

TOWN OF MILFORD

Office of Community Development
Planning • Zoning • Building Safety • Code Enforcement • Health
Economic Development • Active Projects



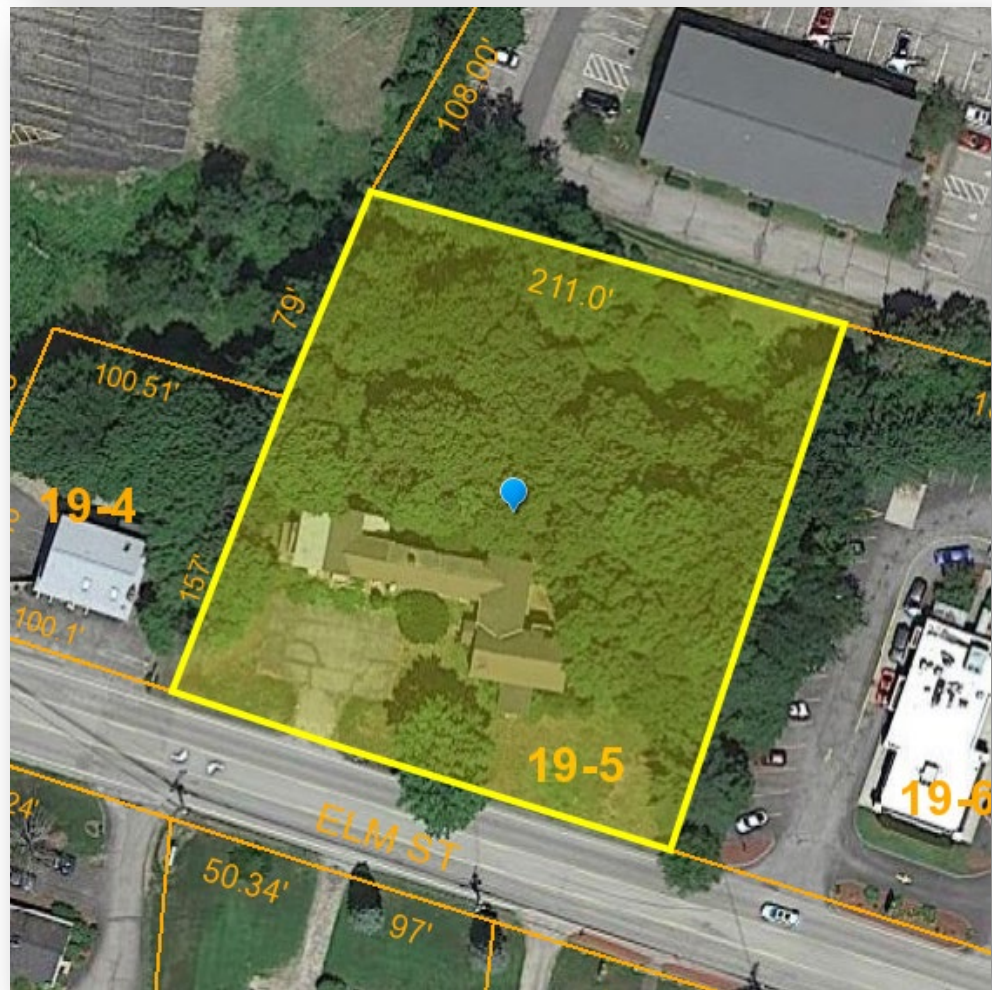
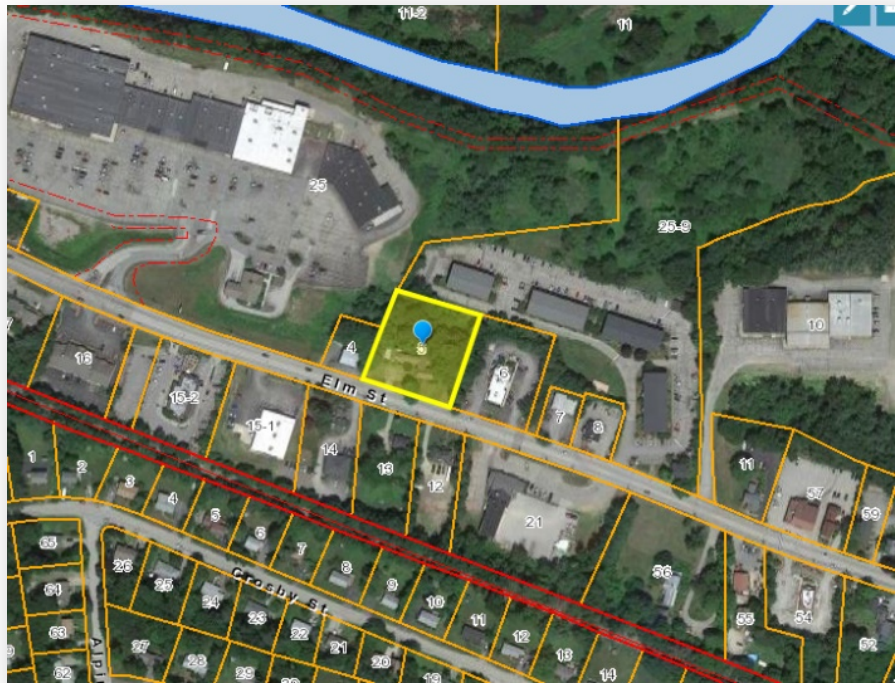
Administrative Review

