

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

NOVEMBER 17, 2020

7:30 PM or immediately after the Special Board of Aldermen Public Hearing

To Join Zoom meeting: <https://us02web.zoom.us/j/87828430451?pwd=NjQ4WmlMVFJTDNpc3NLZ3pvTHozOT09>
Meeting ID: 878 2843 0451 Passcode: 490368

To Join by Telephone: 1-929-205-6099 Meeting ID: 878 2843 0451 Passcode: 490368

If there is a problem with the audio, please dial 603-821-2049 to advise.

ROLL CALL

PUBLIC COMMENT

COMMUNICATIONS

From: Linda McGhee, Deputy Planning Manager

Re: Referral from the Board of Aldermen on proposed O-20-034, extending temporary adjustments to site plans to allow for greater outdoor seating at restaurants

UNFINISHED BUSINESS

NEW BUSINESS – RESOLUTIONS

R-20-090

Endorsers: Alderman Richard A. Dowd
Alderman Jan Schmidt
Alderman-at-Large Michael B. O'Brien, Sr.
Alderman Patricia Klee
Alderman Linda Harriott-Gathright
Alderman Skip Cleaver
Alderman Thomas Lopez
Alderman-at-Large Lori Wilshire

AUTHORIZING THE PURCHASE OF LAND AND BUILDINGS AT 55 FRANKLIN STREET (MAP 68, LOT 53)

NEW BUSINESS – ORDINANCES

O-20-034

Endorsers: Alderman-at-Large Michael B. O'Brien, Sr.
Alderman-at-Large Ben Clemons
Alderman Patricia Klee
Alderman Jan Schmidt
Alderman Richard A. Dowd
Alderman Thomas Lopez
Alderman-at-Large David C. Tencza
Alderman-at-Large Brandon Michael Laws
Alderman Skip Cleaver
Alderman-at-Large Lori Wilshire

EXTENDING TEMPORARY ADJUSTMENTS TO SITE PLANS TO ALLOW FOR GREATER OUTDOOR SEATING AT RESTAURANTS

TABLED IN COMMITTEE

GENERAL DISCUSSION

PUBLIC COMMENT

REMARKS BY THE ALDERMEN

POSSIBLE NON-PUBLIC SESSION

ADJOURNMENT



City of Nashua
Planning Department
229 Main Street
Nashua, New Hampshire 03061-2019

Planning & Zoning 603 589-3090
WEB www.nashuanh.gov

MEMORANDUM

Date: November 6, 2020

To: Ald. Lori Wilshire, President, and Board of Aldermen
Ald. David Tencza, Chair and Planning & Economic Development
Committee

From: Linda McGhee, Deputy Planning Manager

RE: Referral from the Board of Aldermen on proposed O-20-034, extending
temporary adjustments to site plans to allow for greater outdoor seating at
restaurants.

At the Nashua City Planning Board's regularly scheduled meeting of November 5,
2020 the Planning Board voted unanimously to make a favorable recommendation
on O-20-034.

If you have any questions concerning this notification, please contact me at 589-
3110.

cc: Mayor Jim Donchess
Donna Graham, Legislative Assistant
Susan Lovering, City Clerk
Scott LeClair, Chair, NPCB
Sarah Marchant, Community Development Director



RESOLUTION

AUTHORIZING THE PURCHASE OF LAND AND BUILDINGS AT 55 FRANKLIN STREET (MAP 68, LOT 53)

CITY OF NASHUA

In the Year Two Thousand and Twenty

RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor is hereby authorized to purchase property located at 55 Franklin Street (Tax Map 68, Lot 53) from Grace Fellowship of Nashua on terms and conditions in substantially similar to the attached Purchase and Sale Agreement. The purchase price of said land and buildings shall be one million eight hundred twenty five thousand dollars (\$1,825,000).

FURTHER RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor, with the assistance of the Office of Corporation Counsel, is authorized to prepare and execute all necessary documents related to the Purchase and Sale Agreement.

LEGISLATIVE YEAR 2020

RESOLUTION: R-20-090

PURPOSE: Authorizing the purchase of land and buildings at 55 Franklin Street (Map 68, Lot 53)

ENDORSERS: Alderman Richard A. Dowd
Alderman Jan Schmidt

COMMITTEE ASSIGNMENT: Planning and Economic Development Committee

FISCAL NOTE: Purchase price of one million eight hundred twenty five thousand dollars (\$1,825,000)

ANALYSIS

This resolution authorizes the purchase of 55 Franklin Street (Map 68, Lot 53). The Board of Education approved the purchase on October 26, 2020.

NRO §5-4, A states that the Board of Alderman shall approve public funding for the purchase of all City and school land and buildings. Charter §77 provides that the Planning Board “shall review and make recommendations to the mayor and board of aldermen on all locations for proposed municipal building and facilities, including educational, [and] on the purchase and sale of any land by the city.”

Approved as to account structure, numbers and amount:

Financial Services Division

By: /s/John Griffin

Approved as to form:

Office of Corporation Counsel

By: 

Date: 11/4/2020

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into on this _____ day of _____, 2020, by and between **Grace Fellowship of Nashua**, having a mailing address of 55 Franklin Street, Nashua, New Hampshire ("Seller") and **The City of Nashua**, a municipal corporation, having an address of 229 Main Street, Nashua, New Hampshire 03060, ("Buyer").

1. PURCHASE AND SALE. Seller agrees to sell and convey, and Buyer agrees to buy, on the terms and conditions hereinafter set forth, a parcel of land with the buildings and improvements thereon, located in Nashua, Hillsborough County, New Hampshire, known as or described as Lot 68-53 of the City of Nashua Tax Maps, having an address of **55 Franklin Street, Nashua, New Hampshire**, being the property described in a deed recorded in the Hillsborough County Registry of Deeds, Book 6243, Page 1916 ("Premises").

2. PURCHASE PRICE. Subject to any adjustments and prorations hereinafter described, Buyer agrees to pay for the Premises the sum of One Million Eight Hundred Twenty Five Thousand and 00/100 Dollars (\$1,825,000.00) ("Purchase Price"). The Purchase Price shall be payable as installments as follows:

Deposit:	paid on or before 10 days of fully executed Agreement	\$430,000
Installment #1:	paid at closing	\$170,000
Installment #2	paid on or before September 30, 2021	\$250,000
Installment #3:	paid on or before September 30, 2022	\$250,000
Installment #4:	paid on or before September 30, 2021	\$725,000

Installments may be prepaid at any time without penalty.

3. TITLE. Seller shall convey the Premises to the Buyer at the Closing in fee simple with good, insurable, and marketable title by Warranty Deed, free and clear of all liens and encumbrances, except as set forth in the deed or matters of record. Parties shall also deliver such additional documents as may be required under this Agreement or as may be reasonably required by their respective counsel or the title insurance companies insuring the transaction, including but not limited to, assignments, affidavits, documents and certificates.

4. CLOSING. The closing shall occur on _____, 2020, at a time and location mutually agreed to by the parties.

5. INSPECTION AND DUE DILIGENCE PERIOD. The obligations of Buyer to consummate the transaction contemplated by this Agreement are expressly conditioned on the satisfaction of each of the following conditions and, if any such condition is not satisfied as hereafter provided, Buyer will be entitled to either: (a) waive the same in writing; or (b) terminate this Agreement. On such termination the Buyer and Seller will be released from further performance hereunder.

A. Title Examination/Survey.

1. If Buyer desires an examination of title or survey of the Premises, it shall pay the cost thereof.

2. The Buyer shall report to the Seller the results of any such survey or examination of title within forty-five (45) days of the acceptance of this Agreement by the Seller and in such report (the "Title Report") identify any survey issues, defects in title, encumbrances or other matters which would render title unmarketable (collectively the "Objections") and (ii) any mortgages, liens or other financial encumbrances ("Financial Encumbrances"). In the Title Report, the Buyer shall also identify those matters of title to which the Buyer has no objection (the "Permitted Encumbrances"). If the Buyer does not provide a Title Report within the time period set forth above, this contingency shall be deemed waived by the Buyer.

3. The Seller, at its election, may attempt to remove or correct the Objections in or within thirty (30) days of receipt of the Title Report. With respect to the Financial Encumbrances, they shall be paid in full from the funds due Seller at the closing.

4. During the pendency of this Agreement, the Seller shall not (i) enter into any tenancy agreement, lease, occupancy agreement or other agreement concerning the possession or use of the Premises with any third parties; (ii) grant any easements, establish any covenants, nor suffer, permit or grant any encumbrances (including mortgages, liens or attachments); or (iii) grant, transfer, assign, convey, pledge, mortgage or otherwise hypothecate any interest in the Premises, or suffer the same to occur. In the event that an involuntary attachment is placed against the Premises, then the Seller shall have up to thirty (30) days to cause a release or discharge of such attachment to be duly issued or ordered and recorded.

5. In the event the Seller is unable or unwilling to remove the Objections within the thirty (30) day period specified in subparagraph (c) above, then, at the Buyer's election, (i) this Agreement shall terminate and neither party having any further obligations to or rights against the other under this Agreement; or (ii) the Buyer may elect to complete the Closing and accept such title to the Premises as the Seller may convey, without any diminution in the Purchase Price. In the event that an encumbrance or a matter akin to an Objection against the Premises after the effective date of the Title Report and before the Closing, then the Seller shall undertake to remove such encumbrance or matter prior to the Closing to enable the SELLER to convey the Premises as contemplated in Section 3 above.

B. Due Diligence. Buyer shall have sixty (60) days from the execution of this Agreement (the "Due Diligence Period") to undertake at its sole cost and expense the following: (i) an Environmental Phase I Report; (ii) an Environmental Phase II Report (if deemed prudent as a result of the Environmental Phase I); (iii) cost estimates to address any environmental issues; (iv) test pits and borings; (v) wetlands studies; (vi) Zoning/Planning review with the City of Nashua; and (vii) investigation into any other issues relevant to Buyer's decision to the purchase of the Premises.

If Buyer shall discover or determine prior to the expiration of the Due Diligence Period that it is not satisfied in any way with the status of the Premises or the results of any of its due diligence or inspections, Buyer shall have right to terminate this Agreement and have the Deposit refunded forthwith, and all the parties shall thereafter be released from any further obligations hereunder.

6. POSSESSION OF THE PREMISES AND RISK OF LOSS. The Premises shall be delivered to the Buyer at the time of the closing free of all tenants, personal property, and encumbrances. The risk of loss or damage to the Premises, by fire or other casualty, or condemnation, prior to the Closing Date is assumed by Seller. If all or a portion of the Premises should be destroyed or damaged by fire, other casualty, or taken by eminent domain, Buyer may, at its option, terminate this Agreement by written notice delivered to the Seller at or prior to the closing, and both parties shall be discharged from all further obligations or Buyer may accept assignment of insurance or condemnation proceeds and proceed with purchasing the Premises.

7. FINANCING. This Agreement is not contingent upon the Buyer obtaining financing.

8. REPRESENTATIONS AND WARRANTIES OF SELLER. Seller represents and warrants to Buyer that the following are true as of the date of this Agreement and will be true as of the Closing:

- (a) The Premises are not the subject of any existing cease and desist orders, enforcement actions, or any federal, state or local code enforcement violations.
- (b) There are no unrecorded outstanding pending or threatened liens, claims, rights of first refusal, licenses, or encumbrances against or affecting the Premises, which have not been disclosed to Buyer in this Agreement.
- (c) There are no outstanding claims, losses or demands against Seller by any person, entity, or governmental unit respecting Seller's ownership, use, or occupancy of the Premises, which have not been disclosed to Buyer in this Agreement, including without limitation Mechanic's Liens.
- (d) Seller has no knowledge of any boundary disputes or encroachments affecting the Premises.
- (e) There are no leases of any portion of the Premises.
- (f) Seller has no knowledge of any pending or threatened litigation that may adversely affect the transfer of the Premises hereunder or materially affect the value of the Premises.
- (g) Neither the whole nor any portion of the Premises has been condemned, requisitioned, or otherwise taken by any public authority and no notice of any such condemnation, requisition or taking has been received by the Seller and no such condemnation, requisition or taking is threatened.
- (h) Seller has not knowingly released into the environment or discharged, placed or disposed of any hazardous materials, substances, or waste or knowingly caused the same to be released into the environment or discharged, placed or disposed of at, on, or under the Premises. Notwithstanding the foregoing, the Seller cannot represent to Buyer that there are no hazardous waste issues as a result of the

current activities of other unit owners. To the best of Seller's knowledge, the Premises complies in all material respects with all applicable federal and state environmental laws and regulations. Seller has not received any written notice from any governmental authority or any written complaint from any third party with respect to its alleged non-compliance with, or potential liability under, any environmental laws and regulations.

- (i) There are no rights of first refusal or options to purchase associated with the Premises.
- (j) Seller has authority to enter into this Agreement and will provide necessary authority documents at the Closing.

These representations shall survive the Closing.

Other than the representations contained above and the warranty of the proposed Warranty Deed, Seller makes no representation or warranty as to fitness, merchantability, condition or use of the Premises for any particular purpose as the Premises is sold "AS-IS".

9. DEFAULT AND REMEDIES. In the event that Buyer defaults in the performance of its obligations hereunder, Seller shall be entitled to retain the Deposit as reasonable liquidated damages.

10. ACCESS TO THE PREMISES. The Seller hereby grants to the Buyer, its agents and independent contractors, access to the Premises to undertake such activities as may be necessary for the Buyer to exercise its rights this Agreement. The Buyer shall restore any portion of the Premises disturbed by the Buyer in connection with such activities. Buyer, its agents and independent contractors, shall use their best efforts to minimize the disturbances and impact on Seller during such activities and shall indemnify and hold harmless Seller from any damages resulting from such activities.

11. BROKERAGE. Seller and Buyer represent and warrant to each other that neither has dealt with any real estate broker, agent or salesperson in connection with this transaction. Each party agrees to defend, indemnify, and hold the other harmless from any claims, costs, judgments, or liabilities of any kind advanced by persons claiming real estate brokerage fees through the indemnified party. The indemnities set forth in this Section shall survive closing.

12. PERSONAL PROPERTY INCLUDED. Buyer is unrepresented. Buyer is represented by Ron Fredette of KW Commercial NH. .

13. ADJUSTMENTS, PRORATIONS AND CLOSING COSTS.

- (a) Real Estate taxes, assessments, special assessments, rents, water bills, sewer, utilities and condominium association fees, shall be prorated as of the Closing, and the Selling price shall be adjusted accordingly.

With a copy to:

Celia K. Leonard
Deputy Corporation Counsel
229 Main Street
Nashua, NH 03061

(d) Governing Law. This Agreement shall be interpreted under the laws of the State of New Hampshire. The captions used herein are for convenience only, are not a part of this Agreement, and shall not be used in construing it.

(e) Counterparts. For the convenience of the parties, this Agreement may be executed in several counterparts, which are in all respects identical and each of which shall be deemed to be complete in itself so that any one may be introduced in evidence or used for any other purpose without the production of the other counterparts.

(f) Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed at Closing, Seller and Buyer agree to perform such other acts and to execute and/or deliver such other instruments and documents as either Seller or Buyer, or their respective legal counsel, may reasonably require to effectuate the objectives of this Agreement.

[SIGNATURE PAGES FOLLOW]

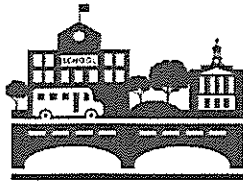
Seller
Grace Fellowship of Nashua

Name:
Title:

Buyer
City of Nashua

Name:
Title:

Jahmal Mosley, Ed. D.
Superintendent



NASHUA
SCHOOL DISTRICT
Gateway to Opportunity

Garth McKinney, Ed. D.
Assistant Superintendent

Donna Fitzpatrick, Ed. S.
Assistant Superintendent

Daniel Donovan
Chief Operating Officer

To: Finance and Operations Committee

From: Daniel Donovan

Date: October 6, 2020

RE: Purchase of 55 Franklin Street

With the increase in the number of pre-school students continuing to grow each year, our elementary schools as of the end of this past year left us with no extra classrooms. Our preschool enrollment numbers have increased from 231 to 275 in the past 3 years and are expected to continue to grow. Having one central location for our preschools would not only make our programs more efficient but also leave more space in our current elementary schools for student specific needs such as behavior management and OT/PT expanded programs for regular and special education students. In speaking with the Director of Special Education, if we can consolidate our preschool programs in one location we may be able to reduce the number of specialists necessary and potentially reduce labor costs going forward.

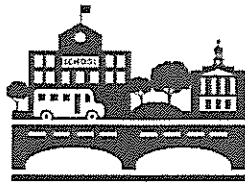
We also currently rent space on Amherst Street for our Brentwood Program at a cost last year of \$170,000. (Base rent of \$155,000 and CAM charges of \$15,000) The base rent for this year will be \$160,000 plus CAM costs.

This lease ends in June 2021 so we will either have to add years to the current lease or look for a new space. It became evident that when searching for school space three years ago that most commercial buildings are not suited for a classroom setting, and to renovate to fit our needs would be at a significant cost.

This past spring, we viewed a few locations with the help of Tim Cummings the city's economic development director as well as members of Special Education and Administration. The property at 55 Franklin was the first choice of the group. This building was the former home to the Nashua Christian School so it was configured more like a school than any other property other than the Infant Jesus School. That building has been rented by another group and was also not for sale. We were looking to purchase a facility instead of paying an annual rental fee.

The attached purchase and sales agreement detail the plan for a purchase. We have an agreement in place with the owner, Grace Fellowship Church, that will allow us to purchase the building on an installment payment plan. This allows us to use mostly grant and operating funds to purchase the facility. The installments will be as follows:

Jahmal Mosley, Ed. D.
Superintendent



NASHUA
SCHOOL DISTRICT
Gateway to Opportunity

Garth McKinney, Ed. D.
Assistant Superintendent

Donna Fitzpatrick, Ed. S.
Assistant Superintendent

Daniel Donovan
Chief Operating Officer

#1 \$600,000 (\$430,000 coming from a grant and \$170,00 coming from the operating budget using funds from transportation savings due to remote learning this September.

#2 \$250,000 (this will come from savings on the Brentwood lease of \$175,000 and \$75,000 to be budgeted in the FY22 operating budget)

#3 \$250,000 (Same as #2)

#4 \$725,000 This will come from savings on Brentwood as well as repurposing excess middle school bond funds as the middle school project will be close to, if not fully complete. We currently have significant contingency funds in the middle school project.

The \$430,000 in grant funds and the excess middle school bond funds offer a unique opportunity for the district to purchase a building versus paying for rent over the long term for a facility.

There is also the possibility that the current rent the district pays to the First Church for the Title 1 kindergarten program might become available if we move that program to 55 Franklin Street. Current rent is \$50,000.

In the current budget we also have set aside from the 2020-2021 one-time funds approximately \$400,000 to improve the current Franklin Street facility. Plant operations personnel have visited the building and we have also had the current Middle School architect perform a study to determine if there will be any significant issues. The timing of the purchase will also give Plant operations personnel plenty of time to get any work done prior to moving in in the fall of 2021.



ORDINANCE

EXTENDING TEMPORARY ADJUSTMENTS TO SITE PLANS TO ALLOW FOR GREATER OUTDOOR SEATING AT RESTAURANTS

CITY OF NASHUA

In the Year Two Thousand and Twenty

Whereas O-20-14, amended, “Relative to temporary adjustment to site plans”, was passed by the Board of Aldermen on June 10, 2020. Said emergency measure allowed the Community Development Director or designee to approve the temporary modification of site plans to allow restaurants to provide additional outdoor seating, and that authorization and any approvals thereunder expire on January 1, 2021. This legislation is to extend that time frame.

Now, therefore, the City of Nashua ordains that

The Director of Community Development or designee is authorized to approve administratively the temporary modification of site plans to allow restaurants to provide additional outdoor seating and to waive any provision of Chapter 190 of the Nashua Revised Ordinances for such purpose. The director or designee may accept for purpose of review such plan or sketch deemed by him or her to be sufficient for this purpose. No fee shall be charged for such review or approval.

This authorization and any approval issued thereunder shall not waive compliance with any building code, fire code, health code, or any otherwise applicable provision of law.

This authorization and any approval issued thereunder shall expire on January 1, 2022 unless extended by further legislation.

This legislation shall take effect following its passage.

The clerk is directed not to codify this ordinance in the Nashua Revised Ordinances but to designate it as Covid-19 Emergency Measure No. _____ and publish it and any subsequent emergency measures on the city website.

LEGISLATIVE YEAR 2020

ORDINANCE:

O-20-034

PURPOSE:

Extending temporary adjustments of site plans to allow for greater outdoor seating at restaurants

ENDORSERS:

**Alderman-at-Large Michael B. O'Brien, Sr.
Alderman-at-Large Ben Clemons**

**COMMITTEE
ASSIGNMENT:**

FISCAL NOTE:

None.

ANALYSIS

This legislation extends the ability for the community development director or designee to modify existing site plans to enable restaurants to provide additional outdoor seating for an additional year, through January 1, 2022.

This measure should be referred to the Planning Board and a public hearing scheduled.

Approved as to form:

Office of Corporation Counsel

By: _____

Date: _____