SPECIAL MEETING
BOARD OF MAYOR AND ALDERMEN
(PUBLIC HEARING)

May 19, 1997 **7:00 PM**

Mayor Wieczorek called the meeting to order.

Mayor Wieczorek called for the Pledge of Allegiance, this function being led by Alderman Hirschmann.

A moment of silent prayer was observed.

The Clerk called the roll. There were eleven Aldermen present.

Present: Aldermen Reiniger, Sysyn, Clancy, Soucy, Shea, Pariseau, Cashin, Robert and Hirschmann
Aldermen Elise and Domaingue arrived late.

Absent: Alderman Wihby

Mayor Wieczorek advised that the purpose of the public hearing was to hear those wishing to speak in favor of or in opposition to a proposed Ordinance; that the Clerk would present the proposed Ordinance for discussion at which time those wishing to speak in favor will be heard, followed by those wishing to speak in opposition; that anyone wishing to speak must first step to the nearest microphone when recognized and recite his/her name and address in a clear, loud voice for the record; that each person would be given only one opportunity to speak and any questions must be directed to the Chair.

The Clerk presented the proposed Ordinance:

> "Amending the Zoning Ordinance of the City of Manchester by rezoning a parcel of land currently zoned R-1B (Residential One-family) located at 1466 Bodwell Road and having an area of approximately 1.75 acres, to B-1 (Neighborhood Business)."

Mayor Wieczorek requested that Robert MacKenzie, Director of Planning, make a presentation.

Mr. MacKenzie stated I'd like to first just orient you as to where this particular site is. It is located on the easterly side of Bodwell Road, if you're familiar with Bodwell Road, heading southerly towards the Town of Londonderry just before the Newton Meadows Condominium complex there is a small road that goes out to Camp Carpenter, if you're familiar with that. Right at that intersection there is roughly a two acre piece that's currently zoned B-1 and B-1 is a Neighborhood Business, it does not allow any heavy retail, large retail, it's geared primarily toward convenient shopping, drugstores, small convenience marts and other small consumer service operations. Just to the north of this there is an existing building that's a truck repair

facility and to the north of that there is a blue building that has four units in it, it was granted a variance back in the 1980's and currently there is a video store in the southerly end of that blue building. The request is by the property owner of that property to rezone the parcel, again it's about two acres, about 1.75 and the request is to grant a zoning change from the current R-1B which is Single-family Residential on 7,500 square foot lots minimum to a B-1 Neighborhood Business. There is a zoning history to it. The applicant did go to the Zoning Board of Adjustment on a few occasions, the latest he went to request a zoning variance to put in a convenience store/pizza shop. The Zoning Board of Adjustment did grant that, but then one of the abutters took the applicant, the owner of the property to court; that court case is still pending. At this point, I'd be happy to try and answer any questions that the Board might have.

Alderman Cashin stated this is in court now, is that right.

Mr. MacKenzie replied the variance is in court, yes.

Mayor Wieczorek called for those wishing to speak in favor.

Edward E. Houle, 3 Field Drive, Windham, NH, stated:
I am the owner of the building and this is my wife, Laurel. Actually, I should say co-owner of the building. We're here tonight to speak in favor of the proposal that we brought before the Board. We bought the building back in the end of July of 1996 and we bought it knowing that it was a commercial building in a residential zone. The previous video store that had been there, had been closed for a short time and my wife's desire was to get back into the video business, the retail business and she reopened that store up. Part of our plans, I guess for the building and they kind of evolved after we had closed on the property, but we're trying to find the best possible uses for a commercial building stuck in the middle of a residential zone and the two best uses that we could come up with for the two empty units that we have in the building was a convenience store and the second was for a pizza and sub shop. Those seemed to be the most accepted uses in the area by the neighborhood residents and it seemed to be the two biggest draw items that the building could serve. Our first thought was to start to see if we could get a variance from the City for those two uses and after several meetings and as Bob MacKenzie had indicated, we did get an approval under the Special Exception clause in the Zoning Ordinance to have those two uses in the building, but then that was appealed to the Board and now there is an appeal pending at Superior Court and the hearing for that is scheduled for sometime, I think it's the second or third week in July. Going beyond on that though, we felt that even with the two approvals for the Special Exceptions for the area that we were still going to have a commercial building stuck in the middle of a residential zone now with three variances, actually four variances instead of the original two and although it would allow us to use it the way we wanted to, it still really didn't solve the problem and I guess the problem originated back when the building was first put up, but it's something that we bought and we're here today to see if we can maybe correct that and our best thought is to serve the area as well as our own uses that a change to that B-1 zoning would be appropriate. We don't want to, our request for a change is

not anything different from what we went into the Board of Adjustment for. We still want to use the two empty units - one for a convenience store and the second for a pizza and sub place. We don't have any plans to expand the building any further, we really want to try and make better use of what we have and a lot of the residents through the video store have come in and have expressed a desire to have some of these types of services right in the area so that they can benefit from that instead of having to drive outside to some of the stores on either Mammoth Road or something around down by Exit 5. One of the questions that had come up before was is this going to increase traffic on the road and my favorable answer to that is that we're hoping that instead of people driving by, that they will drive into the building and then drive back out to their house after they've got what they've wanted. So, we really don't see a type of a traffic increase, we just basically see them stopping at our building, we hope first instead of going somewhere else. Part of our plan that we had submitted to the Board of Adjustment, we wanted to make some exterior changes to the building, something to make it a little bit more residential looking, more on a country store type of atmosphere, to change the front which is right now a metal-sided building to a cedar clapboard which would make it a lot more favorable to view. We want to seal coat the driveway, get some line striping in there and dress up the outside. But, if the use stays the same which is office/warehouse, what we're approved for now, it really doesn't matter to a tenant coming in whether I've got cedar clapboard on the outside of the building of if I've got metal frame on the outside of the building, they really don't care, they're going to use it for their type of business. We could rent...we've left those two units at the end empty hoping that we would get the zoning change or be able to use it the way we want to. We have had some tenants that have expressed an interest in it and one of them was a machine shop and I had no objection to it, but when I tried to look at the big picture of what we're trying to do is if we let a tenant like a machine shop come in there, what benefit are they going to do to the local area, they're not going to do anything, they're not going to be able to help any people that are in the neighborhoods around there, the only thing they are going to be able to do is fill up a unit and pay rent for us and do business on their own. I'm probably a little biased because it is my own building and my plan for the stores is that it is something that I want to run myself, it's a business that I was in prior to the business I'm in now. About eight years ago, I got out of the convenience store business, but that's my idea of giving something back into the convenience and to run that ourselves. My wife would still continue to run the video store and I'd run the convenience store, it's going to be more of a family-operated business and we like the area, we've met a lot of nice people up there and it's something that we think would be profitable for them and profitable for us. Now, I'm aware that there is another property 200 feet down the road, it's a vacant piece of land right now that is zoned B-1 and they have submitted a plan to put up a six-unit building there and I think that would also be a plus for the area because when I originally had a list, I made a list of possible uses for my empty units and I came up with about 15 different uses that I could think that would be good for that area. So, even though there is an existing parcel, it is B-1 already, we're still asking for that change and I think that a little zoning area in that residential area would...everyone would benefit from that.

Alderman Pariseau asked, Mr. MacKenzie, is that use that is currently there the video store appropriate for a B-1.

Mr. MacKenzie replied yes, I think a B-1, a video store would fit within a B-1 neighborhood district.

Alderman Pariseau stated backing up, Mr. Houle, I got a little confused relative to the variance procedure when you went for a Special Exception.

Mr. Houle stated that is what we thought was originally the way that we should go is that we wanted to have a use of this building that was non-conforming with the zoning rules and that my idea was that I would have to go and get a variance in order to use it the way we wanted to and it wasn't until after we had started the variance process and that it ended up getting changed, the Board had recommended that it be changed to a Special Exception instead. It wasn't until after that, that I realized that even with the Board's approval which we were very thankful for, it still left us a commercial building stuck in the middle of a residential zone and now with four variances on it instead of the original two - the one for the building itself and the one for the store - now, we would have four on there. One for the building, one for the video store, one for the convenience store, and one for the pizza and sub place.

Alderman Pariseau stated so the Board of Adjustment did grant you the Special Exception for the convenience store and the sub shop.

Mr. Houle replied they did. It's in court now. Actually, the other parcel, the other B-1 parcel that's 200 feet down the road is taking...they're trying to block us because...I imagine because they don't want any competition and that's my own theory.

Barbara Condon, 353 Megan Drive, Manchester, NH, stated:
It's located in Megan's Meadow subdivision off of Bodwell Road and I am here tonight to support the rezoning of this property. I understand that a zoning ordinance governs how the land may be used and the size, type and number of structures that may be built on the land. However, tonight we are discussing a piece of property that was zoned a 1-B, a Residential One-family located next to a piece of property that stores used tractor trailer beds. Now, as a 1-B, I would not want a single-family home built next to a large parcel of land that contains a bunch of empty tractor trailers that are all rusty and dumpy looking. Okay, the property we are discussing now already has a building on it which was approved by a variance by the Zoning Board of the City of Manchester. The zoning regulations carry out the land allocations recommended in the comprehensive plan. Allowable land uses are specified for each zone including special conditions, such required off-street parking, most regulations are termed "matter of right". If the specific requirements are met, a permit will be given. Other regulations provide general standards with considerable flexibility and the mixture of building uses or the building design. Since Ed and Laurel Houle purchased this property they have met with both Planning and

Zoning to make sure that all requirements would be met from septic design, parking to exterior appearance of the building to blend in and complement the surrounding area. Please take into consideration all their efforts to provide this area with community services that are long overdue. Year's ago before development perhaps the 1-B zoning would have been appropriate, but today it is not. When Ed and Laurel Houle bought this property, their intent was to have a family-owned business to provide a service to a community. This is a lifetime investment and for a lifetime investment, it's essential that this property be zoned correctly. Now, in closing I would like to say that I am aware of the site plan before the Manchester Planning Department by Goldie Realty Trust which is owned by Paul Cowette to build a strip mall on Bodwell Road. I attended the public hearing to support this mall also. Civil rights is used to imply that the State has a positive role in ensuring all citizens equal protection under law and equal opportunity. So, thereby, I feel that the Houle's have just as much right to the opportunity to have this property rezoned as Mr. Cowette had or Goldie Realty Trust or back then in 1989 it was Friendly Neighborhood Realty Trust and Mr. Cowette had permission then to build his store; that property has sat vacant, he's done nothing with that. I've lived in the area for six years, I was told six years ago stores were going to be going in up in this area, day care facility, ballfields. Well, everything changed. We have house-upon-house, but we have no public services not like sewer and stuff. We don't have the basics being able to go down the street, get a gallon of milk and be home in ten minutes. We have to go all the way up to South Willow Street to do grocery shopping, all the way down into Derry, it's ridiculous. Now, all the City planners may report to the Mayor or city managers or other officials, they're true clients are the people and the businesses of the City. Their plans must reflect the interest and priorities of these two groups and at the same time help the City survive and maintain the quality-of-life that these groups desire. The rezoning of this property from a 1-B Residential One-family to a B-1 Neighborhood Business will not only offer the community a valuable service, but it will also increase the value of the property which will in turn help the City and also I feel honestly that this will alleviate a lot of traffic entering and leaving Bodwell Road. I, myself, make at least six trips a week between getting milk, Pepsi, bread, whatever I need it's like my refrigerator can only hold so much when you go to the grocery store on Sunday and I'm sure that each and every one of you experience these same things in your household. So, I ask this Board to please consider this rezoning very seriously because it is something that we do need and I don't feel that in any way would two stores within a couple hundred feet of each other hurt either one of the property owners. It will benefit both property owners in keeping them honest. It will keep competition in the area and our prices won't be sky high. Thank you very much.

Richard Marggraf, 1799 Bodwell Road #16, Manchester, NH, stated:
I'm a member of the Brier's Condominium Association, 24 families that live directly adjacent to the property in question. I believe I speak for all 24 families, we are unanimously in favor of granting the approval to the Houle's. I've never met the Houle's until tonight, I've lived on the street for ten years and it's long overdue. Thank you.

Keith Allard, 1991 Bodwell Road #2, Manchester, NH, stated:
I've been a resident there for nearly six years and I've served on the Board for the last five. Not only do the residents, but me personally feel that this is something that is long overdue. The property that is 200 feet down the road is zoned to be able to have a store in it already has been vacant for all of these six years, no one has taken the initiative to build it and I think it's finally great that somebody wants to come in the neighborhood and put in some convenience stores and sub shops, something that we desperately need. I think it will definitely eliminate the traffic problem. I think Ed and Laurel have great ideas about improving the look of the building which I think would be great. As mentioned by somebody, the property right next door is not exactly something of beauty, it's an eyesore with those trucks, I think it would be great to improve that. I think it would be an asset to the community and not only do I support it, but the Association at Sundance Gardens strongly supports having the video store there, having the convenience store and having a sub shop in there. Thank you.

Laura Seidell, 343 Megan Drive, Manchester, NH, stated:
I live in Megan's Meadows towards the back half of the neighborhood and I just wanted to say that as a resident living so close to this convenience store would be very nice to have one because as Barbara Condon mentioned, I make one big shopping trip once-a-week and I'm back about five times during the week to pick up more items and it would be very nice not to have to go so far, to be home in about 10 minutes and be able to have everything right there within a five minute ride of the house. So, I'm in support of it.

David Ranno, 170 Megan Drive, Manchester, NH, stated:
I want to express my interest in favor of this proposal because it just hit me recently at the beginning of April in the big snowstorm, I lost my vehicle, it was totaled, and I'm waiting for the factory to deliver a new vehicle and I have had to rely on friends and family and co-workers to transport me to and from work and to other events and not being able to have any kind of service within a reasonable walking distance has hurt me. To be able to get the gallon of milk or a carton or eggs that I could walk up. It's about a mile-and-a-half, probably two miles and it's not an unreasonable walking distance, I could have easily done it and not having these services locally is a detriment to our community. Thank you very much.

Mayor Wieczorek called for those wishing to speak in opposition.

Jay Hodes, Bossie, Kelly, Hodes & Buckley, 440 Hanover Street, Manchester, NH, stated:

I'm here tonight representing three parties. I represent Fred Dubois the owner of the property at 1500 Bodwell Road, Mr. and Mrs. Mike Brunette, the owners of the property at 1442 Bodwell Road, those are the two abutters to the property that is before you for the subject of rezoning and both of my clients in that regard are opposed to the petition to rezone. I have a couple of handouts that I would like to pass out at this point that I may refer to during my short presentation, if that's all right. I also represent Goldie Realty Trust that's been referred to and I'm going to address the concerns of all three of the clients briefly. The applicant in this case, Mr. Houle, as he indicated purchased this property in July of 1996. Shortly thereafter, they applied for a variance and a Special Exception. The ZBA after a number of hearings did grant the approval of that to use, I think, two of the units - one for a pizza shop and one for a convenience store in addition to the video store that is there now. That has been appealed by Goldie Realty Trust, one of my clients, and we have reason to believe that the Zoning Board of Adjustment was incorrect in their decision and we are hopeful that that decision will be overturned by the Superior Court and as Mr. Houle indicated that is now pending. The application here by Mr. Houle is an attempt to basically circumvent the litigation and to have the whole property rezoned in its entirety. Now, I appreciate Mr. Houle's representations to you, but once the property is rezoned, Mr. Houle can sell it and the next owner is free to use it however he sees fit as a B-1, it will not necessarily be a family-owned business. The configuration could be completely different and you're reopening the property by rezoning it and it then becomes whatever uses are allowed under the Zoning Ordinance. So, we feel that it is inappropriate for the applicant to come before you in this manner for rezoning. The applicant's are not residents of the City of Manchester and they're seeking to change an existing zoning which has been in here for a long time, there's not a recent change in zoning, it's been zoned this way for many, many years, they bought the property knowing how it was zoned and knowing how it was used. Now, I've shown you a map - Mr. and Mrs. Brunette live adjacent to the property at 1442, they have a residential use, and we feel that the use by the property as commercial uses that are proposed would be detrimental to them. There will be an increase of traffic, there will be a pizza restaurant, we know that theoretically there will be pizza deliveries, people coming in and out at night - convenience stores, ones of the things a convenience store do is they have late hours, so people pulling in and out late hours, the starting and stopping of motors, the slamming of car doors, that's a natural consequence of having a convenience near you and so that would have a direct impact upon the Brunette's whose bedroom window is basically adjacent to that property. Right now, the property can be used for a video store, a warehouse and an office building subject, of course, to the variance that is under litigation. Goldie Realty Trust, one of our other clients owns the property which is about 200 feet south of the subject project; that property is zoned exactly as is being proposed, it is a B-1, it has as a matter of right has the right to use the property for a convenience center and a fact already before the Planning Board, I don't know what stage it is in because I haven't been handling that aspect of it, there has been a hearing, I think it's the site plan first stage, there's been a hearing and I don't know how far away it is from approval, but they are going to put a strip mall in there, that is what their proposal is and as a matter of right they have a right to put a strip mall in

there. What we'll have if we have this will be two strip malls next to each other in essence competing strip malls. You're going to be changing the nature of the neighborhood. I appreciate what Mr. Houle said about competition and all of that, but think about it. You'll have two strip malls, my client wants to put a pizza place in, wants to put a convenience store, wants to probably put a video store in or a drugstore, those kinds of things. You're going to have two strip malls within 200 feet of each other, you're going to have traffic pulling in and out of each of them, you're going to have illuminated lights for parking areas, you're going to have signs that people are going to want and in a B-1 some of that is going to be allowed. So, think about is that going to affect the neighborhood, is that going to be a change in the neighborhood. When this area was zoned, this piece of land that Goldie Realty Trust owns was set aside as a B-1 for this purpose to create a neighborhood convenience center in this area, it was part of the comprehensive planning that was done for this area. There is no compelling reason, no public reason to rezone another piece of land just upstream from this, it doesn't make sense to now open this up and change the whole nature of the neighborhood. I also appreciate the comments of the abutters. Obviously, there is a need for a convenience center, but is there is a need for two adjacent to each other with all the issues that that is going to entail. Now, one of the things I've given you tonight is a letter from Kenneth Rhodes. Mr. Rhodes is a Consulting Engineer, he's done work for Goldie Realty Trust and he's written a letter expressing his concerns with the project and I would ask for you to review that letter. We concur in his comments that this appears to be a situation where when this area was originally laid out and Bodwell Road, not that long ago was a fairly undeveloped area in the City and then as we know now it is fairly well-developed with condominiums, apartment buildings, etc. and when it was laid out Goldie Realty Trust parcel was set aside for purposes of commercial use to allow another property to be used in there without any comprehensive planning, without amending the master plan is what we call spot zoning. Here you have a land owner coming in and saying I want this piece changed because it benefits me financially. It does, it benefits Mr. Houle and I can respect that and if I were here representing Mr. Houle, I would be here making an argument as to why you should do it as well. But, what this is is spot zoning and spot zoning is something that is prohibited in the law. It's where without having an overall zoning plan or concept or without an overwhelming public need to serve the needs of an individual owner only. Rezoning should be based upon public need, public welfare, does it benefit the health, safety, morals or something of that nature and in this case there is no compelling reason to rezone this space. Especially where you already have one that already exists as a matter of right that can be used for this purpose and is already going through the process. There's case law in New Hampshire that says "zoning boundaries, the change in zoning boundaries can only be justified when they are for the purpose promoting health, safety, morals, and for general welfare. The community, they should be made on the basis of comprehensive plan," that's lacking here, "and the adjoining property owners" and this is very critical - "are entitled to rely on zoning districts that they have purchased their property or reliance upon and that those districts won't be changed unless there is compelling reason." So, that is what my other clients, the Brunette's are saying. They purchased their property, they live there, it's a residential zone, it's unfair now to change this to a commercial zone when there is no compelling reason or no compelling showing as to why it should be done

and if it would help the Board, we would be happy to submit a memorandum of law outlining the case law on spot zoning, but we think this is clearly a case where you have an individual coming to you saying this benefits me in a financial manner and that's why I want it to be zoned in this manner. Again, it's our position that the owner when they purchased it knew what they were purchasing and I've also given you a history of 1466 Bodwell Road. As you'll see, it originally started out as a warehouse and office building and granted a variance in '84, it was granted a variance in '87 to have a video store, then in '88, '90 and '91 variances were denied one for a boxing gym, one for a convenience store, another for a convenience store, then in '92 the video store was allowed to expand with stipulations that there be no further expansion. Then most recently, the Board did again grant a further variance which is the one that is under appeal now and is now pending in Superior Court. So, for all of those reasons, we submit that this is an improper rezoning petition and we would ask you to deny the same. Finally, I believe that a protest petition has been submitted to the Mayor's Office concerning this under RSA 675:5 and I believe that that would require then a two-thirds majority vote of the Board.

Alderman Pariseau asked, Attorney Hodes, what is the property owned by Fred Dubois zoned as.

Attorney Hodes replied RB-1. As far as I know, RB-1.

Alderman Pariseau stated that is where the trucking firm is and Mr. Brunette hasn't complained about the Dubois racket.

Attorney Hodes replied not to my knowledge.

Mayor Wieczorek requested Mr. Brunette come up and speak.

Alderman Soucy stated, Attorney Hodes, you said you prepared a memorandum of law, if you could provide the Board with a list.

Attorney Hodes replied we'll have that tomorrow.

Alderman Clancy stated, Attorney Hodes, you said it's going to create more traffic, how is it going to create more traffic.

Attorney Hodes replied it's going to create more traffic, not more traffic in the sense of more people on Bodwell Road, but you would have two driveways to competing malls, strip malls very near each other, you're going to have people pulling in and out, you're going to probably have deliveries from pizza places and in that general area we're only talking about 200 feet separating them. I could see a hazardous condition where you have people pulling in and out without having traffic controls there; that's what I mean by having more traffic in the sense of people pulling in and out and people going to and from the store.

Alderman Clancy stated in my opinion the only ones who would go to the store down there are those who live in the area.

Attorney Hodes stated again, I'm talking about people pulling in and out of the two malls right next to each other.

Alderman Domaingue stated, Attorney Hodes, I'm trying to understand the area itself. I'm looking at the Brunette property and you referenced their bedroom window looking out over the properties being asked to be rezoned. I'm going to assume that you are familiar with the Brunette's and that they've lived there all year long for how many years, in other words it's not a semi-permanent residence, it's a permanent residence for how many years, do you know.

Attorney Hodes replied, I don't know. I think for quite a while though.

Alderman Domaingue asked do you know when the property that's listed under Goldie Realty Trust zoned B-1 was zoned B-1.

Attorney Hodes replied in the 80's, I think, I don't know, do you know.

Alderman Domaingue asked could I ask the Planning Director, do you know when that property was zoned B-1.

Mr. MacKenzie replied, yes. I believe it was zoned in 1985.

Alderman Domaingue asked at that time, I guess my questions are routed in the issue of spot zoning. At that time zoning of that particular property only as B-1, would that have been considered spot zoning at the time.

Mr. MacKenzie replied, I could give you my...I'm not an attorney at this point...I do...

Alderman Domaingue stated there certainly are minutes on that zoning, are there not.

Mr. MacKenzie replied yes, and there was some discussion about that. Normally, I'm not very comfortable with one individual piece of property being rezoned. If there was a zoning district that would be suitable for a small parcel of land though, it would be the B-1 which is a neighborhood business, intended to be a small parcel serving a larger residential area. Clearly, my normal preference would be to have one, two or three properties at least zoned in a particular manner.

Alderman Domaingue stated I would just like the record to note that the Alderman from Ward 8 does recognize that there is one piece of property surrounded by residential that is zoned B-1.

Attorney Hodes stated it is my understanding that in the Master Plan, it was addressed to have a B-1, a neighborhood convenience center in that area and that is how it got zoned B-1, but that's all I have in terms of familiarity with that.

Alderman Domaingue asked what Master Plan are you referring to, Sir.

Attorney Hodes replied the Master Plan of the City of Manchester as far as what was related to me by the engineering department that I'm working with.

Alderman Domaingue stated I guess I would need Mr. MacKenzie to give me a clarification. I thought our Master Plan was done after 1985, am I incorrect.

Mr. MacKenzie replied, no, you are correct, Alderman. It was adopted in 1993 and it did show a generalized blob that was appropriate for neighborhood business somewhere in that area of Bodwell Road.

Alderman Domaingue stated somewhere in the area, but not specifying any one particular piece of property.

Mr. MacKenzie stated it is generally at this location and would probably again, it's at that level which is a map this size that shows the entire City, it could...it would probably likely include Goldie Trust property, the existing B-1, but potentially could include the other parcel, as well.

Alderman Domaingue stated, so it didn't limit it to that one piece of property.

Mr. MacKenzie replied that is correct.

Mr. Roger DesRochers, Boy Scouts, 1440 Bodwell Road, Manchester, NH, stated:
I live next door to the store and I'm representing Camp Carpenter, the Boy Scout Camp as a Camp Committee and they are against the rezoning of this property. Thank you.

Alderman Domaingue asked could you, just for the Board, tell us which Committee.

Mr. DesRochers replied the Camp Carpenter Committee.

Alderman Domaingue asked is that representative of the Daniel Webster Boy Scout Council.

Mr. DesRochers replied, yes, we represent just the camps.

Michael Brunette, 1442 Bodwell Road, Manchester, NH, stated:

I know I didn't sign the paper one way or the other. I'm a bit unsure how to go about this. Originally, as last week, I'd say I'd have been opposed to the project, to the rezoning mainly because what I'd been told by some people. Well, let me give you a brief history and I won't take all night. I did meet Mr. Houle last summer. I was out in the backyard, he was at his property doing some work, I knew he had just purchased the property, went over and we introduced each other and talked about what his plans were, what I'd like to see and all that. At the time, he mentioned that he'd like to put in a convenience store, possibly a pizza joint, and put a driveway, an access road on the north part of his property which is between my house and his. I told him, I really, really didn't like that at all because that driveway would be 20 feet from my bedroom window. By the way, I've lived there for 18 years. We've owned the property for 13, I've raised three boys there and I know as well as anybody how nice it would be to get a gallon of milk real close with three boys. So, we spoke. I told him that I really didn't care to have a convenience store/pizza joint right next door to me. I could see that the area needs a convenience store, it does, there is no way to deny it. I just don't want it in my backyard. But, that's not always a good reason not to. The pizza place I'm concerned about because of the smell, the people coming in and out, will it have a liquor license, a beer license, am I going to be dealing with people who have had a little bit too much, leaving home late at night. I don't like that. So, I'm kind of "iffy" about it. I'd been told previous to this meeting that a curb cut in the driveway was going to go in north of the building between our properties, that upset me an awful lot because I thought Ed was a pretty straight forward guy when I met him. So, I came in all ready loaded for bear and going to shoot it down. He's since told me that he does not plan on putting a driveway, just tonight he told me that. So, that kind of took the wind out of my sails. I don't know where to go with this. My concerns are the concerns that still remain. If it gets rezoned and Mr. Houle does sell it sometime, I don't know what can go in. My wife and I like to sit out in the backyard in the afternoon in summers, it's an open place, it's comfortable, it's quiet. Mr. Dubois used to have the property that we are talking about and his equipment was all in back of that building, right next door to me. It looked ugly as heck, but it was quiet. The equipment didn't make a lot of noise and we were on very good terms, my kids would kick a soccer ball, it would go over there and there was no problem with retrieving it. So, as much as it looked lousy, it was quiet and there weren't any people going in and out. I'm concerned that if it does get rezoned and Mr. Houle does sometime sell there is a good chunk of the property that I don't know if another building could be put up, what's going to happen with it, what's going to happen to my backyard. So, overall, I'm tossed, I don't know whether to oppose it or go with it. Apparently, Mr. Houle, will stick by the word that he gave to me and not put a driveway on my side. I still don't like having a pizza joint next door to my bedroom. A convenience store, yeah, a little bit further down would be great. So, that's kind of where I stand. Any questions.

Alderman Robert stated a question for Bob. Would this allow this establishment or this property to file for a liquor license and get it. Is this the appropriate zoning for that.

Mr. MacKenzie replied I believe you could have restaurants with liquor in, I believe, a B-1, but I would have to check that.

Alderman Robert stated I guess the worse case scenario would be you'd have your poker machines fall in afterwards. I would think about that because I live in a neighborhood where that's all I've got and I wish I had the opportunity to do things again.

Mr. MacKenzie stated I would like to check that, Mayor, and get back to the Board or the Committee on that one.

Alderman Shea stated I'm wondering if Mr. Houle would put in writing the fact that he would not put that driveway in, is that something that he could do or not do.

Mayor Wieczorek stated, Mr. Houle, what the Alderman has asked is would you be willing to put in writing that you wouldn't put the driveway right there.

Mr. Houle replied absolutely. I told Mike that before and he's been misled, I think is part of the reason that he said there too that somebody told him that I was going to put that driveway in. I showed him a copy of the plans that if we expanded the parking that the driveway was going to go on the opposite side of the building and that is the plans that the Planning Department has and the Zoning Board has. We have not intention of putting any driveway on his side. Specifically, for the reason that he asked me that I would not do it and I said I would not.

Alderman Shea stated would there be his assurance that there wouldn't be a liquor license or video machines there, could that be put in writing as well.

Mr. Houle stated the only restriction is that a convenience store as part of the plan is that we are going to sell beer and wine there. We're not going to be serving it, we will restrict patrons from opening it while they're in the store too. But, the pizza place we can put a restriction in the lease on that that no beer or wine is to be served over there. It's basically designed, it's not enough, it's only 1,200 square feet, 1,400 square feet. So, it's not big enough to have a real eat-in type establishment. It's basically going to be takeout and delivery. But, part of our plan and this can also be part of the restrictions in there too is that the businesses were not to be open after ten o'clock at night and that again was designed to accommodate the area and not to be a nuisance. My intention is that I want to open this business, this is something that I want to do and maybe plans will change and I can't say that I would never sell the building, but I'm telling you tonight these are my intentions, this is what we want to do and we want to be there a long time and the whole basis behind some of our plans is to make sure that the neighbors are happy with what we want to do and if Mr. Brunette has some other concerns or something, I had spoken to him before whether he wanted a fence up and he said no he preferred that that land be left open and that's just what I've done.

Alderman Shea asked are these restrictions that he puts on, are they grandfathered in if somebody were to buy the property.

Mayor Wieczorek stated if it's rezoned anything that would apply that could be put there according to the zoning laws could be put there.

Mr. Houle stated I'm not an attorney here and I wouldn't want to ask the other attorney because he's against me, but I know that in a residential area though you have covenants that are on record in some neighborhoods when they're built. But, a site plan can pertain to one property, can it not.

Mr. MacKenzie stated it wouldn't be impossible. You may recall the Lahey Hitchcock rezoning on Wellington Hill. In that case, the applicant volunteered to put deed restrictions on the property to limit uses before the property was rezoned and that did occur. Those deed restrictions do carry from owner-to-owner, so I'd like to review that with the City Solicitor, but it would not be impossible, I think to accomplish that if the applicant was willing.

Alderman Domaingue asked didn't we do the same thing with the Marriott, as well.

Mr. MacKenzie replied yes, we did.

Alderman Domaingue stated, Mr. Brunette, because of the history of this property and the fact that you've lived there for 18 years, you've obviously heard of some of the Zoning Board requests that have been made previously for this piece of property, were you at those hearings, did you have any opinion at the time.

Mr. Brunette replied there was a meeting, I believe it was last November and at the time I had spoken with Mr. Houle and he had assured me no driveway and all that, so again, I'm...yeah, I can see where the area needs a convenience store. I did not go because I was kind of neutral on it. I don't like people that take the opinion "not in my backyard" and that's pretty much what my opinion would be if I would have gone against it, but yet we need a convenience store, don't put it next to me, that's not valid. I don't like the idea that it's there, but the area needs it.

Alderman Domaingue stated you're trying to be a fair neighbor, I guess. When you look out, I'm assuming now that your property because I don't know the area that your property faces Bodwell Road, is that correct that your home faces Bodwell.

Mr. Brunette replied, yes. If we can turn on the slide, I can show you exactly.

Alderman Domaingue stated roughly in that building as it is now, when there is activity in that building do you see any lights, do you hear any noises, are you bothered by any traffic or disturbances as it exists now.

Mr. Brunette replied as it exists now, I see lights, I see out into the parking lot. There is a business DeBolt when their trucks come in and out I can see the headlights, but that doesn't happen often enough to be a bother.

Alderman Domaingue asked is there a fence between your property and that property.

Mr. Brunette replied no, there is not. I asked them not to because it's nice and open and I like it that way. If we were to put a fence on the property line it would be more than halfway toward my house, that's all I've got. But, I think it looks better open with the amount of use it has now. If there's more use, I don't know maybe a fence or a line of trees or something would be appropriate.

Alderman Soucy asked, Bob, how much space is there on the opposite side of the proposed B-1 district. To the left of the property is the Brunette's home, on the opposite side how much space is there between the line and the building for a driveway.

Mr. MacKenzie replied that's a fairly short distance, probably one 10-15 feet.

Alderman Soucy asked is that sufficient room for a drive.

Mr. MacKenzie replied yes, potentially, to get around behind the building you mean, yes.

Mayor Wieczorek advises that all wishing to speak having been heard, the testimony presented would be referred to the Committee on Bills on Second Reading to be taken under advisement with reports to be made to the Board of Mayor and Alderman at a later date.

There being no further business to come before the public hearing, on motion of Alderman Shea, duly seconded by Alderman Soucy, it was voted to adjourn.

A True Record. Attest.

City Clerk