



CITY OF MANCHESTER

PLANNING AND COMMUNITY DEVELOPMENT

Planning & Land Use Management
Building Regulations
Community Improvement Program
Zoning Board of Adjustment

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MANCHESTER ZONING BOARD OF ADJUSTMENT PUBLIC HEARING / BUSINESS MEETING MINUTES

Thursday, February 13, 2020 – 6:00 p.m.
City Hall, Third Floor – Aldermanic Chambers

Board Members Present: Chairman Robert Breault, Michael Simoneau, Alderman Jim Roy, Joe Prieto

Alternates Present: Alderman Keith Hirschmann, Anne Ketterer,

Excused: Guy Guerra, Vice Chairman Jose Lovell

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

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

The Chairman announced that due to the absence of Jose Lovell, Michael Simoneau would be acting Vice Chairman and Anne Ketterer would be a voting Member this evening.

II. PUBLIC HEARING:

(Current Items)

1. **ZBA2019-001**
1497 Union Street, R-1A Zoning District, Ward 1

Marcel Lapierre proposes to maintain a driveway with a width of 41' where 24' is allowed as well as one front yard parking space and seeks a variance from sections **10.08(C)** Driveway Width and **10.09(B)** Parking Setbacks of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through January 9, 2020.

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Francine Lapierre said she and her husband, Marcel Lapierre, of 1497 Union Street are the owners of this property which they purchased in 2007. The driveway was this way when they purchased the property and has been this way for sixteen plus years. She said they are the fourth owners of the property. Mrs. Lapierre said the driveway doesn't encroach on anybody else's property and the driveway is not a nuisance. She said they properly maintain the driveway and they only have two vehicles which they park in the garage. She said none of their neighbors have complained about the driveway. She said they also have a plot plan that was submitted to the Board in the packet, showing that a document was presented and stamped by the City in 2004, by a previous owner and it says the width of the driveway then and it is the same width now.

Chairman Breault turned the hearing over to the Board. There were no questions or comments from the Board and the Chairman turned the hearing over to the public. He invited those either in favor of or in opposition to this application or those with general comments to come forward. No one came forward to this request and the Chairman turned the hearing back over to the Board.

Alderman Roy asked Mrs. Lapierre how they found out that this was in violation. Mrs. Lapierre said they received a letter in the mail. She said they had done renovations inside the property over the years and had inspectors come and go doing inspections after the work was done and permits were pulled and no one ever mentioned anything about the driveway. She said when they bought the property, an inspector walked the property and said their fence was too high and they took that down immediately. There was no mention of the driveway. She said then they got this letter and there were a whole bunch of other violations in there that they had not done to the property. She said when they proved those items wrong, the driveway was still a stickler to this person and he actually gave them a very hard time about it.

Chairman Breault said he thinks it is pretty evident that this is an existing condition that has been prevailing for several years. He said he thinks it would be in the spirit of the Ordinance to grant them a variance. Alderman Roy said it is certainly not going to depreciate the values of the surrounding properties as it has been there for over fifteen years.

Jim Roy made a motion to grant the following variance counts for case ZBA2020-001, 10.08(C) Driveway Width and 10.09(B) Parking Setbacks which was seconded by Michael Simoneau.

Yeas: Breault, Simoneau, Roy, Prieto, Ketterer
Nays: None

Upon a unanimous vote, the variance was granted.

2. **ZBA2020-003**
591 Cedar Street, R-2 Zoning District, Ward 5

Anthony Innie proposes to enclose an existing carport with a 3.5' side yard setback where 10' is required, maintain an 8' x 8' hot tub in required side yard setback and pave a 3.5' walkway along the carport resulting in lot coverage of 67% where 60% is allowed, as well as maintain an undersized parking space in the Cedar Street driveway and seeks a variance from sections **6.03(C)** Side Yard Setback, **8.29(A)** Accessory Structures and Uses, **6.04** Lot Coverage, **10.07(B)** Parking Layout and **10.09(B)** Parking Setbacks of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through January 10, 2020.

Marc Van De Water said he is an attorney here in Manchester at 632 Second Street. He said he is a long term friend of Mr. Innie who got nervous about coming here on his own and he asked if Attorney Van De Water could accompany him. He said Mr. Innie is present as well and is the owner of the property. Attorney Van De Water said to try and make this a little easier, staff told him to just have a picture of the property blown up. Referring to the photo, Attorney Van De Water said this was one of the properties from a plan that was submitted in 1982. He said Mr. Innie was trying to enclose his existing carport that has lattice on the side and back. Referring to the photo, Attorney Van De Water said when Mr. Innie went to the Building Department and was told he needed to get a variance, staff noted that behind the garage was an 8' x 8' hot tub that was there when they bought the property in 2011 and the driveway here and the carport is here and they asked if anybody ever got permits for them. They searched back as far as they could find pictures of this property. All of these items were back there back into the 1950's and 1960's. He said the last permits that were pulled for the property were one in 1959 and two in 1964. Since Mr. Innie was going before the Board, he said he might as well get a variance and make everything legal and he could pull a permit for the carport, the existing hot tub and only thing that is not existing, besides closing in the carport, is a walkway that they would like to put in so the tenant can get to the mailbox.

Chairman Breault turned the hearing over to the Board. There were no questions or comments from the Board and the Chairman turned the hearing over to the public. He invited those either in favor of or in opposition to this application or those with general comments to come forward. No one came forward to this request and the Chairman turned the hearing back over to the Board.

Chairman Breault said it is pretty evident that this is a small lot in a somewhat congested neighborhood and it appears that this carport has been there for several years. He said it is typical of other properties in this neighborhood with everything squeezed in. Alderman Roy said he doesn't think this is contrary to public interest as none of the abutters are opposed to this. Chairman Breault said seeing they are requesting to enclose something that is practically all enclosed now and the hot tub was already there, he doesn't think it is going to diminish anyone's property values, either.

Vice Chairman Simoneau said he agreed that this does meet the five criteria.

Michael Simoneau made a motion to grant the following variance counts for case ZBA2020-003, 6.03(C) Side Yard Setback, 8.29(A) Accessory Structures and Uses, 6.04 Lot Coverage, 10.07(B) Parking Layout and 10.09(B) Parking Setbacks which was seconded by Joe Prieto.

Yeas: Breault, Simoneau, Roy, Prieto, Ketterer

Nays: None

Upon a unanimous vote, the variance was granted.

3. **ZBA2020-004**
180 Kenney Street, R-2 Zoning District, Ward 5

Kyle Jensen proposes to maintain a driveway width of 31' where 24' is allowed and maintain two front yard parking spaces and seeks a variance from sections **10.08(C)** Driveway Width and **10.09(B)** Parking Setbacks (2 counts) of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through January 21, 2020.

Kyle Jenson said he was the owner of 180 Kenney Street and he was seeking approval to maintain the driveway width. He said there is a 4 ½ foot extension that he paid A. Cooper Paving last year to repave the driveway and they were just supposed to repave it as it existed. He said when he went there to look at it, Cooper paving said they had extra material and they laid it out instead of dumping it. He said Janice at the Building Department said this has happened four or five times to other people. He said Jim Tierney said it would be better to get a variance than for him to pay obviously, to tear it up. He said since his abutter on the right side is just a big hole in the ground, it is a creek and it is not usable and it can never be built upon. He said he is not in anyone's way so that is why he is here. He said it is 28 ½ feet wide and 24' from the house out. He said he is here because it exists already and he already paid for the driveway and he would have to now cut it up. He said the extra parking is nice, but it is just more of a nuisance for him to pay again when he already paid for it. He distributed photos to the Board Members.

Chairman Breault turned the hearing over to the Board.

Vice Chairman Simoneau said just to confirm, he asked Mr. Jensen if he changed the driveway since he purchased the property. Mr. Jensen said just last year he paid Cooper Paving to repave it because it had a big crack in the center of it and it actually had some type of sink hole that went down eight feet that they had to fill. He said he paid them \$100.00 extra to pull the permit but they did not, so he had to go back and pull it. Apparently, Jim Tierney just happened to drive by and see that. He said Mr. Tierney knows him from previous properties and that is when this came about. Mr. Jensen said he is not about to try to get one over on the City that he lives in and owns properties in.

There were no further questions or comments from the Board and the Chairman turned the hearing over to the public. He invited those either in favor of or in opposition to this application or those with general comments to come forward. No one came forward to this request and the Chairman turned the hearing back over to the Board.

Chairman Breault said obviously this gentleman was trying to clean up his property and an oversight happened and they made it a little bit wider than it should have been and he is trying to make it right.

Anne Ketterer said her only issue is that his claim of hardship is that someone mistakenly did it and he doesn't feel like fixing it. She said that is not a hardship. She said the driveway is not unlike other driveways in its additional width here in the City and as Mr. Jensen stated, it is not quite 31 feet, it is actually only 28 feet so that is just barely over the limit. She said she doesn't have a problem with it, she just wishes Mr. Jensen would amend his argument.

Mr. Jensen asked if he needed to pull a new permit. He said he pulled a permit but it got denied because of the width and he was told he needed to come get a variance. He said he is assuming he would have to re-pull it if it does get approved. Michael Landry advised Mr. Jensen to give him a call at his office in the next week and he would look into it. He said if they can salvage or use that permit, they will. He will do everything he could to look into it.

Chairman Breault said he didn't think this was going to hurt surrounding property values and is not contrary to public interest. Alderman Roy said he agrees with the Chairman that it is not going to affect the property values around there and his saving grace here is that he is right, it is just a stream next door and no neighbor. He said if there was a neighbor there he wouldn't look favorably on this because he doesn't care if somebody else put the pavement down or not, Mr. Jensen should have pulled that permit and made sure that that the permit was pulled.

Joe Prieto made a motion to grant the following variance counts for case ZBA2020-004, 10.08(C) Driveway Width and 10.09(B) Parking Setbacks (2 counts) which was seconded by Michael Simoneau.

Yeas: Breault, Simoneau, Roy, Prieto

Nays: Ketterer

Upon a split vote, the variance was granted.

4. **ZBA2020-006**
1000 Hall Street, R-1B Zoning District, Ward 2

Matthew Routhier (Agent), proposes to construct an in-ground pool, approximately 16.4' x 28', that results in rear yard lot coverage with accessory structures on a corner lot of 33% where 25% is allowed, create a new parking space in the front yard, as well as maintain a 12' x 16' shed in the rear yard 2.3' from the side lot line, maintain a 6' fence located in the front

yard, and maintain a front yard parking space located within 3' of a 6' x 6' shed located in the side yard and seeks a variance from sections **8.29(A)3** Accessory Structures and Uses (2 counts), **10.09(B)** Parking Setbacks (2 counts) and **8.27(B)** Fences Walls of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through January 24, 2020.

Matthew Routhier of Bedford Design Consultants said he was here with the owners Sandra and Ken. He said they are here before the Board with what began as an intent to build the pool and from there it kind of progressed into the additional counts that are before the Board. He said they have a lot that is 12,000 SF here and has frontages on two roads which causes the majority of the issues here for the count for the fence as well as the issue with the shed and the driveway in the front yard. He said their intent is to widen out the driveway to accommodate two cars. Currently, they are utilizing the garage for one car. It is a narrow driveway made of concrete and next to the driveway, the topography drops two to three feet down into the backyard which is one of the reasons that they have proposed to push that parking space towards the front yard inside. The lot coverage issue is brought into effect obviously, because of the pool and the shed and other items on the lot.

Chairman Breault turned the hearing over to the Board. There were no questions or comments from the Board and the Chairman turned the hearing over to the public. He invited those either in favor of or in opposition to this application or those with general comments to come forward. No one came forward to this request and the Chairman turned the hearing back over to the Board.

Anne Ketterer said they had a fence in the front yard but the six foot fence they are asking a variance for is because this is a corner lot and they kind of have two front yards. Mr. Routhier said the six foot fence, he believes, is the one toward the new section of driveway and he believes it comes in front of the house. Michael Landry said it is barely gets into the front yard and if you look at the plan, it is to the left side of the house. He said it is just barely in there. Anne Ketterer said it is not the one directly in the front of the house. Mr. Landry said that was correct.

Vice Chairman Simoneau said he agrees with Mr. Routhier. He said the fact that it is on the corner lot does create that issue. He said he drove by the area and it is a nice neighborhood. He doesn't see this affecting the property values and he thinks this meets the five criteria. He said he doesn't have an issue with this request.

Michael Simoneau made a motion to grant the following variance counts for case ZBA2020-006, 8.29(A)3 Accessory Structures and Uses (2 counts), 10.09(B) Parking Setbacks (2 counts) and 8.27(B) Fences Walls which was seconded by Anne Ketterer.

Yeas: Breault, Simoneau, Roy, Prieto, Ketterer
Nays: None

Upon a unanimous vote, the variance was granted.

5. **ZBA2020-008**
105 River Bank Road, R-1B Zoning District, Ward 8

Normand Hebert proposes to construct a 6' x 24.5' addition with a front yard setback of 11.8' where 20' is required, maintain a 10' x 16' shed in the side yard with a 3' side yard setback where 10' is required, maintain a front yard parking space within 4' of a building and the front and side lot lines, as well as maintain a driveway width of 29' where 24' is allowed and seeks a variance from sections **6.03(A)** Front Yard Setback, **10.09(B)** Parking Setbacks (4 counts), **10.08(C)** Driveway Width and **8.29(A)2** Accessory Structures and Uses of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through January 30, 2020.

Normand Hebert of 105 River Bank Road said he applied for this variance in 1998 and received a variance for this and life happened and they had a couple of things happen in their lives which prohibited doing it, so the permit expired and he is back before the Board.

Chairman Breault turned the hearing over to the Board.

Chairman Breault asked if the foyer and porch that they were pre-approved for and granted a variance for were the same size and same configuration as this proposal. Mr. Hebert said the size on the porch got a little bit bigger but everything else is basically the same size.

Alderman Roy asked Mr. Hebert when he put the shed in which is only three feet from the line. Mr. Hebert said in 1975. Alderman Roy asked about the driveway. Mr. Hebert said he bought the house in 1975 and has been parking his car there since 1975.

There were no further questions or comments from the Board and the Chairman turned the hearing over to the public. He invited those either in favor of or in opposition to this application or those with general comments to come forward. No one came forward to this request and the Chairman turned the hearing back over to the Board.

Chairman Breault said once again, this is one of the older tight neighborhoods in the City. He said obviously the existing conditions have been there forever. The porch was previously approved, although this Board doesn't have to adhere to it but it is a consideration. Alderman Roy said he believes he saw in the plans that the house actually isn't even twenty feet back. It is nineteen feet something. He said he doesn't think this is going to be contrary to the public interest and he certainly doesn't think it is going to diminish the values of the surrounding properties.

Anne Ketterer made a motion to grant the following variance counts for case ZBA2020-008, 6.03(A) Front Yard Setback, 10.09(B) Parking Setbacks (4 counts), 10.08(C) Driveway Width and 8.29(A)2 Accessory Structures and Uses which was seconded by Jim Roy.

Yeas: Breault, Simoneau, Roy, Prieto, Ketterer

Nays: None

Upon a unanimous vote, the variance was granted.

6. **ZBA2019-177**
70 Russell Street, R-2 Zoning District, Ward 2

Andrew A. Prolman, Esq. (Agent) proposes to convert from a two-family dwelling to congregate housing, propose additional parking and deck on garage and seeks a variance from sections **5.10(A)10** Congregate Housing, **10.07(G)** Landscaping, **10.07(K)4** Parking Screening, **10.07(K)1** Parking Bumpers, **10.06(A)** Parking Layout and **10.09(B)** Parking Setbacks (5 counts) of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through December 27, 2019.

Attorney Prolman approached the Board and distributed additional documents which he brought with him. Attorney Andrew Prolman said he is an attorney with Prunier and Prolman of Nashua. He said he was here representing 70 Russell Street, LLC and Keep it Simple Housing, LLC. He said with him at the table this evening is Kabir Singh who is a Vice President of Amatus Health and Recovery Centers. Also with them this evening is Jonathan Gerson who is the Executive Director of Blueprint Recovery Center. Attorney Prolman said he would have two witnesses to add to their presentation.

Attorney Prolman said he submitted two variance applications. He said the primary reason they are here is for the congregate housing in the R-2 district, which is not an allowed use. That was the initial filing that they made. After all their submittals and plans that were submitted by their surveyor, Mr. Gagne did the full code review and identified a number of parking variances that are necessary for their site and that was the second variance application that he submitted that included the five or six different counts of the parking requirements. He said they are here for 70 Russell Street and 70 Russell Street only. He said you may hear from folks tonight that they have concerns about other sober living houses in the City and perhaps even in the neighborhood, but he is presenting to 70 Russell Street only and he is not familiar with other sober living houses in the City.

Attorney Prolman said his client purchased this property in the Summer of 2018. By the fall of 2018 they opened up their sober living house. They did so without obtaining any permits or approvals and they know that and that was arguably a wrong thing to do. He said they screwed up. He said when he spoke to his client and asked them about that, they tell him that they saw that they were operating a residential use in a residential district and they did not believe any additional permits would be necessary. Amatus Health owns and operates other sober living homes up and down the east coast in a number of cities and they haven't had to obtain permits or approvals from other communities in other states. He said when they came to New Hampshire they thought the same would apply. That is not the case and since he got involved late last summer, he has been working with Mr. Tierney and Mr. Landry to bring them here tonight. He said they believe they are the first sober living house to seek permits from the City. He said it starts with this Board tonight because they are in

the R-2 district and should they prevail tonight, they do have to appear before the Planning Board for a change of use application. He said they have a ways to go.

Attorney Prolman said they had a neighborhood meeting called by Alderman Will Stewart about a month ago. He said many folks were upset. He said you may hear folks say that they got caught and are begging for forgiveness at this time and shame on us. He said arguably, their neighbors aren't wrong. He said they know that but they are here tonight to try and make this right.

Attorney Prolman said he would like to explain who they are. He said Amatus Health Recovery Centers is a corporation based out of Maryland. They are the parent entity of everything that they are talking about here tonight. They own and operate eleven facilities in Maryland, District of Columbia, Georgia, Ohio and the Blueprint Recovery Center in Concord, New Hampshire. What they do is substance abuse treatment and recovery programs. He said the Blueprint Recovery Center is on Chenell Street up in Concord and it is a treatment facility and unfortunately, the need is there. He said he doesn't think there is any question about the need for these facilities. Blueprint Recovery Center treats approximately 40% opioid addictions, 40% alcohol addictions and 20% miscellaneous other drugs and other issues. He said there is no shortage of patients, no shortage of people approaching Blueprint and Amatus.

Attorney Prolman said the treatment itself is outpatient services only. There is no in-house. Part of their success and part of their operation is that Blueprint Recovery Center offers sober living as one of their levels of care. The way they offer up sober living is through houses like 70 Russell Street. He said 70 Russell Street, LLC is the owner of the property and they are largely just a static owner. They don't do anything but pay the taxes and the insurances and that is about it. He said the other applicant, Keep It Simple Housing, LLC is the operator of what goes on at 70 Russell Street. At Blueprint up in Concord, they have the substance abuse and recovery and treatment and there is the clinical treatment that is provided, the medical treatment that is provided, the group therapies, the one on one and the case management for folks looking to shake their addiction and get back on their feet. Again, they have the 40% opioid, 40% alcohol treatment. Amatus Health and Blueprint Recovery have a good track record and what they have found is that the success of the treatment really ties into the sober living house. If they go to treatment for a couple of hours up in Concord and go back to your apartment and your roommate is pounding beers watching a Bruin's game and smoking a joint, that is not a healthy environment for treatment and recovery. As a result, Amatus Health and Blueprint Recovery acquire and operate these sober living homes and that is exactly what happened here. He said we should also know that these patients are voluntary and there are no not court ordered patients. There are no police involved. These are individuals approaching them on their own with their families, looking for help to get sober.

Attorney Prolman said 70 Russell Street has a CARF certification. CARF stands for a Commission on Accreditation and Rehabilitation Facilities. It is an independent, non-profit international group that sets standards for care, standards of facilities and It is important

that the CARF accreditation be maintained because there is a lot of private insurance that goes to pay for the treatment. The insurance companies want to know that the facilities where their insured are going is a quality place. He said the folks at 70 Russell Street and Blueprint are very proud that they have and have maintained the ongoing CARF certification. The operation at 70 Russell Street is residential only. There is no medical treatment and no clinical treatment going on at 70 Russell Street. It is just men living, eating, sleeping and showering, getting up and going over the day. He said to that end, you can see in one of the materials he submitted, toward the end of the packet is a schedule and this is the schedule that is posted on the wall. He said he took a picture when he toured 70 Russell Street and you can see the kind of regimented nature of the daily operation of the men that are at this site. In general, what happens is if patients are accepted into the program, they move into 70 Russell Street and they are in a van heading up to Concord at 8:15 every morning for their treatment for the bulk of the day and then they come back at 3:00 pm. For most of the day, very few people are on site at 70 Russell Street. Then, they come home and you can see the schedule every day, it is just about the same. It is a very controlled and limited exposure to what folks can do.

Attorney Prolman said when he took a tour of 70 Russell Street, the first thing you notice is that there are cameras everywhere and the reason is because they are trying to make sure these folks have a good stable environment and there are no negative influences. They want to keep control of the patients in there so their recovery is successful. There is very limited cell phone use, there is limited television and there is lights out like when you are at camp as a kid. The focus is on recovery from the opiates and the alcohol addiction which is why they have such a tight control. He said on-site there is an office on the second floor where the whole system operates. There are video monitors and there is the medication that the patients take by themselves which is locked behind two sets of locked doors in a safe. It is very much a professional operation again, with a good success rate. Attorney Prolman referred to the first page of the variance application and said you can see they described what the men do while they are on-site. They do 12 step meetings, they have to obtain a sponsor, they seek employment and they have daily chores all designed to get them back on their feet and out of the 78 Russell Street facility. The average stay is 60 days at 70 Russell Street and can go up to 6 months. Typically, they find it is 60 to 90 days is successful to get people back on their feet.

Attorney Prolman said they provided some information on Amatus Health which is taken from their website and again, they are out of Maryland and they are a parent company to recovery centers. He said if you go on the website you can see they have a recovery center, for example, in Georgia and that portion of the website looks very much like the one for the Blueprint Recovery Center in Concord. He said they provided some basic information of the Blueprint Recovery Center. You can see the pictures that go with it and the staff. He said Dr. Marasa runs the place and Joanne Bickford is the Clinical Director. He said they are all professionals and since they opened in the fall of 2018, they have had a very good success rate.

Attorney Prolman said they provided some information about CARF so you can see what

that operation does and again, that accreditation is important because New Hampshire really has no standards for this and the City of Manchester really doesn't have any standards so they abide by the CARF Accreditation Program. He said he included an article from the Union Leader last month because it portrayed what they want people to see and understand about what is happening at 70 Russell Street. He said often, there is so much misunderstanding because you don't know what is going on. He said often there are sober living homes in many communities and people don't even know they are there. He referred to the article in the Union Leader and said they highlighted some points and they thought that was a positive article fairly describing what they do at 70 Russell Street.

Attorney Prolman said as to the zoning, you can see that his first page of the packet is a zoning map for the area. He said congregate housing is not allowed in the R-2 district but is allowed in the R-3, the C-1 and C-2 and you can see that 70 Russell Street is one block away from a zone where congregate housing would otherwise be allowed. They are not that far from the C-1 district and he would submit that the C-1 district in this particular area is similar, not exactly the same, but similar to where they are at 70 Russell Street.

Attorney Prolman said it is true that congregate housing is allowed by right in three districts and allowed by conditional use in a couple of other districts but in speaking with his client and learning about sober living homes, they find that it is best to spread sober living homes throughout a community and not have them concentrated in any one area. He said the whole point is to avoid negative triggers and bad habits and bad influences and if they have sober living homes stacked right on top of each other, that might not be as healthy as spreading them out through the community. He said he would suggest to the Board that that is a factor to be considered.

Attorney Prolman addressed Chairman Breault and said he would like to have Kyle Fuss talk to the Board for a minute.

Kyle Fuss said he was happy to be asked by Jonathan Gerson and Kabir Singh to come and speak on behalf of the Keep It Simple House. He said the reason why they asked him to come here is because fifteen months ago he moved into that house and that is where his personal recovery journey started. He said he grew up in Greenland, New Hampshire and struggled with drugs and alcohol throughout his adult life and never really thought he would have an opportunity to improve his quality of life like that house allowed him to do. He said he thinks the fact that he was even able to come here tonight and personally attest to what that house can accomplish for guys similar to him, shows that they are doing something right there because the person who is here tonight was a much different guy fifteen months ago. He said he had a real tuff time just with living. He said he was very lucky to have landed there and the structure was very helpful to him early on. When the time came, he moved on from that house and he said he still lives in Manchester. He ended up getting a job at Giorgio's over on Granite Street and he worked there early on in his recovery. He said that is something he has done his entire adult life as he went to culinary school as a kid. He said that job for him was also not conducive to his recovery as the lifestyle he had been living was a pretty common one in the restaurant business. He said without getting too much into

that, after a little while, his heart really wasn't in it and he remembers going back and he got a job and currently works at Blueprint Recovery Center and more often than not, he is at 70 Russell Street helping guys that are in a very similar position that he was in fifteen months ago. That has given him a lot of purpose today. He said he is not a bad guy and those aren't bad guys. They are just a little unwell. He said like Attorney Prolman said, they are all there on their own accord. They are there because they want to get better. He said he was there because he wanted to get better. Going back fifteen months ago, the community that he came through that house with, he is still very close with today. He is not going to say that every one of them is still sober, but a majority of them are and they are very close. He said he has seen it with other communities that have gone through there.

Attorney Prolman said the Board has their application and with respect to the congregate housing use, they certainly don't think they are contrary to public interest, in fact just the opposite is true as they are providing unfortunately, a much needed service to the community and to Manchester and New Hampshire. He said they have a residential use in a residential district. They are not providing any clinical or medical services at 70 Russell Street. They don't see that they are violating the general purpose of the Ordinance. They believe the spirit of the Ordinance is there. He said likewise for substantial justice. He said the services that they provide for the demand is there. They believe on balance the substantial justice is being done by this use of 70 Russell Street. Whether right or wrong, it has been there since the fall of 2018. Again, it is a residential use in a residential district and he doesn't see that they have any impact on the neighboring property values. Finally, he said they have a larger lot than most lots in the neighborhood and given what they do and given the space, that this site provides, they believe that to prohibit the ongoing use as a congregate sober living home would be an unnecessary hardship to the applicant.

Attorney Prolman said just to touch briefly on the parking variance requirements, in summary they are not doing anything outside to the property. The parking spaces that are there on-site today were installed by a prior owner they believe in about 2002. They have been using them and the prior owners were using those parking spaces and they are not proposing any additional parking or any exterior improvements. They are just trying to run the sober living house inside 70 Russell Street. He said they believe that using what is there today as it has been used should continue with respect to the parking.

Chairman Breault turned the hearing over to the Board.

Alderman Jim Roy said first off he wants to say he firmly believes that we need congregate housing in this City to address these different problems including the mental health and not just opioids. He said that Attorney Prolman said that they have been in other states they didn't have to get any permits or anything. He asked if they had to get a license in other states. Kabir Singh said in Maryland which he is mainly based, there are three centers, two of which are quite similar to Blueprint Recovery Center and the other is a residential and everything is contained within that. In Montgomery County, Maryland, where one of the centers is, they have a total population of 1.1 million people so there is an incredible amount of population condensed into one county. He said in that one county, there is

prevailing understanding that those who are seeking recovery are protected under the Americans with Disabilities Act. Alderman Roy said he asked if they had to get licensing in there and his question was not about the Americans with Disabilities Act or anything like that. He said the applicant said they came in here and didn't realize they didn't have to do anything to have a house like this. Mr. Singh said then the answer is no, they did not need a license in Maryland. Alderman Roy said then the State doesn't control it. Mr. Singh said they fall under the allowable family unit that is allowed. Alderman Roy asked if other states require licensing. Mr. Singh said they do. He said it is not a group home license. Alderman Roy said other states require licensing and said to Mr. Singh that if they are running that business, they probably should have figured out that they needed to do something here. That is his point. He said they couldn't assume that they are the same as Maryland and they are not going to require anything. He said he thinks they would have asked.

Alderman Roy said they stated that this is a residential use, but it is really a business, isn't it. Anne Ketterer said she wanted to add to that. She addressed Attorney Prolman and said he keeps referring to this as a residential use and in fact, it is really an institutional use and not a business. She said it is classified by law as an institution and she asked Attorney Prolman to please stop calling it residential just for clarity for everybody here. Attorney Prolman said what goes on at the house... Anne Ketterer said you mean the professional operation, those were your words. She said anyway, it is an institutional use. Attorney Prolman said fair enough. He said people eat and sleep and watch tv. Ms. Ketterer said and the TV hours are restricted as well as cell phones.

Alderman Roy said here is his point. He said he went to that meeting that Alderman Stewart had and he sat there and listened and he distinctly remembers Attorney Prolman saying that the insurance companies were paying for these people who are staying there so they are collecting money for these people to be there from a third party. Attorney Roy said it is a business and he is not knocking that but the use on-site is residential in nature. Alderman Roy said he is trying to get down to the fact that he believes it is a business. They are getting money from a third party. Attorney Prolman said he said that at the meeting and he will say it again tonight. Alderman Roy said it is evident because Attorney Prolman brought up this CARF. He said they have to have that CARF so that the insurance company feels comfortable in paying them so we know it is a business. He said he would leave it at that. Attorney Prolman said they don't dispute that.

Vice Chairman Simoneau said Attorney Prolman said it serves up to 16 residents and asked how many they had currently. Attorney Prolman said they had 14 men currently. Vice Chairman Simoneau said the subject building is a two floor, two-family, five bedroom and asked if it was still a 5 bedroom today. Attorney Prolman said he would tell you that a prior owner sought out a variance to have a third floor unit which the history in the City files is not entirely clear, but that unit was built. Whether it was properly permitted or not he doesn't know. He said there are 3 bedrooms on the first floor, two bedrooms on the second floor and then the third floor is kind of an open loft area where 70 Russell Street has additional beds up there as well. Vice Chairman Simoneau said then the loft or the attic is finished. Attorney Prolman said yes.

Alderman Hirschmann said for those of us who don't know the history, he would like to ask Mike Landry, the Deputy Director of Building Regulations to just tell us if this entity went into this space in 2018, when did the City Building Regulations know that they were there. He asked if they came to this Board or did the Building Department know about it and ask them to come here. He said he would like to hear how they got here. Mr. Landry said he is not sure the exact time, but sometime last fall, this is a two-family property and is subject to the housing code and it requires a Certificate of Compliance inspection every three years. He said it was up for that inspection sometime in the fall and the housing inspector noticed that the rooms were numbered and labeled and just did not have the feel of a normal two-family and it was brought to the attention of Code Enforcement that way. Alderman Hirschmann said and since then, that is when this application came and it says the agent proposes to convert a two-family to congregate housing. He asked Mr. Landry if he could define what congregate housing is. Mr. Landry read the definition of congregate housing from the Ordinance. "Congregate Housing is defined as multi-family housing or other dwelling units serving individuals who require on-site services that support independent living, including at a minimum, communal dining facilities. Congregate Housing may be characterized by on-site personal care services, housekeeping and linen services and the supervision of self-administered medication but excluding twenty-four nursing care." Alderman Hirschman said in reference to the application, 70 Russell Street is not zoned for that use at all. Mr. Landry said that is correct. Not that use in that zone. Alderman Hirschman said they couldn't get their Certificate of Compliance. Mr. Landry said that was right and we are still holding back on issuing it until we get resolution here.

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

Marie Giakaumakis of Windham, NH said she is here in favor of the sober living facility. She said the reason she is here to speak is she owns apartment buildings throughout Southern New Hampshire and approximately eight years ago, she was approached to rent a vacant unit she had to the sober living facility. She said similar to many people here who want to contest it, she felt the same way and had a million questions and was very concerned for the other tenants she had in the building. She said she felt pretty hypocritical based off of the extreme need for recovery. She said she took a chance and told the first floor unit and the third floor unit her plan and explained if there was an issue or any problems with them, they would immediately vacate the property. She said they rented that unit for eight years and are some of the best tenants they have ever had. She said they plant gardens and most of them are spiritual and religious and go to church on Sundays. They help the poor and feed needy people. They are an example of what you would hope most people would be. She said basically, she has since rented multiple places and buildings and has worked with both companies and she thinks it is a shame that they have to do this.

Melissa Riley said she lives in the neighborhood that this house is located in at 332 Orange Street. She said she has walked by that house every day for almost ten years. She said she knew it was for sale but she never knew it was a congregate living facility or a sober living

house until recently. She said it is quiet and she never sees people there. She said she can't see where there are any problems. She said she would like to put herself out there and go on record as being a person in recovery for the past 3 years. Normally tonight, she is at an AA Meeting which she chairs and a van full of people from that particular house comes to that meeting. She said she can vouch for folks like Kyle who came and spoke, that these are guys that are trying to turn their lives around. They participate and it is huge that they are there voluntarily. She said she sees people every day in the recovery community that are there because the Judge told them to be. They are just there to get their paper signed and on their way and they are going to likely go back out and cause some more trouble, hopefully just for themselves. She is in favor of this house being there. She said she had the opportunity to actually work with a woman who is in the Blueprint program and she was very impressed by the structure. She said she visited another home that they run and it was just absolutely beautiful. She said she votes for them and thinks they are an asset to our community and they are doing a good thing.

Chairman Breault then invited those in opposition to this application to come forward.

Alderman Joseph Kelly Levasseur of 169 Highview Terrace said he is totally, 100% against this because of the fact that they are coming to the table way after they've already opened it. He said it is one thing when somebody wants to put a shed on their lawn or move a line five inches or a fence over three inches or come here and reduce parking, but somebody who is coming in and trying to put a sober home into a two-family building and already did it without telling anybody, got caught and then comes running here begging for a change of use that is this dramatic. He said you want to talk about changing the quality of your neighborhood this is a major change to the quality of the neighborhood. He said when you move into your neighborhood you expect your neighborhoods to stay relatively stable. This is not a stable change.

Alderman Will Stewart said he is the Alderman of Ward 2 in which 70 Russell Street is located. He said he is here to voice his strong opposition to this project. He said he has heard from nearly three dozen residents with the exception of two, they all have been very much opposed to this project. He said some are here and you will hear from them tonight and he hopes the Board might give some of them more than three minutes. He said as you will hear, they will talk about the details, the impact on the neighborhood, the impact on the property values and more. He said he does want to say that a number of the people he spoke to are not here tonight because of jobs and other obligations. He said a few of them have submitted written testimony which he would like to share with the Board. He said he wouldn't read their entire letters but he does want to note their names and addresses for the record. He said they are Richard and Joan Laroch of 72 Oak Street, Carolyn Dugan and Robert Leonard of 347 Sagamore Street, Jennifer Royce of 189 Russell Street and Ian MacDonald of 282-286 Myrtle Street who are all opposed to this application. He said those following him are abutters who live on that same block in that same area of the neighborhood who are directly impacted and it is his sincere wish that this Board will listen to their concerns and vote appropriately.

Maureen Bernard of 55 Linden Street said she has lived in the neighborhood for over forty years. She said she is opposed to the variance being granted for 70 Russell Street. She said she is concerned that we are allowing these facilities to overtake our single family neighborhood. She said they opened the facility in violation of zoning laws and now they are coming to this Board and asking for reasonable accommodation to permit the violations they have already exercised on our community. They made no effort to contact the City before they established this home, nor did they examine whether the neighborhood they chose was zoned for this use. She said in their neighborhood they have a boarding house and are soon to have Liberty House which followed the zoning laws and at least one other sober home that is associated with one of the owners. She said these facilities have a high turnover rate and she feels they resemble shelters, not dwellings. They are bringing more transient people and traffic to their neighborhood as well as the possibility of drug dealings. She said if the Board enables these homes to open and cluster in their neighborhoods, it is going to negatively impact their property values. The City will lose revenue which in turn will cause their taxes to go up and making our City even more unaffordable to live in.

Jennifer Ward said she is a single mom who lives at 304 Myrtle Street and prior to that she owned a home at 124 Russell Street for eighteen years. She said location, location, location was what attracted them to a walkable safe neighborhood on Russell Street. She said the quality of life has changed dramatically in the four years she has lived on Myrtle Street which is only two streets over and a half block up from where she lived. She said she has always been a walker and honestly, she doesn't feel comfortable in the clustered neighborhood where there is more than one sober home. She said she is planning on owning a home again and she doesn't know how she could own a home thinking that maybe congregate sober home business might be moving in right next to her. She asked where her incentive is to buy a home in Manchester. She said these Air B&B sober home businesses seem to be popping up quietly and practically overnight with no permission and without complying to regulations like the rest of us have to. Buying a home in a residential area and putting in a business or congregate housing is a change of use. It is absurd to her that she has to get a permit for a yard sale or a permit or variance to put up a fence and if the protocol is not followed, the fence has to be taken down yet these congregate sober living homes completely wreak havoc in our neighborhood as far as she is concerned. Now they are asking for forgiveness. She said our City needs sober homes but not in a residential neighborhood.

Gary Field of 302 Orange Street which is right in the proximity of all of it. Mr. Field distributed documents to the Board. He said he is very confused reading the application they submitted because it talks about Keep It Simple House having a 3 year accreditation with CARF. He said they do not have an accreditation with CARF. He said to go to www.carf.org and hit the tab for providers and you will see no Keep it Simple House, LLC. It is not there. He said he struggles with the integrity of what they say. He said they also say that 300 people have gone through Keep It Simple House in sixteen months. He said if you do a little math, that is about eighteen a month. According to that math, they completely turn over that house each month. He said he knows they will tell us they made a mistake and they made an error. It is all he has been hearing. He said he hasn't been hearing any truth. He

said what he submitted to the Board were three opinion letters from Realtors of which some of them are well known in the area, regarding the values of the homes. He said he considers himself somewhat of a professional and explained a little bit about his background. He said he used to be a licensed real estate agent and also had a mortgage banking business. He said when he had the business, he lent about \$750,000,000.00 to people buying homes. He said he can tell you what goes on. He said safety is the big thing. He said maybe if you are buying in a high end development in Bedford, it is not but here it is. He said people buy a home based on where the kids can walk to school and how safe the neighborhood is. Then there is the proximity to restaurants and cultural types of things.

Mr. Field said at the end of the day, what this comes down to is, this is congregate living. He said we have sixteen zoning districts, eight of which there is a possibility they could move into. Mr. Field said everybody is familiar with this and when Attorney Prolman spoke about it only being one street over, he will quote regarding our Ordinances. "To conserve property values by preventing the harmful encroachment of incompatible uses". That is what we've got. We've got encroachment going on. He said he doesn't have time to tell about all the incidents that have happened. He said they see drug dealers. They were parked outside his house. He said they have seen fights. He said people are finding needles in the street. He said he is told by a neighbor that people come out of 70 Russell Street at night dressed in black, go to the house next door that is vacant, at least when it wasn't snowing, and drink in the basement. This is the sort of stuff that goes on. He said the neighbors have talked about this at the previous Alderman meetings and there is no need for him to regurgitate it. The fact of the matter is, if you allow this one street into this district, then you are going to have to allow it another street in and another street in. At the end of the day it goes like this, he said he has a wife and he wants her to be safe. He said his children are older. He said to the Board Members, in your heart of hearts, ask yourself, if you saw his house but knew there was a sober home next door to it, he thinks they would go the other way. In fact, a lot of realtors tell them to not tell buyers that there is a sober home near you. It impacts value.

Patrick Beauzile of 288 Orange Street and **Joan LaRoch** of 72 Oak Street yielded their three minutes over to Richard Gerard.

Richard Girard of 283 Orange Street said he had a handout for the Board. He said he is stuck directly in the middle of two of these places that have opened in his neighborhood. He said as he gets started, he doesn't normally share about his personal life having been a public figure. He has always believed that it didn't really have a place. He said he does sympathize with the cause of sober housing having lost family members and friends to the opioid crisis, one of them being one of his first cousins who at the age of 34 died who died of a heroin overdose. He said he is not unsympathetic. He said he would like to thank his neighbors for yielding their time because he did spend a lot of time on this application.

Mr. Girard said the variance would be contrary to the public interest. He said it would set an irrefutable precedent for a business model that seeks forgiveness rather than permission. He said the people before the Board tonight are associated with at least two other facilities that are also operating in violation of the zoning and life safety codes. He said the first is just

a block away at 296 Orange Street so he finds it interesting that they argued against clustering yet this very same operation is in fact clustering in their neighborhood now. He said the second is at 859 Chestnut Street.

Mr. Girard said the business model here is clear folks. Buy improperly zoned facilities in unsuspecting residential neighborhoods with out of state cash, do unpermitted work that enables a greater number of unrelated individuals to live in the dwelling, operate, hoping not to get caught and if caught, feign ignorance of the codes and come to this Board seeking forgiveness and permission to operate because of the opioid crisis. He said if the board permits this, expect that they will be back asking to legitimize, at a minimum, their facilities at 296 Orange Street and 859 Chestnut Street. He said the Board should also expect more than a handful of the sixty facilities that Fire Chief Dan Goonan says are operating in the City to petition the Board.

Mr. Girard said the business also presents a clear and present hazard to residential neighborhoods. Both 70 Russell Street and 296 Orange Street have had overdoses on their premises. At the January 13th meeting called by Alderman Stewart to discuss the illegal operation of these houses, Chief Goonan admitted that properties serving recovering addicts are often the site of overdoses. It is not at all in the public's interest to have these overdose sites and the drug dealers they attract in a residential neighborhood.

Mr. Girard said despite being asked multiple times at the neighborhood meeting, the applicant failed to answer direct questions about whether or not he knew the rules before opening. After being called out about having to know the rules before he started to operate the facility at 296 Orange Street, the applicant first denied having any involvement with it and after being challenged by several neighbors, fessed up and said he was now "in the process of applying for a variance" at 296 Orange Street.

Mr. Girard said it is not in the public interest to establish a template that enables the zoning Ordinance to be undermined so that these businesses can essentially operate wherever they want. The expectations of those who live in the neighborhood and the consequences to them be damned.

Mr. Girard said the spirit of the Ordinance is not observed by granting a variance because the neighborhood in question is zoned residential, two-family or R-2. He said as defined in the zoning Ordinance, the R-2 district "forms a loose band around the density developed inner city area, representing a transitional district between lower development densities of the single family districts and the maximum densities of the inner city. This district was established to maintain the integrity of existing moderate density neighborhoods that are nearly fully developed with a mix of single family and two family structures, but which are close to the Central Business District."

Mr. Girard said according to its property tax card, 70 Russell Street is a two family with a grand total of five bedrooms. The applicant is asking to place up to sixteen clients, not counting the on-site staff that will live there 24/7/365. This is a far more intense use than

expected in a residential two-family dwelling.

Mr. Girard said this next point answers both the questions about the spirit of the Ordinance and whether or not granting the variance would be in the public interest. He said granting this variance would unnecessarily create a use not found in the zoning Ordinance but also not needed. He said the petitioner is asking this Board to “allow a sober living house” to operate at 70 Russell Street. As the Board is well aware, the Department of Planning and Community Development required this hearing because it correctly determined that it was being used as a congregate living facility, not a two-family residence, after a Certificate of Compliance inspection discovered the Illicit use.

Mr. Girard said as Mr. Landry already defined congregate living, he will skip that. In addition to the description of how this property is now being used in the application, the applicant told their neighborhood on January 13th “our application is to allow the use because the use is not allowed anywhere in Manchester, the sober living, let alone in an R-2 district”.

Mr. Girard said at that meeting, Attorney Prolman also said “the folks who operate this, they are a business. I’m not going to tell you otherwise, we get insurance. Alright?” Mr. Girard said congregate housing, while housing, is a business use that is not allowed in a residential zone. In fact, Attorney Prolman agreed that 70 Russell Street met the congregate housing definition in our neighborhood meeting until he was confronted with the fact that the Zoning Ordinance provides multiple zones where their facilities could legally operate. Then he said they weren’t exactly the same. Truth is, they are.

Mr. Girard said in discussing this with their neighborhood, Attorney Prolman noted how their clients are monitored, transported to services, supervised by on-site staff and assisted with job searches among other things. He said two separate news stories in the Union Leader have reported how their clients prepare and eat meals together, which also speaks to the definition of congregate housing.

Mr. Girard said Attorney Prolman also told them that clients stay from six weeks to six months and acknowledged the neighborhood’s anxiety over the transiency saying “If I’m a neighbor, I want to know about that turnover. There are strange men coming through our neighborhood every couple of weeks. I get it.” He said Attorney Prolman tried to address the anxiety by saying their business has been certified by a national organization and must maintain its standards if they wanted to continue to receive insurance payments from their clients’ insurance providers. Yet they opened before they were certified.

Mr. Girard said the acceptance of payments from third parties via insurance, the constant turnover of clients, the onsite services, the coordinated transportation to offsite services, the shared dining facilities and more underscore that this is a business use that fits the Zoning Ordinance’s definition of congregate housing, which is not allowed in the R-2 district with and with good reason. It is, however allowed by right in the R-3, C-1 and C-2 districts and with a Conditional Use Permit in the R-SM, B-2, CBD, RDV and AMX districts. Therefore, their claim that Manchester does not allow this housing is simply false. There are plenty of

places where they could legally operate.

Mr. Girard said further on this point, our neighborhood will soon be home to Liberty House. It is moving into the Bishop Peterson Residence, a congregate living facility for retired priests at 221 Orange Street. Because that is in a C-1 district, it is allowed by right. For those who don't know, Liberty House is what is now being referred to as a "sober home". It is transitional housing for veterans recovering from drug and alcohol addiction, just like the petitioner's clients.

Mr. Girard said therefore, granting this variance would be contrary to the public interest as the City has already made provisions for this type of housing and it would violate the spirit of the Ordinance because the request is based on a false premise, being the City does not allow for this kind of housing. Clearly, it does. He said as you know, the Ordinance regulates the use of property, not the clientele served by the use. That is how the Bishop Peterson Residence can go from serving retired priests to veterans recovering from drug or alcohol addiction in a congregate living facility.

Mr. Girard said substantial justice would not be done by granting the variance because there is no hardship imposed by the Zoning Ordinance on the property. The applicant argues that justice would be done because of the services rendered by their use of the property. That argument is non sequitur. There is absolutely nothing that prevents the property from being used both as it was constructed and is allowed to be used under the Zoning Ordinance and that is as a two-family home.

Mr. Girard said the question of substantial justice comes into play if there is a hardship imposed on the property by the zoning. Were the Board to grant this variance, it would legitimize the subversive tactics used to open and operate these business facilities in residential areas and very likely lead to the legitimization of countless others in areas where they don't belong. As Mike Landry told our neighborhood at the January 13th meeting, the hardship requiring relief cannot be self-imposed. This one absolutely is.

Mr. Girard said finally, there is no special condition on the property that distinguishes it from others in the area. This is a well-established neighborhood known for its Victorian character and mix of single-family and two-family residential dwelling units. The property conforms to the requirements of the Zoning Ordinance and can operate as it has since its construction one hundred twenty years ago without any burden. The property use is not reasonable given its inconsistency with the residential nature of the neighborhood and the drug and crime hazards it presents. Moreover, legitimizing this use will all but ensure that the property at 296 Orange Street, just a block away, and they said they didn't want clustering, will be allowed to continue its business use. That single-family property, which according to its property tax card has three bedrooms, now holds ten clients plus an onsite manager. Obviously the more people they can cram into these places, the more money they can make. 589 Chestnut Street will be next and so on and so on.

Mr. Girard said finally, for the record, if anyone doubts the quotes, they are published at

www.GirardatLarge.com. He said he took an audio recording of the meeting and you can go listen to them yourself.

Lucia Carlisle said she lives at 35 Oak Street at the corner of Oak and Myrtle Street. She said she was going to yield her time to her neighbor, Mark Larochelle.

Mark Larochelle of 265 Myrtle Street said he has been living there for 28 years and he certainly concurs with other people's concerns about the operation and about the business that is going on in a residential area. He said as you know, this came in without any permits, etc. He said that all has been established here tonight. He said he wanted to address the part of the variance pertaining to the parking area. He said this is non-compliant as you know and they are trying to get that right tonight. Basically, it is non-compliant because a long time ago, he was a nice guy and didn't really oppose so much that the person wanted some additional parking and turn around area.

Mr. Larochelle said what it has become or what it has been used for with the operation here is basically a commercial adult recreational area. He said it is business owned and they pay to go there and they have daily activities out there in the form of basketball. There is a basketball net there. He said it has been a major disturbance for him. When they are out there, the sound pretty much penetrates through most of his house as a pounding noise and that doesn't include the banter and the three point celebrations. He said he can't even escape it on his back deck. He said to Jonathan Gerson's credit, he has suspended that activity after he spoke with him about it. He said he was planning on addressing it here because of the fairly mild winter we have had, the problem has persisted through the January month where you normally wouldn't have that type of activity. He said he would like to have that addressed tonight if possible. He said he is ok with vehicles parking there but parking only. No adult recreation activity two feet from his driveway with sounding that penetrates through his house. Basically, the only way he could be assured of that would be having that whole basketball area disassembled. He said Mr. Gerson is here now and it could be someone else next month or next year and he is not saying that is going to be the case, but he doesn't want to have to revisit it.

Mr. Larochelle said the other concern is the smoking and vaping that takes place around the area which is pretty much anywhere. As someone mentioned, they had a meeting with Liberty House who went about things the right way as far as getting their permits and things done prior. He said a neighbor asked them about the smoking situation and their answer was that they would have an area that is screened off where nobody can see abutters or residents. There is one area. He said he didn't know how the Board is leaning with this but they are going to have to be bending the criteria as far as the congregate housing goes. He said the smoking would have to be addressed in his opinion.

Mr. Larochelle said the other thing is the sixteen person occupancy. He said he has been in the house plenty of times. He is an abutting neighbor directly to the west. He said many times he has been in the residence, throughout the whole house. He said sixteen people to him is really pushing it and is putting quite an impact on that one piece of property. He said

he knows there is an area upstairs that is converted attic space. The perception at the time was that there would be a single guy up there that didn't like to cook. Now making it a bunk house full of people in recovery is a whole different use.

Michael Yatzus said he lives at 45 Oak Street which is about two blocks away from the property in question. He said he did live eighteen years at 270 Orange Street. He said he has been in that neighborhood for about 20 years. He said he just wants to express his sentiments and talk about his neighborhood, actually. Having been there for twenty years, all the neighbors pretty much know each other. He said they know each other's children. He said his son has sold Scout wreaths to most of them. He said Lucia Carlisle has a block party and invites most of the neighbors. Mark Larochelle is a super social guy and he and Mark both knew the people that used to live in that house. He said he walks dogs every morning with two of the other neighbors.

Mr. Yatzus said he could go on but his point is, if the Board approves this variance, this house is dead to the neighborhood. None of that is going to happen. There will not be another gentleman walking a dog that he can say join my dog walking party. He doubts they are going to get invited to Lucia's. He said he can't borrow tools from them and not return them. He said he returns most of his tools but the Board gets the idea. He said he looks forward to the fact that there might be another couple of families move in there, or he might ask a kid how he did in his Little League game today or something like that. As the Board can see, it is a totally incompatible use. It is death. It is like a hanging appendage if the Board approves this. He said he loves this neighborhood and he doesn't want to see that happen. He would like to see more of these relationships between neighbors and they are going to take that house out of the equation. He asked the Board to please not do that.

Michael Porter of 390 Seames Drive said he is the Alderman of Ward 8. He said he wasn't going to speak tonight but he is a little disturbed at how Attorney Prolman has presented this case to the Board, in a very disingenuous manner. He said he continues to refer to this as a residence. It is not a residence. He said in law school, you are taught to listen to the words carefully. He is couching it to make it a residence, but just because he says it is does not mean it is.

Alderman Porter said sitting next to Attorney Prolman is the Vice President of Amatus Health. Think about that for a minute. He said Mr. Gerson has an LLC or two, under his name. Mr. Gerson comes to the Board asking for forgiveness. It is a lot easier asking for forgiveness than it is for permission. He said Mr. Gerson is a savvy business man. He recently engaged another property on Orange Street through an attorney out of Massachusetts. They are opening up these LLC's with out of state owners. Amatus Health is not into residences. Amatus Health is into making money. This is not about addiction and recovery. This is about congregate living. He said the City of Manchester has zoning for that. This is not the zoning. When they moved in here, they are very, very savvy. They are talking about the ADA. They are hitting all the buzz words and he is sure at Attorney Prolman's suggestion. The fact remains, this is nothing more than a money making enterprise. He said they are profiteering off of the addiction crisis in this City. That is not something anybody should be

holding their head up high about. You want to open up a sober house and congregate living, there are zoned areas in the City for you to do so. Coming here after you got caught short, asking for forgiveness is disingenuous.

Bill Kelton said he lives across the street at 274 Myrtle street. He said he is retired so he is home all the time and he can see them right out his front windows in the driveway. He said he can hear them. He sees cars coming and going all the time. He said it changes the character of the neighborhood and it really feels like he has a prison yard across the street.

Brian Kelley of 8 Oak Street and said he has been there since he was about ten years old and has been fortunate enough to have acquired the house and is able to live there with his family. He said he enjoys the area as a family and his daughter and her family with two children, twelve and ten years old, live about a block and a half from 70 Russell Street. He said since he has grown up in this area there has been a lot of infringement here. He said Liberty House is his backyard neighbor which is what it is. He said he agrees with everything that the people in opposition have said this evening. He said if they are going to open up a home like that they should go to where it is zoned properly for it, and he would hope that the Board would not approve the variance.

Donna Dudek of 281 Myrtle Street said she is afraid to speak because as an abutter, she is afraid of what these people would do because they are all young men and she is terrified. She said she won't even go out at night. Ms. Dudek held up a copy of the Union Leader and said "this is how I found out what was going on across the street". She said a kind neighbor stuck it in her door. She never knew about it and she was shocked.

Ms. Dudek said the prior owner would have never sold this house to these people if she would have known it was going to be a sober home. Never. She said the prior owner had a fellow living up on the third floor and they would have had to get a sprinkler system so she decided to sell the house. She poured in tons of money to fix that place. She said she was there and it has been a family home for almost forty-eight years. She said they left Spruce Street and her parents brought them up in this neighborhood to get away from this. Now she has to worry about no matter where she goes, she is going to have to worry about a drug deal or getting beat up. She said it only takes one incident. She doesn't want to be on the front page of the newspaper or on Channel 9.

Ms. Dudek said they said there are only a few cars there and there are four cars in the yard and two vans. She said she can clock it when they leave and when they come. There are also cars that park along the street. She said during the last storm, she couldn't even shovel her walkway because some yahoo leaves at midnight and he is on her side with the car and she couldn't even shovel to go straight up for the trash cans. She said great, now I have to contend with this. She said she doesn't dare say anything to them because she is afraid. She asked the Board Members if any of them lived next to a sober home and said she didn't think so. She left Spruce Street as a kid to grow up in a better environment. Pretty Park is down the street. Their taxes go up and these guys, it is like a double standard. They have all the rights and we who live there have nothing. She said she has never spoken like this in her

life and she is terrified of what is going to happen. She said she is begging the Board to at least please listen to all of us who have spoken tonight.

Ms. Dudek said Rich Girard has five kids and was right across the street from a house with a bunch of women that were drug dealers. She said it was on Orange Street and Russell Street and that house was a house from Hell. She said it was owned by Jim Trombly's brother Tom. She said they had twelve kids running around there and they were there for years, trashing the place and that guy Tom couldn't care less. There were people coming and going all the time. She was scared to death of that place and finally they have two people that bought it, both sides and it is Heaven. Now they have this across the street. It is thrown in their faces all the time. People want to protect their land values and want to protect their taxes and their lives. They are people who have lived there all their lives and these are people from out of state. They could give a care about them. They come from all over New Hampshire and yes, they want to be sober, but why in her backyard. She said she feels like the neighbors have lost all their rights and they have all the rights. She said there is a whole pile of them in that house and she can't fight them off. They could beat her up and trash her house and she has no idea. She is afraid. She said she is speaking and begging for the Board to all listen to all of their comments.

Chairman Breault invited those with general comments to come forward. No one came forward to this request. Chairman Breault invited Attorney Prolman to respond to the comments made.

Attorney Prolman said he only has one comment. He said he takes serious objection to Alderman Porter's claim of him being disingenuous. He said he does this for a living and he is before Boards all the time and he has been before this Board in the past and hopes to again. He said at the neighborhood meeting a month ago that this is a business, and he is not saying anything else or otherwise. It is a business that operates a residential home in a residential neighborhood. That is what he said in his application and that is what he will say tonight and that is what he said a month ago. He said they are not ducking this issue. They opened up without getting permits. They know that that was a mistake. He said had Amatus Health or Blueprint had land use counsel prior to acquisition, this would have come at the City much differently, but they didn't. For the past few months, he has been working with City Staff to get here tonight to try and make this right. They are not ducking this issue. They knew when he got into this thing that they didn't have permits and they should have, but here we are tonight. To say that he is being disingenuous at the neighborhood meeting or tonight, he takes great offense at that. He said he objects to that comment. With that, he said he didn't have anything further. He said we are here and we know the issues and they don't believe they have any safety issues or drug overdoses or anything like that. They are trying to provide a much needed service for this community. He thanked the Board for their time.

Chairman Breault turned the hearing back over to the Board.

Alderman Jim Roy said he had a couple of comments. He said we have heard people say that

there are zones that this is allowed in and they are correct. He said this is covered under congregate housing and it is permitted with Conditional Use. He said there was a comment made earlier by the applicant that they are the first to apply in Manchester. He said that is not accurate. He said on the corner of Hanover and Beech Streets, the Veteran's Northeast Outreach Center has already gone through the process. He said interesting enough, they did their research and found out that this exact same type of operation needed to be in a certain zone. That zone down there allows for that. They bought the property and they didn't have to come to this Board for a variance because it was allowed. They went to the Planning Board and have already gone through that process and they are going to start construction in the spring. This is something that has been addressed in our Ordinances and it is something that is allowed by the City.

Alderman Roy said in the application, it says the variance will not be contrary to public interest. He noticed that one of the things that was left off by the applicant was "I". He said "I" says to encourage the most appropriate use of land and allow for planned orderly and beneficial growth as envisioned by the Master Plan. The City of Manchester has a Master Plan that is developed by the citizens of Manchester, how they want their community to be developed. He said he doesn't think that that is in the spirit of the Ordinance. He said he also disagrees with the variance will not be contrary to public interest on several different areas that they addressed. He said "H" to conserve property values, he had a concern about that and now he thinks it was founded when he gets these three letters from two different realtors that say it is a 10% to 20% drop in value and one said it was going to be a significant drop in value. Alderman Roy said he agrees that for the substantial justice is done that there was no hardship other than the one they created by going in the wrong zone.

Michael Landry said he wanted to clarify something. He addressed Alderman Roy and said Attorney Prolman had asked him if this was the first facility that came before the Board and he said he thinks he got loose with his words and said permitted. He said whatever Attorney Prolman said regarding that, he got the information from him. Alderman Roy thanked Mr. Landry for that clarification and said he certainly did not want to disparage Attorney Prolman. He said he thinks Attorney Prolman is doing a great job for his client and he would be doing the same thing if he were in Attorney Prolman's shoes. He said he is just saying that it is addressed and it has happened already in this City. Not only with the Liberty House but with this other veteran's group. Attorney Prolman said they have no illusions before the Board tonight. He knows this is a tough case all around and if they could go back in time this would have been done much differently, but here we are tonight.

Anne Ketterer said Attorney Prolman presented to the Board for about an hour and he began his presentation with an apology and the thing is, that an apology isn't a hardship. She said she wants to second what her colleague to her left said about it not meeting the spirit of the Ordinance and she said she thinks the point here is she and other Members in the room here agree that sober living is important. She said she has nothing against this and she thanked the young gentleman for coming in and speaking to the Board about his experience, but that is not what they are talking about. She said the applicant took an hour to explain their business and what their business does. She said they refer to this as a

residence but that is incorrect. This is institutional and is a business. The question is, does it belong in a residential neighborhood? No it does not. It is not in the spirit of the Ordinance and is not the best use and it is not legal. She said here we are today and she said she cannot say that she can vote in their favor.

Alderman Hirschmann said he wanted to get to Mr. Field who provided testimony and said that they did not have accreditation from CARF. He asked the applicant if there was a certificate that they could give to the Board. Attorney Prolman said he didn't have one with him tonight but he wanted to give an explanation for that because they are certified with CARF. Mr. Singh said he couldn't speak to the website and he didn't have a certificate with him tonight but he could provide a certificate to the City with respect to the CARF Certification.

Alderman Roy said he could speak to that. He said he went to that website yesterday as a matter of fact. He said he did see that they said that there were two accredited entities in the City of Manchester. One of them was at 70 Russell Street and the other one was 859 Chestnut Street. They have a CARF Certification also, so apparently, they are operating one of these at that location as well. He said he knows Attorney Prolman is not involved with that. He did see that and he also made a call there, which he believes was in Arizona. He said he talked to a fellow named Vidal Ramirez and not that this is a big issue here tonight, because this isn't any of the criteria that they are talking about, but Mr. Ramirez told him that there weren't any codes, life safety codes, building codes or anything like that that are adhered to in this process for this certification. They don't put that on there and they look at a thousand different issues. If you score enough in other areas, you can be lacking in any area such as life safety and stuff like that. That is what he got out of that call and that is what he saw on that website if that helps.

Alderman Hirschmann said for clarification, he just wanted to finish by saying that contrary to the public interest, he thinks this is directly contrary to a residential neighborhood and the functioning of a residential neighborhood. He said all the testimony kind of leads in that direction. He said there were new things he heard tonight about basketball. He said in his neighborhood there are setbacks and he thinks the condo complex had to be 48' back to have a tennis or basketball court from his property. He said Mr. Larochelle who spoke is suffering right now as we speak. This is definitely in the public interest contrary to their benefit.

Chairman Breault said he would reiterate that he thinks the Board Members have been pretty clear on their feelings. He tends to agree with a lot of them.

Alderman Roy said he thinks the variance would be contrary to public interest as is evident by the public testimony here tonight along with those other issues such as "H", which is you've got to conserve property value and "I" about the Master Plan. He said he believes it is not in the spirit of the Ordinance because the Ordinance says it is supposed to be residential and this is actually institutional. As far as substantial justice, there is not hardship here. He believes the values of surrounding properties will be diminished as evident by

those letters that they got. He said literal enforcement of provisions of the Ordinance result in unnecessary hardship. It won't be an unnecessary hardship, because there are other areas of the City where they can do exactly what they want in.

Jim Roy made a motion to deny the following variance counts for case ZBA2019-177, 5.10(A)10 Congregate Housing, 10.07(G) Landscaping, 10.07(K)4 Parking Screening, 10.07(K)1 Parking Bumpers, 10.06(A) Parking Layout and 10.09(B) Parking Setbacks (5 counts) which was seconded by Anne Ketterer.

Yeas: Breault, Simoneau, Roy, Prieto, Ketterer

Nays: None

Upon a unanimous vote, the variance was denied.

Michael Landry announced that this is the last case of the evening and that concludes the public hearing portion of our meeting this evening. He said we will move on to the business items.

III. BUSINESS MEETING:

1. ADMINISTRATIVE MATTERS:

- 1. Review and approval of the ZBA Minutes of January 9, 2020.**

Michael Simoneau made a motion to approve the ZBA Minutes of January 9, 2020 which was seconded by Keith Hirschmann.

Yeas: Breault, Simoneau, Roy, Prieto, Ketterer

Nays: None

Upon a unanimous vote, the ZBA Minutes of January 9, 2020 were approved.

- 2. Any other business items from the ZBA staff or Board Members.**

Michael Landry said the City Solicitor has asked him if this Board would entertain a new application for the proposed warehouse use at 211 Second Street. He said as the Board recalls, they came for a variance which was denied and they requested a rehearing which was also denied. The case is currently in Superior Court. He said the applicant's lawyer is asking that the Board reconsider and they are offering to provide a couple of conditions that he believes would kind of maybe eliminate the concerns and those conditions would include

a five year time limit on the use and restrictions as far as where the materials may be stored and how often they are picked up.

Chairman Breault addressed Michael Landry and said to correct him if he is wrong, but the Ordinance does address application of a similar use and if denied, they have to have a substantive change and it becomes a new application. He asked if that was by right. He asked if with the change, would the applicant be entitled by law to come before the Board with a whole new application? Mr. Landry said not if it is substantially the same. He said this is very unusual that they are doing this. He said the bottom line is, are there conditions they could put on that application that would make this Board reconsider its decision.

Chairman Breault said any case that is before the Board, they consider, but whether or not they would look upon it favorably. Anne Ketterer said they did ask for a rehearing and the Board reviewed it and talked about it and deliberated. She said if they were going to add conditions to get the Board to accept an appeal, they would have added them at that point. Now they are appealing the appeal of the response that they didn't like. She said the Board wasn't flippant about it. She thinks the Board was thorough in their discussion and ultimately it was decided that changing the use in that manner, there was no hardship. She said actually the applicant admitted as much if you go back and look at the notes. There is no hardship. If there wasn't a hardship then, why would there be a hardship now under the condition that it would only last five years. She said she doesn't think that there is one. She said the change is a gimmick but it doesn't alter the decision the Board made that the variance request doesn't meet the five criteria.

Joe Prieto asked Michael Landry if the Board could get a third request for a rehearing when you've got a pending court matter. Is there a rule or regulation? Michael Landry said they are just asking. He said he is aware of no statutory framework that allows for something voluntary remanded back. They are just asking the Board if they would consider this. He said the Solicitor asked him to present this to the Board and that is what he is doing. Joe Prieto asked if there would be a written proposal. Mr. Landry said there would be a new application and they would present it. He said this is highly unusual.

Chairman Breault said the Ordinance does stipulate that they can't come before the Board for the same thing if it has been denied. Mr. Landry said that was correct. He said it is up to the Board to decide if it is substantially different. If the Board would say well, it is only five years of that use, then the Board could consider that a material change. He said Ms. Ketterer just said it is not a material change, it is the same thing. Chairman Breault said it almost sounds like they are asking the Board to make a decision now of a substantial change to avoid having to pay the fees and come before the Board with a full application. They are entitled to come before the Board with another full application and at that point, the Board can say it is not a substantial change if the Board feels it is that way.

Michael Landry said the other question is, does the Board even want to hear it before it gets out of Superior Court. That is where it is at now. Chairman Breault said isn't it general consensus that no cases are presented if there is still litigation pending? Mr. Landry said that

was right, but if the Board was to signal its willingness to basically rehear the case, which they already denied the first request, but if the Board was to signal that they are welcome back on the same issue, he would imagine that they would end the lawsuit.

Joe Prieto asked if there were more proposals other than the five years or was that the gist. Mr. Landry said he wishes he had the specifics. He said the Board could table this until the next meeting if they wanted and he could give them more information. Chairman Breault said he thinks putting a limit of five years is not a substantive change. He said he thinks the substantive change would have to address the access and the other issues that the Board was concerned about. He said one of them was hardship. Where is the hardship? Mr. Landry addressed Chairman Breault and said there is no offer to merge the lot if that is where he was going.

Alderman Roy said there are two things. He said number one, the Board already said they didn't want to rehear this and number two, it is in court. He said he didn't want them to come back before the Board.

Chairman Breault asked if a motion should be made. Mr. Landry said no, just a consensus from the Board would be good. Chairman Breault said his feeling is no, the Board said no and let's leave it at that and there is litigation pending, let it pursue its own avenues.

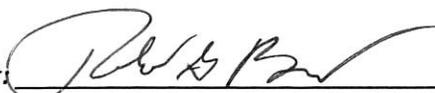
Michael Landry thanked the Board for their consideration. He said there were no further issues to discuss.

Joe Prieto made a motion to adjourn the Zoning Board of Adjustment Meeting of February 13, 2020 which was seconded by Michael Simoneau.

Yeas: Breault, Simoneau, Roy, Prieto, Ketterer
Nays: None

Upon a unanimous vote, the Zoning Board of Adjustment of February 13, 2019 was adjourned.

Attest:



Robert G. Breault Chairman

Manchester Zoning Board of Adjustment

APPROVED BY THE ZONING BOARD OF ADJUSTMENT: March 12, 2020

- Without Amendment
- With Amendment