Date: March 13, 2020
To: Steve Bonczar, Chair, Zoning Board of Adjustment
From: Lincoln Daley, Community Development Director
Subject: **Case #2020-03 Mengyuan Property Management, LLC./Francis King, Sr. for the property located at Tax Map 19, Lot 5, 159 Elm Street.** Variance Application from the Milford Zoning Ordinance, Article V, Section 5.03.4. & 5.05.1.P to allow the construction of a 6-unit multi-family residential building on 51,836 square feet of land where 52,272 square feet is required in the Commercial 'C' Zoning District.

The applicant is before the Board seeking a Variance from the Milford Zoning Ordinance, Article V, Section 5.03.4. & 5.05.1.P to allow the construction of a 6-unit multi-family residential building on 51,836 square feet of land where 52,272 square feet is required in the Commercial 'C' Zoning District.. In reviewing the files for this property, I offer the following comments:

1. The property totals approximately 1.19 acres (51,836 sq.ft.) with approximately 215 linear feet of frontage on Elm Street and lies within the Residential 'B' Zoning District. The property contains a multi-unit residential structure (historically the building contained between 4 to 8 units) built in 1790. The building is in poor condition and is scheduled to be razed.
2. The existing neighborhood, in proximity to the subject property, is largely made up of commercial and residential uses, many of which are two-family or multi-family.
3. The applicant is to replace the existing multi-family with a 6 unit multi-family building. In accordance with Section 5.05.0 multi-family dwellings are a permitted use in the Commercial 'C' District. However, the density for multi-family dwellings must meet the conditions set forth in the ordinance relative to the Residences B District.
4. The allowable density for a multi-family use in the Residential 'B' Zoning District is determined by Section 5.03.4.A which states that multi-family dwellings shall be served by both municipal sewerage and water systems and may have a maximum of five (5) units per acre (8,712 square feet required per unit). The maximum density may be reduced by the Planning Board based on recommendations of other qualified consultants. The total maximum allowable for the property pursuant to Section 5.03.4.A is 5.95 units (51,836 square feet / 8,712 square feet). The applicant's request requires a lot with a minimum area of 52,272 square feet (6 units x 8,712 square feet).
5. The Applicant met with the Planning Board on July 23, 2019 to discuss the project for a conceptual discussion. The Board raised concerns regarding providing sufficient access for emergency vehicles to access the property which may impact the proposed density. See attached 7/23/19 Planning Board minutes.

Aerial Photos – 159 Elm Street





ZBA Application

MILFORD ZONING BOARD OF ADJUSTMENT

TOWN OF MILFORD
RECEIVED
FEB 19 2020
PB ZBA Office

GENERAL PROPERTY INFORMATION FOR ALL APPLICATIONS

PROPERTY INFORMATION

Street Address: 159 Elm Street, Milford, NH

Tax Map / Parcel #: Map 19/Lot 5

Lot Size: 51,836 square feet

PROPERTY CURRENTLY USED AS

Multi-family residential

If the application involves multiple lots with different owners, attach additional copies of this page.

PROPERTY OWNER

Name: Mengyuan Property Management, LLC

Address: 7 Mountain Ash Lane

City/State/Zip: Franklin, MA 02038

Phone: () 973-277-1386

Email:

fyx1691@hotmail.com

The applicant is the person who is making this proposal on behalf of themselves, the owner or a third party. This is usually the same as the property owner, but might be a tenant, someone who plans to purchase the property, an engineer or lawyer, etc. If the applicant is the same as the owner, just check "Same as owner" and leave the rest of this section blank.

APPLICANT/REPRESENTATIVE

SAME AS OWNER

Name: Francis Kling, Sr.

Address: 34 Ridgefield Drive

City/State/Zip: Nashua, NH 03062

Email: frankkling56@gmail.com

Phone: () 781-502-2640

Cell: ()

The undersigned property owner(s) hereby authorize(s) the filing of this application and agree to comply with all code requirements applicable to this application.

Property Owner's signature

Francis Kling

Date:

2/19/20

Date Received: *2-19-2020*

Case Number: *2020-03*

Application Number: *2020 0424*

Hearing Date: *3-19-2020*

Decision Date: _____

Decision: _____

Zoning District (check one):

- Residence A
- Residence B Residence R
- Commercial
- Limited Commercial
- Industrial
- Integrated Commercial-Industrial
- Integrated Commercial-Industrial-2

Overlay District (check any that apply):

- West Elm Street Overlay
- Nashua/Elm Street Overlay
- Commerce & Community Overlay
- Open Space & Conservation
- Wetlands Conservation
- Groundwater Protection
- Floodplain Management

APPLICATION FEES

Application Fee:	\$75.00
Abutters Fee: \$4 x <i>11</i>	<i>44.00</i>
Amount received:	<i>119.00</i>
Date Received:	<i>2-19-20</i>
Check <input checked="" type="checkbox"/> Cash _____	

THE FEES ASSOCIATED WITH THIS APPLICATION DO NOT APPLY TO ANY OTHER FEES REQUIRED FOR APPROVAL OF THIS PROJECT. PLANNING, IMPACT, BUILDING AND OTHER FEES MAY APPLY.



ZBA Application - Variance
MILFORD ZONING BOARD OF ADJUSTMENT



Date Received: _____
 Case Number: _____
 Application #: _____
 Date Complete: _____
 Hearing Date: _____
 Decision Date: _____
 Decision: _____

PROPERTY INFORMATION

Street Address: 159 Elm Street, Milford, NH

Tax Map / Parcel #: Tax Map 19 / Lot 5

A Variance is a use which is not permitted by the Zoning Ordinance. Approval from the Zoning Board of Adjustment is required to allow any use or deviation from the Zoning Ordinance. Please work with the Zoning Administrator to make sure your application is complete and you know what will be required of you at the hearing.

What section of the Zoning Ordinance are you asking to be varied?
 Article V Section 5.03.4 & 5.05.1P

Describe the variance you are requesting under the above section of the Ordinance.
 The Applicant is requesting a variance to construct a 6 unit multi-family dwelling on 51,836 square feet of land where 52,272 square feet is required.

General Criteria Section 10.01

Explain how the proposal meets the following conditions per New Hampshire RSA 674:33.I

1. Granting the Variance would not be contrary to the public interest because:
See attached

2. If the Variance were granted, the spirit of the ordinance would be observed because:
See attached

3. Granting the Variance would do substantial justice because:
See attached

4. Granting the Variance would not diminish the value of surrounding properties because:
See attached

5. Unnecessary Hardship:
This section is the central portion of your argument and is the critical factor that the Zoning Board of Adjustment will need to determine what is unique to your property and not generally applicable to other properties in the area or in town.



ZBA Application - Variance
MILFORD ZONING BOARD OF ADJUSTMENT

TOWN OF MILFORD
RECEIVED
FEB 19 2020
PB _____ ZBA _____ Office _____

A. Owing to special conditions of the property that distinguish it from other properties in the area; denial of the Variance would result in unnecessary hardship because:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because :

See attached

AND

ii. The proposed use is a reasonable one because:

See attached

(B) Explain how, if the criteria in paragraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the Ordinance, and a Variance is therefore necessary to enable a reasonable use of it:

See attached

(C) Notwithstanding paragraph (B) above, a Variance may be granted without finding a hardship arising from the terms of the Zoning Ordinance when reasonable accommodations are necessary to allow a person or persons with a recognized **physical disability** to reside in or regularly use the premises, provided that:

See attached

1. The Variance requested under this paragraph shall be in harmony with the general purpose and intent of the Zoning Ordinance because:

See attached

In addition, Variances may have extra criteria that must be met. This includes, but is not limited to:

6.03.5 Floodplain Management: The criteria for evaluation is listed in 6.03.5:B General Conditions and the applicable conditions are listed in 6.03.5:C. If your project is covered by this regulation, include your answers to the required criteria as specified in the referenced Section of the Milford Zoning Ordinance as an attachment under Section 3 C. of this application.

ATTACHMENTS – additional information may be needed to help the Zoning Board of Adjustment fully understand your petition.

- A. A plan of the property and all buildings, drawn to scale, is required.
- B. A Building Permit Application as needed (to be determined by the building official.)
- C. Additional explanations, justification, abutters' statements, letters, etc.

Zoning Board of Adjustment
Case # _____
Application for Variance
Mengyuan Property Management, LLC



Applicant’s Application Material

A. The Applicant is requesting a variance to construct a 6 unit multi-family dwelling on 51,836 square feet of land where 52,272 square feet is required.

VARIANCE CRITERIA

1. AND 2.

THE VARIANCE WILL NOT BE CONTRARY TO THE PUBLIC INTEREST AND WILL BE CONSISTENT WITH THE SPIRIT OF THE ORDINANCE.

The requirement that the variance not be contrary to the public interest is related to the requirement that it be consistent with the spirit of the ordinance and the two have for years been treated together by the State Supreme Court. See Malachy Glen Associates, Inc. v. Town of Chichester, 155 NH 102 (2007). Because the provisions of a zoning ordinance represent a declaration of public interest, any variance would be contrary thereto to some degree. Consequently, the Supreme Court has instructed that to determine whether a requested variance is not contrary to the public interest and is consistent with the spirit of the Ordinance, the Zoning Board of Adjustment (“ZBA”) must determine whether granting the variance “would unduly and to a marked degree conflict with the ordinance such that it violates the ordinances basic zoning objectives”.

The Court has recognized two tests for determining whether granting a variance would violate an Ordinance’s basic zoning objectives. One is to determine whether the variance would “alter the essential character of the neighborhood”. The second is to determine whether granting the variance would “threaten the public health, safety or welfare.”

Granting the variance will not alter the essential character of the neighborhood The property is located in the Commercial District. Section 5.05.0 permits single-family dwellings, two-family dwellings and multi-family dwellings Multi-family dwellings must meet the conditions set forth in the ordinance relative to the Residence B district. The Applicant’s proposal meets all of said conditions except for density. The existing neighborhood is made up largely of commercial and residential uses, many of which are two-family or multi-family. The property has been used

previously for multi-family apartments. An additional one unit at the property (6 versus 5) will not alter the essential character of the neighborhood.

Nor would granting the variance threaten the public health, safety or welfare. An additional unit will not significantly affect traffic or noise or the level of emissions, vibrations or odor.

3. GRANTING THE VARIANCE WOULD DO SUBSTANTIAL JUSTICE.

“Perhaps the only guiding rule in this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” Malachy Glen Assoc., Ibid. As stated previously, the property is situated in the Commercial District. Use of the property for a multi-family dwelling and accessory structures is a permitted use and five units are permissible under the ordinance. It is only the fact that the lot is 1/100th of an acre smaller than required that necessitates a variance. The burden on the Applicant by losing the full use and enjoyment of the property outweighs any benefit to the public of denying the Applicant the right to the full use and enjoyment of the property due to the lack of 1/100th of an acre.

4. GRANTING THE VARIANCE WILL NOT DIMINISH THE VALUE OF SURROUNDING PROPERTIES.

The Applicant proposes to raze an existing building in need of significant rehabilitation or replacement and replace it with six modern, attractive dwelling units. Five such units are permitted as of right. Granting the variance allows one additional unit on a lot that is only 1/100th of an acre short of the required size for six units. The additional unit will not diminish the value of surrounding properties.

5. OWING TO SPECIAL CONDITIONS OF THE PREMISES THAT DISTINGUISH IT FROM OTHER PROPERTIES IN THE AREA, DENIAL OF THE VARIANCE WOULD RESULT IN UNNECESSARY HARDSHIP BECAUSE 1) NO FAIR AND SUBSTANTIAL RELATIONSHIP EXISTS BETWEEN THE GENERAL PUBLIC PURPOSE OF THE ORDINANCE PROVISION AND THE SPECIFIC APPLICATION OF THAT PROVISION TO THE PREMISES, AND 2) THE PROPOSED USE IS REASONABLE.

The Premises consists of approximately 1.19 acres of land. The Premises is improved in part by a building consisting of approximately 1,485 square feet. The building was constructed in 1790 according to the Town’s assessment records. The building has served from 4 to 8 apartments over the years. The building is in poor condition, and the Applicant proposes to raze the building and replace it. But under existing zoning, only 5 units per acre are allowed. The lot is 1/100th of an acre short of qualifying for 6 units. A strict interpretation of the ordinance yields only 5.95 units.

No fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application of that provisions to this property because the Applicant’s proposal is in substantial compliance with the ordinance. The obvious purpose of the ordinance provisions is

to regulate density and limit the potentially adverse effects arising from excessive density – lack of open space, visual congestion, excessive traffic, etc.

But in this case, the size of the lot supports 5.95 units. The lot is just 1/100th of an acre short of meeting the requirement for 6 units. And the traffic from all 6 units will be less than the traffic from many of the abutting and neighboring properties. And, the 6th unit can be constructed while still complying with the other requirements for multi-family dwellings. The project is served by municipal water and sewer. The proposed building will meet all set-back requirements. The lot meets the minimum lot size and frontage requirements. The project will meet the required open space requirements. And the proposed building will meet height limitations. In short, the variance can be granted without compromising the interests and values that the ordinance provisions are designed to protect.

And the proposed use is reasonable. As stated above, the proposed use is a permitted use in the Commercial District. The use, even with 6 units, is completely consistent with the neighborhood and will not have adverse effect on abutters or the neighborhood in general.

MENGYUAN PROPERTY MANAGEMENT, LLC
7 Mountain Ash Lane
Franklin, MA 02038



February 19, 2020

Town of Milford
One Union Square
Milford, NH 03055

Re: Tax Map 19, Lot 5, 159 Elm Street, Milford, New Hampshire

Dear Sir(s),

Please be advised that I hereby authorize Francis Kling, Sr., to apply for a variance relative to the above-referenced property on behalf of Mengyuan Property Management, LLC. I further authorize Mr. Kling and/or my attorney to represent me before the Zoning Board of Adjustment. This authority includes the power to complete applications for special exceptions, variances and equitable waivers as Attorney Quinn deems necessary or appropriate relative to my property referenced above.

Sincerely,

A handwritten signature in black ink, appearing to be "Fang Yuan", written over a horizontal line.

Fang Yuan, Member

LAW OFFICE OF
THOMAS F. QUINN
PROF. CORP.

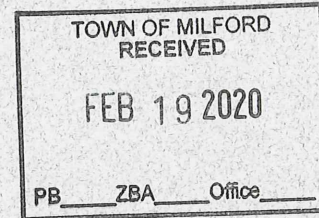
62 Elm Street
Milford, NH 03055

PH: 603-554-1662
FAX: 603-554-1495

E-MAIL: tquinn@tfqtitle.com

February 19, 2020

Town of Milford
One Union Square
Milford, NH 03055



Re: Tax Map 19, Lot 5, 159 Elm Street, Milford, New Hampshire

Dear Sir(s),

Please find enclosed herewith an Application for Variance, together with supporting material
Also, enclosed please find a check for the filing and notice fees.

Please review these submissions and let me know if there is any additional information that you
need. I look forward to seeing you at the hearing.

Thank you for your assistance in these matters.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "T. Quinn".

Thomas F. Quinn

#19-0161
Enclosures

**ABUTTERS' LIST IN RE: MENGYUAN PROPERTIES, LLC
159 ELM STREET, MILFORD, NH
TAX MAP 19, LOT 5**

MENGYUAN PROPERTY MANAGEMENT, LLC
7 MOUNTAIN ASH LANE
FRANKLIN, MA 02038

KAPLAN, AARON R & JAMIE L TRSTEEES
167 ELM STREET NOMINEE TRST
31 MACK HILL RD
AMHERST, NH 03031

SCF RC FUNDING I LLC
902 CARNEGIE CENTER BLVD STE 520
PRINCETON, NJ 08540

JORDAN, WILLIAM A BRAVO, LINDA J
P O BOX 776
STODDARD, NH 03464-0776

WILSKY INVESTMENTS, LLC
154 ELM ST
MILFORD, NH 03055

SOUHEGAN WATERFALLS, LLC
138 ELM ST
MILFORD, NH 03055

ALEXANDROU, CHRISTOPHER TRUSTEE
1-9 PAULINE STREET REALTY TRST
16 SAMUEL BIXBY WAY
BOXFORD, MA 01921

BROOKSTONE MANOR LLC
1 MONARCH PLACE SUITE 1300
SPRINGFILED, MA 01144

OTHER PARTIES TO NOTIFY:

FRANCIS KLING, SR.
34 RIDGEFIELD DRIVE
NASHUA, NH 03062

THOMAS F. QUINN, ESQUIRE
62 ELM STREET
MILFORD, NH 03055

MERIDIAN LAND SERVICES, INC.
P.O. BOX 118
MILFORD, NH 03055



1 MILFORD PLANNING BOARD MINUTES
2 July 23, 2019 Milford Town Hall, BOS Meeting Room, 6:30 PM

3
4 **Members Present:**

5 Doug Knott, Chairman
6 Tim Finan, Vice Chairman
7 Janet Langdell, Member
8 Paul Amato, Member
9 Laura Dudziak, Selectmen's Rep
10 Pete Basiliere, Alternate Member

Staff:

Lincoln Daley, Community Development Director
Kellie Shamel, Planner
Darlene Bouffard, Recording Secretary
Tyler Berry, Videographer

11
12 **Excused:**

13 Susan Robinson, Member
14 Jacob LaFontaine, Member

15
16
17
18 **1. Call to order:**

19 Chairman Knott called the meeting to order at 6:30 p.m. Introductions were made of Board members and
20 staff. It was noted that Pete Basiliere as an Alternate member will sit with the Board as part of the discussions
21 and will vote in the absence of Susan Robinson.

22
23 **2. Approval of Minutes:** 6/25/19, 7/10/19

24
25 T. Finan moved to approve the minutes of June 25, 2019 as presented. P. Amato seconded. T. Finan, J.
26 Langdell, P. Amato, P. Basiliere and L. Dudziak were in favor, with D. Knott abstaining. Motion passed 5/0/1.
27 T. Finan moved to approve the minute of July 10, 2019 as presented. P. Basiliere seconded. T. Finan, P.
28 Basiliere, J. Langdell, P. Amato were in favor, with D. Knott and L. Dudziak abstaining. Motion passed 4/0/2.

29
30 **3. Public Hearing:**

31
32 **a. Meridian Land Services (applicant) and Richard Keogh (owner) –** Continued review for final
33 approval of a major subdivision application to subdivide the existing lot of record into eight (8)
34 residential lots. The parcel is located at 118 Amherst Street in the Residence A District. Tax Map 23, Lot
35 **2. Request for continuance.**

36 D. Knott indicated that the applicant, Meridian, has requested a continuance to August 20, 2019 for this
37 application. J. Langdell confirmed with K. Shamel that a written request has been received. K. Shamel
38 said that is correct. P. Amato moved to accept this request. J. Langdell seconded. All were in favor of
39 this request. **Continuance granted to August 20, 2019.**

40 **b. Frank Kling (applicant) and Mengyuan Property Management, LLC (owner) –** Conceptual
41 discussion of a potential major site plan to raze an existing building and construct a six (6) unit
42 condominium and associated site improvements. The parcel is located at 159 Elm Street in the
43 Commercial, Nashua Elm Street Overlay and Milford 79-E Districts. Tax Map 19, Lot 5.

44 D. Knott indicated this application is for a conceptual discussion only, for which there will be no
45 decisions made. Tom Carr, representing the applicant Frank Kling, explained this application is for the
46 property at 159 Elm Street which has 1.19 acres in the Commercial District. There are no wetlands on the
47 site that would affect the buffer. There is an existing multi-family unit building on the lot with a small
48 parking lot. Water utilities service will be by town water and sewer. Frank Kling has met with
49 Community Development Director Lincoln Daley several occasions to discuss options for this property
50 along this corridor. This application will be for a six-unit condominium building. The property record
51 card for this lot shows it is 4-6 units. The restoration of the existing building was considered, however
52 the cost was beyond its worth and it was determined the existing structure would be razed. There would
53 be a 24' egress with parking in the back with a garage under each unit. All lighting and landscaping will
54 be presented at the time of site plan presentation. Frank Kling would like to keep as much of the existing
55 landscaping. Tom Carr indicated the lot size of 1.19 acres would yield 5.95 units, almost 6; Frank Kling

56 wonders if that can be rounded up to the 6 units? K. Shamel said the Town would not be rounding up to
57 the 6 units. Tom Carr wants to talk to the Planning Board about that, we are aware of that limit. The
58 building elevation was shown with 6 units. Landscaping will be in the front of the building, which is
59 what will be visible from Elm Street with parking in the back. P. Amato asked if the front doors are on
60 the front of building? Tom Carr responded that they are, and the mailboxes would be out front but guests
61 would go around back for parking and entry. Tom Carr asked for questions from the Planning Board.
62 This is just to show the Planning Board the conceptual plan. D. Knott asked for specifications of the
63 intent of the overlay. Kellie Shamel said it would fall under the intent of the Overlay District, this is an
64 acceptable use (multi-family). K. Shamel spoke with Lincoln about the density and he advised a
65 variance from the ZBA (for 6 units). The architecture shown would be acceptable for that corridor and
66 also the performance standards for that district. K. Shamel indicated comments were received only from
67 the Ambulance Department regarding the ability to turn around on site for Fire and Ambulance with only
68 the one entrance. The back of the building has a total width of 42'.

69 Tom Carr explained the garage is for two cars under the unit with 18' of stacking cars for guests behind
70 the garage. K. Shamel said the concern raised was the turning around for an ambulance (for fire truck)
71 because there does not appear to be any area for turn around. J. Langdell asked if the ambulance could
72 use the front door instead of the back door when responding? Tom Carr said there could be an ambulance
73 service in the front yard but we could only use pavers to allow that. K. Shamel said it was not realized
74 there were actual front doors at the time of review. D. Knott asked if the set back is too far? P. Amato
75 said it is set back 30' which is what we require. P. Amato asked if there is living space on the garage
76 level? Frank Kling responded there is not. T. Carr said we would need a front access for ambulance;
77 from the garage there will be stairs going up to the living area. P. Amato said if the building was moved
78 back 20' would that give a little more space in the front for access? Tom Carr said he is trying to balance
79 the cut and fills. J. Langdell said there is a significant drop in back. Tom Carr agreed if the parking area
80 were full with guests, it would be hard for an ambulance to turn around. P. Amato suggested dropping a
81 unit on the plan so there are 5, not 6, and then have that extra space for a turn around. P. Amato thinks if
82 the building were moved back a little, that would allow people (guests) to go in the front door instead of
83 the back. J. Langdell said we need a safe place for people to cross. The sidewalks in that area have some
84 gaps. D. Knott said there is no side walk going into the Granit Town Plaza which is in this area.

85 P. Amato asked if Frank Kling has gone to the Heritage Commission about razing the existing structure?
86 Frank responded that he has and an agreement was reached. D. Knott asked Dave Palance of the Heritage
87 Commission if he had any input. Dave Palance, Chairman Heritage Commission, talked with Frank and
88 asked if the oldest portion of the building toward the southern portion could be preserved; they talked
89 about different ideas. There was a well that has been removed but there is another dug well inside the
90 building built with small river stones, the Heritage Commission would like that well somehow preserved,
91 to which Frank agreed to move that well from the inside to the outside of the structure. Further, the
92 Commission concluded that the only benefit to the town heritage would be to request that the new
93 building when built, would carry the name of the original owners, Frederick and Freeman Crosby.
94 Mr. Kling has offered the beams for reuse on another location and the stone lined well could be
95 moved outside to be included in the new concept. Dave Palance did not see any of these ideas on the
96 lplan and he would like to see those.

97
98 J. Langdell said if the planned building were moved back away from the road could any of these be
99 done? Tom Carr said we would be losing some buffer in the back if we do that. P. Amato said there
100 is room for the building to move back and then the land levels out and is flat. It would still be at the
101 level and would require fill to be brought in. P. Basiliere said emergency vehicle access is important,
102 we should make sure they can get in and then out of the property. T. Carr agreed and will discuss
103 this with Frank Kling about going to five units (instead of 6) to allow for turnaround area. J.
104 Langdell wants to be sure in an emergency they can access the units through the front doors. J. Carr
105 believes the Fire Department would react badly to having only one egress for fighting fire in the front
106 and back of the building. K. Shamel said she did not hear from the Fire Department, only from the
107 Ambulance Department. J. Langdell said this building has been vacant for many years and if we get
108 some more market rate affordable housing in the area, that is a good thing.
109