

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

7:00 P.M.

**OCTOBER 24, 2017
Reconvened From
OCTOBER 17, 2017**

MEMBERS PRESENT: Chairman David Rheäume, Vice-Chairman Charles LeMay, Jeremiah Johnson, Patrick Moretti, Chris Mulligan, Arthur Parrott, and Alternate Peter McDonell

MEMBERS EXCUSED: Jim Lee, Alternate John Formella

ALSO PRESENT: Peter Stith, Planning Department

Chairman Rheäume stated that the alternate Mr. McDonell would assume a voting seat on every petition that evening.

II. OLD BUSINESS

A) (Case 10-1) Request for Rehearing regarding property located at 87 Lincoln Avenue.

Chairman Rheäume recused himself from the application, and Vice-Chair LeMay assumed his seat as Chairman.

Vice-Chair LeMay read the petition into the record. He said that there was a previous rehearing but the applicant didn't show up. He said the applicant claimed that they did not receive a certified letter addressed to Working Stiff Properties LLC. Vice-Chair LeMay said the applicant received and signed for the notice that the meeting would be held. He said the Board's option was to grant or deny the rehearing, or hear it at the November meeting.

Mr. Mulligan said the representation made by the applicant was that he did not receive the notice. He said the Staff Memo was consistent with that fact. He noted that the owner/applicant was sent a certified letter but claimed that he did not receive it. The Board discussed it further. Vice-Chair LeMay said that the Board considered the issues that were presented in writing as well as the applicant's testimony. Mr. Mulligan said they opened the public hearing and listened to the public. Mr. Johnson said that it seemed they were dealing with a technicality and that it was worth rehearing what the Board heard the previous week. He said he couldn't imagine any

testimony that would change the outcome of what the Board discussed and the reasoning behind their decision. He said he thought the applicant deserved the benefit of the doubt.

DECISION OF THE BOARD

*Mr. Johnson moved to **rehear** the petition at the November meeting. Mr. Mulligan seconded. The motion **passed** by unanimous vote (6-0).*

III. PUBLIC HEARINGS - NEW BUSINESS (continued from the October 17, 2017 meeting)

Chairman Rheame resumed his seat as Chair. Vice-Chair LeMay returned to Vice-Chairman status.

Case #10-3

Petitioners: Juanita Lancaster (1/8 Int.) and Eddie, Devon, Darren, and Tiffany Thomas, owners, John Anastas and Gloria Esposito-Anastas, applicants

Property: 1079 Maplewood Avenue

Assessor Plan: Map 219, Lot 49

Zoning District: Single Residence B (SRB)

Description: Replace existing structures with new construction of a single-family home and attached garage.

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 the following: (a) a lot area and lot area per dwelling unit of 9,563'± where 15,000 s.f. is required; (b) continuous street frontage of 72'± on Maplewood Ave where 100' is required; and (c) a secondary front yard setback of 17.3'± where 30' is required.
2. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

Chairman Rheame read the petition into the record.

SPEAKING IN FAVOR OF THE PETITION

Attorney Derek Durbin representing the applicants stated that he had a letter of support from all the neighbors except for one who wasn't available, and he gave the letter to the Board. He said that the applicants were under agreement to purchase the property and noted that the property was on a corner lot and was a single-family residence with a connected garage that was in poor condition. He said the frontage lot area was non-conforming and the garage had a zero-foot front yard setback from the driveway. He said the applicant wanted to demolish the residence and garage and build a new home with a two-car garage underneath it. He said the Department of Public Works recommended that the new driveway be constructed off McGee Street because the current one was off Maplewood Avenue and was so narrow that vehicles had to be backed out.

He said they wanted to make the front yard more conforming but needed relief for the residence. He reviewed the criteria and said they would be met.

Chairman Rheaume asked what the dimensions were between McGee Street and the property line. Attorney Durbin said he didn't know. Chairman Rheaume said it looked like it was ten feet. Attorney Durbin said it would be 17 feet from the front property boundary but looked like it was a farther distance from the street. He said there were no paved sidewalks on McGee Street.

SPEAKING IN OPPOSITION TOTHE PETITION

No one rose to speak.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Rick Becksted of 1395 Islington Street said he had been to the 1922 home about ten years before as a contractor and saw that the foundation was missing and that the house detracted from the neighborhood. He said the family had asked whether they should invest money into renovations and that he advised them not to. He said that it was one of the few cases that he advocated demolishing a home and building a new one.

No one else 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 stated that the applicant required three variances, two of which were existing conditions that wouldn't change no matter what because the lot was a substandard one. He said the other variance was for a secondary front yard variance gong from the current nonconforming setback to just over 17 feet, so what was proposed would improve and move the property to less nonconformity.

Mr. Mulligan stated that granting the variances would not be contrary to the public interest or to the spirit of the Ordinance because the essential character of the neighborhood would retain its residential nature. He said the single-family dwelling was being replaced with another single-family dwelling. He said the public's health, safety, and welfare would be improved by new construction. He said granting the variances would do substantial justice because if the Board required strict compliance with the Ordinance, it would pose an incredible burden on the applicant that wouldn't be outweighed by an corresponding need by the public. He said the variances were needed and if the Board denied them, the existing conditions would remain and they were more nonconforming than what was proposed. Granting the variances would improve the value of surrounding properties because the new construction would be a large improvement to the neighborhood and would enhance the values of surrounding homes. As for literal enforcement, he said there were special conditions of the property that distinguished it from others in the area. He said it was quite a bit smaller than many nearby lots and it was a corner lot

with a very narrow building, which drove the request for relief. He noted that the property was currently nonconforming in many respects, so there was no fair and substantial relationship between the purpose of the dimensional requirements of the Ordinance and their application to the property. He said it was a single-family residence being replaced by a single-family residence, which was reasonable and should be approved.

Mr. Parrott said he concurred with Mr. Mulligan and also noted that it was a corner lot, which posed its own problems. He said that strict compliance with the setbacks as they were would make it impossible to build anywhere on the property that was reasonable, so the lot would go to waste, with no gain to the public. He thought it was a case where the strict application of the numbers of the Ordinance was unreasonable and that the project should be approved.

Chairman Rheume said he would support the application. He noted that the Board was always careful about complete demolitions, but it appeared in that case that the structure was aged and not kept up and not laid out well, and the garage arrangement made more sense. He said the setback requirement on both Woodbury Avenue and McGee Street made it challenging for the lot to be compliant, which was a significant hardship in itself. He said that sensible demolition and reconstruction was something that any community would be willing to support.

The vote passed by unanimous vote, 7-0.

Case #10-4

Petitioners: Dovev Levine, owner and Dovev & Jannell Levin, applicants
 Property: 96 Woodlawn Circle
 Assessor Plan: Map 237, Lot 7
 Zoning District: Single Residence B (SRB)
 Description: Construct front portico and right side addition.
 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) a primary front yard of 18'± where 30' is required and b) a 28'9" ± rear yard where 30' is required.
2. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

Mr. McDonell recused himself from the vote. Chairman Rheume read the petition into the record.

SPEAKING IN FAVOR OF THE PETITION

The owner Dovev Levine said he was asking for relief on the front and rear setbacks so that a front portico could be added. He said the house didn't have an established entryway and that the addition would not exceed the depth of the front steps and would be narrow. He said they also wanted to install a side addition for a family room that would accommodate a new basement stairwell. He reviewed the criteria and said they would be met. He noted that all the abutters

were in favor and that he had a letter from the abutters and neighbors, which he gave to the Board.

Vice-Chair LeMay asked about the room's orientation, noting that the variance wouldn't be necessary if the room were turned 90 degrees, which would allow a lot of room to the side. He asked what forced it to be in that particular spot. Mr. Levine said that it was for aesthetic purposes and that he wanted a clean look to the room.

SPEAKING AGAINST 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. Parrott moved to **grant** the variances for the application as presented and advertised, and Mr. Moretti seconded.*

Mr. Parrott said it was a nice addition and that the amount of relief asked for was fairly small. He said the proposed construction was toward the center of the lot and noted that it was one of those corner parcels with its own unique problems. He said the project was the least likely to cause the neighbors any concern.

Mr. Parrott said that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance. He said the project didn't change anything in the character of the single-family neighborhood because the home would still be a single-family home, only more suited for the family. He noted that nothing in the proposal would threaten the public's health, safety, or welfare or anyone's public rights. He said granting the variances would do substantial justice because the benefit to the applicant was obvious and wouldn't cause any concern or harm to the general public or neighbors. Granting the variances would not diminish the value of surrounding properties because the project would be an upgrade and wouldn't have anything but a positive effect, if any, on the neighborhood, especially the immediate neighbors. He said the hardship would be on the applicant if the petition were denied for no good purpose. He thought that the strict application of the Ordinance's dimensions as stated would be to no one's advantage. He noted that the rear yard setback was a foot in, so it couldn't be much smaller, and the primary front yard would be no greater than it presently was.

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

Chairman Rheume said he would support the application and noted that the Board could demand that the new addition to the side be shortened so that it didn't go into the rear setback, but the proposed size was reasonable, a single-family addition facing toward the open portion of the lot, and it was only a minor encroachment to the rear. He said the applicant did a good job of rearranging the front access so that the new mud room didn't make any more of an apparent approach to the street side.

The motion passed by unanimous vote, 6-0.

Case #10-5

Petitioners: Columbia Street Development LLC, owner, Revision Development, LLC, applicants

Property: 53 Columbia Street and Columbia Street (No address)

Assessor Plan: Map 145, Lots 43 & 44

Zoning District: General Residence C (GRC)

Description: Merge two lots and build an eight-unit dwelling.

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

1. A Special Exception under Section 10.440, Use #1.52 to allow eight dwelling units on a property where they are allowed by special exception.
2. A Variance from Section 10.521 to allow a) a lot area per dwelling unit of 1,289 s.f. where 3,500 s.f. is required; and b) 44.4% building coverage where 35% is the maximum allowed.

Mr. McDonnell resumed his voting seat. Mr. Mulligan recused himself from the petition.

Chairman Rheume read the petition into the record.

SPEAKING IN FAVOR OF THE PETITION

Attorney John Bosen was present on behalf of the applicant to speak to the petition. He introduced the project team, which included Sean Peters of Revision Development, John Chagnon of Ambit Engineering, and the architect Carla Goodnight. Attorney Bosen stated that there were two letters of support from neighbors Cecelia Demarco and Karen and Craig Sears, which he gave to the Board.

Attorney Bosen reviewed the petition, stating that there was a 12-unit apartment building on Lot 43 and that Lot 44 was vacant. He said the applicant wanted to merge the two lots and build an 8-unit dwelling. He explained why the special exception and variances were needed, noting that the project would bring the property into greater zoning compliance and fulfill the intent of the Ordinance in the GRC zone, which provided residential uses at moderate and high densities. He reviewed the special exception and variance criteria and said they would be met.

Mr. Moretti asked about Lot 43 and how the residents got to the back parking lot. Attorney Bosen said it was an open lot with no gate and that the residents drove across the other lot.

Chairman Rheume asked whether the current parking on Lot 44 was for the apartments on Lot 43. Attorney Bosen agreed and said the parking was used for the existing 12-unit building. He said the project would provide all the proper parking on site. Chairman Rheume said the applicant proposed one parking spot over what was required at 13. He asked what the current parking capacity of the existing parking lot was. Mr. Chagnon explained that how the parking translated to six or seven cars. He said legally there were 8 to 10 vehicles allowed.

Chairman Rheume said he was trying to understand the driver for the client to tear down what appeared to be a good building. He said that he didn't see anything in the presentation about the building falling down and that there didn't appear to be anything substantially wrong with the building. He asked why it would be replaced with a building with eight units, some of which were small. Mr. Peters said the building was not typical and was more of a rooming house because there were two main corridors and the bathroom for each unit was not within the units' interiors. He said that the applicant tried to find the easiest way to add value to the building, and renovating it wasn't the best option. In response to further questions from Chairman Rheume, Mr. Peters said the existing smaller units were about 600 square feet. He said the driver for going from 12 units to 8 units was because they wanted to maximize the value of both lots and keep them in the most conforming way with the zoning. He said the reduction of units was because they needed less relief to accomplish what they wanted to do, which was to bring all the units up to code.

Attorney Bosen said the Board had seen larger projects whittled down and that their project met the parking requirements and met the setbacks. He said the project met all the requirements except for the building coverage and lot area per dwelling.

Mr. Johnson said he thought another driver would be that it was a large building and the applicant didn't know whether they could fit more than eight units.

Mr. Parrott said the building was designed and placed on the lot for a particular reason, and he was curious as to why the front face appeared not to be parallel to the front property line. Ms. Goodnight was they were looking at a balance of many things with the parking unit size and lot coverage, and there was a desire to bring the vehicles off the main road and behind the building under cover and to try to bring the mass behind or under the building. She said it wasn't an urban infill, so they identified the best rectangular option, which was to align the parking with the rear lot line and along the angular areas to avoid the odd angles. She said they broke up the front façade into two masses and joined them with a significant recess, which would represent a narrower façade than the current building. She said they jogged one side of the building slightly forward and one side back so that they weren't on top of each other and that they eroded the mass as they came around the corner on both sides.

Mr. Parrott said he thought it might be something like that when he looked at the back parking. He said it was sort of designed from back to forward. He asked whether Ms. Goodnight knew how much variation there was in feet from one side of the building to the other, with respect to the front property line. Ms. Goodnight said it was no more than 3-4 feet and was an advantage because it made the building look less like a big box on the road.

Chairman Rheume said that it didn't seem that the existing building was completely square to the street and that it seemed more aligned to the firewall side of the property. Ms. Goodnight agreed, noting that it picked up the side lot line.

SPEAKING IN OPPOSITION TOTHE PETITION

Rick Becksted of 1395 Islington Street said that the building was built in 1920 and had contributed to the neighborhood all that time. He asked what the goal was of knocking down a building that was part of Portsmouth's heritage. He said there was no hardship to the applicant. He said the building represented what little affordability the City had. He said the applicant bought the building as an investment but asked what the investment into Portsmouth itself would be by increasing the rental prices considerably. He asked how the building would affect the neighbors who lived behind it.

Christie West of 53 Columbia Street said she was a tenant and was concerned about affordability. She said 14 people lived in the 12 units and included a teacher and service workers. She said half the tenants didn't have cars and walked or rode their bikes to work. She said the current rent was \$750-\$850 a month. She said the bathroom was across the hall due to the fire exits but was up to code. She said the former owner had the building for 30 years and recently sold it to Mr. McDonald, who also renovated a 4-unit building next door, of which two units were advertised at \$3,000 a month each. She said no one in her building could afford that. She noted that the tenants did park in the lot. She said the owner stated that the project would have no impact to the public, but she argued that there would be fourteen tenants who would be impacted.

Hannah Sheridan of 53 Columbia Street said she also lived in the building and was a teacher. She said there were at least ten parking spaces, so they didn't have parking challenges. She discussed the dire need for affordable housing. She said the Master Plan supported maintaining and adding more affordable housing. She quoted from some sections of the Master Plan, summarizing that the urban core accommodated affordable housing in existing and mixed-use buildings and that all boards should consider the impact of their actions on housing affordability within legal guidelines. She asked whether demolishing a building with affordable housing and putting in fewer apartments at a larger price played into the Master Plan.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Ms. Goodnight clarified that the building did not extend over the back row of parking, as shown on the diagram.

Attorney Bosen asked the Board not to lose sight of the applicant's property rights. He said the applicant wasn't responsible for solving the affordable housing problem and was not receiving any tax credits or a significant density bonus. He noted that Mr. Becksted said that he wanted to hear from the people who lived behind the project. Attorney Bosen referred to the letter of support from Ms. Demarco, who lived behind the building. He said they were talking about zoning and bringing the property into greater conformity in a manner that met the zoning criteria.

Mr. Becksted said he was dubious about the diagram and about who lived behind the building. He said the same person could own that particular building. He said they were multi-family apartments and that the landlord or owner of each building would have received the Abutters Notice and the owner may not have let the residents know. He surmised that each tenant of the units did not receive Abutters Notices because if they did, the chambers would be full.

Attorney Bosen said the notice was posted on the property.

Ms. Sheridan said the notice on the property wasn't legible. She said the Ordinance's criteria stated that the project could not be contrary to the public interest. She said she thought affordable housing was in the public's interest.

Ms. West said she believed that the letters of support were from people in the new, expensive units at 39 Columbia Street, who would naturally be in support of the project.

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

DECISION OF THE BOARD

The Board discussed the petition at length. Mr. Johnson said he was split because he had heard a lot of testimony for affordable housing, but the Board wasn't tasked to decide that. He said he had no problem with the demolition because it wasn't in the District, and that if the owner wanted to demolish the building, it was his right. He said he was concerned about how large the replacement building would be and felt they were large and drove the size of the building, which was maxed out on building height. He didn't think the building could be any bigger on the site and still be navigated with vehicular circulation. He said the plan showed that the proposed building compared to nearby ones was large but not out of scale with some of the buildings, so he had no problem with the special exception. He said he had a harder time getting behind the building coverage because it didn't have to be what was proposed to be a successful project.

Vice-Chair LeMay said he concurred with Mr. Johnson's comments. He felt that, from the standpoint of affordable housing and the owner's rights issues, there had to be a balance. He said the need for affordable housing couldn't be on the back of one owner and that he had property rights. However, Vice-Chair LeMay said he agreed that the 44% coverage was not justified by any hardship on the property. He said if the project fit at 35% and the owner wanted to fit eight units, it might be an incremental increase in the rent and the size and not be overpowering, even saying that the project would fit there and still have room for a car. He said it was reasonable because it was the most profitable thing to do, but he didn't know if he could go along with it. In terms of the public interest and the spirit of the Ordinance, he said the criteria was whether the project changed the neighborhood in any way and he thought that changing the demographic of the neighborhood from individuals in workforce housing to what might be considered luxury accommodations in terms of pricing could be a change in the neighborhood. He said it depended on where the neighborhood was defined and how many units were changing.

Mr. Parrott said it was interesting to look at the developer's standards. He said the present coverage of the two lots was 20.1% and the proposed was over 44.5%. He said the drawing showed practically no open space and little landscaping, so it seemed like it was a direct result of occupying so much of the space. He said that 35% was the requirement and not unreasonable in the context of things. He noted that people generally liked to step outside their door and not go immediately onto the sidewalk or street, that they liked some greenspace. He said it was proposed to demolish a sound building and replace it with a much larger footprint, which would leave little or no greenspace around it. He said it was a problem for him. He said he shared the

previous concerns with respect to the size of the building, including the footprint, and that the project seemed to be asking a lot, perhaps too much.

Mr. Moretti said the Board previously dealt with demolition of buildings in other cases, where the owners bought single-family properties and demolished them and the neighborhood was up in arms, but he said it wasn't the criteria that the Board had to judge. He said the property owners had the right to take the building down, at least until the Historic District expanded or the City changed some of the ordinances. He said he was on the fence with the lot coverage and wanted to be convinced that 44% was a good number. He said that, like Mr. Parrott, he had voted against a few cases that didn't allow greenspace. He said the building was a good one for the property and that he understood the arguments about affordable housing, but it wasn't in the Board's scope to judge. He said his only hang-up was the building coverage.

Mr. McDonell said he was sympathetic with the concerns of the residents and understood the property right argument made by Attorney Bosen, but was still having trouble seeing a real hardship. He said he thought Vice-Chair LeMay wasn't arguing that the project could necessarily create a change in the character of the neighborhood but that he was positing it as a possibility. He said he didn't think it was unreasonable that one could argue that the project could create a change in the neighborhood's character, but didn't know whether or not it was enough to prevent it. He said he was torn.

Chairman Rheume said he shared the same concerns and felt it was important to the City to preserve whatever workforce housing they had and to create more of it. He said, however, that the Board was looking at a case in the currently established zoning, which was letting them down in that regard. He said the requested relief was probably reasonable but agreed that the size of the project disturbed him. He said the applicant was bringing one of the two lots into more compliance and that the practical use of the two lots currently was that they were combined and acting as one larger lot for the same common purposes and had been used like that for quite some time. He said the Board was looking at both of them already, and what was being proposed in that sense was quite a bit larger. He said the applicant indicated that there would be covered parking, but one of the aspects of covered parking was that it allowed more room on upper floors to put more apartment or condo space. He said the Board could live with the 35% or a closer number than what was being proposed. He said the structure felt somewhat big for the two lots and the neighborhood in general, even though the neighborhood had some large structures, and he had a hard time justifying the argument that the character of the neighborhood would change because of the change in demographic and cost of apartments. He said he wished that he could, but typically when the Board discussed things in terms of that, they talked about multi-family units in a single-family neighborhood or some unique architectural aspects. He asked whether the Board could turn it into a cost demographic and said they would be far more activist as a Board than what he would be comfortable with. He said that, as much as it pained him, and for the purposes of the Board, the project was probably okay but was lacking in terms of its proposed overall size. He said it could be scaled down to be in better keeping with the criteria.

*Mr. Moretti moved to **grant** the special exception, and Mr. McDonell seconded.*

Mr. Moretti said 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 he didn't see how the development could do any of that because it was a modern building with modern equipment. He said it would pose no detriment to property values in the vicinity or change the essential character of the area, including residential neighborhoods, business structures, pollutants, noise, heat, and so on. He said it was an apartment building being developed over two properties instead and would not change anything. He said it would be a larger facility with less apartments, but he didn't see that it would change any values. He said the improvements to and modernization of the building and property would add to property values in the vicinity. He said granting the special exception would cause no creation of traffic, safety hazards, traffic congestion, and so on because the building was going from 12 units to 8 units and the City Ordinance stated that there would be so many cars to so many apartments. He said it would be a reduction based on those standards. He said there would be no excessive demand on municipal services, water, sewer, police and fire protection and so on. He said a reduction in the apartments would lessen those types of use and he didn't see any excessive demand with the newer building. He said granting the special exception would not significantly increase stormwater runoff onto adjacent properties or streets because the building would be modern and he was sure that the building management would deal with the storm water from the roof. He said he believed that the special exception should be granted.

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

*The motion **passed** by unanimous vote, 6-0.*

The variances were then addressed.

*Vice-Chair LeMay moved to **deny** both variances for the application, and Mr. Parrott seconded.*

Vice-Chair LeMay stated that the two variances requested were essentially opposite sides of the same coin, one having to do with lot area per dwelling unit and the other having to do with open space coverage. He said that there primarily was no hardship that justified the changes with the property. With regard to the first two variances, he thought changing the number and size of units in a way that moved them from one end to the spectrum residentially to the other was not consistent with not changing the neighborhood. He thought it would have an impact and change that neighborhood. He said the proposal did not meeting Criteria 1, 2, and 5.

Mr. Parrott said he concurred with Vice-Chair LeMay. He said the more he looked at the plan, the more trouble he had finding the hardship inherent in the lot. He said the design was a clever one that maximized the use of the lot, but it wasn't necessarily in the public interest. He thought that parking the cars on the back property line left no room for snow removal, which was a small point, but everything looked like it was guaranteed to maximize the space on the lot. He noted that if the building was torn down and a project started with a blank lot, the applicant had full opportunity to comply with the requirements of the City Ordinances in full. He said the project did not do that. It proposed a much larger lot coverage than allowed by the City. He said he thought that flew in the face of the unnecessary hardship test because there wasn't any hardship once there was a blank lot, so he was convinced that it did not meet the first and second criteria,

especially the public interest criteria with respect to affordable housing. He said that he had the most trouble with the unnecessary hardship test and agreed with Vice-Chair LeMay that he didn't see any hardship in the lot as it was presented to the Board. He said he would support the motion to deny the variances.

Mr. Johnson said he had difficulty with the motion because he would support the motion to deny but believed that the request for lot area per dwelling was appropriate. He thought it was a mixed message that the Board was approving the special exception and saying they were okay with the eight units but not okay with the density. He said he was okay with the eight units but felt there was room to improve the project, and there were valid arguments for all five criteria that could make the project a success. He said he was more concerned about the 44% building coverage.

Vice-Chair LeMay commented on his support for the special exception for the eight units and said that, in a given size, eight units would make smaller units, and the parking was there, so it would help keep the size down. He said he didn't want to sound like he was inconsistent.

Chairman Rheume said the inconsistency that Mr. Johnson brought up was that the lot area per dwelling unit was driven by the total square footage of the lots divided by the number of units, so he felt that the special exception and that particular variance were almost the same thing. He agreed that there was a mixed message that contributed to his concern in approving the motion. He said it was odd because, other than lopping off a piece of the property or buying another portion of someone else's property, he didn't know that the applicant could resolve it satisfactorily from a Fisher vs. Dover standpoint. He said consequently that he did have some concerns with the motion and wasn't sure he could support it for that reason.

Vice-Chair LeMay said the threshold for a special exception was lower than it was for a variance. Mr. Moretti said his hang-up was the 44%, but if that got reduced, the lot size per dwelling unit would also get reduced. Chairman Rheume said the lot area would be taken along with how many units were on it and then divided up. He said it didn't matter what size the units were themselves, it was a matter of density. Mr. Johnson said the density would always stay the same with eight units. Chairman Rheume said it wouldn't matter if the units were made larger or if the underground parking went away because the calculations would be the same, and that was where his problem came in. He said the applicant could come in with seven units, which would no longer make it a Fisher vs. Dover argument. He said the Board approved the special exception for eight units, with different criteria, but now they were saying something different in their approval for the variance. He said that was the potential difficulty they had.

*The motion to deny both variances **passed** by a vote of 4-2, with Mr. Moretti and Chairman Rheume voting in opposition.*

Case #10-6

Petitioners: High Liner Foods Inc.

Property: 1 High Liner Avenue

Assessor Plan: Map 259, Lot 14

- Zoning District: Industrial (I)
Description: Replace and reface wall signs.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance from Section 10.1251.20 to allow a 600 s.f. wall sign where 100 s.f. is the maximum allowed for a wall sign;
 2. A Variance from Section 10.1271.20 to allow a wall sign on a façade not facing a street and with no public entrance; and
 3. A Variance from Section 10.1251 to allow a wall sign with no aggregate sign area available.

Mr. Mulligan resumed his voting seat. Chairman Rheame read the petition into the record.

SPEAKING IN FAVOR OF THE PETITION

Attorney Mark Vaughan was present on behalf of the applicant to speak to the petition. He introduced the project engineer Mark Fisher and the sign company representative Jim Tracy. He gave a brief history of the company and reviewed the petition, noting that the property was bounded on three sides by roadways with limited access, which included Route 95. He said the project would allow the applicant to modernize their signage facing Route 95 while reducing the amount of signage they currently had. He noted that three signs were located on Route 95. He said the sign on the left would be refaced with new text and a graphic and would also indicate that the company was hiring. The middle sign would be replaced by a sign of the same square footage but with a different shape and would have a new logo and graphic symbol, of which only the letters and symbol would be illuminated. He noted that the three signs would be replaced to two and would be an overall reduction of square footage and well below the maximum allowed. He reviewed the criteria and said they would be met.

Mr. McDonell noted that Attorney Vaughan mentioned customer traffic and people coming off the highway and said it seemed that the expectation was that he wanted the signage visible from Route 95 so that they could attract customers. Attorney Vaughan agreed, saying that there was a fair amount of customer traffic as well as visitors who went to the facility to do business.

Vice-Chair LeMay asked whether the existing signage was internally illuminated. Attorney Vaughan said it was not but that it was illuminated externally from ground lighting. He said that the proposed sign on the left would have ground-lit illumination, and the new sign with the new logo would not be externally lit but the letters and emblem would be internally illuminated.

Chairman Rheame noted that there was a lot of discussion in the document provided to the Board that addressed the criteria saying that the signage on Route 95 would be used to help find High Liner Foods. He said that someone driving on Route 95 would have to be a bloodhound to figure out how to get to High Liner Foods. He said he didn't see the correlation but felt that the billboard wasn't that objectionable. He said his one concern was the message on the second sign, explaining that having the company name and extra information was good, but he asked what the longevity for the request for workers would be on that sign and whether it would still be applicable in five years.

Attorney Vaughan said there would always be a demand for good workers, given the historic turnover they had, but if it was no longer the case in a few years, they could modify the sign.

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. Mulligan moved to **grant** the variances as presented and advertised, and Mr. Johnson seconded.*

Mr. Mulligan said that what was being proposed was similar to what existed and was simply updating it with the applicant's new branding and making it look cleaner. He noted that three variances were needed and that the amount of signage was more than what was allowed but was actually less than what currently existed. He said the signage already existed on a façade that didn't front a street with a public entrance. He said there was a variance allowing a wall sign where there was no aggregate sign area available because it was on the side of the property that fronted Route 95 but essentially was replacing what already existed with something similar in kind and slightly less conforming.

Mr. Mulligan stated that granting the variances would not be contrary to the public's interest or the spirit of the Ordinance because the essential character of the area would not change and the public's health, safety, and welfare would not be affected. Granting the variance would do substantial justice because the loss to the applicant would far outweigh any gains to the public if the Board required them to start complying with the sign portions of the Ordinance. Granting the variances would not diminish the value of surrounding properties, which would not be affected by the signs because they were facing away from property. He said that special conditions existed because the property was bounded by Route 95 and was on a dead-end street, where its natural façade was for signage which wouldn't do it any good, so he didn't think there was any fair or substantial relationship between the purpose of the Sign Ordinance and its application to the property. He said the use was reasonable and noted that there had been signs on that portion of the building for as long as he had been around, and he couldn't imagine that anyone would have a problem with them. He said the petition met all the criteria and should be granted.

Mr. Johnson concurred with Mr. Mulligan and added that, even though there wasn't a pre-existing sign that exceeded the square footage, it seemed to be an appropriate use for a larger sign due to the mass and scale of the building and its distance from vehicular traffic. He said that having signage that met the actual Ordinance would probably render any signage on that side of the building useless.

Chairman Rheume said he would support the motion and felt that it was essentially a billboard to provide generalized information to passing motorists but was pretty innocuous. He said that the vast majority of motorists probably didn't even notice the sign, so it wasn't a distraction. He

said the sign illumination would be changed a bit but seemed like it would be benign. He noted that the hospital also had illuminated signs that could be seen from certain angles but didn't distract motorists, which was the main concern with brightness. He said the project was appropriate and that he would support it.

*The motion **passed** by unanimous vote, 7-0.*

IV. ADJOURNMENT

*It was moved, seconded, and **passed** by unanimous vote to adjourn the meeting at 9:07 p.m.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary