

**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.

**AUGUST 15, 2017  
To Be Reconvened  
AUGUST 22, 2017**

**MEMBERS PRESENT:** Vice-Chairman Charles LeMay, Jeremiah Johnson, Chris Mulligan, Arthur Parrott, Jim Lee, Alternate John Formella

**MEMBERS EXCUSED:** Chairman David Rheaume, Patrick Moretti, Alternate Peter McDonell

**ALSO PRESENT:** Peter Stith, Planning Department

---

**I. APPROVAL OF MINUTES**

A) July 18, 2017

*It was moved, seconded, and unanimously approved to **approve** the July 18, 2017 minutes.*

B) July 25, 2017

*It was moved, seconded, and unanimously approved to **approve** the July 25 2017 minutes as amended.*

---

**II. OLD BUSINESS**

A) Request for One-Year Extension of the Variance granted August 18, 2015 for property located at 305 Peverly Hill Road.

*Mr. Parrott moved to **grant** the one-year extension, and Mr. Mulligan seconded. The motion **passed** by unanimous vote, 6-0.*

---

**III. PUBLIC HEARINGS – OLD BUSINESS**

Acting Chairman LeMay read the three petitions that were requested to be postponed into the record.

*It was moved, seconded, and unanimously approved to **postpone** the petitions for 73 Court Street and 180 Mirona Road to the September meeting and 24 Kent Street to the August 22, 2017 meeting.*

10) Case 7-10.

- Petitioners: Petition of Flintatta LLC, owner and the Unitarian Universalist Church of Portsmouth, applicant
- Property: 73 Court Street
- Assessor Plan: Map 116, Lot 19
- Zoning District: Character District 4-L1.
- Description: Change of use.
- Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:
1. A Special Exception under Section 10.440 Use #3.11 to allow a religious place of assembly in a district where the use is only allowed by special exception.
  2. Variances from 10.5A41.10A to allow the following: a) a 1'± left yard and 3'± rear yard where 5' is required for each; b) building coverage of 66% where 60% is the maximum allowed; and c) open space of 11.8% where 25% is the minimum required;
  3. A Variance from Section 10.1112.30 to permit no off-street parking spaces to be provided where the following are required: a) 8 off-street parking spaces for the 2,000 s.f. of office space; and b) 67 off-street parking spaces for the assembly use. *(This petition was postponed from from the July 25, 2017 meeting and revised.)*

**DECISION OF THE BOARD**

*It was moved, seconded, and unanimously approved to **postpone** the petition to the September meeting.*

**III. PUBLIC HEARINGS – NEW BUSINESS**

1) Case 7-10.

- Petitioner: Petition of Logan properties LLC
- Property: 403 Deer Street #7-13 (The Hill)
- Assessor Plan: Map 118, Lot 26
- Zoning Districts: Character District 4-L1 and Downtown Overlay.
- Description: Install 24±s.f. wall sign.
- Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:
1. A Variance from Section 10.1251.20 to allow a 24± s.f. wall sign where 16 s.f. is the maximum allowed.
  2. A Variance from Section 10.1271.20 to allow a sign on the side of a building not facing the street and without a public entrance.

**SPEAKING IN FAVOR OF THE PETITION**

The applicants Jenny and Tom Nelson were present to speak to the petition. Ms. Nelson reviewed the petition, stating that there was no road traffic to their restaurant and they needed the signage to distinguish that the restaurant was an actual business. She reviewed the criteria and said they would be met.

In response to Mr. Mulligan's questions, Ms. Nelson said the pre-existing sign for the Blue Mermaid restaurant had been down for a month and that the Blue Mermaid closed during the first week of June.

Judy Miller of 77 Hanover Street stated that she lived in the Harbor Hill Condominiums down the street. She said the condominium association was a good neighbor to the previous owner and never had problems with parking or rowdiness, so they welcomed the Nelsons.

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

No one rose to speak, and Acting Chairman LeMay 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 the request was to replace a pre-existing nonconforming sign that only recently came down and would replace it somewhat in kind, and that the applicant proposed to bring the amount of signage down and make it more conforming. He said that granting the variance would not be contrary to the public interest and would observe the spirit of the Ordinance because the essential characteristics of the neighborhood would not be negatively affected by a slightly larger sign, nor would the public's health, safety, and welfare. Substantial justice would be done because the loss to the applicant would be much higher than any gain to the public if the Board were to insist on strict compliance with the Ordinance. Mr. Mulligan said it was the only appropriate place for signage that could get enough public eyeballs on it, given the property's location. He said granting the variance would not diminish values of the surrounding properties because similar signage had been in place for years and years and the values of surrounding properties were not negatively affected. As for hardship, he said the property was a very large building with kind of a blank sheet on the side, where the applicant wanted to put the proposed sign, and it was surrounded by numerous 6-story buildings that weren't present when the building originally became a restaurant, so it was a hardship in terms of getting visibility to the location. He said there were special conditions that distinguished the property from others in the area, such that there was no fair and substantial relationship between the purpose of the Sign Ordinance and its application to the property. He said that requiring the sign to be only on the side of the building where the public entrance was would do no good because there was little visibility on that side of the building. He said the use was a reasonable one, a commercial sign in a commercial zone, and it met all the criteria.

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

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

---

2) Case 8-2.

Petitioner:           Petition of 933 Islington LLC  
Property:             933 Islington Street  
Assessor Plan:      Map 172, Lot 9

Zoning District: Business

Description: Install decal signage on two windows.

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

1. A Variance from Section 10.1271.20 to allow a sign on the side of a building not facing the street and without a public entrance.

### **SPEAKING IN FAVOR OF THE PETITION**

The applicant Bill Hurley stated that he was requesting a permit for new signage and hadn't realized that he was in violation of the sign ordinance for the last seven years. He explained that the road curved so that the building's front entrance didn't face the street, and people couldn't see the signage until they went by the building. Mr. Hurley said the neighbors were in support of the sign. He reviewed the criteria and said they were met.

Mr. Mulligan said it was an unusually-shaped building and asked how it got to be trapezoidal. Mr. Hurley said the rectangular face was an addition put on by a car dealership in the 1960s for a showroom.

In response to Acting Chairman LeMay's questions, Mr. Hurley said he had decals in the windows on the side for seven years that were insufficient for advertising his business because people didn't see them until they were right up to the building, and it was hazardous due to abrupt stops or speeding. He said he currently had illuminated canned letters on the front of the building that would be removed. Mr. Hurley showed a photo rendering of how the building would look painted and said the paint job would wrap around the side. He said the paint job was decorative and not part of a logo and that it would look like brick.

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

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

### **DECISION OF THE BOARD**

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

Mr. Johnson stated that, with the new color scheme, hopefully no one would go past the building without knowing it was there. He said he thought the design was tasteful and would spice things up in the West End. Mr. Johnson said that granting the variance would not be contrary to the public interest and would observe the spirit of the Ordinance because it was a unique situation, with the angled wall and with the building partially front-facing and side-facing. He said that side signage to a building that didn't have a public entrance was hard to define, as far as being contrary to the public interest and the spirit of the Ordinance, but he couldn't see how it would affect the character of the neighborhood because there was existing signage as well as many buildings around the property. He felt it would pose no threat to the public's health, safety, and welfare or rights. He agreed that having signage on the side of the building would provide a safer environment, in addition to benefiting the applicant in other ways because it was a tricky area with various pull-offs into commercial properties. Mr. Johnson said that granting the variance would do substantial justice because he couldn't see how the project could be detrimental to the public or anyone else. He said the scales were tipped toward the applicant on that. Granting the variance would not diminish the value of surrounding properties because it would keep the property clean and well-signed on

a commercial area and wouldn't affect the property in a negative way. He said the hardship was that the property was at the faster traveling end of Islington Street, and it wasn't easy to see the signs facing the street. He said the shape of the building and how it addressed the street was a factor, noting that the building was originally a car dealership, so the building's angle was to offset the showroom to people coming down the street. He also said that some of the commercial properties were set back and had big signs, so people were able to pull off into the parking lots behind them. Mr. Johnson stated that all those things combined to create a hardship and that the project was worthy of having that type of signage. He noted that it wouldn't exceed the square footage for signage as well.

Mr. Parrott said that the project was compatible with the rest of the neighborhood in terms of signage on that side of the street. He pointed out that there was no definition in the Ordinance that said one couldn't have a side of a building considered the front or a side if it was x-number of degrees. He said that it was reasonable to consider that at least a partial view of the side of the building could be looked at as part of the front, lacking further definition in the Ordinance, so he felt that the project clearly met the requirement for compatibility and would have no detrimental effect and that the Board could support it.

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

---

3) Case 8-3.

Petitioner: SLF Realty Group  
 Property: 180 Mirona Road  
 Assessor Plan: Map 235, Lot 2  
 Zoning District: Gateway  
 Description: Replace an internally illuminated free-standing sign.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:

1. A Variance from Section 10.1251.20 to allow a 112+ s.f. free-standing sign (including base) where 100 s.f. is the maximum allowed.
2. A Variance from Section 10.1243 to allow a second free-standing sign on a lot where only one free-standing sign is permitted.
3. A Variance from Section 10.1281 to allow a nonconforming sign or sign structure to be altered, reconstructed or replaced without bringing the nonconforming sign into conformity with the Ordinance.

**DECISION OF THE BOARD**

*It was moved, seconded, and unanimously approved to **postpone** the petition to the September meeting.*

---

4) Case 8-4.

Petitioners: Sean P. and Robin M. Murphy  
 Property: 24 Kent Street  
 Assessor Plan: Map 113, Lot 39  
 Zoning District: General Residence A  
 Description: Construct a 2-story attached garage.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:

1. A Variance from Section 10.521 to allow 28.3%± building coverage where 25% is the maximum allowed.

**DECISION OF THE BOARD**

*It was moved, seconded, and unanimously approved to **postpone** the petition to the August 22, 2017 meeting.*

---

5) Case 8-5.

Petitioner: Susan MacDougall

Property: 39 Pray Street

Assessor Plan: Map 102, Lot 38

Zoning Districts: General Residence B

Description: Reconstruct a rear one-story addition and shed.

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

1. A Variance from Section 10.521 to allow a 3'± right side yard setback where 10' is required.
2. A Variance from Section 10.573.10 to allow a 1'± side yard setback where 5' is required.
3. 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.

Acting Chairman LeMay suggested that the Board address the issue of Fisher vs. Dover since the application sounded like a previous one. He asked the project architect Anne Whitney to tell the Board what was different about her request compared to what was asked originally.

Ms. Whitney stated that the one-story shed-roof addition existed in 2008, and at the time they wanted to create a smaller one-story addition so the elderly resident could live in the building. They hadn't done foundation work because the owner didn't want to disturb the garden. She said they built the addition and a new addition on posts, and it was on a limited budget. The owner passed away, so they wanted to create a bigger one-story addition and to also solve the foundation problems.

Acting Chairman LeMay confirmed that the first application was to replace the section on the back with a one-story addition. Ms. Whitney agreed and said they now wanted to come in from Salter Street and put a foundation under the additions. She said the original addition was very small, just 17'x10', and that most of the new addition would be out of the variance requirement.

Acting Chairman LeMay asked whether the building envelope or the issue of light and air were different in any way. Ms. Whitney said they were not.

Mr. Parrott noted that the new application was building more toward the center of the lot than the previous application, so it would have less effect on neighboring properties in respect to light and air. He said he saw it as similar but different.

Acting Chairman LeMay asked for a voice vote in favor of hearing the application as a new one.

*It was moved, seconded, and unanimously **approved** to hear the application as a new one.*

**SPEAKING IN FAVOR OF THE PETITION**

The project architect Anne Whitney reviewed the site plan. She stated that the light and air would remain the same and that the additions would be taken down so that a foundation could be placed. She explained in detail how they would create access to the existing basement. She said they also wanted to rebuild the existing 8’x10’ shed and pull it off the property line by a foot due to the tight driveway. She reviewed the criteria and said they would be met.

Susan MacDougall said she was the owner and that it was treacherous to go down to the basement to access the furnace and so on, and that the project would make for easier access.

Mary Anker of 34 Salter Street said she had the shed on her property line and was in support of the variance for the shed but was concerned about runoff because the pitch would be different. She said she was also concerned that her property values would be affected by future phases of the project, including parking space that would go into the gardens, but wasn’t sure how to address the issue.

Acting Chairman LeMay advised Ms. Anker to contact the Planning Department regarding process and general procedures.

**SPEAKING IN OPPOSITION TO THE PETITION**

No one rose to speak.

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

Ms. Whitney emphasized that what they proposed was for the first phase but that they were considering using the second front to get a little parking on that side in the future.

Mr. Johnson said it looked like the pavement where the shed currently was went all the way to the back and asked what the ground cover would be with the new shed. Ms. Whitney said it might stay but that they might break it up by a foot.

Mr. Stith verified that the house was in the Historic District and that the project would have to go before the Historic District Commission.

Ms. Anker stated that she wanted it noted that she was in favor of the shed variance but not in favor of anything else at that time.

Acting Chair LeMay said when the Board looked at things that came before them as fresh issues, and they didn’t like looking at ‘second bites of the apple’. He said it was within the property owner’s rights to bring another application before the Board for something entirely different, at which time the Board would look at the requirements and criteria and make their judgment.

No one else rose to speak, and Acting Chairman LeMay 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 the Board was looking at a currently nonconforming structure and that the existing one-story addition would be rebuilt and expanded and already violated the sideyard setback. He said there wouldn't be a significant increase in the addition's mass, and none of it would impact the right sideyard setback any further than the existing one did. He noted that the property already had a one-story addition that violated the setback, which would still be the case when the project was complete. He said the fairly substantial nonconforming shed encroaching on the neighbor's property would be relocated in such a way that it would also reduce the nonconformance, so he felt that a substantial amount of relief was reasonable under the circumstances. Mr. Mulligan said that granting the variances would not be contrary to the public interest or to the spirit of the Ordinance because the essential characteristics of the neighborhood would not be altered, nor would the public's health, safety, and welfare. He said it would result in substantial justice because, if the Board balanced the loss to the applicant by requiring strict compliance with the Ordinance against some gain to the public, he didn't see what the gain to the public would be. He said any type of addition to the property would require similar relief. He said that granting the variances showed no likelihood of diminishing the value of surrounding properties because the proposed increase was outside of the setback encroachment. As for the unnecessary hardship, he said the special conditions of the property were that it was a large and long property with frontage on two streets, but the dwelling structure was pushed right up against Pray Street and onto the lot line next door, so there was a very small existing sideyard. He said there would be no fair and substantial relationship between the purpose of the setback requirements and their application to the property. He said the use was a reasonable one, a residential use in a residential area, and met the criteria.

Mr. Johnson concurred with Mr. Mulligan and had nothing further to add.

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

---

#### **IV. ADJOURNMENT**

*It was moved, seconded, and passed by unanimous vote to adjourn the meeting at 8:00 p.m.*

Respectfully submitted,

Joann Breault  
BOA Recording Secretary