

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

7:00 P.M.

September 18, 2018

MEMBERS PRESENT: Chairman David Rheaume, Vice-Chairman Jeremiah Johnson, John Formella, Jim Lee, Peter McDonell, Christopher Mulligan, Arthur Parrott, Alternates: Alternate Phyllis Eldridge, Chase Hagaman

MEMBERS EXCUSED: None

ALSO PRESENT: Peter Stith, Planning Department

Chairman Rheaume noted that two petitions were postponed.

I. APPROVAL OF MINUTES

A) August 21, 2018

*It was moved, seconded, and passed by unanimous vote (7-0) **approve** the August 21, 2018 minutes as amended.*

II. PUBLIC HEARINGS - OLD BUSINESS

A) Case 8-1

Petitioner: Petition of Islington Street, LLC, (CVS Pharmacy)

Property: 674 Islington Street

Assessor Plan: Map 155, Lot 3

Zoning District: Character District 4-W.

Description: Install wall signage.

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

a) from Section 10.1251.20 to allow four wall signs that each exceed 40 square feet;

b) from Section 10.1261.30 to allow internal illumination in the Historic District;

- c) from Section 1251.10 to exceed the maximum aggregate signage available;
and
- d) from Section 10.1271 to allow signage where there is no frontage or public entrance.

Note: This petition was postponed to the following month at the August 21, 2018 meeting.

DECISION OF THE BOARD

*Vice-Chair Johnson moved to **postpone** the petition until the October 16, 2018 meeting, and Mr. Parrott seconded.*

Vice-Chair Johnson noted that it was a second request for postponement but thought it was reasonable because the applicant had needed extra time to work with the Historic District Commission (HDC) to get an approved design. Mr. Parrott concurred and had nothing to add.

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

Chairman Rheaume then asked to take Case 9-1 out of order. He read the petition into the record and noted that the applicant requested a postponement because some members of the applicant's team weren't present at that particular meeting.

*It was moved, seconded, and **passed** by unanimous vote (7-0) to take the petition out of order.*

Mr. Parrott recused himself from the following vote.

*Mr. Mulligan moved to **postpone** the application to the October 16, 2018 meeting, and Mr. Lee seconded.*

Mr. Mulligan said the Board typically granted a first request for postponement and felt that the request was reasonable. Mr. Lee concurred and had nothing to add.

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

B) Case 8-10

Petitioners: Petition of William Brinton Shone and Tatjana Rizzi Shone, owners
Property: 11 Elwyn Avenue
Assessor Plan: Map 113, Lot 27
Zoning District: General Residence A
Description: Infill addition and dormer

- Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from Section 521 to allow the following:
- a) a 5± foot right side yard where 10 feet is required;
 - b) 40% building coverage where 25% is the maximum allowed;
 - c) *a 14'10" rear yard where 20' is required.*
and a variance from Section 10.321 to allow the following:
 - d) an existing nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.
- (Note: This petition was tabled at the August 21, 2018 meeting and has been amended by the addition of item c) above in italics.*

Chairman Rheame noted that the petition was tabled at the previous meeting so that the applicant could provide additional information.

*It was moved, seconded, and **passed** by unanimous vote (7-0) to take the petition 'off the table' for further discussion.*

Chairman Rheame read the petition into the record.

The applicant Bill Shone was present to speak to the petition. He stated that he addressed the Board's requests to scale down the overall profile. He reviewed the updated plans, noting that the third-floor additional living space and master bath were eliminated and that the roofline was lowered. He said the porch would be opened up and that the main structure would stay the same except for the dormer. He said he had a letter of support from three abutters. Mr. Shone also emphasized that the other option was to do a teardown, which he didn't want to do.

*Vice-Chair Johnson moved to **re-open** the public hearing and limit the scope to the specific changes, and Mr. Parrott seconded. The motion **passed** by unanimous vote, 7-0.*

SPEAKING TO, FOR, OR AGAINST THE PETITION

James Beal of 284-86 Cabot Street said he commended the applicant for renovating a building on a prominent corner lot. He said the proposed massing should be considered but the project should be approved because tearing down the structure and replacing it with new construction would reduce the historic significance of the 100-year old building.

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

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

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 it was a nice upgrade to an interesting house and that the design work showed a great deal of thought by respecting the existing architecture and improving it for a modern family. He said it would not alter the public's health, safety, or welfare, or injure any public rights; he did not see any public interest in the case because the project upgraded and modernized an old house in a tasteful and appropriate way. He said granting the variances would not diminish the value of surrounding properties, noting that the existing house had suffered from benign neglect, and updating it, as well as adding the tasteful addition, would improve its condition and be a win-win for the owner and the neighborhood. He said that literal enforcement of the Ordinance would result in unnecessary hardship to the applicant, noting that the applicant bought the house to expand it tastefully, and that he could see no hardship posed to the public or neighbors. He said the Board should approve the project.

Mr. McDonell concurred with Mr. Parrott. He said the Board's previous concerns were with the mass of the addition and the potential infringement on the light of the neighbors east of the site, but he thought they were adequately addressed, so he saw no reason not to grant the request.

Chairman Rheume said he would support the motion, noting that the applicant had listened to and understood what the Board had asked for. He said the reduction in size of the gable was helpful, as well as the reduction of the additional lot coverage's size. After further comment, he concluded that the project was a good rework of a slightly troublesome application.

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

C) Case 8-11

Petitioners: Petition of Lucky Thirteen Properties, LLC, owner, and Opendell Journey, LLC, applicant

Property: 361 Islington Street

Assessor Plan: Map 144, Lot 23

Zoning District: Character District 4-L2

Description: Operate a food truck style establishment.

Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
a) from Section 10.440 to allow a food truck style establishment.

Note: This petition was tabled at the August 21, 2018 meeting.

Chairman Rheume noted that the Board had tabled the petition previously so the applicant could provide additional information, which the applicant had done.

*Mr. McDonell moved to take the petition off the table, and Mr. Parrott seconded. The motion **passed** by unanimous (7-0) vote.*

Chairman Rheume read the petition into the record.

SPEAKING IN FAVOR OF THE PETITION

Attorney Jack McGee was present on behalf of the applicant to speak to the petition. He noted that he was representing Attorney Durbin, who could not attend. He said the Board's concerns included public safety, nuisance, and noise and that they also wanted the applicant to address certain items that were presented in a letter that the applicants had submitted on September 12, 2018 that outlined the five issues of most concern. He also introduced the project engineer Cory Belden. He said an amended site plan was done in reaction to the Board's concerns.

Attorney McGee stated the following:

- There would be only one food truck.
- Traffic issues as addressed in the amended site plan: 1,100 square feet would be used, and 11 parking spots were required, with 12 spots available. The traffic flow is designed to prevent the normal concerns of any commercial development.
- Light control: the applicants will replace the Christmas lights with downward pointing lights and abandon the lights that abutted the next-door neighbor.
- Noise control: the operation is not the type to lead to a great deal of noise or entertainment and is not likely to draw a noisy crowd.
- The applicants would have control of the business and have a more vested interest in it than a typical fast food restaurant.
- Hours of operation would be consistent with other food service-type businesses in the area. The business would close at 8:00 p.m. on weeknights and 10:00 p.m. on weekends.
- Relating to the concerns about the safety of children and people driving through the area, large planters will be placed that will not allow a vehicle to get through. (The applicant Ms. Blanchette distributed photos to the Board of the planters).
- The City would ensure that concerns of TAC, police, fire, electrical, plumbing and so on were considered.

Mr. Lee said the nature of the term 'food truck' implied that it would not be part of the lot, and he asked how long the applicant intended to operate there. Attorney McGee said he didn't know because it was a difficult property. Mr. Lee noted that the lot was a valuable piece of commercial property and asked whether enough income could be generated by a food truck. Attorney McGee said the property owner Mr. Labrie could answer that question but wasn't present.

Mr. Hagaman said that the proposal was originally supposed to be seasonal but was now year-round. He asked why it would close at 10:00 o'clock on weekends when the neighboring Lexie's closed around 8:00 or 9:00. The applicant Ms. Blanchette replied that food trucks generally operated on a seasonal schedule, but that she didn't want to limit the operation to a seasonal one when she might have the customer base to support the food truck through the winter. She said the biggest concerns seemed to be the volume of traffic, which would die down in the winter. She said that most of the Islington Street restaurants had comparable hours. Mr. Hagaman asked if the planters were already in place. Ms. Blanchette said they were and that they were heavy and permanent. Mr. Parrott asked what the plan was for operating the engine in the truck. Ms.

Blanchette said the truck could be plugged into the gas station's electrical outlet so that the engine would not need to be on. She said there would be no generator, and the only noise would be the fan for the fire suppression system and would be a 'white noise'.

Chairman Rheaume reminded the applicants that he previously asked about a balancing test between granting an exception to the Ordinance and what the rest of the neighborhood would get from it. He said the exterior of the building looked like an old Getty station in disrepair and asked whether there were plans to brighten it up. Ms. Blanchette said they had begun painting the front and would spruce up the back as well. Chairman Rheaume asked whether the applicants would own the property if the proposal was approved or if there was some type of lease arrangement. Attorney McGee said it was presently a lease.

*Mr. Lee moved to **re-open** the public hearing, and Mr. Parrott seconded. The motion **passed** by unanimous vote, 7-0.*

SPEAKING IN FAVOR OF THE PETITION

Barbara DeStefano of 90 Brewery Lane said she was still in favor of the project. She said she walked by the lot and noticed that the new planters were very heavy and looked good. She asked that the Christmas lights remain because they looked much better than the garage lights.

Caitlin Pulgraf of 38 Langdon Street said the Christmas lights were an asset to the area and that the project was a great thing for the neighborhood, with similar hours to nearby businesses.

SPEAKING IN OPPOSITION TO THE PETITION

Elizabeth Errico of 342 Cabot Street said she was familiar with the gas station. Included among her many comments were concerns about the variances regarding parking and traffic and an outdoor kitchen. She said the takeout window would be contrary to the zone because it would have a greater use than allowed. She said that approval would open a loophole for food trucks to be allowed on any vacant lot and not require that older properties be updated.

SPEAKING TO, FOR, OR AGAINST THE PETITION

James Beal of 284-86 Cabot Street said that granting the variance would have a long-term impact on the neighborhood. He felt that it would be more prudent to wait until the definition of a food truck was included in the records. He noted that the variances would stay with the property for life and allow higher impact consequences. He asked the Board to delay their vote until a complete definition of a food truck was made by the City Council, or to limit the proposal to a single food truck with a clear definition, as well as limit the hours of operation. He said there would also be issues with parking and congestion.

Elizabeth Errico read a letter from a 304 Cabot Street resident in opposition to the proposal.

Attorney McGee said the project would improve the area and that nothing said the owner had to tear down the existing hardship, an ugly gas station. He said the traffic congestion was minimal compared to that of a 50-seat restaurant. He said the City had no definition of a restaurant, never mind a food truck. He said the question raised in the letter about how the food truck would be taxed *in situ* was a legal question for Attorney Sullivan and didn't think it was relevant to the Board's decision. He said his client wanted to improve the lot and run a business that would be a good thing for the neighborhood and was within the concept of what the zoning would allow. He said the Board could stipulate granting the variance only for that particular food truck.

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

DISCUSSION OF THE BOARD

Chairman Rheume said the Board had a number of emails and letters for review that were in favor and opposition and that he also had feedback from the City staff. He said the concerns were the location of the exit/entry point on Cabot Street, the venting of the food truck under the canopy, and what additional permits and approvals were required. Mr. Stith said the amended site plan could be done administratively but would likely have a work session with the Technical Advisory Committee (TAC), which would also have public input. He said that the petition could also go before the Historic District Commission (HDC) if there were exterior changes. He noted that recent zoning amendments had a new use for outdoor dining and drinking, so outdoor seating would need a Conditional Use Permit (CUP) from the Planning Board.

Vice-Chair Johnson said the extra detail helped him figure out a few things. He noted other allowable uses that would be allowed on the site without a variance, like a convenience store with hours from 6 a.m. to 11 p.m. as well as several uses with allowed by special exception. He said it would be an easy approval for him because the proposal was a low intensity of use, compared to other uses that could be on the site. It was further discussed.

Mr. Parrott said the property was unique because the gas station had been there for a long time and, because of that, was a distressed property. He noted that there were vehicles going in and out of the lot when there was a gas station and detailing shop there. He said the new proposal involved one truck that would remain on the property and probably wouldn't be any busier in terms of people going in and out of previous businesses. Mr. Lee thought it would be a temporary business because the economics wouldn't support it. Chairman Rheume said the variances went with the land, but if the Board felt it could go with that specific vehicle, they could give it a try. Mr. McDonell said he was more concerned that if the Board approved it as presented, it would be a stationary truck plugged into the building, with no generator. He said he thought the Board could approve the food truck as presented. Chairman Rheume recommended a stipulation, noting that it would carry more weight.

Chairman Rheume said he believed there was enough in the balancing test. He said the applicant tried to do a good job of addressing the Board's concerns and he thought the use could work in that location. He said the issues of parking, entry point, and whether or not the planters

were adequate to prevent accidents would go before the technical experts. He recommended stipulating that only one food truck be on the property and powered from the building to address the noise concern. He said he wasn't very concerned about the lighting because TAC would work through it. He also recommended that the operation hours be stipulated because the area was a residential one.

DECISION OF THE BOARD

Mr. McDonell moved to grant the variance with the following stipulations:

- *That there be one truck only;*
- *That the truck not be powered by a generator or engine in the truck and that the power come from the electrical supply in the building; and*
- *That the maximum hours of operation be from 11 a.m. to 8 p.m. Sundays through Thursdays and 11 a.m. to 10 p.m. on Fridays and Saturdays.*

Mr. Formella seconded the motion.

Mr. McDonell noted that the Board had a lot of discussion. He said he understood the concerns of the neighbors regarding traffic, safety, light, and noise, but said it was a use in a zone with other allowed and more intense uses. He said that special conditions of the property were the deed restrictions on the allowable use, which limited the owner, and the applicant was trying to make some use of the property and would not be overly burdensome on the neighbors or public. He said granting the variance would not be contrary to the public interest and would observe the spirit of the Ordinance. He said the essential characteristics of the neighborhood would not be altered because of the eclectic character of the neighborhood, and the lot was an old gas station that would still look like one, except with a food truck in front of it. He said there would be no threat to the public's health, safety, or welfare and no injury to public rights. He said there were legitimate concerns about traffic and entry from and exit onto Cabot Street, but the petition would go before TAC, who might push back the entrance a bit anyway. He said granting the variance would do substantial justice because the benefit would be to the applicant, who would make use of that property. He said there could potentially be some harm to the public, especially folks who lived in the area, but there had to be an understanding that it was a commercial zone and that it could be developed, and the proposal was a minimal development. He said granting the variance would not diminish the value of surrounding properties, noting that there was no testimony to that, but there was a lot of testimony from several people who were excited about the project and would receive value from it. He said the balancing test included special conditions, such as the site was tricky and development capability was limited at the present time. Because of that, there wasn't really a fair relationship between the purpose of the Ordinance and its specific application to the property. He stated that a restaurant use was allowed, and the food truck was a reasonable use in a corridor like Islington Street.

Mr. Formella concurred with Mr. McDonell and had nothing to add.

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

D) Case 8-3

Petitioners: Petition of Pease Development Authority, owner, and Wentworth-Douglass Hospital, applicant

Property: 121 Corporate Drive

Assessor Plan: Map 303, Lot 8

Zoning District: (Pease) Airport Business Commercial

Description: Illuminated wall sign and monument sign

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

- a) from Section 306.01(d) to allow 391.7 square feet of sign area where 200 square feet is the maximum per lot.

Note: This petition was postponed at the August 21, 2018 meeting.

Mr. McDonnell recused himself from the petition, and Ms. Eldridge assumed his seat.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bill Tucker representing the applicant Wentworth-Douglas Hospital was present to speak to the petition. He introduced the hospital's Sr. Vice-President Dan Dunn, who reviewed the petition. Attorney Tucker said the site was unique and that they were requesting two signs, one for the entry and one for Building C. He reviewed the sign dimensions and said they were reduced by 30% from the original proposal. He noted that the PDA Board had approved the proposal and pointed out that 72-s.f. monument sign at the entry was important so that people didn't wander around the Pease campus. He reviewed the criteria and said they would be met. Dave Mullen, PDA Executive Director, verified that the Board met in May and had approved the proposal after a 30% reduction in sign dimensions were made.

Mr. Parrott said he heard two different things, 1) that the huge sign with big letters was necessary so that it could be seen from the turnpike, and 2) that the sign had subsidiary words on it that were also important but were much smaller. It was further discussed. Attorney Tucker said the larger letters were designed to be viewed from the turnpike's northbound lane and the smaller letters were not the critical ones but were just the corporate logo. Mr. Parrott asked why the smaller letters were there if they weren't important. Mr. Dunn said that Wentworth-Douglas Hospital was part of the Massachusetts General Hospital and that the branding was an important part of their community and was reflected in the logo.

In response to Mr. Hagaman's questions, Mr. Dunn said the sign would be lit from the inside out, with just the letters lit in white, and the blue circle would be blue and white. He said they had not considered exit signage like a hotel or restaurant would have because it was a medical care center and their patients were sick or elderly, so their marketing and advertising approach was to indicate to the patients to get off at Exit One and orient them to where they had to go.

He noted that it was important to have a combination of large and small words on the sign to indicate where they were at Pease. Ms. Eldridge said she felt that the important sign was the other signage and that it wouldn't help orient her once she got on the Pease campus. Mr. Dunn said the procedure at Pease was not to have multiple signs, and it was further discussed.

Chairman Rheume asked whether there was only one entrance into the campus. Mr. Dunn said there was a road on the south side that tied into the campus, but not in a signed way. In response to further questions from Chairman Rheume, he said the primary sign would indicate the entry and exit to the campus and that the large sign on Building C would be illuminated all night.

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.

DISCUSSION OF THE BOARD

Before beginning the discussion, Chairman Rheume noted that the motion when made would be to recommend (to the Pease Development Authority) that the project be approved or disapproved.

Vice-Chairman Johnson said he was skeptical that most people wouldn't already know where they were going because most people had GPS and so on, but he felt that the sign was an identifier and a tried-and-true method. He said he understood the concerns about the smaller lettering but thought it was a typical, hierarchical issue that he had no problem with. Chairman Rheume said the monument size was a little large but didn't think it would look incongruous. He noted that other nearby signs were comparable and that the sign would indicate the main entrance and direct people from both sides of the road. He said the Building C sign was large like a billboard and thought that realistically it wouldn't help anyone get to that location but agreed that it was like other signs seen on Route 95. He said he could understand the marketing purposes but still thought the sign was large for those purposes. He said he could approve but personally thought that it could be smaller.

DECISION OF THE BOARD

*Mr. Mulligan moved to **recommend approval** for the project, and Vice-Chair Johnson seconded.*

Mr. Mulligan stated that the large sign marketed the establishment by taking advantage of the siting of the building adjacent to the Spaulding turnpike. He noted that there were similar sites on Pease and that they were common and useful, so he thought it was appropriate for the property and that the monument sign was very useful and necessary to get in and out of the property. He referenced the PDA Zoning Ordinance criteria and stated that the proposal would have no adverse effect on, or diminishment of, surrounding properties. He said he didn't see any properties on Pease being negatively affected and thought the monument sign would enhance the

properties on Pease. He said the wall sign wouldn't affect Pease at all because it was facing away. He said the properties outside of Pease were big box stores on the other side of the turnpike and would not be affected. He said it would benefit the public interest because the signs would provide an ability for the public to have a better understanding of what was there and how to get there. He said the denial of the variance would result in unnecessary hardship to the applicant because there were multiple buildings on combined lots, and the applicant was trying to establish a billboard signage in keeping with their marketing program on one of the buildings, and he saw no reason why complying with the Ordinance was so important to anyone else on Pease. He said substantial justice would be done because the hardship to the applicant would outweigh any benefit to the public. He said the proposed use was not contrary to the spirit of the zoning rule because multiple buildings combined on separate lots could get a very similar volume of signage if they kept separate lots and put wall signs on each building, which would be useless. He said the applicant met all the criteria and should be approved.

Vice-Chair Johnson concurred with Mr. Mulligan and had nothing to add.

*The motion **passed** by a vote of 5-2, with Mr. Parrott and Chairman Rheume voting in opposition.*

E) Case 8-6

Petitioner: Petition of Amanda R. Blanchette, owner
 Property: 1462 Islington Street
 Assessor Plan: Map 233, Lot 86
 Zoning District: Single Residence B
 Description: Attached garage with living space above
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from Section 521 to allow the following:

- a) a 10 foot rear yard where 30 feet is required;
- b) a 3' right side yard where 10' is required;
- c) 26% building coverage where 20% is the maximum allowed;
and a variance from Section 10.321 to allow the following:
- d) an existing nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

Note: This petition was postponed at the August 21, 2018 meeting.

Mr. McDonell resumed his voting seat, and Ms. Eldridge resumed her alternate status.

SPEAKING IN FAVOR OF THE PETITION

Attorney Jack McGee was present on behalf of the applicant and introduced the applicant's mother, Cindy Blanchette. He requested that the petition be continued to the next meeting because the applicant was in the hospital.

Chairman Rheume noted that the petition was postponed previously because only five members were present and that it made sense to do so again, since the applicant could not be present.

DECISION OF THE BOARD

*Mr. Mulligan moved to **postpone** the petition to the October 16, 2018 meeting, and Mr. Parrott seconded.*

Mr. Mulligan noted that the applicant would be present if she could but was in the hospital, which took precedence. Mr. Parrott concurred and had nothing to add.

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

III. PUBLIC HEARINGS - NEW BUSINESS

1) Case 9-1

Petitioners: Petition of James C. Lucy Revocable Trust, James C. & Kimberley A. Lucy, Trustees
Property: 127 & 137 High Street
Assessor Plan: Map 118, Lots 20 and 21
Zoning District: Character District 4-L1.
Description: Change a section to office use, add a second floor rear addition and construct a single-family home.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
a) from Section 10.642 to allow a residential use in the ground floor in the Downtown Overlay District;
b) from Section 10.5A41.10A to allow a ground story height less than 11 ft.; and
c) from Section 10.5A41.10A to allow a house in the Downtown Overlay District.

DECISION OF THE BOARD

*It was moved, seconded, and passed by unanimous vote to **postpone** the petition until the October 16, 2018 meeting.*

2) Case 9-2

Petitioners: Petition of Brendan A. White & Jessica Paterson
Property: 119 Union Street
Assessor Plan: Map 145, Lot 70

Zoning District: General Residence C
Description: Construct a dormer
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
a) from Section 10.521 to allow a 0'± left side yard where 10' is required: and
b) 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. Mulligan recused himself from the petition, and Mr. Hagaman assumed his voting seat.

SPEAKING IN FAVOR OF THE PETITION

The project designer Hubert Krah was present on behalf of the applicant and said the project was to make the existing bathroom usable. He reviewed the petition, noting how close the bathroom dormer was in proximity to the adjacent structure and could have no window because of fire codes. He reviewed the criteria and said they would be met.

There were no questions from the Board.

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

*Vice-Chair Johnson moved to **grant** the variances for the petition as presented and advertised, and Mr. Hagaman seconded.*

Vice-Chair Johnson said he thought it was a small request and that the dormer was about as small as one could be. He said his only concern would have been the dormer's location and its window in relation to the property next to it but said it was alleviated. He said that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance. He said the houses in that area were in close proximity and that many had dormers, second and third floors, and tight quarters, and he felt that the small dormer was appropriate for the applicant's and abutters' health, safety, and welfare. He noted that his only concern would have been issues with windows, but that it was alleviated. He said substantial justice would be done by granting the variances because the justice was tipped toward the applicant and posed no detriment to the abutters. He said the property line was slightly built up but didn't think it would have an impact on the abutter. Granting the variances would not diminish the value of surrounding properties, and he thought that making the bathroom more usable would slightly bump up the property value. He said the hardship was the siting of the house on the property line,

which didn't allow much room for a very small and reasonable vertical addition to a non-conforming building. He said the petition met all the criteria and should be approved. Mr. Hagaman concurred with Vice-Chair Johnson, adding that the request was straightforward.

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

3) Case 9-3

Petitioners: Bonnie A. Konopka & Stephanie Ross
 Property: 5 Simonds Road
 Assessor Plan: Map 292, Lot 58
 Zoning District: Single Residence B
 Description: Rear addition
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
 a) from Section 10.521 to allow a 16'± rear yard where 30' is required.

Mr. Mulligan resumed his voting seat, and Mr. Hagaman resumed his alternate status.

SPEAKING IN FAVOR OF THE PETITION

The applicant Stephanie Ross was present to speak to the petition. She noted that she was present in June to request a 19-ft setback but then discovered that her as-built survey and the City tax map did not match and that a 16'5" setback was required. She said that everything else was the same as before, including the reasons why the petition would adhere to the criteria.

Mr. Hagaman clarified that the mistake was not something the City should have known in advance. Mr. Stith said that only the tax map was used in the applicant's case and wasn't as accurate as the survey. Chairman Rheume said modifications were allowed, based on the tax map, and were moderately reliable.

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 variance for the petition as presented and advertised, and Mr. Parrott seconded.*

Mr. Mulligan said it was a technical correction to a previously-approved application. 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 character of the neighborhood wouldn't change, and the

public's health, safety, and welfare would not be threatened. He said substantial justice would be done because the loss to the applicant would far outweigh any gain to the public if it required strict conformance with the setback requirement. He said granting the variance would not diminish the value of surrounding properties. He noted that the Board had already approved the almost identical project, and that the as-built the applicant was seeking relief for made no real difference to the project. He said that literal enforcement would result in unnecessary hardship to the applicant, noting that the addition was sited in the only location that it could realistically go, and that maintaining the 30-ft setback would push the applicant back on top of the original dwelling. He said it wasn't a large enough building envelope on the small lot, so there would be no fair and substantial relationship between the purpose of the setback ordinance and its application to the property. He said the petition should be approved.

Mr. Parrott concurred with Mr. Mulligan and had nothing to add.

The motion passed by unanimous vote, 7-0.

4) Case 9-4

Petitioner: Monarch Family Trust of 2018, Samantha D. King, Trustee
 Property: 45 Miller Avenue
 Assessor Plan: Map 129, Lot 21
 Zoning District: General Residence A
 Description: Construct basement and rear house access structures. Expand an existing deck.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
 a) from Section 10.521 to allow 28% ± building coverage where 25% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

Josh White was present on behalf of the applicant to speak to the petition. He said they wanted to build a 32-s.f. basement access bulkhead structure and to change the flat roof to a sloped one. He noted that the criteria were addressed in the packet.

Chairman Rheaume asked how someone would get into the basement. Mr. White said there was an existing door that matched the surrounding finishes, like a hidden door, and that they would recreate that and go up a bit. In response to further questions from Chairman Rheaume, Mr. White said the door was relatively short and had just outdoor access mostly to allow for ease of replacing any equipment, and that it wasn't for daily ingress and egress.

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

Mr. Formella said the request was straightforward and reasonable. He said the property would become more conforming. He said that granting the variance would not be contrary to the public interest and would observe the spirit of the Ordinance by allowing the modest improvements that would reduce the building coverage. He said it would not alter the essential characteristics of the neighborhood nor threaten the public's health, safety, and welfare. He said substantial justice would be done because there would be no gain to the public by denying the variance and where would clearly be a loss to the applicant because he wouldn't be able to moderately improve the overall functionality and safety of his property. He said there was no evidence to show that the values of surrounding properties would be diminished. He said granting the variance would result in unnecessary hardship because special conditions included that the structure was already non-conforming relating to building coverage and was a unique opportunity to improve the property to make more conforming, so there was no fair and substantial relationship between the provisions of the Ordinance and their application to the property. He said the proposed use was a reasonable one and that the petition should be approved.

Mr. Lee concurred with Mr. Formella and had nothing to add.

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

5) Case 9-5

Petitioners: Logan Properties LLC, owner, Doug & Dan LLC, applicant
 Property: 403 Deer Street #7-13
 Assessor Plan: Map 118, Lot 26-3
 Zoning District: Character District 4-L1
 Description: Operate a ten-room inn.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
 a) from Section 10.440 Use #10.30 to allow an Inn where the use is not permitted in the zoning district.

Mr. Mulligan and Mr. Hagaman recused themselves from the petition, and Ms. Eldridge assumed a voting seat.

SPEAKING IN FAVOR OF THE PETITION

The applicant Doug Palardy was present to speak to the petition. He stated that he had a Purchase and Sales agreement to buy the property and was seeking the variance for an inn rather instead of

a bed-and-breakfast. He explained the difference between the two and said he submitted several letters in support to the Board. He reviewed the criteria and said they would be met.

Chairman Rheume asked about the parking arrangement. Mr. Palardy said there were 28 spots in the lot and additional ones available on the Hill, but he noted that most of the other businesses required parking during the day and his guests would check in around 5:00 p.m. and leave the following morning, so he would fill the gap for use of that lot and would have less use for it than an office building. In response to further questions from Chairman Rheume, he said the spaces were delineated and that a gate system was in place. Bob Marchewka said he was an abutter and belonged to the Hill Condominium Association. He said the lot had was a 26-space gated lot that the Hill leased and was given to them from the Portwalk project developers.

Chairman Rheume said no new floor plans were provided and asked if there would be rooms on both floors and on both sides. Mr. Palardy agreed and said the footprint would not be expanded. He said he would get building permits and also meet with the HDC.

Chairman Rheume opened up the public hearing.

Judy Miller of Harbor Hill Condominiums said the condos were located opposite the proposed inn's front door and that she and several of her neighbors felt that the inn would be a wonderful addition to the neighborhood. She said the historic improvements were very appealing and that the inn would be quieter than the previous restaurant had been, with no exhaust fans and so on.

Bob Marchewka said he was a direct abutter and a real estate broker involved in the building's sale. He said the Hill Condominium Association met with the applicants and thought a restaurant or office use would have more intense use as far as parking and so on. He said they appreciated that the restaurant structure and exhaust would be removed.

Karen Logan said she was one of the property owners and that the property was challenged due to its location, pointing out that operating another restaurant in that spot would be difficult. She said the development would enhance the neighborhood.

Joe Almeida of New Castle said he owned three properties on High Street, which he had lived on for many years, and had seen a significant impact from all the recent development in the area. He said he also lived close to the applicant's inn in New Castle and thought that it was very well run and cared for, and he believed that same quality would be placed on the new inn. He said the current empty building would have a much larger negative impact on the neighborhood than the application could ever have and that the values of surrounding properties would not be diminished. He said he fully supported the project.

**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

Chairman Rheaume said that when the applicant's building was a restaurant, the fact that a hotel was built between it and the main portion of downtown changed the characteristics of the property so that it wasn't viewed successfully as a restaurant, and he noted that a lot of new downtown buildings made it much easier for restaurant access. He said the inn was a clever idea and would make a good re-use of the unique property. He said the parking issue was a manageable one, with an adequate number of parking spaces, and that people could use the parking garage if necessary. He said it was a good application.

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

Mr. McDonell said that special characteristics of the property included that it had been an unusual spot for a restaurant and that it was getting harder to make that kind of use, so it looked like the proposed inn would work. He said that granting the variance would not be contrary to the public interest and would observe the spirit of the Ordinance. He said the applicant noted that a B&B was allowed by special exception, which convinced him that allowing an inn would not be contrary to the public interest or the spirit of the Ordinance. He said granting the variance would not alter the essential characteristics of the neighborhood, noting that the character of the neighborhood had changed in part with the hotel nearby, but an inn would be in keeping with the nature of the neighborhood and would pose no threat to the public's health, safety, or welfare. Substantial justice would be done because of the benefit to the applicant, and he saw no harm to the general public. He said the neighborhood would lose what historically was a restaurant but felt that there were enough restaurants in the vicinity to support any loss. Obvious benefit to the applicant to be allowed to make his requested use. He said granting the variance would not diminish the value of surrounding properties, noting that there were a number of abutting condominium dwellers and others who welcomed the addition to the neighborhood. He also noted the applicant's successful history in the area that would be indicative of an increase in the values of surrounding properties after the inn was built. Regarding literal enforcement resulting in unnecessary hardship, he said the property had special conditions that distinguished it from others in the area. He thought the property was an outlier in the historic use in that area, which distinguished it, so allowing it to be more in keeping with the nature of the neighborhood was reasonable. Due to those special conditions, he saw no fair and substantial relationship between the general purposes of the Ordinance and its specific application to the property. He said the proposed use was a reasonable one and noted that a B&B was a special exception and there was a hotel next door, so it seemed like a reasonable proposal.

Mr. Lee concurred with Mr. McDonell and also agreed that the applicant's track record in similar successful ventures gave it a high probability of success.

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

It was moved, seconded, and passed by unanimous vote to go beyond the 10:00 adjournment rule.

6) Case 9-6

Petitioner: 335 Maplewood Ave LLC
Property: 335 Maplewood Avenue
Assessor Plan: Map 141, Lot 26
Zoning District: Character District 4-L1.
Description: Replace existing rear addition
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
a) from Section 10.521 to allow a 3.4'± right side yard where 5' is required.

Mr. Mulligan resumed his voting seat. Ms. Eldridge resumed their alternate status. Vice-Chair Johnson recused himself from the petition, and Mr. Hagaman assumed his voting seat.

SPEAKING IN FAVOR OF THE PETITION

The architect Joe Almeida was present on behalf of the applicant to speak to the petition. He said it was currently the home to Petersen Engineering and that they wanted to move into the next phase, which was to remove the non-conforming portion and rebuilt it to the current footprint. He said they had strong support from the immediate abutter, whose letter was included in the Board’s document packet. He reviewed the criteria and said they would be met. He noted that the applicant would also use the addition as his home.

Mr. Mulligan clarified that the existing setback encroachment at its closest spot was 3’4”. Mr. Almeida said they were proposing that. Mr. Mulligan referred to the zoning calculations table and said it indicated that the rear setback was 5 ft required where 3.4 ft existed, and that 3.4 ft was proposed. He asked which existing setback the project would be closer to, the side yard or rear yard. Mr. Almeida said it was the side yard setback and that they were currently 3’4” off the side yard and proposed that it remain the same.

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 variance for the petition as presented and advertised, and Mr. Hagaman seconded.*

Mr. Mulligan said it was a straightforward proposal that would violate the setback no greater than it already did. He said granting the variance would not be contrary to the public interest and

would observe the spirit of the ordinance. He said the essential characteristics of the neighborhood would not change, the use of the property wouldn't change, and the public's health, safety, and welfare would not be negatively affected. He said granting the variance would do substantial justice because the loss to the applicant if required to be in strict conformance with the Ordinance would far outweigh any gain to the public. He said the proposed project was a very tasteful and good-looking updating of the property, and it was part of a long-term renovation project. He said granting the variance would not diminish the values of surrounding properties because the addition, by replacing existing, would enhance the values of surrounding properties. He said that the special conditions of the property included already having a non-conforming setback that distinguished it from others in the area and that it would maintain a different structure with a different addition. He noted that the existing had an odd shape and lot configuration, and that those were special conditions of the property that distinguished it from others in the area, so he saw no fair and substantial relationship between the purpose of the setback ordinance and its application to the property. He said the use was a reasonable one and permitted in the zone and that the petition met all the criteria and should be granted.

Mr. Hagaman concurred with Mr. Mulligan. He said his only concern had been getting clarity on whether the footprint would expand, and because it would not, he concurred.

Chairman Rheume said he would also support the motion, noting that one of the toughest things in renovating an old home was to get a modern and functional kitchen to fit in, and he felt that adding on a usable kitchen would be a logical extension on an existing old footprint.

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

IV. OTHER BUSINESS

A) Board of Adjustment Rules & Regulations

Mr. Stith stated that three issues were addressed in the memo:

- 1) What happened when the Board had a tie vote. He said that typically, if there was a motion to approve and there was a tied vote, the motion failed. He said it wasn't specified in the Rules and Regulations, which addressed what happened if a tie vote occurred during a Request for Rehearing but not a general vote on a special exception or variance. He said the language proposed to address that stated that the motion to grant a variance or special exception would result in a tie vote, and the decision would be a denial unless a subsequent motion received four affirmative votes.
- 2) The House Bill 1215 originally required the Board to vote on each criteria, but it had not passed. What did pass included language stating that the Board should have one consistent voting method for all applications and that it should be clarified in the Rules and Regulations. Therefore, a Board member would make a motion on all the criteria in one motion, as opposed to voting individually on them.

- 3) There was a conflict regarding the City Council’s adopted fee schedule, which was related to an appeal of an administrative decision. He said the Board stated that there was no fee, but the City Council said there was a \$50 fee, so the Board proposed to delete it from the Rules and Regulations.

The Board discussed the three issues in detail, with the Rules & Regulations to be amended and presented to the Board for final adoption and distribution.

V. ADJOURNMENT

*At 10:30 p.m., it was moved, seconded, and **passed** by unanimous vote (6-0) to **adjourn** the meeting.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary