rezone these lots that front on Londonderry Turnpike, is as a result of several meetings with the neighbors. He said Mr. Martel would be speaking briefly to that. Attorney Craven said effectively, the neighbors have told them that they are not against this opportunity. They would be against a rezoning because they don't want to see another Dunkin Donuts in a high traffic late hours type thing. They are supportive of a professional, attractive office type building whether that is office, real estate, doctor's office, banking but something that would be much more of a business hours type approach to improve that corner. He said it is a fairly unique corner stuck between the exit ramp and Lakeside Avenue. He said they have come before the Board at somewhat of an odd spot and they understand that but in order for them to move forward and take title to 146 Londonderry Turnpike it doesn't make economic sense for them to do that unless they know they have the opportunity to come in under this type of a use already. Attorney Craven said Mr. Martel would now speak briefly about his meetings with the neighbors.

Keith Martel said he was representing himself as a landowner of the Kathleen Martel Trust. He said back some time ago in a fairly recent future Dunkin Donuts was brought to the corner of this neighborhood street and in doing so the neighborhood united themselves fairly strongly in opposition to the Dunkin Donuts coming in. Having known that, they reached out early and they touched bases with the owners because they were curious as to what was going on and what they were doing. What became clear of that meeting is that they were essentially against additional high traffic use like what they see coming through on Dunkin Donuts. He said what they discussed with the neighbors in their original approach was to consider some sort of zoning change and following that path through with it which allow them to change the zoning on the property absent a user. He said he understands the dilemma that they are here with. In an effort to try to stay working in tandem with the abutters and what they were looking for, they decided to ask for a use variance specific to what the neighborhood supported so that prior to bringing it to market for an open blank slate of uses, the neighborhood and developers were in alignment with the types of uses that could fit there and that's why they are here tonight.

Chairman Hendershot turned the hearing over to the Board.

Matt Routhier said his only comment is that with professional office and medical office you can run into situations where a tenant is not particularly what a neighborhood would want so with that he would probably caution a little bit on how the Board deals with that. He asked Michael Landry if the Board had the availability as a condition to have them come back with a specified use. Michael Landry said the easiest way would be to not take an action until the Board is satisfied. He said the applicant absolutely needs to go to the Planning Board and the more he thinks about it he doesn't want to say he is certain they would come back to the Zoning Board. He tends to believe that they would but maybe they can design it such that they comply fully with the Ordinance. Mr. Landry said he is cautious about saying they wouldn't be back before the Zoning Board, but he doubts that they could escape another trip to the Zoning Board. He said it is really up to the Board. The Ordinance does have provisions about building height and size and he doesn't want to say the Board is operating blind but to some degree they are. He said he doesn't mean to weigh in as it is absolutely the decision of the Board.

Chairman Hendershot said he had no problem with developing it as professional offices, etc., but he does have a problem with the kind of blanket nature of this that they really have no idea what they want to put on it. He said he would rather see some more specifics. Obviously the neighborhood is changing but at the same time is a CVS a health care professional business type thing and it has a 24 hour drive-thru. He said it is just too vague for him at this time.

Michael Landry said the retail use with the drive-thru that Chairman Hendershot mentioned would not be included in any of these uses that are being discussed this evening. Chairman Hendershot said the second one says and other business and professional offices which is pretty vague. Michael Landry said he would agree but it certainly would exclude a retail use. That is a separate use.

Matt Routhier said usually when the Board makes a decision on a variance there is a defined use. This leaves it pretty open so with that, he is not really in favor of granting this as it is written.

Vice Chairman Dupre said he agrees with both Chairman Hendershot and Matt Routhier. He said this is very vague. We are talking about a piece of land that is less than an acre sitting in a residential neighborhood and this wouldn't seem fair to the neighborhood.

Raymond Clement said if the Board didn't look at this tonight, he didn't think it would delay them in trying to get ownership of the property and design a plan to present to the Planning Board.

Keith Martel said the challenge is in the marketing and the challenge is in the end user or planned investment based off of the fact that it is currently an R-1A zone. He said they aren't opposed to another visit coming back before the Board with a final user. He said they are a bit handcuffed because they are stuck with a parcel of property right now that is essentially the fingernail of an R-1A zone that is surrounded by a neighborhood zoning district that had they asked for a zoning change or had followed suit going towards that, would have achieved their goals because it would have had a defined set of uses that could fit into there but may have been in contrary to the neighborhood. It puts them in a bit of a pickle with acquiring title to the abutting parcel still being in an R-1A zone without any support from the City or the Board that they may or may not be on the same page with the types of things that they envision for that corner. It leaves them with the question of would a zoning change be more pertinent at that point. It would achieve the goals of an end user and there are plenty of institutions that will say they don't want to put money into architectural plans and engineering plans as they are in a residential zone right now. Tell me I can do what I want to put in there. Tell me I can put in a bank, or a doctor's office or any of these things and then I can put forward that money.

Vice Chair Dupre addressed Mr. Martel and said he hadn't even included even a "box" to say this is where our building is going to be and this is where our parking is. He said they have to know that this is very, very vague. Chairman Hendershot said he didn't see their marketing as a hardship.

Attorney Craven said the plans they submitted were done so in conjunction with discussions with City staff. He said in the second page of their plans they were asked to provide just the envelope of where the buildable area would be upon the merger of the two lots. He said they had originally filed this application with a conceptual plan of an office building with parking and they were told that was not acceptable because if it is conceptual if you are going to submit a plan with a building and parking lots then you have to have elevations and signs and all these other things. Again, the reason they are here before the Board versus the Aldermen and going to try to change the zoning on this property was an effort to try and work with the neighborhood and the people in the neighborhood who don't want to see that property re-zoned to B-2 which opens the door to all of the uses under B-2. They are trying to do this, understandably, in a bit of an odd way and he and Mr. Landry and Mr.

Gagne have had several conversations as to why they have two applications and why are they doing this as they don't have a user. As Mr. Martel said, without this sort of initial step by this Board to say yes we agree to allow you to develop these uses, and they would even agree to a condition of the variance that they have to come back before this Board once they have an actual use and a design. He said they cannot go forward and expend the money to buy 146 Londonderry Turnpike and there is no way they are going to get a user who is going to come in and expend the money to develop the plans for this site when they cannot even tell them that it is permissible. He said he understands why everyone is struggling a little bit but that is why we are here. They are really trying to accommodate those in the R-1A district that are abutters and listen to them. Mr. Martel has had several meetings with the neighbors and this is what they have come to. They would support the applicant if they were in a position where they did not have a full blown B-2 opportunity.

Matt Routhier said his only comment on that would be that with a purchase and sales agreement, they could have the applicant or the proposed end user could have the ability to come back before the Board once they have someone who is interested in the property as far as dealing with the variance itself as far as use.

Attorney Craven said they only have one of the two properties under title now. One is under agreement but if they don't get this approval, it is not going to be purchased. Vice Chairman Dupre said he understood what Attorney Craven was saying but he thinks that Matt Routhier made a good point. He said people regularly come before the Board contingent on the sale of the property. He said the Board had tennis courts last month on a piece of land that if they could put them in they were going to buy the property and if they couldn't, they weren't. There was something conceptual to work with there. Matt Routhier said he didn't think the Board doesn't see it as a viable option and that is just his particular opinion, but he is of the opinion that you could market it as such and someone who is willing and interested in the property could come before the Board with the actual use. Therefore, saving the applicant the trouble of doing this work and at the same time giving the Board a clear idea of what is actually going to happen. Attorney Craven said he understood where the Board is coming from.

Michael Landry addressed Chairman Hendershot and said maybe a call out to the abutters might break the ice.

Chairman Hendershot turned the hearing over to the public and invited those in favor of this application to come forward. No one came forward in favor of this request.

Chairman Hendershot invited those in opposition to this application to come forward.

**Tom Martone** of 44 Lakeside Drive said he is a direct abutter who is about one hundred fifty feet away. He said first off, he was never approached and asked how he felt about the whole thing. Lakeside Drive is a cul-de-sac with maybe a hundred houses on it. He said he is concerned directly about the traffic if a business is put in right there especially with the Dunkin Donuts on the other side. He said he certainly would not want to see the driveway of this business go out onto Lakeside Drive. He would be concerned about the landscaping

and as the gentlemen on the Board have said, what will he be building there, four stories high, three high or one story high.

Chairman Hendershot addressed Mr. Martone and said the answers to his questions about a lot of those issues would come from the Planning Board. They have all kinds of rules about landscaping and so forth.

Chairman Hendershot turned the hearing back over to the Board.

Raymond Clement asked Chairman Hendershot if the Board was going to decide if they were hearing these two cases tonight. Chairman Hendershot said the Board could vote on it or table it. He said he thinks the Board feels as though they needed more information and a little clearer direction. He said the Board could vote to deny both applications, or they could vote to table it.

Raymond Clement asked the applicant if tabling the cases would give them enough time to come back to the Board next month with some type of plan. Chairman Hendershot said the Board would be willing to give the applicant more than a month. Attorney Craven said his bigger concern is if the Board elects to deny the application currently, he is concerned that then in six months if they do put this other property under agreement and find a user and come back are they then facing a subsequent application. Chairman Hendershot said the Board could deny this application without prejudice. Michael Landry said that would be appropriate. Chairman Hendershot said the Board could deny it but without prejudice so the applicant could still make another application with the same parameters. He said he would just like more information.

***Raymond Clement made a motion to deny without prejudice the following variance count for case #ZO-06-2017, Section 5.10 (H-2)1 Offices of Health Care Practitioners and Outpatient Health Care, which was seconded by Vice Chairman Dupre. (Motion Carried)***

***Yeas: Hendershot, Dupre, Clement, Routhier, Lovell***

***Nays: None***

Upon a unanimous vote the variance was denied without prejudice.

***Raymond Clement made a motion to deny without prejudice the following variance counts for case #ZO-072017, Sections 5.10 (H-1)1 Banking, Financial, Real Estate and Insurance Offices and 5.10 (H-1)2 Other Business and Professional Offices, which was seconded by Vice Chairman Dupre. (Motion Carried)***

***Yeas: Hendershot, Dupre, Clement, Routhier, Lovell***

***Nays: None***

Upon a unanimous vote the variance was denied without prejudice.

11. **ZO-08-2017**

**Youville Street, Map 436, Lots 2, 2C, 2D and 2E, R-1B Zoning District, Ward 6**

Daniel Muller, Esquire, (Agent) proposes to subdivide parcel into 4 single family building lots where proposed Lot 2 has insufficient lot frontage and lot width and where proposed Lots 2C, 2D and 2E have insufficient lot area, lot frontage, lot width and cannot satisfy front, side and rear setbacks and seeks a variance from Section(s) **6.01** Minimum Buildable Lot Area (3 counts), **6.02** Minimum Lot Frontage and Width (8 counts), **6.03 (A)** Front and Street Yard Setback (3counts), **6.03 (C)** Side Yard Setback (6 counts) and **6.03 (B)** Rear Yard Setback (3 counts), of the Zoning Ordinance, as per documents submitted through December 22, 2016.

Attorney Daniel Muller from Cronin, Bisson and Zalinsky said he was appearing on behalf of the applicant and said Joseph Wichert who is the surveyor and Norris Viviers who is with the owner of the property were present as well. Attorney Muller said this is an approximately 2.8 acre lot in the R-S zoning district and what characterizes those types of lot is the lack of sewer. He said across Youville Street are properties in the R-1B zoning district and the three lots in the front are intended to match the character of the lots that are across the way. He said they will be bringing sewer across the Eversource property and there has already been discussions of getting a sewer easement from them. In addition, to approve Youville Street to some extent, Mr. Wichert has spoken to people with the Department of Public Works about a turn-around. Obviously, this is a dead end as it currently stands and there is a proposed turn-around that meets their requirements.

Attorney Muller said for further detail, the driveways for Lots 2C and 2D will actually come off of the turn-around as opposed to Youville Street itself at the request of the Department of Public Works. With respect to all four lots, the proposal is that they be used for single family residential. They are not looking to do anything else with the lots. Attorney Muller said the only other thing he would note here is if you look below on the plan there is a reference to Rimmon Boulevard that is a street that was dedicated at one point in time but never constructed. While there could be a legal argument as to the ownership of the upper half of that, if you notice on the plan a portion of the T-ball field is located there. They are not proposing to claim that or to displace the T-ball field and that is part of the reason why you see the configuration that you do as it is in part to avoid that issue of going to the City to ask them to change the location of the T-ball field which in fact may be in part on a portion of property that would otherwise go to the existing Lot 436-2.

Chairman Hendershot turned the hearing over to the Board.

Vice Chairman Dupre asked if the applicant was providing sewer for Lot 2 or just the new proposed lots on Youville. Joseph Wichert said all four lots will be serviced by municipal sewer and water.

Chairman Hendershot said he went out and looked at this and he asked the applicant how they were planning on getting to Lot 2. Attorney Muller said one of the counts here, in fact the only count for Lot 2 is the frontage count, there is a 25.13 foot section and they would bring a driveway up there and the notion also is that will provide some degree of buffer

between any residences and the field next door. Chairman Hendershot asked whether 25 feet would be enough to build a driveway in there. Attorney Muller said it would be. Chairman Hendershot asked if it would satisfy everybody for setbacks, etc. Joseph Wichert said driveways are excluded from setbacks. Chairman Hendershot asked if the applicant was going to be back before the Board for a driveway change setback, etc. Joseph Wichert said there are no setbacks for driveways so the intent would be a standard ten or twelve foot wide residential driveway, probably centered and maybe shifted north a little bit if they were trying to buffer the ball field. There would possibly be a fence for the first hundred feet or so as there is already a chain link fence around the field but maybe a little screening fence.

Vice Chairman Dupre asked if the applicant made that depth by choice on proposed Lots 2C, 2D and 2E because of the size of the rest of the neighborhood. Joseph Wichert said across the street is zoned R-1B which is 7,500 square feet so if you look at the buildable area table, two of those lots are at 7,575 square feet buildable and one lot is at 8,000 square feet. The intent was to try to make the lots maintain the R-1B buildable area. Vice Chairman Dupre said he didn't know if that turn-around was going to eat up too much of their property or is that not in their calculation. Mr. Wichert said the turn-around is excluded under the easements.

Chairman Hendershot turned the hearing over to the public and invited those in favor of this application to come forward.

**Alderman Keith Hirschman** of 296 Dunbarton Road said he is the Alderman for ward 12. He said after having conversations with the applicants, the assurances seem to be in place that it is going to be four residential lots. He said the first three kind of mirror the homes on the other side of the street. They are small ranches and little capes so he doesn't envision any big families moving into these little houses. They are three houses that will fit the neighborhood and then there is this one lot in the back that seems to be a more stately lot and he has been assured it is going to be residential. He said the applicant first called him a couple of months ago asking him how he felt about having a multi-senior living facility on that site and it is a very nice little neighborhood with a little school and a beautiful little dead end. He said he would prefer a couple of small homes. If they are able to achieve this, he doesn't see a major impact to the school and he doesn't see a major impact to the neighborhood with only maybe five or six cars coming in out of those homes instead of forty cars going into a senior facility. It kind of fits what he asked the applicant to do and he is hoping they work with other abutters on the street and just keep everybody happy.

Chairman Hendershot invited those in opposition to this application to come forward. No one came forward to this request.

Chairman Hendershot turned the hearing back over to the Board.

Raymond Clement asked if the applicant had any idea what they would do with Lot 2 and asked if it would be strictly residential as it is a big lot. Joseph Wichert said it is a big lot and

it will be a single family residence. He said they actually did talk to the Parks and Recreation Department to see if they had an interest in a portion of it but they never got back to them. Raymond Clement said so now it is still designed to be a residential area. Joseph Wichert said that was correct.

Chairman Hendershot said he went out and looked at it and he doesn't have any problems with it. He said it totally mirrored the area. Raymond Clement said it is a nice area. Chairman Hendershot said it is a nice little neighborhood and it is going to be the same as across the street.

***Raymond Clement made a motion to grant the following variance counts for case #ZO-08-2017, Sections 6.01 Minimum Buildable Lot Area (3 counts), 6.02 Minimum Lot Frontage and Width (8 counts), 6.03 (A) Front and Street Yard Setback (3counts), 6.03 (C) Side Yard Setback (6 counts) and 6.03 (B) Rear Yard Setback (3 counts) which was seconded by Vice Chairman Dupre. (Motion Carried)***

***Yeas: Hendershot, Dupre, Clement, Routhier, Lovell***

***Nays: None***

Upon a unanimous vote the variance was granted.

12. **ZO-09-2017**

**1 Sundial Avenue, RDV Zoning District, Ward 9**

Jason M. Craven, Esquire, (Agent) proposes to erect 2 new free-standing signs on property where 2 free-standing signs already exist, resulting in a total of 4 free-standing signs on the property where only 2 are allowed and seeks a variance from Section **9.09 (A)1** Signs, of the Zoning Ordinance, as per documents submitted through December 27, 2016.

Attorney Jason Craven said he was appearing on behalf of the owner of 1 Sundial Avenue, SMC Sundial, LP. He said that 1 Sundial Avenue is in the RDV zone and it is a very large sight consisting of 522,000 square feet. This project has been under way for some time with his client and he said they have worked hard to re-develop this large parcel and building into the very mixed uses that the district expects and sought to see have developed. In doing so, the property currently has frontage on Sundial Avenue and Queen City Avenue and they have two signs. As you come onto Sundial Avenue from Queen City Avenue there is a directory style sign primarily for the businesses in the building. There is a second sign which was put on the property by an abutter. He said you have to go past 1 Sundial Avenue and around and over the railroad tracks to get to their property and years ago, they requested to put a sign up by the front of 1 Sundial Avenue that would help their customers know to keep going across the railroad tracks and there they are.

Attorney Craven said as they have redeveloped this property, they have now converted a portion of the property into residential units. They are looking to put in two very attractive signs that would be free-standing but low to the ground. He said there are renderings in the packet that were submitted to the City and they have provided a plan that shows where

these two signs would go and they are primarily at the last leg of the “L” as you go toward 1 Sundial Avenue in order to direct people as to where the residents are as opposed to where all the businesses are and the other uses at the property. He said they feel that based upon the size of the property and the frontage on two roads that these two signs being four signs where two are permitted is important not only to the direction but to keep people going in the right places. It is a safety issue to have people going to the residences not end up in the business district of the property.

Chairman Hendershot turned the hearing over to the Board.

Chairman Hendershot said he had a question on the “Now Leasing” sign. He asked if that was meant to be a temporary sign. Attorney Craven said that is correct and they were advised by City staff that because of the location with frontage on two roads that that leasing sign is permitted and did not need a variance. Chairman Hendershot asked Attorney Craven if that sign was included in the variance. Attorney Craven said it was not and they were only here for the two free-standing signs as is his understanding and is what was on the notice that was issued. Michael Landry said that was correct and they were allowed ten percent of the wall area for a wall sign and the building is huge. Chairman Hendershot asked what the difference between that one and the other variance in the past where they put the banner on the side of the building. Michael Landry said that was in a different zone. Chairman Hendershot asked if it was just because it was in a different zone, because he liked how the Board put a limit on that one as a temporary sign. He asked Michael Landry if he was saying that the Board couldn’t do anything about this one anyway. Michael Landry said according to the zoning review, it is permitted by right otherwise it would be a count.

Chairman Hendershot turned the hearing over to the public and invited those in favor of or in opposition to this application to come forward. No one came forward to this request.

Chairman Hendershot turned the hearing back over to the Board.

Chairman Hendershot said he didn’t have any problem with this proposal. He said obviously, they need this kind of signage.

Vice Chairman Dupre asked the applicant if they had any plans for additional signs. He said they have a lot of uses in there. There is the Envy Sports Club and a couple of businesses in there too. He asked if they had plans for more monument signs. Bob Simons from SMC Sundial, LP said they are currently redesigning that pylon sign and he doesn’t think they plan to change the size of it or add anymore. Chairman Dupre said he just didn’t want to see them back in a couple of months looking for another one. Attorney Craven said he had a conversation with Glenn Gagne about getting together and creating a sign plan and an inventory for the property so that it would be on record and everything would be clear as opposed to the steps that have gone on over the years.

***Vice Chairman Dupre made a motion to grant the following variance count for case #ZO-09-2017, Section 9.09 (A)1 Signs which was seconded by Raymond Clement. (Motion Carried)***

***Yeas: Hendershot, Dupre, Clement, Routhier, Lovell***

***Nays: None***

Upon a unanimous vote the variance was granted.

13. **ZO-10-2017 (Subsequent Application)**  
**48 Henriette Street, R-1B Zoning District, Ward 10**

Michael Chen, Esquire, (Agent) proposes to maintain the increase in units from 32 rooming units and 8 apartments to 34 rooming units and 8 apartments and seeks a variance from Section(s) **10.03 (B)** Parking Number of Spaces and **11.04 (F)** Expansion of Use Created by Variance of the Zoning Ordinance, as per documents submitted through December 28, 2016.

Michael Landry addressed Chairman Hendershot and said if he went to the case history, he will see that in 2010 there was a variance to convert the original 32 rooms and 8 apartments to 38 rooms and 8 apartments. It was an increase of 6 rooms in 2010 and that variance request was denied. He said it was up to the Board to determine whether or not the current request which is for 34 rooms and 8 apartments, an increase of the 2 rooming units is a significant enough material change such that the Board could hear this application.

***Vice Chairman Dupre made a motion to close the public hearing and open a limited business meeting which was seconded by Chairman Hendershot. (motion carried)***

***Yeas: Hendershot, Dupre, Clement, Routhier, Lovell***

***Nays: None***

Chairman Hendershot said he didn't know if all of the Board Members remembered this one but it is where they didn't follow the terms of the variance. He said if he remembered correctly, they also didn't get a building permit. Chairman Hendershot said he didn't really see any difference and he asked how the rest of the Board felt.

Vice Chairman Dupre asked for a clarification on the history. He said the last time they were in they were making a request to go from 32 units, 8 apartments to 38 units, 8 apartments. Michael Landry asked Vice Chairman Dupre if he was asking about the administrative appeal. Vice Chairman Dupre asked when the last time the Board heard this case was. He asked if it was to maintain or was it to convert. Michael Landry said it was an administrative appeal, appealing the decision that a variance was required in the first place to maintain those. He said he didn't want to speculate why they chose to go for an administrative appeal as opposed to a variance. Vice Chairman Dupre said his

question is was it to maintain 32 units to 38 units and now they are looking to maintain 32 units to 34 units. Michael Landry said the reason why this came up is because at the last housing inspection the inspector identified 34 rooms and 8 apartments and that is the subject of the current variance. He said it is important to remember that the number of apartments hasn't changed so if we only speak in terms of the rooms, again, originally when the use was approved initially as a rooming house it was 32 rooms and in 2010 they wanted to get a variance for 38 rooms and that was denied. During an inspection in the last year or so they identified 34 rooms, an increase of 2 rooms and so they are seeking a variance to expand the non-conforming use by 2 rooming units.

Raymond Clement said his question was where they come up with the two extra rooms all of a sudden. Chairman Hendershot said they had them before and they were using them as their offices. Raymond Clement asked if they were eliminating those offices. Vice Chairman Dupre asked if this application was different than what they had in 2010. Chairman Hendershot said it is a different number of rooms but it is not different in that they are asking the Board to give them a variance for things that they did when they didn't get the variance in the first place. They were looking for six rooms last time but it is two this time but basically it is the same deal. Vice Chairman Dupre said the difference is they are getting hit for the same offenses but they are submitting a different application. Chairman Hendershot said it is still the same offense. Vice Chairman Dupre said he didn't care. Michael Landry said it is a matter of degrees of the expansion, where they previously wanted to increase it by six rooms and now they are asking to expand by two rooms.

Chairman Hendershot said the question is whether the Board wants to hear this again or not. Michael Landry said the Board should be clear and say that they find no material change in between this application and the last one. If the Board sees a material change then they are welcome to hear it. Michael Landry asked the Board if they would like him to read language from a case. He said "when a material change of circumstances affecting the merits of the application has not occurred, or the application is not for a use that materially differs in nature and agree from its predecessor, the Board of Adjustment may not lawfully reach the merits of the petition." He said that was Fisher v. Dover, a case often cited for this premise.

Chairman Hendershot said this case is a different degree. He said the applicant met half of the requirement of what Michael Landry just read.

Vice Chairman Dupre said he wanted to point something out to some of the Board members who are kind of on the fence on this. He said if they went through the packet that they were given, the rooming house first floor plan is from 2013 and he asked if that was the last time the Board heard this case. Michael Landry said he believes that plan was submitted with a building permit application. The building permit application was denied because it was determined they needed a variance. Vice Chairman Dupre said then that picture in the packet is from four years ago. He said that being said, if this is being submitted in this packet, there is no difference. Michael Landry said the denial of a

building permit is not the same as the denial of a variance. The Board is barred to hear a subsequent application that is the same as a previously denied variance.

Jose Lovell asked Michael Landry if he would mind reading that portion of the case law where it talks about difference in use and change if he heard that correctly. Michael Landry read again, "when a material change of circumstances affecting the merits of the application has not occurred, or the application is not for a use that materially differs in nature and degree from its predecessor, the Board of Adjustment may not lawfully reach the merits of the petition."

Matt Routhier said he thinks the Board Members all agree that it only meets to a degree and it needs to hit both those parts. Michael Landry said it is the Board's judgment call.

Chairman Hendershot said he wouldn't say it is different in nature at all, it is a different degree, it is two units and not eight. He said he didn't know if that was enough to put it over the top but if the Board wants to hear it. Vice Chairman Dupre said there is enough doubt and the Board probably should hear it.

***Raymond Clement made a motion to accept the subsequent application for case #ZO-10-2017, which was seconded by Vice Chairman Dupre. (Motion Carried)***

***Yeas: Hendershot, Dupre, Clement***  
***Nays: Routhier, Lovell***

Upon a split vote, the Board agreed to hear case #ZO-10-2017.

Michael Landry said the applicant delivered a document to the Planning and Community Development Department earlier in the day and he distributed the document to the Board. He said the document was largely the same as what was previously submitted by the applicant and there was nothing significantly new, it was just updating some of the counts. Mr. Landry explained that parking was identified as a variance count but this Board doesn't have the authority to grant reduction of parking as that is done by the Planning Board through the conditional use permit process so that is why he didn't read it into the record. Vice Chairman Dupre asked if that was count 14.02 (B). Michael Landry said the count was relating to a former stipulation that restricted occupants or tenants being the age of 55 and over. The Planning and Community Development Department has determined that the previous variance which removed that stipulation has vested and it is not a count for this case. He thinks the Department came to a consensus during the administrative appeal period that their use of the rooming house for tenants less than 55 vested that variance and they conceded that it is valid so really what they are only talking about is the expansion of a non-conforming use and if the variance is granted the Planning Board would have to address the reduction of parking because there is additional parking needs for the additional rooms.

***Vice Chairman Dupre made a motion to close the limited business meeting and re-open the public hearing which was seconded by Chairman Hendershot. (motion carried)***

***Yeas: Hendershot, Dupre, Clement, Routhier, Lovell***

***Nays: None***

Attorney Michael Chen thanked the Board for hearing this case. He said the 2010 application to the Zoning Board was from a different owner. He said Sarah Chartier has owned the building since 2012.

Attorney Chen said the purpose of today's request to move amount of rooming units from 32 to 34 is not only for the purposes to provide for two additional areas but also to relocate and position the two rooms in a proximity to the manager's office which holds its proximity to its common area where it seems to be a problem area for the tenants. He said as part of the application, the Board will see a spreadsheet as well as the supporting documentation for the Manchester Police Department which shows that this is, unfortunately, a location in which the Manchester Police Department does frequent.

Attorney Chen said beginning back in 2012 as the Board will see, that the addition of the two rooms by the management office has reduced not only the number of calls that have gone to the Manchester Police Department but has also increased the number of prosecutions, therefore removing what would otherwise be an element that essentially is unwanted. At this point the two additional rooms which have been added in addition to the bathroom that has been added for the personal use of the manager as well as the custodian, allows them to respond quickly to any type of emergencies. He said whether it be for any type of fire and rescue but also any type of event that may happen in the common area as is sometimes typical for rooming houses.

Attorney Chen said this area provides for low income housing and there is no way around that. He said he thinks that ultimately the purpose and the desire of the owners of this building who he represents is to essentially prevent any type of diminishing of the surrounding properties and to control any type of element to what the tenants of the rooming house who will otherwise not be able to find other locations to live. The owners of this property provide a service to the City of Manchester and understand the complications that can come along with this service to the City of Manchester. He said they have made a concerted effort to attempt to quell with what would otherwise be a difficult situation to manage.

Attorney Chen said at this point they would ask for a variance be granted so that the building owners can seek a conditional use permit for increase in parking as well as a building permit. He said this is a chicken and egg type of deal. Without the granting of a variance, there is no ability for his clients to seek a building permit and or conditional use permit for additional parking. He said they will request per the application that they have submitted to this Board that the two subsequent rooming units be added and granted the zoning variance.

Chairman Hendershot turned the hearing over to the Board.

Jose Lovell asked Attorney Chen how many rooms exist presently. Attorney Chen said there are 34 rooms existing right now. Mr. Lovell asked if that includes the two rooms for management. Attorney Chen said there is one room for the custodian to live in and one room for the manager to live in. Mr. Lovell asked Attorney Chen if that made it 36 rooms. Attorney Chen said that made it 34. Mr. Lovell asked Attorney Chen when those additional 2 rooms were built. Attorney Chen said they were built in 2013. Mr. Lovell asked if that was when they were occupied as well by the custodian and manager. Attorney Chen said that was correct.

Vice Chairman Dupre said he was looking at the police log which goes back for years and is pages and pages long and said he counted dates in 2016. He said he counted 45 and said obviously it looks like there are multiple appearances or multiple calls on a particular day. He said on the other spread sheet Attorney Chen submitted he is saying there were 14. Attorney Chen said he would be happy to clarify that. He said some of those calls per the codes that are associated with the calls are check-in by probation officers and some of those are wellness checks which are not necessarily criminal in nature. They are simply a follow up which is handled by the Manchester Police Department and the Department of Probation. What is included in the spread sheet is actual calls for say and assault, drunk in public, drug related cases and those types of things which have happened in this rooming house. The idea of the spreadsheet is to clarify that and he understands the reason for the back-up is for those type of questions specifically. In 2016 there are obviously more than the calls that are on there but due to the code and the nature of those calls, they didn't make it on the spread sheet. The ones on the spread sheet are criminal in nature.

Chairman Hendershot said he added these up and said Attorney Chen said they decreased but this only goes to the tenth month. He said the tenth month was the highest one in the whole year. Vice Chairman Dupre said he was dumping off all of the wellness checks. Chairman Hendershot said Attorney Chen said these were all criminal. He said there is mental check and welfare check. Attorney Chen said a welfare check is not criminal in nature. Chairman Hendershot asked if WTD meant a welfare check. Attorney Chen said he believed so. He said what has been explained to him from the Manchester Police Department who printed off those call sheets is that specifically what was described here as what was criminal in nature is what has been added onto that spread sheet. Chairman Hendershot said then a welfare check is if somebody is over dosing. Attorney Chen said that was correct. Chairman Hendershot said there are 10 of those.

Vice Chairman Dupre said he would like to take this one step further. He said this is just the Manchester Police log. He asked if given the location, of this building does the Goffstown Police ever respond to calls at this location. Attorney Chen said that this has been something that has come up in the past and Goffstown does not touch this building. Because it abuts the town line they put it off typically to Manchester saying it is a problem

for Manchester Police Department to deal with. Vice Chairman Dupre asked if this entire property is in Manchester. Attorney Chen said he believed so. Sarah Chartier said it is not. She said the rooming house side is all in Manchester. She said there are four units on the apartment side that are in Goffstown. Vice Chairman Dupre asked if something happened in those apartments would that be a Goffstown call. Ms. Chartier said she thinks that depends. Vice Chairman Dupre said then the Board has in incomplete log. He said if there is activity that they aren't picking up from Goffstown that would make this list longer.

Vice Chairman Dupre asked if the parking lot was in Goffstown or in Manchester. Attorney Chen said specifically what is being requested are the rooming units which are on the Manchester side of the building. Vice Chairman Dupre said then this police log is just for the rooming units and not for the apartments. Attorney Chen said that log is for just what Manchester Police have responded to. Vice Chairman Dupre said then it is both. Attorney Chen said it could be both, yes. Vice Chairman said but it doesn't include some of the rooms that are in Goffstown. Attorney Chen said the police log doesn't specifically state which room they respond to or who the person was that they responded to. He said this is the basic information he was given. Vice Chairman Dupre said these were one room units and asked if the ideal situation is one person lives in that one room. Attorney Chen said that was correct. Vice Chairman Dupre said there seems to be a lot of domestic issues on this police log. Attorney Chen said domestic issues can be several different things as domestic violence does not necessarily have to be between a man and a woman or any type of romantic relationship. There could be people who have brother who shows up and is talking to their brother who is living inside the rooming house and that leads to domestic violence or a domestic dispute. The domestic dispute does not necessarily need to arise with two people who are living together. Vice Chairman Dupre asked how that was different from an assault. Attorney Chen because of the nature of a kinship. Chairman Hendershot said somebody still got assaulted.

Chairman Hendershot said he didn't see any evidence in these reports that there is a decrease in calls. Attorney Chen said he wasn't trying to make an assertion that there is an overall decrease in calls. Chairman Hendershot said that is his point though, that the two units have decreased the number of responses. Attorney Chen said they have also increased the number of prosecutions by the Manchester Police Department. He said if you looked through the logs. Chairman Hendershot said they haven't decreased the number of calls. Attorney Chen said but they have increased the number of times of people who were prosecuted.

Vice Chairman Dupre said in looking at this log, it seems like everybody gets along in the holiday season because it stops November 13<sup>th</sup> and stops on November 21<sup>st</sup> and then stops October 3<sup>rd</sup>. He said these aren't even complete logs. Chairman Hendershot said there is no November and December on there. Attorney Chen said with all due respect to the Board, he cannot pick and choose what the Manchester Police Department provided him.

Chairman Hendershot turned the hearing over to the public and invited those in favor of this application to come forward. No one came forward to this request.

Chairman Hendershot invited those in opposition to this application to come forward.

**Dan Larochelle** said he lives at 25 Theophile Street which is one block over from the rooming house and he also owns King Bowling Lanes which is an abutter on the other side. Mr. Larochelle asked Michael Landry if he was from Zoning or Planning. Michael Landry said he was from the Building Department. Mr. Larochelle said he spoke with Glenn Gagne and according to Glenn, this is still elderly housing. He said he questioned Mr. Gagne because at the last meeting, he heard something like what Michael Landry said earlier. Michael Landry said he would stand by what he said earlier. Mr. Larochelle said according to Glenn, this is still elderly housing which clearly it is not. Mr. Landry said that is his point. Mr. Larochelle said clearly it should be.

Mr. Larochelle said he could show the Board a complete police activity log from 2015 that showed 73 visits. He said he couldn't tell the Board what all the codes are but he can tell the Board that it has been a sore in the neighborhood ever since the nuns left. He said there has been drug use and he has found couches, a dryer, clothes, and kids toys in his yard. He said at one point there were salvage operators working out of there. He said it is just not a good situation.

Mr. Larochelle said he questions how many people can rent a room. He said that question was brought up earlier and he doesn't know if they limit it to one person but that certainly is not the case. He said he knows there are couples living there. He said the rooms they made was formerly the common living room so what they did was split the common living room in half and made two apartments out of it without the benefit of a permit or whatever else they needed. He said that would be on the far end of the building which used to be the chapel.

Mr. Larochelle said he has been in the building many times and he thinks there are others in the room that have been in that building many times and are certainly familiar with that. It is not a good situation. There have been people in the past begging his customers for money.

Mr. Larochelle said he was assuming that parking was not going to be addressed this evening but said he was going to talk about it anyway. He said certainly they do not have enough parking. He said they have forty units or actually forty two units right now and he is guessing there are eight parking spots available to their tenants. He said they rent those parking spots as parking is not free over there, they rent the spaces to their tenants. He said most of their tenant's park on the street and during snow emergencies, they do not move. Henriette Street is a disaster and Edmund Street is a disaster. He said there is a church across the street and the church does not have enough parking. Ollie's doesn't have enough parking and we are just compounding it. If we keep giving everybody rides about parking there is not going to be enough parking. There is a hair

salon on Pinard Street that doesn't have enough parking so parking is certainly a big issue.

Mr. Larochelle said it is not a good situation and fortunately for him, his children are older. He said across the street from this apartment house they have younger kids and they have had some issues. He said in fact, a resident from that unit even went into their home one day. He has actually found a van in his parking lot with people camping out with relatives who resided in the unit. It is just not a good situation.

**Nick Hatzibros** said he owned Ollie's Restaurant which is right across the street from this building. He said basically he is here to oppose it. It is a nightmare for the neighborhood. The property values in the neighborhood have gone way down as nobody wants to live there and he doesn't think any of the Board Members would have a building like this next to them. He said the problems that they create every single day such as the drug deals in the parking lot, crossing back and forth to Cumberland Farms with six packs of beer and looking into people's cars is pathetic. He said this building should house people age 55 and older. He said as far as the parking goes, if you drive by there on any snow emergency and there are cars there, the plows go around and plow them right in and the street keeps shrinking every winter. It is horrible.

Attorney Chen said he understands where the two gentlemen who spoke are coming from. Obviously, this is not an ideal situation but the people who do live in this rooming house do deserve a place to live. He said as the Board has heard earlier regarding the shop that was attempting to open, they talked about the homelessness that is in Manchester. He said the people who are the tenants living inside the rooming house are low income. Some of them, unfortunately, also have a criminal background. Some of them have a criminal background which restricts them from being able to live anywhere else in the City. This is a place where unfortunately, this is what the building owners have bought. In 2012 the change in the nature of the building had gone from 55 and older into what it currently is today. This is something where the building owner is trying to manage the problem before them. He asked if it was a perfect solution which they have come up with and said no, it is not. He asked if they are attempting to try and help and said yes, they are.

Attorney Chen said the owner installed cameras in 2014 and their attempt here is to simply manage and prevent problems like this going forward. This is something where Ms. Cartier is a first time building owner and she is trying her best to manage what is an otherwise difficult situation for people who do deserve a place to live. Again, not an ideal situation, understood, however these people are entitled to a place to live and that is a service which she is trying to provide.

Chairman Hendershot turned the hearing back over to the Board.

Chairman Hendershot asked Michael Landry to clarify the parking section of this. Michael Landry said they need 42 spaces and they have 12. Chairman Hendershot said to get that approved they would have to have conditional use by the Planning Board. Chairman

Hendershot said he didn't understand and asked Michael Landry if the Board denied this application, could the applicant still go before the Planning Board. Michael Landry said if the Board denied it there is no increase in demand for parking and no need for that conditional use permit for a reduction in parking.

Michael Landry addressed Chairman Hendershot and said he didn't know if the Board has had the opportunity to look at section 11.04 (G) of the Zoning Ordinance has the criteria for change or expansion of a non-conforming use. He asked if Chairman Hendershot would like him to go over some of these elements. Chairman Hendershot said he read it. Michael Landry said the count is for 11.04 (F) and the criteria to allow the expansion are listed under 11.04 (G). Michael Landry said there are nine elements and he wouldn't read all of them but he wanted to touch on some of ones that might be pertinent. He said a change or expansion of a non-conforming use may be issued by the Board of Adjustment upon a finding that the proposed use 1.) Will not have an adverse impact on the surrounding neighborhood and 2.) that the change in use is more conforming with the intent and purpose of the Ordinance. In making these determinations, the Board of Adjustment must find that all of the following conditions are satisfied; 1.) The proposed change will not result in an increase in noise vibration, dust, odor, fumes, glare or smoke detectable at the property line. 2.) The numbers and kinds of vehicular trips to the site will be comparable to or lower than those associated with the existing use. 3.) The use will not place increased demand on the amount and nature of outside storage or loading requirements and they will not be a net loss the number of off street parking spaces serving the existing use. 4.) The visual appearance of the site and structure including landscaping and screening will either remain unchanged or will be improved. 5.) The proposed hours of operation for the use will result in an equal or lesser impact on the neighborhood. 6.) The non-conforming characteristics of the use including residential density, signs, loading, lighting and landscaping will be brought into greater conformance with the requirements of the Ordinance. 7.) The area of the lot devoted to the non-conforming use will not be increased. 8.) The change in use will be equal to or more compatible with the character of the neighborhood or contribute to the neighborhoods socioeconomic needs or will otherwise be in the public interest and finally, 9.) The maximum expansion of a non-conforming use over its lifetime shall not exceed 25% of the area of its existing building measured from the time the use first became non-conforming by reason of an amendment to this Ordinance.

Michael Landry said those are the elements and the Board should think about them and discuss them. Chairman Hendershot said here is the deal. The place is a mess and if they have two more or two less it doesn't change the fact that it is a mess. He said the police aren't going to come any less and they probably aren't going to come any more. He said the Board went over this last time with this place and outside of shutting it down what can they do. Raymond Clement said what the Board can do is not add to it with those two extra units. Vice Chairman Dupre said he thinks the problem is that it is a density issue as Michael Landry was just listing off. He said we are adding more density to this thing that is already restricted. Chairman Hendershot said he understood that but said they were supposed to get even less than 32 units if they hadn't violated the original

variance. Michael Landry said the original configuration was 32 units. Chairman Hendershot said the Board denied them and they went ahead and did it anyway in 2013 or so.

Chairman Hendershot said he certainly did not want to add to the problem. Vice Chairman Dupre said he didn't see any benefit to the public. He said he understands what Attorney Chen said about low income housing but putting more units in to something that is already having capacity issues is not a solution. He said this is not for the benefit of the neighborhood and the public is not served on this. Property values have gotten hit by this. He said he didn't see where adding more units was going to help. Raymond Clement said they would just be creating a bigger problem. It is not pretty and should have never gotten to the way it was but it is there now and he didn't want to add to it anymore.

Chairman Hendershot asked about the parking issue. He said he was still unclear on that. Matt Routhier said if they don't get the two additional units they don't need the conditional use permit for the additional parking so that is null and void should the Board not grant this variance. They will still have the same number of parking spaces and nothing is going to change.

***Vice Chairman Dupre made a motion to deny the following variance count for case #ZO-10-2017, 11.04 (F) Expansion of Use Created by Variance which was seconded by Raymond Clement. (Motion Carried)***

***Yeas: Hendershot, Dupre, Clement, Routhier, Lovell  
Nays: None***

Upon a unanimous vote the variance was denied.

***Vice Chairman Dupre made a motion to close the public hearing and open the business meeting which was seconded by Matt Routhier. (motion carried)***

***Yeas: Hendershot, Dupre, Clement, Routhier, Puthota  
Nays: None***

### III. BUSINESS MEETING:

#### 1 ADMINISTRATIVE MATTERS:

- Review and approval of the ZBA Minutes of December 8, 2016.

***Raymond Clement made a motion to approve the minutes of December 8, 2016 without amendment which was seconded by Vice Chairman Dupre. (Motion Carried)***

***Yeas: Hendershot, Dupre, Clement, Routhier, Lovell  
Nays: None***

- Any other business items from the Zoning Staff or Board Members.

***There was no new business items brought up.***

***Vice Chairman Dupre made a motion to adjourn the ZBA Meeting of January 12, 2017 which was seconded by Matt Routhier. (Motion Carried)***

***Yeas: Hendershot, Dupre, Clement, Routhier, Lovell***

***Nays: None***

***Attest: \_\_\_\_\_***

***Allen D. Hendershot, Chairman***

***Manchester Zoning Board of Adjustment***

APPROVED BY THE ZONING BOARD OF ADJUSTMENT: February 23, 2017

With Amendment

Without Amendment

**Full text of the agenda items is on file for review in the Planning & Community Development Department.  
The order of the agenda is subject to change on the call of the Chairman.**