

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

7:00 P.M.

MARCH 21, 2017

MEMBERS PRESENT: Chairman David Rheame, Vice-Chairman Charles LeMay, James Lee, Patrick Moretti, Chris Mulligan, Arthur Parrott, Alternate Peter McDonell

MEMBERS EXCUSED: Jeremiah Johnson, Alternate John Formella

ALSO PRESENT: Jane Ferrini, Planning Department

I. APPROVAL OF MINUTES

A) February 21, 2017

*It was moved, seconded, and **passed** unanimously (7-0) to approve the amendments, submitted for clarification, to the February 21, 2017 minutes.*

*It was moved, seconded, and **passed** unanimously (7-0) to approve the February 21, 2017 minutes as amended .*

II. PUBLIC HEARINGS – NEW BUSINESS

1) Case #3-1

Petitioners: Goodman Family Real Estate Trust, Nancy L. Goodman, owners and Aroma Joe's Coffee LLC, applicant

Property: 1850 Woodbury Avenue

Assessor Plan: Map 239, Lot 9

Zoning District: General Business

Description: Drive-through take-out restaurant and related signage

Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including Variances from the following Sections:
1) 10.440 #19.40 to allow a drive-through as a principal use where the use is only allowed as an accessory use;

- 2) 10.1112.30 to allow 21 off-street parking spaces to be provided where 22 spaces are required;
- 3) 10.1113.31 and 10.835.32 to allow accessways, traffic aisles, and drive through bypass lanes to be set back 30'± from a residential district where 50' to 100' are the minimums required;
- 4) 10.1113.41 to allow off-street parking areas, accessways & traffic aisles to be set back 30'± from the front lot line where 40' is the minimum required;
- 5) 10.591 and 10.835.31 for an outdoor service facility to be located 75'± from a residential district where 100' is the minimum required;
- 6) 10.1243 to allow three free-standing signs on a lot where only one free-standing sign per lot is permitted;
- 7) 10.1271.70 to allow signage to be located on a wall that does not face the street or include a public entrance;
- 8) 10.1251.10 to allow 61± s.f. non-freestanding signs where 30 s.f. is the maximum allowed.

Mr. Mulligan recused himself from the petition, and Mr. McDonnell assumed his voting seat.

SPEAKING IN FAVOR OF THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant to speak to the petition. He also introduced Eric Weinrieb of Altus Engineering.

Attorney Phoenix noted that the Staff Memo stated that 22 parking spaces were required, but he said that he told the Planning Department that it should have been 30 required spaces and 21 requested spaces.

Attorney Phoenix reviewed the location of Aroma Joe's. He noted that there was an existing free-standing sign close to the mattress store but that the applicant was requesting a second sign to make Aroma Joe's easier to find. Attorney Phoenix reviewed the hours of operation, the parking, the setbacks, and the estimated traffic. He then reviewed the criteria and said they would be met. He also noted that the Executive Director of the Portsmouth Housing Authority, Craig Welch, supported the project.

Mr. Moretti asked whether the 'open' signs in the windows were counted as signage. Vice-Chair LeMay said an applicant could not avoid the sign ordinance by putting a sign in the window. Attorney Phoenix stated that the Planning Department had not told him that a variance was needed for those signs.

Mr. Moretti asked whether someone turning into the wrong entrance would have an option to get back to the correct entrance. Attorney Phoenix said it could happen once but that the driver would either turn around or park in the nearby lot. Mr. Moretti asked whether the parking lot lighting would be screened so that it didn't disturb the nearby residents. Attorney Phoenix said they would probably screen the lights.

Mr. Lee noted that there would be a maximum of eight cars during peak hours. He asked whether it could be assumed that 12 vehicles would queue at one time, adding that some of them

would have to wait on Woodbury Avenue, thereby adding more vehicles to the existing mix on Woodbury. Mr. Weinrieb said that 12 or more vehicles would fit on the site, allowing room to bypass the queue. Attorney Phoenix noted that Dunkin Donuts and Starbucks had the same scenarios and that there were no queuing problems at their locations.

Chairman Rheume stated that 30 parking spots were required for the mattress store and Aroma Joe's, and he asked how many spots were required just for Aroma Joe's. Attorney Phoenix said eight spots were required, based on the square footage. Chairman Rheume said he could see issues on Saturdays, with peak times shifting to later in the mornings causing a higher level of traffic, more queuing, and more parking in the mattress store lot. Attorney Phoenix said he seldom saw cars parked at the mattress store and that he didn't think it would be a concern.

In response to further questions from Chairman Rheume, Attorney Phoenix said no microphones would be used and that the menu boards would probably be illuminated. Mr. Weinrieb said that some signs would be internally lit and some would be down lit, but he wasn't sure whether the freestanding sign at the rear of the property would be internally lit. Chairman Rheume said his concern was with the third free-standing sign pointing toward the abutting neighbors. Attorney Phoenix said they could place screening in that area.

Mr. Parrott said he was concerned that a vehicle exiting the lot would directly face traffic coming onto the lot via the southern entrance. He asked what the minimum distance between two lines of traffic directly opposing one another on the same side of the street, or driveway in that case, was. Mr. Weinrieb said there would be more signage and that they would consult the Department of Public Works and Safety. Mr. Parrott asked whether there was a similar situation elsewhere that could be used as a model. Mr. Weinrieb said they had the best scenario because a third entrance would add more pavement. Mr. Parrott said that a third driveway to service the mattress store made more sense than the head-to-head conflict on the edge of the property.

Chairman Rheume said he preferred the previous proposal on Lafayette Road near Bowl-O-Rama and felt that the new site was 'squished in' and tight. He asked Attorney Phoenix to compare the new application with the Lafayette Road one. Attorney Phoenix did so, emphasizing that the Lafayette Road location was far off the road but created problems due to conflicting property owners claiming rights and the setback. For the Woodbury Avenue site, he said they met the lot coverage and open space requirements significantly. He said it seemed tight due to the 100-ft setback from the residential zone and the setback for parking. He said the applicant needed a certain area for the drive-through aisles.

SPEAKING IN OPPOSITION TO THE PETITION AND/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. McDonnell said he had some concerns but wasn't opposed to the petition. He stated that the use along the drive-through was a principal use and not unreasonable because of the nature of the business. He felt that it was in keeping with the neighborhood. He said the parking and drive-

through configuration couldn't be helped and that the residential setback issue could be solved by having it fenced off to protect against light encroachment. He said the signage requirements were appropriate for the lot and that it made sense to have separate signs at the north and south ends to make it clear that the northern entrance was the primary one for Aroma Joe's.

Mr. Moretti said he agreed and noted that the property was in the commercial zone and that the Portsmouth Housing Authority was not opposed. He strongly recommended the stipulation that screening be used to protect the residents from the lighting.

Mr. Parrott said the usage patterns of the two businesses were compatible enough to be on the same lot as well as compatible with the area. He said he wished the traffic pattern could be developed better, but given that the traffic in and out of the mattress store was very low, he felt that the opportunity for opposing traffic getting into trouble with one another was also pretty low. He also agreed with the importance of buffering the adjacent apartment district.

Chairman Rheume said a lot of relief was asked for and that he was concerned with the setbacks from the neighborhood because the apartments would probably hear a lot of noise in the early morning and potentially late at night. He said signage was another issue because it seemed like everything had a sign on it. He felt that the Planning Department might want to double-check the three windows with 'open' signs in them and that the situation could possibly go back to the Board if the Planning Department said something was missed. He reiterated that it felt very 'squished' on the lot due to all the signage on a very small space. He said the Lafayette site had no visual impact concerns but that the structure on Woodbury Avenue was much closer to the road and could create distractions for drivers. He also noted that the mattress store could be turned into a different store in the future, with a more intensive use. He said he wasn't comfortable approving so many variances.

*Mr. Moretti moved to **grant** the variances for the application as presented and advertised, with the following stipulation:*

- *that some type of barrier or fence block the light of any vehicle entering the property from shining onto the housing behind it, as determined by the Planning Department.*

Mr. Lee seconded the motion.

Mr. Moretti stated that granting the variances would not be contrary to the public interest because it was a commercial property in a commercial zone that went back to the 1960s, so he didn't believe it would be a giant change. He said it would observe the spirit of the Ordinance because, even though the applicant was asking for a lot, the building was very small. He said there was a lot of signage, but due to the nature of the business, there would be no public interest in the building and the signage was necessary to expedite the vehicles so that there wasn't a traffic problem. He said that granting the variances would do substantial justice because the commercial property was underutilized and the very small commercial business would gain from using the property. He said the business could generate a small amount of traffic but not much. He said surrounding property values would not be diminished because they were all commercial and the one behind it was housing; he thought the surrounding property values could be slightly improved. Mr. Moretti said the unnecessary hardship was the property's shape, location and size. He said the business did not have internal clientele and that the hardship was the nature of

the operation and the location of the property and how traffic had to be allowed in and out of the property. He said those hardships showed themselves very well.

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

The motion passed, with 5 in favor and Chairman Rheaume voting against the petition.

2) Case 3-2

Petitioners: The Rockingham House Condominium Association, owner, Sean Tracey Associates, applicant
Property: 401 State Street
Assessor Plan: Map 116, Lot 3
Zoning District: Character District 4 and the Downtown Overlay District
Description: Install a free-standing sign.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including:
1) A Variance from section 10.1243 to allow three free-standing signs on a lot where only one free-standing sign per lot is permitted.

Mr. Mulligan recused himself from the petition, and Mr. McDonnell assumed his voting seat.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech was present to speak to the petition on behalf of the applicant. He distributed the first two pages of the sign ordinance to the Board. He said there were three existing free-standing signs, but that one was a historic marker erected by the City, which he believed the Planning Department considered to be the second sign. He said it was erected with no variance request because historical monuments didn't require permits. He briefly reviewed the history of Sean Tracey Associates and said they needed a small free-standing sign to indicate where their office was. He reviewed the criteria and said they would be met.

Mr. Lee noted that he had not seen anything from the Rockingham Condominium Association. Attorney Pelech said they signed the application and that there was a settlement agreement between the parties.

Chairman Rheaume asked whether the sign would be externally illuminated, and Attorney Pelech said it would not.

SPEAKING IN OPPOSITION TO THE PETITION

Charles Young of 401 State Street said he was opposed to the petition because there were only two main entrances to the building, one for the restaurant and one for the 35 condominiums and Sean Tracey Associates. He said that the business did not have significant walk-in traffic and that the lobby foyer already had a sign directing clients to the business. He said a street sign would change the character of the building and set a precedent.

Wayne Lehman, President of the Rockingham House Condominium Association, clarified that the Association agreed to sign the application so that the applicant could request the variance but that it didn't mean they supported it.

Robin Lehman of 401 State Street said she agreed with Mr. Young that the business could be found without a new sign and that a precedent could be set.

Elliot Alexander of 401 State Street said the Rockingham was one of Frank Jones' greatest facilities and that the left-side entrance was the main entry for the condo owners and residents. He asked the Board to stand by their current zoning ordinance.

Rebecca Lucy stated that she the owner of a condo unit, which she used as an office for the past 30 years to do global marketing research. She said she did very well without a sign.

Karen Andersen of 401 State Street said she was concerned that the sign would be out of character and would detract from the residences.

Ronald Pilotte said he was a condo owner and believed that the sign would change the historic character of the building and diminish its property values.

Eileen Kane of 401 State Street said there were already signs for Sean Tracey Associates in the building and several websites available for directions.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Chairman Rheume said that the Planning Department had received an email from the owner of the Library restaurant stating that the condominium documents said that no signage was allowed in front of the building or on the building except for the restaurant, which was one of the original condominiums. Chairman Rheume read the email into the record.

Attorney Pelech stated that he had said the applicant's clients could not find the entrance to the business, not the building itself, because there was no sign directing people to the left-hand units. He said the applicant had to follow a court action to get the condo association to sign the application and that the condominium documents clearly allowed signage. He read the settlement agreement into the record. He said the law was clear that if the condominium declaration stated that the applicant could have a sign and the Board of Adjustment agreed that the requirements for a sign were met, that was the law. He gave a copy of the settlement agreement to the Board.

Elliot Alexander stated that his friends and family had no difficulty finding his unit.

Charles Young said he understood precedent and that, even though the mediation agreement said the sign would be removed, he could come back in ten years as a new owner and ask for a sign, reasoning that someone else had had a sign for ten years.

Karen Andersen said that the condominium documents stated that signs were to be used for directional use only.

DECISION OF THE BOARD

Chairman Rheume stated that the proposed sign was really a second free-standing sign and not a third one.

Vice-Chair LeMay said it boiled down to the reasonableness of the application. He said that there were some intangible values of living in a private hotel and having a residential entrance and that the building was primarily a residential entity, and he felt that the sign didn't look aesthetically pleasing or well thought out.

Mr. Lee asked Attorney Pelech whether the business had a lot of drop-in clients. Attorney Pelech said there were some individuals who went into the office off the street and that Mr. Tracey had problems with people not finding his unit due to the lack of exterior signage. Mr. Lee concluded that there was not a lot of drop-in traffic and felt that clients could be given instructions on how to find the business. Mr. Parrott said it was significant that the applicant made a point of saying how successful his business had been for a long time, which indicated that people had been able to find it. Mr. McDonell said he wasn't sure why the applicant would have submitted the petition if he didn't see a need for it.

Mr. Lee said the application was signed by the president of the condominium association, yet a significant number of residents showed up in opposition. He also noted that the Board hadn't had time to read the court order, so he felt there was some conflict. Mr. Parrott agreed, asking why the document was withheld from the Board if it was so important.

Chairman Rheume said it seemed to be new information provided that evening. He said it probably wasn't the only location in the City where a residential entrance was shared with some businesses. He said sometimes the signage would be in a second-floor window or on a small placard at the entryway, but that a free-standing sign was somewhat different. He said the building was unique and set back from the road and that he wasn't convinced that a free-standing sign was necessary for the applicant's business. He noted that the applicant persuaded the condominium association to sign on in order to move the application forward but felt there were extenuating circumstances due to the unique building and its landmark status. He said he agreed with the residents that it was easy to direct clients where to go. He said he felt that there wasn't sufficient hardship to warrant granting the variance.

*Mr. Lee moved to **deny** the variance for the application as presented and advertised, and Vice-Chair LeMay seconded.*

Mr. Lee stated that the variance was contrary to the public interest, given the historic significance of the building. He said he didn't think there was a lot of drop-in traffic and that there were more pre-arranged appointments, so he didn't feel that a sign was necessary and felt that it would diminish the building, especially since it was in the Historic District.

Vice-Chair LeMay said he agreed that the building's character would be diminished but hoped that the condominium owners could agree to a sign near the entrance so that the clients didn't

have to enter the building to see the sign. He said he also agreed that there was no hardship and that it was evidenced by the business having been there a while and being successful.

Chairman Rheame said he would support the motion to deny. He said the unique character of the property worked against the applicant and precluded some of the same signage granted to other structures. He said there were a lot of residential units and that the residents made a good case that the entrance was primarily a residential entryway. He said the sign would somewhat diminish the property as a whole and that the substantial justice balance said the public had a greater interest in not having the sign.

The motion to deny passed with all in favor, 6-0.

3) Case 3-3

Petitioner: Hope for Tomorrow Foundation
Property: 315 Banfield Road
Assessor Plan: Map 266, Lot 5
Zoning District: Industrial
Description: Construct a K-8 Elementary School.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1) A Variance from Section 10.1113.20 to allow off-street parking spaces to be located between a principal building and a street.

Mr. Mulligan resumed his voting seat.

SPEAKING IN FAVOR OF THE PETITION

Attorney Peter Loughlin was present to speak to the petition on behalf of the applicant. He stated that the Planning Board granted site plan approval conditioned on the variance relief due to the tight schedule to get the school built. He said the applicant was seeking relief mainly for aesthetics but for safety reasons as well. He said that little if no parking would be visible from the street. He reviewed the criteria and said they would be met.

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

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

DECISION OF THE BOARD

*Mr. Mulligan moved to **grant** the variance for the application as presented and advertised, and Mr. McDonnell seconded.*

Mr. Mulligan stated that the lot was very large and that the applicant's design was to site the building in the most advantageous spot in order to get traffic in and out appropriately. He said the petition was reasonable and desirable. He stated that granting the variance would not be

contrary to the public interest or to the spirit of the Ordinance because the intention of the design was to promote large expanses of green space rather than force the building in the front of the property and place the parking behind it, which would compromise the green space. He said it would result in substantial justice because the loss to the applicant if the variance was denied would not be outweighed by any gain to the public. He said it was a better location for the building and for the parking and wouldn't be a sea of asphalt and that it was tastefully designed. Mr. Mulligan stated that granting the variance would not diminish the values of surrounding properties because what was proposed would improve the values. Literal enforcement would result in unnecessary hardship due to the special conditions of the property having a very large lot and some interesting topography that the applicant wanted to take advantage of, which he felt was appropriate. He said there was no fair and substantial relationship between the purpose of the parking ordinance, which was to avoid the sea of asphalt in front of commercial establishments, and its application to the property. He said it was a very tasteful design with lots of green space and felt that the use was a reasonable one net met all the criteria.

Mr. McDonnell said he concurred with Mr. Mulligan. He said it was a unique property with a campus feel, and having the parking in the front nearer to the road wouldn't detract from the view from the road or have any safety aspect.

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

4) Case 3-4a

Petitioners: Stewgood, LLC, Craig Steigerwalt and Anne Shiembob
 Property: 268 & 276 Dennett Street
 Assessor Plan: Map 143, Lots 13 and 13-1
 Zoning District: General Residence A
 Description: Lot line adjustment
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

Lot 13

1) A variance from Section 10.521 to allow continuous street frontage of 57.6'± where 100' is required;

Lot 13-1

2) Variances from Section 10.521 to allow: continuous street frontage of 42.4'± where 100' is required; a right side yard of 0'± where 10' is required; and 28.5%± building coverage where 25% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

The owner Bill Stewart of 268 Dennett Street was present to speak to the petition. He said he was also representing his neighbors Craig Steigerwalt and Anne Shiembob of 276 Dennett Street. He reviewed the criteria and said they were met.

In response to Chairman Rheaume's questions, Mr. Stewart said that the City involuntarily merged the two properties and that they were both owned by Stewgood LLC, who petitioned the City to have them unmerged later on.

Chairman Rheume asked whether the applicant would sell the other property once the lot lines were rectified. Mr. Stewart said he had already sold the property to Mr. Steigerwalt and Ms. Shiembob. He said there didn't appear to be any encroachment when the lots were unmerged, but it was discovered that a maintenance easement was necessary, which would remain in place. He said that 268 Dennett Street would be able to maintain that side of the house.

Mr. Mulligan asked Mr. Stewart to explain the public right-of-way for 276 Dennett Street. Mr. Stewart said it was a public way that was originally intended to extend to Dennett Street, but the road was never built out, so it was maintained as a paper road. He said it was used to access 276 Dennett Street and not for parking.

Chairman Rheume asked whether there was off-street parking for 268 Dennett Street. Mr. Stewart agreed, saying it was directly in front of the building, and that there was a garage beneath the building.

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

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

DECISION OF THE BOARD

*Vice-Chair LeMay moved to **grant** the variances for the application as presented and advertised, and Mr. Parrott seconded.*

Vice-Chair LeMay said it was a slam dunk and that nothing material was changing as far as the public was concerned. He said it came about because the can of worms was opened. The frontage was 57.6 feet where 100 feet was required, so the frontage on the two lots was being divided up slightly differently to facilitate the lot line, and he thought it was fine.

Vice-Chair LeMay said that granting variances would not be contrary to the public interest and would observe the spirit of the Ordinance because it was in the public interest not to have a house straddle the lot line. He said the nature of the neighborhood would not change at all. He said substantial justice would be done because the variance would allow the owners to maintain their homes. Granting the variances would not diminish the value of surrounding properties because there would be no change due to it. He said the hardship was that in 1970, there were only rubber rulers and people couldn't measure the lots or square it up and put the house where they drew the lines.

Mr. Parrott said he concurred with Vice-Chair LeMay and said that it seemed that all the right steps had been taken and that it was already reflected in the deed. He said the zero setback bothered him a bit, but since there was wide open space and a maintenance easement, he felt that the ability to do maintenance on that side of the house would meet that concern.

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

5) Case 3-5

Petitioner: Swirly Girl II
Property: 244 South Street
Assessor Plan: Map 111, Lot 3
Zoning District: Single Residence B
Description: Convert a three dwelling unit building to two dwelling units and add a rear addition.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1) Variances from Section 10.521 to allow: an 8.5'± right side yard where 10' is required; building coverage of 23%± where 20% is the maximum allowed; a lot area per dwelling unit of 3,802 s.f. where 15,000 s.f. is required;
2) A Variance from Section 10.1112.30 to allow two off-street parking spaces to be provided where four off-street parking spaces are required.

SPEAKING IN FAVOR OF THE PETITION

The project architect Anne Whitney was present to speak to the petition on behalf of the applicant. She noted that most of the lots were much smaller than the property, and one side of the street had a number of 2-family dwellings. She said the applicant wanted to put an addition to the rear of the structure and reduce the three units to two, making it a single-family residence with an addition housing a garage and a two-story apartment above it. She reviewed the criteria and said they were met.

Mr. Moretti asked about the 100-ft wetland buffer. Ms. Whitney said they would have to get the Planning Board permit because they were overlapping the wetland setback. She said they would also go before the Historic District Commission.

Chairman Rheume noted asked whether the narrow driveway was solely on the property or whether it went onto the adjacent property. Ms. Whitney said that, historically, there was a shared paved area between the two buildings, with no recognized easement.

In response to further questions from Chairman Rheume, she said that the design was driven by the amount of room needed for maneuvering, which drove where the garage entry point was, which in turn drove the entryway for Unit B. Ms. Whitney said she considered making it even with the existing building in order not to need the setback, but it would make it just under a 5-ft entry into the building. She said she felt that the addition of the 18 inches wasn't detrimental to the adjacent properties. She said the garage was for Unit A, and the Unit B entry wouldn't use the driveway and the resident would park on the street. Chairman Rheume asked whether Ms. Whitney had preliminary discussion with the HDC, and she said she hadn't but didn't foresee any major objections from them.

Chairman Rheume asked whether Ms. Whitney knew the total volume of the addition relative to the current volume of the 1750s structure. Ms. Whitney said the structure was 20' x 44' and that the addition was 22' x 30' and therefore smaller.

SPEAKING IN OPPOSITION TO THE PETITION AND/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. Mulligan moved to **grant** the variances for the application as presented and advertised, and Mr. Parrott seconded.*

Mr. Mulligan said he thought at first that it was a little aggressive, but the plans showed what the applicant was trying to do in maximizing the garage and getting additional living space, which he thought worked well. He said the mass to be added on was significant but felt that the resulting variances were relatively modest and reasonable in light of what the applicant was trying to do.

Mr. Mulligan stated that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance because the essential residential characteristics of the area would not be changed, nor would the health, safety and welfare of the public be compromised. He said the applicant would improve the lot area per dwelling unit and would also eliminate some of the off-street parking impact. Granting the variance would do substantial justice because of the loss to the applicant if the Board forced compliance with the ordinance against any gain to the public. Mr. Mulligan said he didn't see the gain to the public and that the existing nonconformities would become less nonconforming as a result of the project. He said the variances were a modest increase in building coverage and side yard setback encroachment. He said there would be no loss to the public, especially in that neighborhood where similar nonconformities already existed. Granting the variance would not diminish the value of surrounding properties but would increase them due to the significant investment in the property. As for the unnecessary hardship, Mr. Mulligan said that the unique conditions of the property included the pre-existing nonconforming structure that violated setbacks and parking requirements, so what was proposed would pose no fair and substantial relationship between the purpose of the side yard setback and the purpose of the lot area per dwelling as they applied to the property. He said the use was a reasonable one, given that it was a residential use in a residential zone, and met all the criteria.

Mr. Parrott said he concurred with Mr. Mulligan. He said it was a Single Residence zone, and reducing the number of units from three to two would bring the property more in compliance. He said the location of the addition on the back of the property would not adversely affect either of the adjacent properties, both of which were further toward the street. He said the back yard backed onto the wetlands, where there were no nearby residences. Mr. Parrott said he felt that it was a nice improvement for the property and not detrimental to the adjacent properties.

Chairman Rheaume said he was concerned that it was a large addition overall, and changing it from three to two dwelling units would increase the square footage. He said he was willing to support it, however, because it was a nominal improvement.

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

6) Case 3-6

Petitioners: Friends of the Music Hall
Property: 28 Chestnut Street
Assessor Plan: Map 126, Lot 7
Description: Replace the existing marquee with a lighted marquee and blade sign.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including Variances from the following:
1) Section 10.1251.20 allow a marquee and blade sign to exceed maximum sign area for individual sign types;
2) Section 10.1251.10 to allow an aggregate sign area that exceeds the maximum allowed;
3) Section 10.1261.30 to allow signs to be lit by internal and direct illumination where only external illumination is allowed;
4) Section 10.1273.20 to allow the marquee letters to be taller than 1.5’.

SPEAKING IN FAVOR OF THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant to speak to the petition. He introduced the Executive Director of the Music Hall Patricia Lynch and Music Hall Trustee Ben Auger. He distributed an update on Exhibit 2 to the Board and noted that the plan was updated to reflect the fact that there would be no flashing lights. He also noted that there was a discrepancy in the square footages and a typographical error on the chart. Attorney Phoenix showed renderings of the marquee and signs and gave a brief history of the Music Hall. He distributed letters of approval from the public, neighbors, and the Department of the Interior and read from several of them. He reviewed the criteria and said they were met.

Mr. Mulligan asked whether the color scheme was set in stone, noting that it looked more like New Orleans than New England. Attorney Phoenix said it was the intended color scheme.

Mr. Parrott noted that the last item on the Zoning Relief Chart that indicated that the requirement was 1.5 feet, that the existing was less than 15 feet but that the proposed was greater than 1.5 feet. He asked what it really was. Attorney Phoenix gave some dimensions and said it was as tall as 36 inches and as narrow as half of that, so the ‘M’ in ‘Music Hall’ would be 36 inches in height. Attorney Phoenix said the intent of the 18 inches was to address what was in the marquee but that the Planning Department felt should be included all together.

Vice-Chair LeMay asked whether there would be plastic letter or a screen. Attorney Phoenix said it would be a screen and that it would all be done electronically.

Chairman Rheume asked whether it was a large LED screen and whether it would always be blackened out, with the lettering in white. Attorney Phoenix agreed and said the marquee would have direct illumination.

Chairman Rheume said he was also concerned with the overall appearance in illumination because the downtown area was all about indirect illumination. He said the reflective light was less present than a light emanating from a source and felt that the applicant was asking for a

substantial exception and some pretty large signs. He asked what would make the project seem not as bright. Attorney Phoenix said they relied on their sign contractor for that particular purpose and that theater marquees utilized neon. He said he hoped Chairman Rheume's concern would be addressed by the fact that the HDC still had to weigh in and that they had expressed no concern about it at the work session. He also said the marquee would not be on the beaten path and that the neighbors and arts people were fine with it. Chairman Rheume said it didn't look like Portsmouth in some aspects, especially the size and the type of illumination, and he felt it would have a different effect from anything else downtown. Attorney Phoenix noted that the Music Hall was different from anything else in Portsmouth.

Patricia Lynch stated that illuminated marquees were standard on historic theaters and that there was an illuminated marquee at that location for many years. Attorney Phoenix said they didn't need a variance for the brightness issue, but Chairman Rheume said the type of illumination was different than what the variance called for.

Mr. Mulligan asked whether the pink brick façade would change and was told that it would not. He said it seemed garish but agreed that the Music Hall was a jewel and a unique property.

Vice-Chair LeMay asked whether the HDC commented on the color. Ms. Lynch said they appreciated the design and that the color scheme was drawn from colors within the Music Hall.

Mr. Parrott noted that there was no attempt to relate the colors to the City of Portsmouth's colors. Attorney Phoenix agreed but thought the sign contractor tried to reflect Portsmouth's colors and asked the Board to consider the color scheme in the entire historical context.

SPEAKING IN OPPOSITION TO THE PETITION AND/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. McDonnell said that he liked the colors in the larger context as well as the shape and size of the different signs and thought they would have a different effect than any other building in the vicinity. He said that the sign made sense in front of the old theater and thought it was reasonable in the context, which was unique.

Chairman Rheume said there was a lot of variance asked for and that if it was any other place downtown, he wouldn't consider it. He said that signage purposes were for people to identify locations and to distinguish the business. He noted that there were other performance venues downtown, like the Repertory Theater and Prescott Park, that didn't have large signage but still drew in people. He said he was okay with the marquee sign but felt there was need for some improvement in the signage. He noted that the Music Hall sold out their performances, and the marquee would only tell people they were there for the right night. He didn't think the marquee would necessarily draw in people. He said he liked the fact that it was black to reduce the illumination, with white lettering on the front. He said he was okay with the Music Hall emblem

above it because it would help people identify the location. He felt that the amount of illumination would be noticeable but not overwhelming.

Chairman Rheume said that the tougher sell was the blade and that he was concerned about the blade's size and illumination and the fact that it added a lot of extra square footage. He said he wasn't convinced that it would provide a benefit to the public because it wouldn't really help them find the place, seeing that the Music Hall wasn't on a long boulevard. He said he felt it was more of a piece of art to add to the artistic look of the structure, and he asked whether that was enough. He asked whether the Music Hall had enough uniqueness to overcome the hardship criteria. He said he felt that it was too much.

Vice-Chair LeMay said it wasn't the dull red brick that was on most of downtown Portsmouth but that it didn't mean that it wasn't appropriate on Chestnut Street. He said it would not change downtown or the streetscape significantly because it was around the corner. He said the neighbors were in favor, and he thought it made sense and was reasonable for the context.

*Vice-Chair LeMay moved to **grant** the variances for the application as presented and advertised, and Mr. Moretti seconded.*

Vice-Chair LeMay stated that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance. He asked whether it would change the neighborhood, noting that the Music Hall had dominated that neighborhood for a long time. He said the project wouldn't impact the Rockingham Building nor the parking lot of the bank that it abutted. He felt that, in terms of the neighborhood, those tests were met.

He said substantial justice would be done because of the effort of the applicant and the City to improve the area. He said the neighbors thought it was a good idea and that the City liked the arch. Granting the variances would not diminish values of surrounding properties. He said the abutters would not have supported the project so fully if they felt otherwise. As for unnecessary hardship, he said that strictly imposing the Portsmouth Sign Ordinance on the edifice would probably not be in the general public's interest, and there were still plenty of dull brick buildings to look at in town. He said people could enjoy the light and colors of the Music Hall.

Mr. Moretti said he concurred with Vice-Chair LeMay. He said Portsmouth had signs over the years that were unique and he felt the project would add a focal point to the downtown district. He said the Music Hall would be a destination point for the community and the sign would be a focal point, like the Yokens sign was for Lafayette Road.

Chairman Rheume asked the makers of the motion if they would consider a **stipulation** that the marquee sign displaying information be restricted to white lettering on a dark background and that it not be animated. Both Vice-Chair LeMay and Mr. Moretti accepted the stipulation.

*The motion **passed** 5-2, with Mr. Mulligan and Chairman Rheume voting in opposition.*

*It was moved, seconded and passed to **continue** the meeting past 10:00.*

7) Case 3-7

Petitioners: Eric M. Katzman
Property: 150 Sherburne Avenue
Assessor Plan: Map 112, Lot 34
Zoning District: General Residence A
Description: Construct right and left side shed dormers.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1) A Variance from Section 10.521 to allow a right side yard of 7.5'± where 10' is required.

Mr. McDonell and Chairman Rheaume recused themselves from the petition, and Vice-Chair LeMay assumed Chairman Rheaume's seat.

SPEAKING IN FAVOR OF THE PETITION

Attorney John McGee, Jr. was present to speak to the petition on behalf of the applicant. He stated that the applicant needed the variance on the right side of the house to expand the third floor and explained it in detail. Attorney McGee also said that he had a petition signed by the two direct abutters and the neighbor across the street, which he gave to the Board. He reviewed the criteria and said they would be met.

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

No one rose to speak, and Vice-Chair LeMay closed the public hearing.

DECISION OF THE BOARD

*Mr. Mulligan moved to **grant** the variance for the application as presented and advertised, and Mr. Lee seconded.*

Mr. Mulligan stated that granting the variance would not be contrary to the public interest or to the spirit of the Ordinance because the essential residential characteristics of the neighborhood would not be altered and the public's health, safety and welfare would not be affected. He said it would result in substantial justice because the loss to the applicant if denied would be the lack of a useful third floor, and he didn't see that it would outweigh any gain to the public by requiring strict conformance with the side yard setback requirement. Mr. Mulligan stated that granting the variance would not diminish surrounding property values. He noted that the applicant showed similar dormer additions in the vicinity. As far as unnecessary hardship, Mr. Mulligan said the unique characteristic of the property was the existing nonconforming footprint that violated the side yard setback. He said the vertical expansion of the existing nonconformance would not extremely impact light, air, emergency access and so on, which was the purpose of the side yard setback requirement. He said the use was a reasonable one and met all the criteria.

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

The motion passed with all in favor, 5-0.

8) Case 3-8

Petitioners: 319 Vaughan St. Center LLC, owner, and 3S Contemporary Artspace, applicant
Property: 319 Vaughan Street
Assessor Plan: Map 124, Lot 9
Zoning District: Character District 5 and the Downtown Overlay District
Description: Hold a summer outdoor concert series.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1) A Special Exception from Section 10.1440 #3.521 to allow an outdoor performance facility use where the use is allowed by special exception;
2) A Variance from Section 10.592.10 to allow an outdoor performance facility use to be located less than 500' from a residential district.

Chairman Rheame and Mr. McDonnell resumed their voting seats.

SPEAKING IN FAVOR OF THE PETITION

The Director of Operations at 3D Artspace Martin Holbrook was present to speak to the petition. He briefly reviewed the special exception and variance criteria and said they would be met.

Mr. Mulligan noted that it was the same request as the one requested the previous season but with different dates, and he did not recall hearing about any problems the previous year. Mr. Holbrook said the music was all acoustic and was usually finished by 9:00 p.m.

Vice-Chair LeMay asked whether there were more dates than the previous year and whether the amount was doubled, and Mr. Holbrook agreed.

Mr. McDonnell noted that the hours were 6 to 8 p.m. the previous year and asked whether the closing hour would be 9:00 p.m. Mr. Holbrook said he would have to check and that the music was typically done by 8:30 or 9:00 p.m.

Chairman Rheame asked whether a date would be deleted if the show was rained out. Mr. Holbrook said the show would be moved into the restaurant if the weather was 'iffy', but if it was raining heavily, the performance would be cancelled.

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

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

DECISION OF THE BOARD

Mr. Parrott moved to grant the variance for the application as presented and advertised, and Mr. McDonnell seconded.

Mr. Parrott said it was a simple request because the Board had seen it before and that he had not heard of any bad reactions to the previous performances. He said the only difference was that more performances of the same nature were scheduled. He said that granting the variance would not be contrary to the public interest and would observe the spirit of the Ordinance because the experience had proven satisfactory in those regards and there had been good attendance. He said the spirit of the Ordinance was to encourage culture activities. He said that granting the variance would do substantial justice. There was no overwhelming counter public interest that would argue any harm to the public or would overwhelm the benefit to the organization. Surrounding properties would not be diminished because the venue's location was not close by homes, and the music was acoustic and would not carry. He said the hardship was the special conditions of the size of the facility because it all could not be done inside, and people liked to be outside, which made the argument for outdoor performances. He said the project clearly met the criteria.

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

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

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

Mr. Moretti stated that granting the Special Exception would pose no hazard to the public or adjacent properties on account of potential fire, explosion, release of toxic materials, and so on. He said it was a minute process as far as having people out in the parking lot or yard to listen to music. He said there would be no detriment to property values in the vicinity or change to the essential characteristics of the area's residential neighborhoods or industrial districts, and no odor, noise, gas, heat vibration, and so on. He said it would be an acoustic set with very small speakers and it would be after business hours and would close by 9 p.m. Granting the Special Exception would create no traffic safety hazard or increase in the level of traffic congestion in the City because it was an extension of an ongoing entertainment venue and would add nothing more to the area. It would pose no excessive demand on municipal services and have no significant increase of stormwater runoff because the property would not be changed.

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

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

III. ADJOURNMENT

*It was moved, seconded, and **passed** by unanimous vote to adjourn the meeting at 11:20 p.m.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary