

**MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

JULY 19, 2016

MEMBERS PRESENT: Chairman David Rheume, Arthur Parrott, Patrick Moretti, Christopher Mulligan, James Lee, Peter McDonell, John Formella

MEMBERS EXCUSED: Vice-Chairman Charles LeMay, Jeremiah Johnson

ALSO PRESENT: Jane Ferrini, Planning Department

Chairman Rheume read the withdrawn petition, Case 6-12, into the record. He announced that Jim Lee went from alternate member status to regular member. He also introduced the new alternate, John Formella.

Chairman Rheume asked for a motion to nominate Mr. Mulligan as Acting Vice-Chair for the evening for the absent Vice-Chair LeMay.

*It was moved, seconded and **passed** unanimously (7-0) to nominate Mr. Mulligan as Acting Vice-Chair.*

I. APPROVAL OF MINUTES

A) June 21, 2016

B) June 28, 2016

*It was moved, seconded and **passed** unanimously (7-0) to approve the two sets of minutes, with minor edits on the June 28 minutes.*

II. OLD BUSINESS

A) 5 Buckminster Way

Chairman Rheume referred to the case heard the previous month and stated that the letter reviewed by the Board pointed out differences between the information on file in the Planning Department regarding an official City document and a copy of said information provided by the

applicant as part of his application. Chairman Rheume noted that the revised information could have been potentially misleading and said it was a serious matter because the Board expected all information brought before them to be accurate to the best of the applicant's knowledge.

There was no comment from the Board members. Chairman Rheume recommended that the Planning Department forward the letter to the Legal Department for appropriate action.

Mr. Mulligan requested that Case 7-4, Request to Postpone, 17 Gardner Street, be taken out of order.

Mr. Parrott moved to take Case 7-4, Request to Postpone 17 Gardner Street, out of order so that the Board could address it immediately. Mr. Moretti seconded the motion.

They then addressed the petition (see page 9).

III. OLD BUSINESS – PUBLIC HEARINGS

A) Case #4-9

Petitioner: Michael De La Cruz

Property: 75 Congress Street (63 Congress Street)

Assessor Plan 117, Lot 5

Zoning District: Character District 5, Downtown Overlay District

Description: Construct five residential use dormers and one office use dormer, with walkways and decks. Restore pediments.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, enlarged or structurally altered without conforming to the Ordinance.
2. A Variance from Section 10.5A43.31 and Section 10.5A21.22 to allow the following building heights where the maximum building heights allowed per Map 10.5A21B are 40' for a 2-3 stories height requirement area and 45' for a 2-3 stories (short 4th) height requirement area:
 - a. 62'11"± for the proposed pediments;
 - b. 65'11" ± *for the proposed flat roofed office dormer onto existing sloped roof; and*
 - c. 58' 11" ± *for the proposed residential dormers*

(This petition was postponed from the May 17 and June 21, 2016 meetings and has been revised as indicated in italics.)

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech was present on behalf of the applicant and stated that the Board had voted a few months earlier to postpone the petition so that additional information could be submitted. He said the applicant had complied with the Board's request and had a 3-dimensional rendering, aerial and street views, a cross-section plan of the dimensions, detailed exterior lighting plans, explanation of covenants for the roof deck, and a packet of complete plans and photos. Attorney Pelech reviewed the entire packet, with emphasis on the pediments, dormers, building height,

awnings, decks, elevations, rooftop, lighting, and covenants. He also compared several features with those of nearby buildings. He reviewed the five criteria and said they were met.

Attorney Pelech introduced the owner and applicant Michael De La Cruz, the consultant Joe Almeida, and the architect Jeremiah Johnson of McHenry Architects.

Mr. Mulligan asked how far the dormers facing Congress Street would be set back. Attorney Pelech referred to the roof plan and gave the setback dimensions for all five dormers.

Chairman Rheume asked whether the historical record showed when the pediments were removed and why. Mr. De La Cruz replied that some of the building conditions were 140 years old and others were brand new, so the masonry had deteriorated and been replaced at different times. Chairman Rheume asked about the deck house. Mr. De La Cruz said the deck house was currently being inspected and was on a permit that had been running for a few years. He said it would be greatly reduced in size and would not be seen from the street.

The consultant Mr. Almeida stated that he was not being compensated for his consulting services and was not speaking for the Historic District Commission (HDC), of which he was Chairman. He said he had watched Mr. De La Cruz work on the building for years and thought it was of the highest quality. He said the reason the applicant was before the Board was due to recent changes to the Ordinance. He said Mr. De La Cruz was a great steward of his building's history

SPEAKING IN OPPOSITION TO THE PETITION OR SPEAKING TO, FOR, OR AGAINST THE PETITION

No one rose to speak, and Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

*Mr. Mulligan moved to **grant** the variances for the application as presented and advertised, and Mr. Parrott seconded the motion.*

Mr. Mulligan stated that the applicant put together a thorough packet and made it easy for the Board to comprehend why the relief was required. He said the building was a pre-existing nonconforming one that did not meet the current height requirements. It was already 60 feet high, and the Board was granting some partial increases in height in various spaces throughout the building, but at most they were looking at 6 feet or so in height over the existing 60 feet. For such a large building, he said the amount of relief was not substantial and was required to restore the historic building's original features.

Mr. Mulligan stated that granting the variance would not be contrary to the public interest or to the spirit of the Ordinance because the mostly commercial character of the neighborhood would not change in any significant way, nor would the proposed changes threaten the health, safety and welfare of the public. It would result in substantial justice because the loss to the applicant would far outweigh any gain to the public. Mr. Mulligan said the applicant went to great lengths to bring the building back to its former glory, and it would be a net benefit to the entire community. If denied, the building would remain as it was, lacking some of its historical features, and since it was in the Historic District, he saw no reason why it would be a gain for the public.

He said granting the variance would not diminish the values of surrounding properties because many of them were of similar or greater height, so he didn't believe there would be an issue with

encroachments as far as light, air and so on. As for the unnecessary hardship, literal enforcement of the Ordinance would harm the applicant, due to the unique lot and the very large building that spanned it. The building was formerly a theater, so there was a need for the dormers to introduce light and air into some of the new spaces. He pointed out that there were many taller buildings in the vicinity, the building was on a corner lot, and the lot had unique factors for a historic building. He said the building was currently a nonconforming one, so there were special conditions, including the fact that some of the original historic features could not be replaced or restored without the requested relief because it would violate recently-enacted height restrictions. He said the project met all of the criteria.

Mr. Parrott concurred with Mr. Mulligan and added that the information provided was just what the Board had asked for and was very helpful in understanding the project better. He said the replacement of the pediments was very commendable, and the fact that they replicated the previous design was a fine thing to do, and he thought it would dress up the building. He also found helpful the comparisons of the building's height with the adjacent buildings. Mr. Parrott said he would support the motion.

Chairman Rheume said he also would support the motion because he thought it was a very good design overall. He said some of the relief seemed to be substantial, but the most significant relief of 65 feet was substantially far enough back from the wall surfaces to make it less obvious. He said the views provided of how the building would look to people passing by were pretty accurate, noting that sometimes the Board got a distorted view. He said there had been a lot of work done to recess everything and make it look like it would fit in.

The motion passed with all in favor, 7-0.

B) Case #6-12

Petitioner: Beth P. Griffin Revocable Trust of 2011, Beth P. Griffin, Trustee

Property: 250 Broad Street

Assessor Plan Map 131, Lot 10

Zoning District: General Residence A

Description: Second floor addition and relocation of barn/office/rec. room.

Requests: The Variances and/or Special Exceptions necessary to grant the

required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow a right side yard setback of 3.09'± for the barn/office and 4.05'± for the second story addition where 10' is required.

DECISION OF THE BOARD

Chairman Rheume noted that the petition was withdrawn by the applicant.

IV. PUBLIC HEARINGS – NEW BUSINESS

1) Case #7-1

Petitioners: Sarah J. Duddy & Gregory J. Vaillancourt
Property: 43 Suzanne Drive
Assessor Plan 292, Lot 70
Zoning District: Single Residence B
Description: Raising chickens.
Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Special Exception under Section 10.440, Use #17.20 to allow the keeping of chickens where the use is allowed by Special Exception.

SPEAKING IN FAVOR OF THE PETITION

The owner Gregory Vaillancourt said he wanted to construct a chicken coop to help his children learn how to care for animals and to live more sustainably. It would be kept as a clean and healthy environment and the single-family home would not change. He said his abutting neighbors approved. Mr. Vaillancourt reviewed the Special Exception criteria and emphasized that the coop would be fenced in at the rear of the home and that there would be six chickens and no roosters. He also noted that he had a permit to build the coop.

In answer to Mr. Moretti's questions, Mr. Vaillancourt said the coop would be eight feet high and that the height of the privacy fence would depend on the coop. He chose the location because it was near the garden and away from the road, so the chickens wouldn't be stressed, and he felt the location was the best because it was a shaded area and near the compost. He said the owners of 41 and 14 Suzanne Street approved the project.

Mr. Mulligan asked whether the coop would be sited 10 feet off the property line, and Mr. Vaillancourt agreed and asked whether he needed a variance for setbacks. Mr. Parrott said there were exceptions for sheds. Mr. Mulligan asked how much space would be within the fence structure, and Mr. Vaillancourt said the fence would be a few inches off the coop.

Chairman Rheume noted that the Board had received correspondence from two abutters at 70 and 45 Suzanne Drive who had concerns but didn't appear to be in opposition to the project.

SPEAKING IN OPPOSITION TO THE PETITION OR SPEAKING TO, FOR, OR AGAINST THE PETITION

No one rose to speak, and Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

*Mr. Mulligan moved to **grant** the Special Exception for the application as presented and advertised, and Mr. Moretti seconded.*

Mr. Mulligan said the use was permitted by Special Exception, so the burden on the applicant was much lower than it would be to get a variance. He said the Table of Uses permitted the keeping of certain animals in the SRB zone by Special Exception. He said the first exception was met and the rest was the neighborhood effect.

*Mr. Mulligan **amended** his motion to stipulate that there would be no more than six hens, and no roosters. Mr. Moretti agreed.*

Mr. Mulligan stated that granting the Special Exception would pose no hazard to the public on account of potential fire explosion or release of toxic materials. It would pose no detriment to public property in the vicinity or change the essential characteristic of any area on account of the location or scale of the building. Mr. Mulligan noted that the Board received letters of from abutters concerned about noise and odor, but in his experience with that number of chickens, he said that the hens made almost no noise and generated no smell at all, nor did they seem to attract vermin or have other deleterious effects on the neighbors. Granting the Special Exception would cause no traffic impact or congestion, no excessive demand on municipal services, and so on. There would be no significant increase of storm water runoff because what was proposed was a very modest structure. He concluded that all the criteria for a Special Exception were met.

Mr. Moretti concurred with Mr. Mulligan and said he had nothing to add.

Chairman Rheume said the Board did some research and found that Section 10.573 covered the issue about the required rear setback, which he then read. He said he would support the motion somewhat reluctantly because the Board had been seeing more petitions for chickens on increasingly smaller lots. He noted, however, that in the applicant's case, there was enough open space and it was allowed in the Ordinance. He said that a Special Exception was less rigorous than a variance, but if it wasn't, he would feel differently.

The motion passed with all in favor, 7-0.

2) Case #7-2

Petitioners: Green Leaves Holdings LLC, owner, Portsmouth Believers Church, Inc., applicants

Property: 4 Greenleaf Woods Drive #101

Assessor Plan 243, Lot 6-A101

Zoning District: Gateway

Description: Religious services in a building with office uses.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Special Exception under Section 10.440, Use 3.11 to allow a religious place of assembly where the use is allowed by Special Exception.

SPEAKING IN FAVOR OF THE PETITION

Margaret Cunningham stated that she and her husband were the pastors of the church, and she noted that the broker David Lefebvre was also present. She said the owner Paul Brock was the president of the condominium association as well as her landlord. She said they had 15-20 church members who met on Sunday morning, and she ensured that there would be no structural changes to the building. Ms. Cunningham reviewed the criteria for a Special Exception and said they were met.

Mr. Mulligan asked whether the services were only on Sunday mornings. Ms. Cunningham said they would perhaps add a Wednesday service in the future.

Chairman Rheume said the photos showed that there was no issue with other uses on a Sunday as far as parking, but he noted that people who went to the nearby gym used the parking lot and it could get full. He asked Ms. Cunningham about it. She said she hadn't noticed.

Mr. Lefebvre spoke and said the unit used to be a realtor's office with 10-15 employees and that the business was some distance away from the gym. He said the parking lot next to them usually filled up, but their lot never got filled up by the gym. He said he didn't see a parking issue.

**SPEAKING IN OPPOSITION TO THE PETITION OR
SPEAKING TO, FOR, OR AGAINST THE PETITION**

No one rose to speak, and Chairman Rheaume closed the public hearing.

DECISION OF THE BOARD

*Mr. Moretti moved to **grant** the Special Exception for the application as presented and advertised, and Mr. Parrott seconded.*

Mr. Moretti said it was a simple application and that granting the Special Exception would pose no hazard to the public or adjacent properties because it was a church and he didn't believe that they would have anything potentially hazardous or explosive. It would pose no change in the essential characteristics of the neighborhood because the facility would be used off-hours and would not affect traffic or the parking facility. Granting the Special Exception would not change anything in the building or on the exterior. There would be no creation of a traffic safety hazard or increase in traffic, and if there was a slight traffic impediment with the sports facility up the street, he didn't think it would be anything different than if the building was an office one. There would be no excessive demand on municipal services and no significant increase in storm water. He said the building already existed and wouldn't be affected by what would happen on site.

Mr. Parrott said he concurred with Mr. Moretti and had nothing to add.

Mr. Mulligan said he would support it somewhat reluctantly, noting that it was a facility that had at least two places of worship. He noted that he lived in a neighborhood with three churches that offered access via one way in and one way out, and he was concerned that the applicant's church members would all leave at the same time, causing potential traffic problems. He noted that it could become an issue.

*The motion **passed** with all in favor, 7-0.*

- 3) Case #7-3
 Petitioner: Sachiko Akiyama
 Property: 161 Aldrich Road
 Assessor Plan 153, Lot 32
 Zoning District: Single Residence B
 Description: Add second story to existing garage.
 Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, enlarged or structurally altered except in conformity with the Ordinance.
 2. A Variance from Section 10.521 to allow a 71" ± left side yard setback where 10' is required.
 3. A Variance from Section 10.521 to allow a 14'± rear yard setback where 30' is required.

SPEAKING IN FAVOR OF THE PETITION

The owner Sachiko Akiyama was present to speak to the petition. She said she had a 2-car garage and wanted to build a second floor on it to use as a hobby/work space. She said the footprint would not be changed and that her neighbors would not be affected. She said it would increase the property value and that her abutters were in favor of the addition.

Mr. Moretti asked whether water or any type of facilities would be installed. Ms. Akiyama said she requested that a sink be put on the first floor.

Mr. Parrott asked whether the garage had an independent heating system and whether a small kitchen would be installed. Ms. Akiyama said there currently wasn't a heating system but she wanted to install one, and that she would not put in a kitchen or bathroom because it would be strictly a workshop and not a living space.

**SPEAKING IN OPPOSITION TO THE PETITION OR
SPEAKING TO, FOR, OR AGAINST THE PETITION**

No one rose to speak, and Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

*Mr. Parrott moved to **grant** the variances for the application as presented, with the stipulation that the addition not be built as a living unit nor converted to a living unit. Mr. Lee seconded the motion.*

Mr. Parrott stated said the variances were required because the garage was an existing structure and the proposed addition would be built up in the frame of the garage, and the setbacks were insufficient by current standards.

Mr. Parrott stated that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance because the garage would not be a detriment to the neighbors and would allow the owners to make better use of the structure they already owned and make the house more livable and enjoyable for themselves. He said the purpose was not to create additional living space. Granting the variances would do substantial justice because it was hard to see any public interest in a garage that was being enlarged and upgraded and being kept in the same location. It would not diminish the value of surrounding properties because it would be a nice upgrade to the garage, which was located at the back of the lot and on the side of the yard and adjacent to open space on the adjacent property. As far as the hardship criteria, he said the garage was located where it was, with dimensions that long preceded the current zoning requirements, and it wasn't that far off the present requirements. He said the petition easily passed all the tests.

Mr. Lee said he concurred with Mr. Parrott and had nothing to add.

*The motion **passed** with all in favor, 7-0*

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- 4) Case #7-4
Petitioners: Thunderbolt Realty Trust of 2011 c/o Alison Jewett
Property: 17 Gardner Street

Assessor Plan 103, Lot 14

Zoning District: General Residence B

Description: Reconstruct rear additions.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
2. Variances from Section 10.521 to allow the following:
 - a) A front yard setback of 4'10" ± where 5' is required;
 - b) A left side yard setback of 1" ± where 10' is required;
 - c) A rear yard setback of 9'2" ± where 25' is required; and
 - d) Building coverage of 40.2%± where 30% is the maximum allowed.

Mr. Mulligan recused himself from the vote.

Chairman Rheume stated that the applicant had also gone before the HDC.

DECISION OF THE BOARD

*Mr. McDonell moved to **grant** the Request for Postponement. Mr. Parrott seconded.*

Mr. McDonell stated that it was the applicant's first request to postpone. He noted that the applicant's attorney had said the proposal was before the HDC and that their input might affect the relief required by the Board, so he thought it was a reasonable request.

Mr. Parrott said he concurred with Mr. McDonell and had nothing to add, except for the fact that it was traditional to almost automatically approve a first request to postpone.

*The motion **passed** with all in favor, 7-0.*

5) Case #7-5

Petitioners: Carol I. Cooper, owner, Lorax Sustainable Development, LLC,
applicant

Property: 996 Maplewood Avenue

Assessor Plan 219, Lot 4

Zoning District: Single Residence B

Description: Construct five free-standing dwellings.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.513 to allow more than one free-standing dwelling on a lot.

Mr. Formella recused himself from the petition.

SPEAKING IN FAVOR OF THE PETITION

Attorney Tim Phoenix introduced the Director of Lorax Mike Brigham and the project engineer Corey Colwell. He said the lot was irregularly shaped and had a pond, 80% of which was directly

on the property. He emphasized that the lot was large enough to put a number of homes on it, but it was difficult to put five single-family homes, so they proposed to build five condominiums instead of no greater than 2500 s.f. and serviced by a driveway and not a road. Attorney Phoenix said it required crossing into the wetland buffer, which they would address with the Planning Board. He noted that there may be water problems in the area but that the project could not increase or worsen water runoff. He said the lot area per home would be 50% greater than what the Ordinance allowed for standalone lots, but the project met the purpose of the SRB zone to provide areas for single-family dwellings for low-to-medium densities. He believed that the five homes on 2.6 acres would be much better than five homes on 60,000 square feet. He said the project complied with the Master Plan. He also noted that the homes would be solar powered and sustainable homes. Attorney Phoenix reviewed the criteria in detail and said they were met.

Mr. Moretti asked how much of the lot area was buildable and how much was water that could not be built on. Mr. Colwell said the pond was 1.1 acre in size, of which .7 acres was not on the property. Mr. Moretti asked how much of a buildable lot area to put a house on would be left. Mr. Colwell said it would be 1.9 acres, of 16,700 s.f. per building.

Mr. Mulligan asked what the blue shade area at the end of Fairview Drive on Exhibit 2 was. Attorney Phoenix said the blue area showed the easement for fire trucks and other vehicles to turn around in.

Mr. Lee asked whether there was a gate at the end of Fairview Drive accessing the lot. Attorney Phoenix agreed and said it was an area for an easement for public service purposes.

Chairman Rheume referenced the easement and said Attorney Phoenix had said they would present more detailed information to the Planning Board, but he felt it was a concern to the Board of Adjustment as well. He asked whether the applicant had more information as to how the easement would help provide better fire truck access to the proposed homes at the end of the lot. Attorney Phoenix said the easement area was less than a stone's throw to where the two houses would be located and that access could be gained there. He also said it could be made into a turnaround in front of the two houses.

Chairman Rheume asked whether the homes would be connected to an alternate City power source, seeing that they were solar homes. Mr. Brigham replied that the City negotiate with an abutter so that someone could go down Fairview Avenue and turn around. He said it abutted two of the condominiums and thought the existing easement could work in the project's favor as well. He said it would be great to put water and sewer at that end, and said they also thought about having the access to those two homes via that route. He said the houses would face south and have solar panels but would remain connected to the public grid.

Chairman Rheume asked whether there would be elevated power lines, and Mr. Brigham said they preferred underground lines.

Chairman Rheume asked how plowing the driveway would work. Mr. Brigham said it would be included with the majority of the needs, such as maintenance and trash removal. Chairman Rheume said he was more concerned with the mechanics of plowing. Mr. Brigham said a lot of details were left out and that they would fine-tune it.

Chairman Rheume noted that if the property were actually subdivided, the homes were placed 10 feet from the property lines, with 30-ft setback requirements. He said if a separate parcel was created, the home would have to be 30 feet back instead of 10 feet. He asked whether there was

any thought of moving the homes further away from the lot line. Mr. Brigham said it was a rough concept and their goal was to buffer it as far away as possible from civilization.

Attorney Phoenix said there was a wetland buffer issue and that they would respect the pond and give as much wetland buffer relief as possible.

Mr. Parrott pointed out discrepancies in the plan regarding setbacks, saying a 30-ft rear yard setback was indicated but another line marked a 10-ft setback. Attorney Phoenix said it was an odd-shaped lot and there were judgment calls as to what was a side line and a rear line. Mr. Colwell said the Ordinance defined the rear yard as connected by the side yard, so one or the other could be chosen to be the rear yard. He said it didn't make a difference as to how the house was laid out. The side yard extended from Maplewood Avenue to the rear point, and it was an interpretation.

Chairman Rheume said it was such an irregular shaped lot that the Planning Department felt that calling it the rear lot line was most appropriate for the lot. Mr. Parrott said they ended up at the same place but were labeled differently, and he didn't see the logic.

SPEAKING IN OPPOSITION TO THE PETITION

Darrin Hatch of 16 Fairview Drive said there was an easement put in for their driveway, so there was an easement for fire trucks and so on. He said he owned half of the gate at the end of the driveway and that he had to promise, when he built his property, that no road would go through that gate and that the gate must be locked at all times. He also noted that the wetlands had coyote and deer and was a nice natural spot.

Chairman Rheume asked where the gate was, and Mr. Hatch said it was at the end of his property but was not part of the road. Mr. Moretti asked whether the City plowed snow in that area, and Mr. Hatch agreed.

The following people spoke in opposition to the petition:

Jim Furnell, 1000 Maplewood Avenue
Peter Bresciano 101 O'Leary Place
Steve Entermann, 14 Fairview Drive
Karen Johnson, 455 South Street
Victoria O'Brien, 11 and 13 Fairview Drive
Caroline McMullen, 40 Opal Avenue
Zoe Steward, 8 Fairview Drive
Francesca Marconi, 1000 Maplewood Avenue
Rick Becksted, 1395 Islington Street
Paul Mannle, 1490 Islington Street
Barbara Willer, 9 Fairview Drive
Lenore Bronson, 828 Woodbury Avenue

Their concerns included issues pertaining to:

- Wetland buffer
- SRB zoning
- Detrimental effects to the pond
- Minimum acreage cited in the proposal

- Encroachment on the buffer zone
- Inadequate sewer capability
- Diminishment of surrounding property values
- Ordinance nonconformance
- Wildlife impact
- High density
- Too many units
- The road, driveway, and gate
- Lot lines

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Phoenix said he had a photo of the gate area, which he gave to the Board, and said the tax map showed all the lots in the area. He said everything to the west was less than 15,000 square feet. He said the Board had a balance test of the neighbors' concerns and the right of the owner to use his property. He said that even if the pond was removed, the homes were an average of over 16,000 square feet, and he wasn't aware that the buffer area could not be considered in the overall lot area of a home. He said the pond would not be developed and all the lot line concerns would be met. They would not circumvent the Ordinance and would utilize its variance requirements.

Francesca Marconi stated that the owner of the lot lived out of state, and that she would not change the way Ms. Marconi lived.

No one else rose to speak, and Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

Mr. Mulligan said he thought the project was aggressive and, although the applicant had the right to use the private property and some relief would be necessary, given how large the lot was and its irregular shape, he was concerned about the two units tucked into the rear corner. He said the applicant was taking advantage of a 10-ft sideyard setback, but for the two units in the back, those ten feet were really the rear of those properties, so they were inordinately close to the neighboring properties.

Mr. Parrott stated that it was the SRB zone, which meant there wasn't enough frontage for two houses because the frontage on the road was 139 feet and 100 feet per lot was needed to comply with the Ordinance. He said the lot was big, but that didn't mean it was useful or easy to develop. He said it had to be looked at in terms of what was there and the way it was zoned, and if there were two houses in the front area, it would still be in violation of the frontage requirement, but it could work. He said he couldn't see how five houses could work in that area without jerry-rigging things to a degree. He said the wetland setbacks were there for a reason and needed to be respected. The Board was not taking anything away from someone by not allowing the expansion of a building – it was a vacant lot. The opponents wanted to see it developed in full accordance with the zoning, or with small concessions, and it was difficult to see a hardship on a property that was big enough to build on and meet all the requirements.

Mr. Moretti said he agreed with Mr. Mulligan and Mr. Parrott and had a hard time getting past the buffer zone and the pond. He also said he could not accept the two houses in the rear. He

thought the applicant was trying to do a development that was not common to the area. He said he could understand two or three houses, but five units were a reach for him.

Chairman Rheume said he also was bothered by the application on many levels. The concept of the shared driveway with five houses was, he felt, essentially building a street, and maintaining it would be a lot of work. He said the trash wouldn't be picked up in front of the house and the City wouldn't do any plowing. He said the applicant mathematically made a good case by taking the number and dividing it by 5, but the resulting density, with the odd shape, wetland buffers, was much greater than anywhere else in the neighborhood. He said the homes were clustered together more densely than was expected in the SRB zone, and the two houses in the back were beyond acceptance. He also had concerns with the three houses in the front. He said the characteristics of the neighborhood was single-family homes facing the road, and he felt the project did not fit in with that character because the three homes in the front in such an odd configuration would look like a mini-subdevelopment and would be very different from anything else in the neighborhood. He thought it could work as more than one unit, but it would have to look like it had been there all along and belonged. He said he objected to everything that was presented.

Mr. Mulligan said the lot line on the east side was almost 300 feet, so a driveway masquerading as a road would almost support three lots but would have to be squeezed in and receive variances. He said there wasn't enough property to support three dwelling units. Due to certain characteristics of the property, he could understand why it may be preferable to do something creative rather than build a 300-ft road to the pond and subdivide it. He said he couldn't accept the two units in the back.

Mr. Moretti said he had concerns about the trash in the street with a shared driveway and no sidewalk, and children walking up and down the street. He also thought the two back lots were quite a ways from the two streets, without a sidewalk.

*Mr. Mulligan moved to **deny** the application as presented and advertised, and Mr. Moretti seconded.*

Mr. Mulligan stated that the Board had a lot of discussion and in order to sustain a variance, all five criteria needed to be met. He said the essential characteristics of the neighborhood would be altered if the project was approved, and he thought it was a very significant change in density compared to what was in the immediate neighborhood. He said granting the variance would diminish the value of surrounding properties, particularly the abutting properties affected by the two proposed units in the rear corner, which would only have to recognize a 10-ft sideyard setback. For those reasons, he said he didn't think the application met either of those criteria, so the variance could not be granted.

Mr. Moretti said he concurred with Mr. Mulligan and would add his prior comments. Chairman Rheume said he would support the motion. He said it was a unique property and had some legitimate basis for asking for more than a single-family home, but he felt that the five homes were too much and had too high of a density. He said that even the three homes apart from the two in the corner needed to be rethought in terms of the essential characteristics of the neighborhood. He said it was a well-established neighborhood with a lot of great rhythm to it, and the Board had to be respectful of that.

*The motion to deny **passed** with all in favor, 7-0.*

6) Case #7-6

Petitioner: 303 Islington Street LLC

Property: 303 Islington Street

Assessor Plan 144, Lot 11

Zoning District: General Residence C, (pending CD4-L2)

Description: Maintain existing parking in rezoned district.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following.

1. A Variance from Section 10.5A44.31 to allow an off-street parking area to be located less than 20' behind the façade of a principal building.
2. A Variance from Sections 10.5A43.50 and 10.5A44.32 to allow parking lots and loading areas without being screened from the street by a building or street screen.

Mr. Formella resumed his seat. Chairman Rheume recused himself from the vote, and Acting Vice-Chair Mulligan assumed his seat as Acting Chairman.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech representing the applicant was present to speak to the petition and stated that it was a unique situation. He said the applicant received variances from April 2014 to convert three office units into residential units and to allow eight parking spaces that didn't meet dimensional requirements. He said, due to the new Zoning Ordinance proposed, the applicant had to get variances because their off-street parking wasn't 20 feet away from the building. Attorney Pelech showed the site plan to the Board and discussed what would happen if the Character-Based Zoning was applied to the 150-year-old building. He also noted that the screen would eliminate one space, and moving the parking 20 feet from the building would eliminate five spaces. He reviewed the criteria and said they were met.

There were no questions from the Board.

SPEAKING IN OPPOSITION TO THE PETITION

Norm Gray of 49 Rockingham Street stated that he was not completely opposed, but that the people most impacted were the Parks, who lived next to the property but were unaware of the proposal because they were on vacation. Acting Chair Mulligan asked when they would be back, and Mr. Gray said soon. Mr. Mulligan said that any decision made that night was not final and that an appeal could be made. Mr. Gray said the neighborhood was congested and surrounded by several rental units, and he felt that everyone would fight for a parking space. He reiterated that he wanted the Parks to have a chance to address the petition. Acting Chair Mulligan said the Parks could request a rehearing if they were back within 30 days and objected to the relief.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one rose to speak, and Acting Chair Mulligan closed the public hearing.

DECISION OF THE BOARD

Mr. Parrott noted a technical point that the Ordinance didn't seem to deal with the 20-ft setback. He said it might be cited in the wrong section. Upon reading it further, he said it was just the

wording and that he was fine with it, but he had expected to find the 20 feet in the Ordinance. Attorney Pelech said he followed the Planning Director's memo. It was further discussed.

Acting-Chair Mulligan asked whether the proposed change was to get the property into the zone. Attorney Pelech said it was rezoned to another district that had those parking requirements. Acting Chair Mulligan said he didn't know if the applicant even needed relief because it had nothing to do with the façade, but realized that the applicant acted based on what the Planning Director told him.

Mr. McDonell said the references were available on line and asked whether it meant there was supposed to be revision related to the text. Mr. Parrott said the Planning Department said it was amended through August 17, 2015 and that he didn't have a problem with the request.

*Mr. Parrott moved to **grant** the variances for the application as presented only. Mr. Moretti seconded.*

Mr. Parrott said it was just a technicality of timing and processing of the building project versus the ongoing changes to the Ordinance. He stated that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance because that was what the applicant was trying to do, so it was within the spirit of the written word and hard to see any public interest. Nothing physically would change. He said it would do substantial justice because the applicant had followed the proper procedures but got caught up in an ongoing change of the Ordinance, and substantial justice would tip to the applicant. Granting the variances would not diminish the value of surrounding properties because the technical change would not have any effect on surrounding properties. As for the hardship test, Mr. Parrott said it was a coincidence of timing between the changes made to the Ordinance and the property being renovated for a different use. He said it passed the variance test.

Mr. Moretti said he concurred with Mr. Parrott and noted that the Board approved it a year before, and he didn't see why they shouldn't approve it again.

Ms. Ferrini said the proposed Ordinance dated May 2, 2016 showed the changes from the existing Ordinance, which was adopted on August 17, 2015. She read the section, which stated that all off-street parking space shall be located at least 20 feet behind any façade of a principal building except when in an underground parking level.

*Mr. Parrott **amended** his motion to grant the variances as presented and advertised. Mr. Moretti agreed.*

*The motion **passed** with all in favor, 7-0.*

- 7) Case #7-7
 Petitioners: 1987 Tamposi Limited Partnership, owner, Key Collision Center of Portsmouth, LLC, applicant.
 Property: 9 Post Road
 Assessor Plan 284, Lot 11
 Zoning District: Industrial
 Description: Auto body repair facility with existing parking areas.
 Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Special Exception under Section 10.440, Use #11.20 to allow a motor vehicle repair use in a district where the use is allowed by Special Exception.
2. A Special Exception under Section 10.440, Use #20.61 to allow outdoor storage of vehicles in a district where the use is allowed by Special Exception.
3. A Variance from Section 10.843.21 to allow outdoor storage or display areas for vehicles to be set back less than 50' from the street right-of-way and from all lot lines.
4. A Variance from Section 10.1114.21 to allow parking spaces and accessways that do not meet the dimensional requirements for off-street parking.
5. A Variance from Section 1114.32(a) to allow vehicles to enter and leave parking spaces by passing over any other parking space or requiring the moving of any other vehicle.
6. A Variance from Section 10.1114.41 to allow no provision of a 5' wide pedestrian path throughout the site connecting adjacent streets, accessways, sidewalks and parking areas to the entrances to all structures.
7. A Variance from Section 10.1124.10 to allow loading areas to be located between the front property line and any building or structure or in a required side or rear yard.

Chairman Rheume resumed his seat.

SPEAKING IN FAVOR OF THE PETITION

Attorney Kevin Baum on behalf of the applicant stated that the applicant wanted to change the use of the existing building from light manufacturing to auto body repair and that there would be limited physical changes. He said the Special Exception requests related to the change of use, but the variance requests were due to the attempt to maintain the existing parking. He said the property was part of a larger industrial development and there would be some change to the parking layout. A fence would be installed in the back and some paving in the front would be removed for landscaping. Water runoff would be dealt with by installing two bio-retention areas. He said only auto body work would take place, with no engine repair, and that outdoor storage would be fenced in with security fencing. Attorney Baum reviewed the criteria and said they were met.

Chairman Rheume asked whether the 42 parking spots in the back of the building would be needed. Attorney Baum said they would not be needed but they were shown to comply with the requirements and also to show that they could meet the space requirements. He said the amount would vary based on how many cars the auto body had lined up. Chairman Rheume said the rest of the parking layout seemed awkward because the numbers didn't work out, and he asked about employee parking versus customer parking. Attorney Baum said a customer entrance on the other side would be more for employee use, and that the employees could also access the rear parking area. The intent was to maintain what existed and utilize it, and the applicant didn't want to separate it because of the two driveway accesses. Chairman Rheume said it was a big space for an auto body repair facility. Attorney Baum said the intent was to move the applicant's other two operations there in the future.

Mr. McDonell asked whether the intent for the retention areas was to capture and treat some of the runoff from the facility. Attorney Baum said if the autos had been in a collision and posed a risk of leaking, they would be drained. He noted that the applicant had gone before the Technical Advisory Committee, whose main concern had been runoff from salt.

**SPEAKING IN OPPOSITION TO THE PETITION OR
SPEAKING TO, FOR, OR AGAINST THE PETITION**

No one rose to speak, and Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

*Mr. Mulligan moved to **grant** the Special Exceptions and Variances for the application as presented and advertised, and Mr. McDonell seconded.*

Mr. Mulligan addressed the Special Exceptions first. He stated that the zoning allowed vehicle repairs to be done on the site and also permitted outdoor storage. Granting the Special Exception would pose no hazard to the public or adjacent properties on account of potential fire explosion or release of toxic materials, and the applicant had addressed the fact that they went through TAC, who was satisfied. He noted that vehicles with some risk would be drained before going on site. There would be no detriment to property values in the vicinity because of the preexisting condition, and odor, smoke, gas and other pollutants didn't really apply. He said the outdoor storage of vehicles didn't count as outdoor storage of equipment, and noted that storage of vehicles was mentioned in the criteria, but he didn't see how it would affect any detriment to property values or change the essential character of the neighborhood. He said granting the Special Exception would not affect traffic safety or increase the level of congestion because the site was just being adapted to a new use. There would be no excessive demand on municipalities because they wouldn't be affected at all. There would be no significant increase of storm water runoff with the proposed addition of two bio-retention areas. For all those reasons, he said the Special Exceptions should be approved.

Mr. Mulligan then addressed the variances, which he said was more complicated because there were so many, but most of them related to repurposing the existing parking and other built structures on the property to fit the new use. He said granting the variances would not be contrary to the public interest or to the spirit of the Ordinance because there would be no effective change to the building on site. Substantial justice would be done because the loss to the applicant would outweigh any benefit to the public if the Board required the property to be used in conformance with the parking ordinances and some of the other ordinances. Granting the variances would not diminish the value of surrounding properties because there would be no change to the essential layout of the property, and the public wouldn't notice anything different. He said there would be some mitigating effect by the bio-retentions, which may increase property values. As for the hardship criteria, the property had special conditions consisting of a large building that swallowed up most of the lot, and the existing parking layout would be re-adapted to the new use but would basically stay in its current character. He said the property already existed in its current condition and the new use would be a reasonable one.

Mr. McDonell said he concurred with Mr. Mulligan and had nothing to add.

Chairman Rheume said he would support the motion, although he had some concerns because reusing the existing parking made for an awkward parking layout, but he felt it was something that the applicant could work out.

The motion passed with all in favor, 7-0.

8) Case #7-8

Petitioners: Airgead Realty Trust, Paul & Christopher D. McInnis, Trustees, owners, Sligo Realty Trust, applicant

Property: 678 (678-686) Maplewood Avenue

Assessor Plan 220, Lot 89

Zoning District: Single Residence B

Description: Construct warehouse with associated retail and office space on two lots proposed to be merged.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance under Section 10.440 to allow warehouse, office and retail uses in a district where these uses are not allowed.

SPEAKING IN FAVOR OF THE PETITION

Mr. Mulligan recused himself from the petition.

Attorney Derek Durbin stated that he was there on behalf of Attorney John Bosen, who represented the owners and applicants. He noted that a few things in the Staff Memo were inaccurate, one of which was the amount of frontage permitted in the SRB District, which was listed as 150 but was really 100. The other inaccuracy was relative to the setbacks, which was indicated as 20 feet but the Ordinance required only ten feet.

Attorney Durbin introduced the architect and the engineer Colin Dinsmore, and he also passed out a letter from F. W. Webb Company to the Board. He reviewed the conceptual plan, noting the square footage for the showroom and warehouse. He said the two lots would be merged into one, and the two-family dwelling on the smaller lot would be torn down. He said the lot area would be five times greater when developed than what was required. He referenced the letter and said the F. W. Webb Company wanted to use the property as proposed.

Attorney Durbin said the closest abutting structure was Rexel, the electric supply company, and that the change in use was intended to be similar to them. He said the property was located next to the I-95 Corridor and the Route One Bypass, and there were some residential uses across the street. He emphasized that no dimensional relief was being sought and that the change in use was proposed after receiving comments by the Board and abutters at previous meetings involving a higher density for the property.

Chairman Rheume asked whether retail would be involved. Attorney Durbin agreed that the plan was to accommodate some interest in retail. Chairman Rheume said it would be a permitted use in the District, and he asked Attorney Durbin to refresh the Board about what happened with the Planning Board. Attorney Durbin said he didn't know the history, and it was further discussed. He then reviewed the criteria and said they were met.

Mr. Moretti asked whether the building was in the Maplewood Avenue no-truck zone. Mr. Dinsmore said they had no information pertaining to that issue.

Chairman Rheume said the applicant had to go before the Planning Board for the Site Plan Review and asked Attorney Durbin whether he anticipated having more detail on the exact plan.

Attorney Durbin said he highly doubted that they would proceed to Site Plan Review without that level of detail.

Ms. Ferrini stated that there was a prohibition on Article 7 that said no tractor trailer may travel on Maplewood Avenue from Central Avenue to Woodbury Avenue. Chairman Rheame said Central Avenue was the next street down, so the Planning and Traffic Boards would have to get some type of agreement with the neighboring property to allow truck travel there.

SPEAKING IN OPPOSITION TO THE PETITION

Ed Miller of 5 Central Avenue stated that several people opposing the project left due to the late hour, and he had a list of their names, which he gave to Chairman Rheame. Mr. Miller reviewed the history of the applicant's pursuit of the business zone change, saying that the applicant only wanted substantial financial gain. He said the site was a desirable single-family home site and that the applicant never put forth a plan to develop the property as a single-family project, so it was disingenuous of the applicant to say that the site had problems that restricted them to do something else within the Ordinance. He went through the criteria in detail.

Nicole David of 139 Fairview Avenue said she echoed what Mr. Miller said and noted that it was a residential neighborhood with a school, so she was concerned about safety and an increase in traffic. She also noted that the property had previously been denied a business use.

Tara Shaw of 934 Maplewood Avenue and 134 Fairview Avenue said she and her husband strongly objected to the project and to the tactics that the owner and applicant had used. She said she endorsed what the previous speakers said and asked the Board to deny the application.

Rick Becksted of 1395 Islington Street said he echoed the previous comments, and he reminded the Board that the district was SRB. He said the frontage of the property was 134 square feet, and the similar application the Board previously denied was 139.9 square feet of frontage.

Paul Mannle of 1490 Islington Street said the applicant was asking for variances to change the use and the zoning to business, which had already been denied twice by the Board. He said there was no hardship because the property abutted one business and two residences, plus five or six residences across the street.

Christine (last name indecipherable) of 898 Maplewood Avenue said she supported her neighbors in opposition and said it was the third time she had spoken against the same piece of property.

Chairman Rheame noted for the record that the Board had a petition of 27 submitted signatures in opposition to the project.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Durbin noted that there was a tremendous amount of fear or speculation of what the property could become if there was a change in use. He said the property was very unique because it was between an overpass cutting it off from residential uses and Route 95, there were utility easements and lines behind the property, and Rexel was next to it. He said lighting, buffering, and truck traffic would be addressed once they had a concrete plan. He stated that there were no other residential properties surrounding the property that abutted the types of uses or topography that the two lots had.

Ed Miller clarified that he spoke out in a previous application before the City Council, the Planning Board and the Board of Adjustment for the 30 units and spoke in a favorably context about Rexel because their commercial use predated his home purchase. He said the commercial uses were low intensity compared to 30 units. He emphasized that the applicant knew the challenges for developing the property when he bought it.

Rick Becksted Street said there was a desire for a single residence on the lot.

No one else rose to speak, and Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

The Board discussed it. Mr. Moretti said that one of his concerns was that the Board could approve the petition and F. W. Webb could back out of the project, so it would be a commercial zoning piece of property. Chairman Rheume said what the Board would potentially allow if they moved forward would not be rezoning but a warehouse use that someone else could use with the same purpose. He said the previous attempt the applicant made when he tried to rezone a business opened up all the other uses permitted, so a number of things could end up on that property. He said the Board would not be allowing that but would limit the use to a warehouse, retail, and office. Mr. Moretti said he was bothered by the perpetuity clause.

Mr. Parrott said it was significant that the property was bought on speculation because the applicant had full knowledge of it being in the SRB zone and that there had never been a proposal to develop it as SRB because it had been zoned SRB for a long time. He said the two efforts to rezone it had apparently failed. He emphasized that the City Council, the Planning Department, and the Planning Board said it was an SRB zone, and he felt it was incumbent on the owner to try to develop it as it was zoned. He said placing a warehouse in an SRB zone was a huge stretch of the Zoning Ordinance and was, in effect, rezoning, and whether the BOA did it or the Planning Board did it, the net result was the same. Mr. Formella said he was sympathetic to the applicant but would not be comfortable supporting the application because it was hard to justify making a case for hardship with a pure commercial use.

Chairman Rheume said he was torn because the application was not quite as straightforward as what the abutters would like the Board to believe. He said it was a complex property with hills, power lines, and unique things, all of which the owner knew when purchasing both properties. Being adjacent to Route 95 was a more challenging location, and he pointed out the empty lots on Edmond Avenue and across the street from the project. He noted the news articles about people complaining about issues like highway noise and topography, and he said he wasn't convinced it was such a great site for single-family homes. He thought a good point was made by the abutters, that with the business zone right next to it, the lot was defined by that business zone and Route 95, but at the same time, he didn't think the Board wanted to expand business zones in that area. He clarified that the Board's consideration was not to rezone it but simply allow the use on the property in its current zoning that was consistent with the business use. He noted that it was vetted by the Planning Board, who felt strongly that the existing zoning made the most sense. With those considerations, he didn't think he could support the application, while noting that it was a good attempt made by the applicant in trying to find something that worked on the property.

*Mr. Parrott moved to **deny** the application as presented and advertised, and Mr. Lee seconded.*

Mr. Parrott stated that the spirit of the Ordinance had been expressed by the Planning Board and the City Council when they denied changing the zoning, so the spirit had been reinforced once or twice, and he felt that granting the variance would not be compatible with the spirit of that Ordinance. He said the public interest was being expressed by the neighbors, who had shown up in strong opposition for several different hearings and expressed their interest in retaining the zoning as it was. He noted that none of the area's businesses had spoken in favor of the project. Mr. Parrott said substantial justice was the tipping test, and he felt it should go to the nearby property owners who had lived there and invested in their homes and who felt the project would be an intrusion. He had heard no testimony regarding the diminishment of the value of surrounding properties, but he felt that it would not help and might diminish the values of some of the surrounding residential properties. He had heard no claims that it would not have a negative effect. As far as the hardship, he said the conditions were what they were, and the City had not changed the rule on the purchases. He thought it could be developed with one or more single-family homes. He concluded that the application did not meet any of the criteria.

Mr. Lee said he concurred with Mr. Parrott and had nothing to add.

Chairman Rheume said he would support the motion and noted that, if the Board approved the application, they would not be rezoning the property but would be allowing the use in perpetuity on the property, which was not consistent with the zoning.

*The motion to deny the application **passed** by a vote of 6-1, with Mr. McDonnell voting in opposition.*

V. OTHER BUSINESS

There was no other business.

VI. ADJOURNMENT

*It was moved, seconded, and **passed** by unanimous vote to adjourn the meeting at 12:30 p.m.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary