

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

**7:00 P.M.**

**May 21, 2019**

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

**MEMBERS EXCUSED:** None

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

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Vice-Chair Johnson was absent at the beginning of the meeting.

**I. APPROVAL OF MINUTES**

A) April 16, 2019

*It was moved, seconded, and passed by unanimous vote to **approve** the April 16, 2019 minutes.*

B) April 23, 2019

*It was moved, seconded, and passed by unanimous vote to **approve** the April 23, 2019 minutes as amended.*

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**II. PUBLIC HEARINGS – OLD BUSINESS**

Alternate Eldridge took a voting seat in Vice-Chair Johnson's absence.

A) Case 4-1

Petitioners: Donna L. Acox Revocable Trust, Donna L. Acox, Trustee

Property: 14 Mt. Vernon Street

Assessor Plan: Map 111, Lot 26

District: General Residence B

Description: 6' x 12' Shed

Minutes Approved 6-18-19

- Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
- a) from Section 10.573.10 to allow a 1.5' right side yard where 5' is required;
  - b) from Section 10.521 to allow 38% building coverage where 30% is the maximum allowed; and
  - c) from Section 10.521 to allow 22% open space where 25% is the minimum required.

### **SPEAKING TO THE PETITION**

The applicant Donna Acox reviewed her petition, explaining why the shed's proposed location was the only place to put it. She said she didn't get a building permit because she received an approval from the Historic District Commission (HDC) and didn't think it was necessary.

Chairman Rheaume opened the public hearing.

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

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

### **DECISION OF THE BOARD**

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

Mr. Mulligan said the request didn't require a lot of consideration beyond the right yard setback relief because the building coverage and open space requests were modest. He said granting the variances would not be contrary to the public interest or to the spirit of the Ordinance and the essential character of the neighborhood wouldn't be altered, nor would the health, safety, and welfare of the public be impacted. He said it would result in substantial justice because the loss to the applicant if denied would not be outweighed by any corresponding gain to the public. He said granting the variances would not diminish the value of surrounding properties because the shed was a minimal structure being placed in an appropriate position on the property. As for hardship, he said the special condition that distinguished the property from others was that the property was a long lot and much narrower than its nearest neighbor, especially the right-side neighbor where the setback relief was coming from, so there was no fair and substantial relationship between the provisions of the ordinance and their application to the property. He noted that the physical characteristics of the current built environment drove the replacement of the shed to the proposed location. He said the use was a reasonable one, an accessory use that was permitted in a residential zone, and that the petition met all the criteria.

Mr. Parrott concurred, adding that the lot was very small and the shed had to be built close the lot anyway. He pointed out that the line was marked by a sturdy fence and the adjacent property's backyard was on the other side of it, and the stone wall and garage were in the other direction. He said he didn't see any detrimental effect on the adjacent neighbors at all.

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

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Mr. Mulligan recused himself from the petition, and Alternates Eldridge and Hagaman took voting seats.

**B) Case 4-2**

Petitioners: Vaughan Street Hotel LLC  
Property: 299 Vaughan Street  
Assessor Plan: Map 124, Lot 10  
District: Character District 5 and the Downtown Overlay District  
Description: Signage and lighting for a proposed hotel  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:  
a) Signs #1 and #2, from Section 10.1251.20 to allow two wall signs (124± s.f. and 70± s.f.) where 40 s.f. is the maximum allowed for a individual wall sign;  
b) Sign #5, from Sections 10.1271.10 and 10.1271.20 to allow a sign on an exterior wall that does not face a street and is on the side of the building without a public entrance;  
c) Sign #2, from Section 10.1261.30 to allow internal illumination where only external illumination is allowed for signs in the Historic District;  
d) Accent Light #1, from Section 10.1144.63 to allow lights above the height of 25' on the building surface; and  
e) Light L20, from Section 10.1144.60 to allow a luminaire to be attached at 32'9" ± above grade where the maximum height allowed is 20' above grade.

**SPEAKING TO THE PETITION**

Attorney Peter Loughlin was present to speak to the petition on behalf of 299 Vaughan Street LLC. He stated that the applicant had spoken with the 233 Vaughan Street Condominium owners, who had expressed their concerns about the accent lighting.

Eben Tormey of 299 Vaughan Street Hotel reminded the Board that there were concerns about lighting at the previous meeting due to the poor rendering that showed the lighting washing the entire building. He also noted that the HDC approved the lighting. He said they had an improved rendering and that Attorney Loughlin had provided additional information about the lighting in a letter to the Board. He said they met with the condominium owners and proposed turning off the

lighting at 11 p.m. He said a few neighbors thought it was a good compromise but that there were still concerns, and he requested that Variance D for the accent lighting be withdrawn from the petition so that they could have more time to discuss it with the neighbors. Attorney Loughlin said he reviewed the criteria in full at the previous meeting.

Mr. Lee said he was confused about all the lighting locations and asked if there would be additional lighting facing 3S Artspace and Market Street. Attorney Loughlin said there would not. Mr. Tormey said the 11 fixtures for the parking lighting required a variance due to the height, but nothing else required a variance. Ms. Eldridge asked what the purpose of the sign was, noting that Sign #5 didn't face the street. Mr. Tormey said it did face Market Street and that it would be helpful in making people aware that they needed to take a right-hand turn.

Chairman Rheume asked what the impact would be if the entire petition were postponed instead. Mr. Tormey said it would delay construction. Mr. Hagaman suggested continuing the canned lighting from the left side of the building instead of transitioning to the strip lighting. Mr. Tormey said that section of the building was brick and was meant to look like a different building, so they wanted to use different lighting to break up the mass of the building. Mr. McDonell verified that the applicant preferred that the Board deny Variance D and approve the other four variances that evening. Mr. Tormey said they wanted to resolve the accent lighting with the abutters so that they didn't have to return and discuss it for the third time.

Chairman Rheume said it was unusual and probably not appropriate for an applicant to request withdrawing a portion of a petition. It was further discussed.

*It was moved, seconded, and passed by unanimous vote to **re-open** the public hearing.*

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

No one rose to speak.

## **SPEAKING IN OPPOSITION TO THE PETITION**

Bruce Ocko of 233 Vaughan Street said he was opposed to the illumination on Green Street and the 'eyebrow' lighting across the top of the building. He said his bedroom faced that light and that his property value would be diminished. He said the lighting along the side was purely aesthetic and that he didn't see how it would help draw people to the property.

Kathy Herman of 202 Vaughan Street said the accent lighting would impact two of her bedrooms. She said she was concerned about the full impact of all the lighting and not just the strip lighting. She said there wasn't enough information to make a decision.

Bob Leyman said he and his wife were able to look directly in the hotel. He thought the project was setting a low bar for the rest of development in the City and could set a precedent for future

projects. He said the lighting would diminish his property's value and also affect the health of him and his wife because they couldn't get a good night's sleep.

Tammy O'Neil of 302 Vaughan Street said that property values would be diminished. She asked whether the applicant could potentially go above the 25-ft limit. Chairman Rheume said the Planning Department would ensure that the application went back before the Board. Ms. O'Neil asked if the applicant could also make the lights brighter. Chairman Rheume said those issues would go before the Board as well. Ms. O'Neil said there were too many gray areas and no proven hardship and that people would not be able to sleep because of all the lighting.

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

Attorney Loughlin clarified that the applicant was not asking for relief on the accent lighting that evening. He noted that the City would confirm every permit. He said the applicant addressed all the concerns but that there was still issues with the accent lighting, which was why they wanted to withdraw it from the petition or postpone it.

Tammy O'Neil said the neighbors didn't have the time or inclination to keep coming back. She said she was fine with the applicant's offer to turn off the lights at 11 p.m. but didn't know whether the other neighbors would find it reasonable if they went to bed early.

Bruce Ocko stated that the offer to turn the lights off at 11 p.m. might just be applicable to the current owner. Mr. Lee said the variance remained with the building, not the operator. Chairman Rheume said they would have to stipulate the timing of the lights. Mr. Ocko said the accent lighting would be a dramatic shift from the way other buildings in the area were lit.

Kathy Herman said it still wasn't clear on what the lighting intensity would be.

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

### **DISCUSSION OF THE BOARD**

Mr. Stith reviewed the parking lot lighting and emphasized that the lights all pointed down and wouldn't be seen from any street frontages. Mr. Hagaman noted that the HDC approved the plan but that he couldn't tell if they approved the lighting because the document indicated that accent lights would require additional approval beyond the HDC. Chairman Rheume said the HDC didn't have the final word on lighting. They discussed whether the entire petition should be postponed or whether just Variance D for the accent lighting should be postponed.

*Ms. Eldridge moved to **separate** Variance D from the petition and **postpone** it to another meeting. Mr. Lee seconded for purposes of discussion.*

Mr. Hagaman said he would not support the motion because it was the second meeting and he thought the applicant wanted to withdraw the accent lighting variance out of fear that it might not

get approved. He added that most of his issues were with the accent lighting and he didn't know if any new information would persuade him to support it. He said there were other ways to provide accent lighting on the building that didn't require a variance. Chairman Rheaume pointed out that the abutters had already attended two meetings and that the applicant had an extra month to sort the accent lighting out but that it was still a concern, so he didn't see how another month would change things significantly and was not willing to postpone the accent lighting. Mr. Parrott said there wasn't enough definitive information for him to make a decision as to what the building would look like without the accent lighting.

*The motion to postpone Variance D **failed** by unanimous vote, 7-0.*

Mr. McDonell explained why he thought the requests for the sign variances were reasonable as well as the parking lot lighting. He said he could support approving those variances and disapproving the variance request for accent lighting, which would include the vertical lighting strips and the eyebrow. Mr. Lee said he didn't see how the strip lights would complement the City and thought they would disturb people's sleep. Chairman Rheaume said there were three other hotels in Portsmouth that operated successfully without accent lighting and that people had no trouble finding them. He said he could support all the signage except for Sign #5 in Variance B that would be visible from Market Street. He felt that it was asking for too much and felt that it was purely advertising on the applicant's part and not appropriate for the downtown area. He also noted that other hotels didn't have accent lighting and asked what was unique about the property that it had to have accent lighting. He said he didn't think it was a hardship, regardless of what side of the building the lighting was on. He said it was approved by the HDC in 2017 and wondered why it took so long for it to come before the Board. He said he didn't sympathize with the applicant's request to have more time to configure the accent lighting.

## **DECISION OF THE BOARD**

Mr. McDonell said he agreed with Chairman Rheaume and was convinced that there wasn't sufficient hardship to approve Sign #5.

*Mr. McDonell moved to **grant** the variance requests for A, C, and E and deny B and E. Mr. Hagaman seconded.*

Mr. McDonell noted that it was reasonable to allow identifying signage, even though most people used GPS to find locations, and allow Signs #1 and #2 as requested. He said that granting the variances for A, C, and E would not be contrary to the public interest and would observe the spirit of the ordinance. He said he didn't think there would be any injury to public rights and that the public's health, safety, and welfare would not be impacted because no one had indicated as such, although they had indicated that the accent lighting would affect their health. He said substantial justice would be done because the essential character of the area would be kept by allowing Signs #1 and #2, and the parking lighting wouldn't be a harm to the public. He thought there would be harm in seeing a random sign for a random hotel from far away, however, and closer harm with the accent lighting that the neighbors were concerned about. He said that

granting the variances would not diminish the value of surrounding properties, noting that there was no testimony as such for Variances A, C, and E, but there was lots of testimony about accent lighting, which the Board had to take into account. He said the hardship was that the property was set back in such a way that most people wouldn't be driving down those streets if they were just passing through, so there were some special conditions to the property with respect to the parking luminaires. He said the elevated parking deck and enclosed lighting were special conditions that distinguished them from others.

Mr. Hagaman said he concurred on the approval of Items A, C, and E, and believed that denying Items B and D was appropriate because Variance B failed on the hardship criteria. He thought the biggest concern of the property owner was finding the building but didn't think it was a legitimate hardship. He said Variance D failed several criteria: it would alter the essential character of the neighborhood, would be contrary to public interest, and would possibly diminish surrounding property values. It failed the hardship criteria because there was no evidence presented as to why the accent lighting would alleviate some hardship inherent with the property.

There was some confusion because the staff report didn't match the agenda in identifying the variances. Mr. Stith clarified that Sign #5 was actually the 70 square-foot sign and, if denied, then Sign #1 would be approved as the 124 square-foot sign and Sign #2 was the marquee sign under Variance C. He said that approving Variance A would be approving Sign #1, and denying Variance B would be denying Sign #5.

*Mr. McDonell **amended** his motion in approving Variance A to approve only Sign #1. Mr. Hagaman concurred.*

Mr. Parrott said the whole package should be denied because it was too piecemeal. He said he would not approve the motion.

*The motion to approve Variances A as it applied to Sign #1, Variance C in its entirety, and Variance E in its entirety, and to deny Variances B and D **passed** by a vote of 5-2, with Mr. Parrott and Mr. Lee voting in opposition.*

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### III. PUBLIC HEARINGS – NEW BUSINESS

Mr. Mulligan resumed his voting seat.

*It was moved, seconded, and passed to take Petition 5-5 out of order and **postpone** it to the June 18, 2019 meeting.*

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At this point, Vice-Chair Johnson arrived at the meeting, and Ms. Eldridge and Mr. Hagaman resumed their seats as Alternates.

## 1) Case 5-1

Petitioners: Ida Barry House Condominium Association and James Gary Dinulos  
Revocable Trust of 2013, James G. & Paulette A. Dinulos, Trustees

Property: 3 Hancock Street

Assessor Plan: Map 103, Lots 85-1 and 85-2

District: Mixed Residential Office

Description: Install a ductless A/C condenser

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

a) from Section 10.515.14 to allow a 7'± right side yard for a ductless A/C condenser where 10' is required.

**SPEAKING TO THE PETITION**

The applicant James Dinulos said he wanted to place the condenser on the other side of the house where it would be shielded from public view by a fence. He reviewed the criteria.

Mr. Hagaman asked why the condenser had to be placed on the other side of the house. Paulette Dinulos explained that they couldn't go through the two existing chimneys.

Chairman Rheume opened the public hearing.

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

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

**DECISION OF THE BOARD**

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

Mr. Formella stated that the requested relief was less than what already existed on other parts of the property. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance and would not alter the essential character of the neighborhood. He noted that the condenser would be placed right next to the house because it couldn't go anywhere else and no one would see it. He said substantial justice would be done because there would be no benefit to the public by denying the request and there would be a loss to the applicant if he couldn't cool his home. He said granting the variance would not diminish the value of surrounding properties. As for hardship, he said there were special conditions of the property, given the size and build of the lot and the fact that there was nowhere else to put the condenser. He said a deviation already existed on the property that was greater than what the applicant was asking for, so there was no substantial relationship between the purpose of the



ordinance and the application of the provisions to the property. He said the proposed use was reasonable and should be approved.

Mr. Parrott concurred and had nothing to add.

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

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2) Case 5-2

Petitioners: Hunking Holdings LLC and Peter G. Morin Trust, Peter G Morin, Trustee  
Property: 170 Mechanic Street  
Assessor Plan: Map 102, Lot 7  
District: General Residence B  
Description: Construct a 24'± x 24'± garage, 30± s.f. addition and a bulkhead.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:  
a) from 10.573.20 to allow an accessory structure with a 5'± rear yard where 14' is required;  
b) from Section 10.521 to allow a rear yard of 7.9'± for an addition and 9'± for a bulkhead where 25' is required for each;  
c) from Section 10.571 to allow an accessory building or structure to be located closer to a street than the principal building; and  
d) 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.

### **SPEAKING TO THE PETITION**

Arilda Dench was present on behalf of the applicant to speak to the petition. She reviewed the site plan and emphasized that the property had three frontages. She said the garage and the bulkhead would be tucked into the back so that they did not affect the views. She also noted that approval was received from all the abutters.

Mr. Hagaman asked why the applicant didn't just shift the footprint closer to the property to keep the 8-ft setback. Ms. Dench said the applicant wanted a typical-sized modest garage.

Chairman Rheume opened the public hearing.

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

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

### **DECISION OF THE BOARD**

Minutes Approved 6-18-19

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

Mr. Mulligan noted that properties with frontage on three separate streets weren't often seen and posed challenges. He said the request was reasonable and was heartened at how modest the proposal was in a neighborhood of elaborate garages. 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 character of the neighborhood would not be altered and there would be no threat to the public's health, safety, and welfare. He said there would be additional encroachments into the setbacks but that there was a lot of open space because the property fronted on three streets and the encroachment wasn't unusual, given the amount of setback encroachment in the neighborhood. He said substantial justice would be done because it was almost impossible for the lot to comply, given that there was the frontage on three streets, and placing the garage anywhere else on the property would take away a lot of the open space. He said granting the variance would not diminish the value of surrounding properties and that surrounding properties would see a greater impact if the garage were sited elsewhere. As for literal enforcement of the ordinance, he said the lot was unusually large for the neighborhood and fronted on three streets, which were conditions that differentiated it from others in the neighborhood. He said there was no fair and substantial relationship between the purpose of the setback ordinance and its application to the property. He said the use was reasonable, a garage and a modest mudroom addition, and met all the criteria.

Vice-Chair Johnson concurred and had nothing to add.

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

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Mr. Parrott recused himself from the petition, and Mr. Hagaman assumed his voting seat.

### 3) Case 5-3

Petitioners: Donald J. and Lauren E. Geoffrion

Property: 1847 Lafayette Road

Assessor Plan: Map 268, Lot 1

District: Single Residence B

Description: Construct an 11'± x 25'± 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 a 22'± secondary front yard where 30' is required.

### **SPEAKING TO THE PETITION**

The applicant Donald Geoffrion stated that the current deck was an eyesore that did not follow the setback guidelines. He said the property was a corner lot and the new deck would be located

near the main entry to the house. He noted that the new deck would extend about a foot further. He reviewed the criteria and said they would be met.

Chairman Rheaume opened the public hearing

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

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

### **DISCUSSION OF THE BOARD**

Mr. Stith said an as-built survey would not be required because the measurements were taken from online to account for any discrepancies.

### **DECISION OF THE BOARD**

*Mr. Lee moved to **grant** the variance for the petition as presented and advertised, noting that it wasn't necessary to put a tolerance on it. Mr. Mulligan seconded.*

Mr. Lee said it was a simple request and that the property was a corner lot. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. Substantial justice would be done, and the value of surrounding properties would not be diminished. He noted that special conditions of the property were that some of the frontage was on two different streets, which distinguished the property from others, so there was no fair and substantial relationship between the purpose of the ordinance and its specific application to the property. He said the proposed use was a reasonable one.

Mr. Mulligan concurred and had nothing to add.

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

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#### 4) Case 5-4

Petitioners: 319 Vaughan Street Center LLC, owner and 3S Artspace, applicant  
Property: 319 Vaughan Street  
Assessor Plan: Map 124, Lot 9  
District: Character District 5 and the Downtown Overlay District  
Description: Summer concert series.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:  
a) a special exception from Section 10.440, Use #3.521 to allow an outdoor performance facility where the use is allowed by special exception; and  
b) a variance from Section 10.592.10 to allow an outdoor performance facility use to be located 500' from a residential district.

**SPEAKING TO THE PETITION**

The applicant Tristan Law stated that it was the third year for their outdoor concert series and that they were held on Fridays from 7 to 9 p.m., with usually 50 people in attendance. He said the concerts ran only in July and August and that there were never complaints from the public. In response to the Board's questions, Mr. Law said the music would be done by 9:00 p.m., that they were usually held on Fridays, and no performances would be held inside. He said they anticipated having eight or nine shows and that there were no complaints about noise in the past, and the concerts were always held on Friday nights and just during the summer season.

Mr. Hagaman asked whether more permanent structures would be required or if a permitting process was needed for alcohol being consumed outside. Mr. Stith said there would not. Chairman Rheume said he thought the applicant would just need fencing.

Chairman Rheume opened the public hearing.

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

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

**DISCUSSION OF THE BOARD**

Chairman Rheume said the Board had approved the concerts twice already but pointed out that the variances went with the property. He said the area wasn't developed at the time, but since then the hotel was an abutting neighbor and there was a business use across the street. He said the request was also for perpetuity and that the Board could stipulate the days of the weeks that would be acceptable, the level of amplification, and so on.

**DECISION OF THE BOARD**

*Vice-Chair Johnson moved to **grant** the requests for special exception and a variance, but limit it from June 1 to October 1, 6 to 9 p.m., and not require the applicant to return. Mr. Lee seconded.*

Vice-Chair Johnson said the location, hours, arrangement of the site, performance location, and having precedent that 40-60 people would attend made him comfortable with the continual approval of the application. He addressed the special exception and stated that it would pose no hazard to the public or adjacent properties on account of potential fire, explosion, and so on. It would pose no detriment to properties in the vicinity or change to the essential characteristics of any area including residential neighborhoods, industrial or business districts, etc. on account of the location or scale of the buildings, other structures, and so on. He said it was already a performance facility and included an art gallery and restaurant, so the facility already had similar uses going on inside and out. He said granting the special exception would pose no creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity,

noting that it had been proven that those types of events at that particular facility were on the smaller side and not hosted on the inside. He said there would be no excessive demand on municipal services for the same reason, that the use of the facility for that purpose was less than things that already existed and approved. He said there would be no stormwater runoff issues.

Vice-Chair Johnson addressed the variance, noting that there was proximity to small residential neighborhoods in the vicinity, but the area was made up of an eclectic arrangement of hotels, businesses, commercial, performance facilities, restaurants, train tracks, future grocery stores, parking lots, and so on. He said it was also in the DOD but on the downtown's buffer border, where there was an acceptance of certain activities, quantities of people, and levels of volume and noise that came from living in an area near an urban downtown and was part of the sacrifice made from the benefits of living in that area. He said the use would not alter the essential character of the neighborhood because it would be in line with that neighborhood's character that had developed in the past years and that it would take a use that was already accepted in the interior of the building and move it to the outside. He noted that it had been proven over the past few years to be respectfully done and would continue to be done so, taking into account the ever-changing scenery, neighbors and hotel. He said he was sure that, based on the recent few years of 3S Artspace's existence and as adjacent properties to the concert area developed, that if there were complaints there would be compromise. He said the use had already been proven, however, to not have an effect on the immediate abutters. He said the project also tied into the spirit of the ordinance, as far as the location of the property. He said granting the variance would do substantial justice, noting that no one spoke against the proposal and that he had never experienced a downside to the outside performances there and that they didn't seem to be negatively affecting the public. As far as diminishing the values of surrounding properties, he said there could be an argument made for values of places such as the new adjacent hotel being located near small cultural satellites throughout town and that there could be an advantage to that, and that he didn't think it would diminish the values of surrounding properties. He said the hardship was that the location was borne out of an eclectic neighborhood that surrounded it and the fact that it was in a former industrial/commercial and future residential business/commercial area, but it still had lingering and important residential ties to it in a broad radius based on what the applicant was proposing, which was smaller outside acoustic performances. He said he heard no complaints from residential neighbors in the past and would put his good faith that the use would continue on in the same manner. He said that, for those reasons on the special exception and the variance, the Board should approve the application.

Mr. Lee concurred, adding that the applicant had a successful track record and pointing out that the approval limited the dates and times, so he saw no need to limit the frequency of the concerts.

Mr. McDonell asked whether the Board should stipulate that no more than 10 events would be held. Chairman Rheume said the Board was granting it in perpetuity and that someone other than the applicant could do something different in the future, so he suggested stipulating that the performances could only be Fridays through Sundays and that portable amplification must be used for sound. He said those two additional stipulations would protect the neighborhood as it

developed into a more residential area, and if a future applicant felt that it was necessary to add more times or more amplification, the applicant would have to return for additional approval.

*Vice-Chair Johnson **amended** his motion to include that a maximum of 16 performances be allowed per season, a cut-off time of 9:00, a portable amplification system, and a limit of Friday to Sunday evenings.*

*Mr. Lee concurred.*

*The final motion was to **approve** the concert series in perpetuity, with the following stipulations:*

- The concert series must take place between the first of June and the first of October;
- The concerts must be between the hours of 6:00 p.m. and 9:00 p.m. only;
- The concerts would be limited to a maximum of 16 performances per season;
- The concerts would be limited to between Fridays and Sundays;
- Portable amplification must be used for all sound amplification.

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

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5) Case 5-5

Petitioner: 56 Middle Street LLC  
Property: 56 Middle Street  
Assessor Plan: Map 126, Lot 19  
District: Character District 4-Limited and the Downtown Overlay District  
Description: Convert to residential duplex. Replace addition with two-story addition/garage.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:  
a) from Section 10.5A41.10A to allow a building footprint of 2,646± s.f. where 2,500 s.f. is the maximum allowed;  
b) from Section 10.5A41, Figure 10.5A41.10A and Section 10.5A43.60 & Figure 10.5A43.60 to allow a duplex in the Downtown Overlay District where it is not permitted; and  
c) from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance.

*It was moved, seconded, and passed by unanimous vote (7-0) to **postpone** the application until the June 18, 2019 meeting.*

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6) Case 5-6

Petitioners: Thomas A. Nies Revocable Trust of 2010 (50% Int.), Thomas A. and

Denise M. Nies, Trustees  
Property: 419 Richards Avenue  
Assessor Plan: Map 112, Lot 20  
District: General Residence A  
Description: Replace existing garage.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:  
a) from Section 10.521 to allow a 6.5'± right side yard where 10' is required;  
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.

### **SPEAKING TO THE PETITION**

The applicant Thomas Nies stated that the existing garage was not a conforming structure and was too small to fit a car in it, so he wanted to replace it with a new garage. He reviewed the criteria and submitted to the Board emails from abutters who were in support of the project.

In response to Mr. Hagaman's question, Mr. Nies said the patio didn't have the space to maintain the current eight feet because the new garage would be a few feet larger and require 2-1/2 feet. He noted that the patio had landscaping surrounding it and a path between it to the garage.

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

Andrea Daly of 429 Richards Avenue said the project wouldn't affect her property values and would be in keeping with the neighborhood.

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

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

### **DECISION OF THE BOARD**

*Mr. Parrott moved to **grant** the variances for the petition as presented, with the following stipulation:*

- That the right sideyard setback be plus or minus 6 inches of the requested 6-1/2 feet.*

*Vice-Chair Johnson seconded.*

Mr. Parrott said the petition was straightforward, a replacement of an old garage that was sized typically to its day with a modern garage that was modest but big enough to accommodate a modern vehicle and yard equipment. He said a detached garage was typical of the neighborhood

and would be a benefit to the property and adjacent properties. He said granting the variances would not be contrary to the spirit of the ordinance and wouldn't change the essential character of the neighborhood nor threaten the public's health, safety, and welfare or injure public rights. He said it was hard to see anything of concern with respect to the public. He said substantial justice would be done because there was no public interest in the project. Granting the variances would not diminish the values of surrounding properties. He said they were likely to benefit by the upgrading of the property with respect to a modern, code-compliant garage. He said the hardship was that the buildings and driveway were located where they were and the lot was narrow, so it was logical to place the garage in the intended location. He said the approval of plus or minus six inches regarding the placement of the garage relative to the sideline would allow for normal construction abnormalities. He said all the criteria were met.

Vice-Chair Johnson concurred and had nothing to add.

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

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7) Case 5-7

Petitioner: Gail H. Sanders Revocable Trust of 1998, Gail H. Sanders, Trustee  
Property: 30 Walden Street  
Assessor Plan: Map 101, Lot 18  
District: Waterfront Business  
Description: Replace 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 a 5'± left yard where 30' 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.

**SPEAKING TO THE PETITION**

The project contractor James Edwards Sabatini reviewed the petition and criteria. He said he thought they had a permit because the original contractor had indicated so. In response to Mr. Mulligan's questions, Mr. Sabatini said the existing deck violated the setback, the proposed deck received HDC approval, and there was no change to the design since then.

Chairman Rheume opened the public hearing.

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

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

**DECISION OF THE BOARD**



*Mr. Formella moved to **grant** the variances as presented and advertised, and Mr. Lee seconded.*

Mr. Formella said that granting the variances would not be contrary to the public spirit and would observe the spirit of the ordinance. He said the new deck would be in the same footprint and would not alter the essential character of the neighborhood. He said substantial justice would be done because there would be no gain to the public, given that nothing was really changing on the property, and if denied, the loss to the applicant would be that they would have to stick with their existing, low-quality deck. He said granting the variances would not diminish the values of surrounding properties because the new deck would be in the same footprint. He said the hardship was the lot and where the house was located on the lot, and the existing deck was already in violation of the setback, so there was no fair and substantial relationship between the purpose of the setback ordinance and its application to the property. He said the use of a deck was reasonable and that the petition should be approved.

Mr. Lee concurred and had nothing to add.

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

Mr. Mulligan noted that the application was the second one that evening in which the applicant thought he was okay because he had gone before the HDC. He suggested that City staff consider how certificates of approval were communicated to applicants so the applicants knew they might need further approvals. Chairman Rheaume agreed.

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#### **IV. OTHER BUSINESS**

No other business was presented.

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#### **V. ADJOURNMENT**

*It was moved, seconded, and passed by unanimous vote to **adjourn** the meeting at 9:50 A.M.*

Respectfully submitted,

Joann Breault  
BOA Recording Secretary