

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

7:00 P.M.

**July 23, 2019,
Reconvened From
July 16, 2019**

MEMBERS PRESENT: Chairman David Rheame, Vice-Chairman Jeremiah Johnson, Arthur Parrott, Jim Lee, Peter McDonell, Chris Mulligan, Alternate Phyllis Eldridge, Alternate Chase Hagaman

MEMBERS EXCUSED: John Formella

ALSO PRESENT: Peter Stith, Planning Department

I. OLD BUSINESS

Mr. Mulligan recused himself from the Request for Rehearing, and Alternates Ms. Eldridge and Mr. Hagaman assumed voting seats.

A) Request for Rehearing regarding property at 201 Kearsarge Way

Chairman Rheame stated that the applicant submitted additional information as to why he believed the Board was in error in denying the petition.

DECISION OF THE BOARD

*Mr. Hagaman moved to **deny** rehearing the petition, and Mr. Parrott seconded.*

Mr. Hagaman said he was the member who moved to deny the original petition because he felt that it had not met the two criteria of observing the spirit of the ordinance and hardship. He said he had believed that the project would alter the essential character of the neighborhood and that it lacked a hardship. He noted that the Board discussed the lot size, frontage, etc. and thought that the project would create a mini-subdivision of homes in that area of Kearsarge Way. He said Mr. Parrott had thought there was plenty of room to do a more traditional subdivision into two lots that would be more consistent with the neighborhood. Mr. Hagaman said the issue hadn't been just the variance itself but what the resulting properties could do to the area.

Mr. Parrott concurred with Mr. Hagaman's comments and had nothing to add.

Chairman Rheaume said he would not support the motion because he still stood by what the Board thought previously and that he still believed the properties were gerrymandered. From a macro standpoint, he said there was a number of larger lots in the general area but that the relief sought was just on one of the three lots. He said it was within the Board's purview to look at the application as a whole and include the other two lots. He said if the petition were reheard, it would give the Board an opportunity to better define what they were trying to get across in denying it. Mr. Lee said he wouldn't support the motion. He said he couldn't see how the project would change the neighborhood's character because it was isolated from the neighborhood and the thirteen feet lacking in frontage was ridiculous to deny.

*The motion **failed** by a vote of 3-4, with Mr. Lee, Ms. Eldridge, Vice-Chair Johnson, and Chairman Rheaume voting in opposition to the motion.*

*Mr. Lee moved to **rehear** the petition, and Ms. Eldridge seconded.*

Mr. Lee said the case should be reheard for the reasons he previously outlined, and Ms. Eldridge concurred. Vice-Chair Johnson said the applicant made some good points relating to density in the adjacent neighborhood and hardship, but he agreed about the gerrymandering language and thought it was worth hearing the petition again. Mr. McDonell said he would not support the motion because he thought the maker of the original motion had articulated that there would be a detriment to the character of the neighborhood and the hardship issue on reasonable grounds.

*The motion **passed** by a vote of 4-3, with Mr. McDonell, Mr. Hagaman, and Mr. Parrott voting in opposition to the motion.*

II. PUBLIC HEARINGS – OLD BUSINESS

Mr. Mulligan and Mr. Parrott recused themselves from the petition. Alternates Ms. Eldridge and Mr. Hagaman retained their voting seats.

A) Case 7-7

Petitioner: Matthew Wajda
Property: 183 Coolidge Drive
Assessor Plan: Map 268, Lot 29
District: Single Residence B
Description: Create a second lot from an existing lot.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from Section 10.521 to allow the following:
a) a lot area and lot area per dwelling unit of 10,100 s.f. for the lot with an

- existing structure where 15,000 s.f. is required for each;
- b) a lot area and lot area per dwelling unit of 10,270 s.f. for the proposed lot lot where 15,000 s.f. is required for each;
- c) 85' continuous street frontage where 100' is required; and
- d) 86' lot depth where 100' is required.

(This petition was rescheduled, and changed, from the July 16, 2019 meeting.)

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech was present on behalf of the applicant. He reviewed the criteria and said they would be met, noting that the lot size was almost twice the size of the other lots in the area.

In response to the Board's questions, Attorney Pelech said the lot could hold a 30'x40' home, that the lot had always been one lot, and that nothing on the application had changed since it was originally submitted a few decades before and then withdrawn by the applicant's parents

SPEAKING IN OPPOSITION TO THE PETITION

Jim Homet of 259 Grant Avenue said his and some of the neighbors' lots were the same size as the applicant's and that Grant Avenue had nothing to do with Elwyn Park. He said his request for a similar variance was denied several years before, even though it was much smaller.

Diane Oman of 259 Grant Avenue said the lot didn't conform enough to allow another home on it and would not be in keeping with the neighborhood. She said there was no hardship.

Judy Defrias (no address given) said her backyard abutted the applicant's property and said the project would have a negative impact on her yard, including loss of greenspace and privacy.

Brenda Bishop of 239 Grant Avenue agreed with her neighbors that there was no hardship because the applicant could renovate his home or add on to it.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Pelech clarified that Grant Avenue was shown on the original 1960s Elwyn Park subdivision plans. He said the application had gone before the Planning Board before and not the BOA, and that the procedure was different then and the application was withdrawn.

Jim Homet said Grant Avenue was obviously near Elwyn Park but pointed out that there were nicer and bigger homes on Grant Avenue, which made it a nicer street.

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

DISCUSSION OF THE BOARD

Mr. Lee said it seemed that all the lots were smaller than the applicant's, and if the applicant's lot were subdivided, it would make them the same size as the other lots. He said if the applicant built a house fronting on Grant Avenue, it would have another address and not be stuck in someone's backyard. Mr. Hagaman agreed that most of the lots surrounding the applicant's property in that particular vicinity looked similar in size and placement of housing, but that there seemed to be a distinction in size and shape near the McKinley intersection. He appreciated that Elwyn Park had a lot of small properties with houses crammed on them but said one part of it had a more spacious aspect, so he had concerns that having two very nonconforming lots would be out of character with that aspect of the neighborhood.

Vice-Chair Johnson said he agreed that subdividing the properties would bring the property more into character with the neighborhood. He said the micro neighborhood really was between Coolidge Drive and Grant Avenues, which made that unique portion of the neighborhood across the street in proximity, but he noted that the Board was dealing with the adjacent properties between the two streets, and subdividing the lots would bring them into closer conformity with their surrounding neighborhood. He elaborated and also noted that the proposed building would comply with lot coverage, setbacks, and height requirements. Mr. McDonell said the deciding factor of hardship was that the property was not a corner lot and that it had frontage of Coolidge Street and Grant Avenue. He said two lots would look identical to the ones next door. Chairman Rheame said he was in favor of the petition because if the lot was broken up into two lots, the property would fit and be in keeping with the neighborhood's characteristics more than the previous time it was submitted.

DECISION OF THE COMMISSION

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

Vice-Chair Johnson said he would include his previous comments. He said the building size that was derived from making a zoning-compliant house would bring the lot more into conformity and character. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because the subdivision and new single-family home would bring the neighborhood more into character with the surrounding micro neighborhood between Grant Avenue and Coolidge Drive. Although he respected the fact that some of the properties across the street were slightly larger, he didn't find it to be something that weighed in drastically. He said if the average of the properties across the street and adjacent properties was taken, it would come out to something pretty close. He said the SRB zones tended to be closer to the 10,000-s.f. size and felt that it would not affect the neighbors' light and air and would leave plenty of yard and space. He noted that whenever the Board considered infilling a long-term, vacant property, there was usually resistance from the neighbors. He said granting the variances would do substantial justice because the applicant had the right to use his property in a reasonable manner. He noted that the abutters might not be pleased, but the majority of the criteria, such as light, air, safety, public welfare, and character of the neighborhood, would not be greatly offended. He said granting the variances would not diminish the value of surrounding

properties because any new construction would drive values up. He said the project would be a tasteful and moderate-sized house built of sound construction, which would add to surrounding home values. He said the hardship was that the lot was larger than the immediate adjacent properties and fronted on two streets. He said there was no fair and substantial relationship between the general purpose of the ordinance and its specific application to the property. He said it was a reasonable use, a small-to-moderate single-family home in a single-family neighborhood, and that some driving down the street in five years would know no difference.

Mr. Lee concurred, adding that the petition checked all the criteria boxes and that there would be no diminution of value in surrounding properties. He said the lot was tailor-made to subdivide.

*The motion **passed** by a vote of 5-1, with Mr. Hagaman voting in opposition.*

III. PUBLIC HEARINGS – NEW BUSINESS

Mr. Mulligan and Mr. Parrott returned to their voting seats. Mr. Hagaman retained his voting seat and Ms. Eldridge returned to alternate status.

1) Case 7-9

Petitioners: Weeks Realty Trust, Kaley E. Weeks, Trustee and Chad Carter, owners and Tuck Realty Corporation, applicant

Property: 3110 Lafayette Road and 65 Ocean Road

Assessor Plan: Map 292, Lots 151-1, 151-2 and 153

District: Single Residence B

Description: Demolish existing residential structure and construct 18 townhouses in 5 structures on merged lots with one existing home to remain.

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

- a) from Section 10.513 to allow more than one free-standing dwelling per lot;
- b) from Section 10.440, Use #1.40 to allow townhouses where the use is not permitted;
- c) from Section 10.521 to allow a lot area per dwelling unit of 4,537 s.f. where 15,000 s.f. per dwelling unit is required.

Chairman Rheume noted that the Board denied the petition in May 2019 but the applicant had submitted some information pertaining to Fisher v. Dover. The Board had no comments.

SPEAKING IN FAVOR OF THE PETITION

Attorney Larry Gormley was present on behalf of the applicant to speak to the petition. He introduced the realtor Mike Garrepy, who reviewed the changes. He said the units were decreased from 23 to 18, including two triplexes in the back of the property, and that the existing house would remain. He said that all the units had decreased in size and that there would be no traffic conflicts. In response to Vice-Chair Johnson's comments, Mr. Garrity said they went from 23 units to 18 because the Board thought 23 units were too dense. He noted that the single-family home made it 19 units and that its retention would help maintain the buffer.

Attorney Gormley reviewed the criteria and said they would be met.

SPEAKING IN OPPOSITION TO THE PETITION

Robert Mayberry of Winchester Street said the project did not fit in with the character of the neighborhood. He said the property was full of ledge and granite, which would necessitate using dynamite. He pointed out that all the neighbors' backyards would face the townhouses.

Maria Gregory of 85 Ocean Street said the development was too big and didn't look right for the neighborhood. She also agreed that dynamite would have to be used to build.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Mr. Mulligan said the plan was more modest than the previous one and felt that there was evident hardship because one of the lots had been undivided for a long time and the other lot was derelict. He said it was an appropriate location for that much density and because the neighborhood was a transitional one with mixed uses. Vice-Chair Johnson agreed and said there was a balance between the density and building a project that was lucrative but still sensitive. He said the siting of the back buildings was appropriate, with the townhouses moved more toward the corner lot. He said the single-family home would remain and would take care of more than a third of the property line for the abutter and keep that area open. He said he would support a stipulation for screening. Mr. Hagaman said he appreciated the significant adjustments that the applicant had made and thought most of the density was pulled toward the front, away from the residences behind it. He said the adjacent property would not be overcrowded because the single-family home would stay and would maintain the residential feel of the neighborhood.

Mr. McDonell said it was a good application but was concerned about diminution of the value of surrounding properties, especially the neighbor directly behind the development, because the land would be heavily developed. Mr. Parrott agreed that the revised plan was the best but thought it was still too dense and that the established neighborhood deserved more of a buffer than the project provided. He said it was also intense in terms of the number, placement, and size of the units and thought that six units could be eliminated, with the rest concentrated toward

Lafayette Road. He thought the back units still made the development too big and intense for the SRB zone. He said the density request was for a huge increase and couldn't support it without further modifications. Chairman Rheume said the two back buildings would not seem that huge because they had a good transition feel, and he said the Board felt that the revised plan and keeping the single-family home was more appropriate for Lafayette Road.

Vice-Chair Johnson said he wanted to retract his comment about stipulating screening because he discovered that there was a landscape plan.

DECISION OF THE COMMISSION

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

Mr. Mulligan said he would have voted for the 23-unit plan but thought the revised plan was even better and incorporated several important features that would be beneficial to the neighborhood and would mitigate other neighborhood effects. He said granting the variances 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 because it was a mixed neighborhood with different uses including several commercial businesses and dense residential manufacturing housing. He said substantial justice would be done because the loss to the applicant if denied would outweigh any gain to the general public by requiring strict conformance with the ordinance. He said that portion of the city wasn't suited for an SRB zone, pointing out that one of the lots had never been developed and the other lot was derelict. He said the applicant did a nice job of repurposing the property. He said the hardship was that the property had special conditions including frontage on Ocean and Lafayette Roads and the fact that it was a large amalgamated piece of property that was different from others, so there was no fair and substantial relationship between the purpose of the application of the ordinance to the property that would distinguish it from others in the area. He said the property wasn't suitable for single residence development. He said granting the variances would not diminish the value of surrounding properties because the development would have shiny new homes that would be code-compliant construction and would have a positive effect. He said a lot of the design elements mitigated any negative effects on the abutters' properties. He said the rhythm of the neighborhood would not be affected because the existing dwelling would remain and the densest part of the development would be pushed toward Lafayette Road. He said the petition met all the criteria and should be approved.

Mr. Hagaman concurred and said the adjustments were important factors in meeting the criteria.

*The motion **passed** by a vote of 6-1, with Mr. Parrott voting in opposition.*

Mr. Parrott recused himself from the petition, and both Alternates assumed voting seats.

2) Case 7-10

Petitioner: Gruen Revocable Trust of 2019, Thomas W. and Carol R. Gruen, Trustees

Property: 673 Middle Street

Assessor Plan: Map 148, Lot 33

District: General Residence A

Description: A one-story 7.5' x 22' rear addition (165 s.f.) including rear entry porch.

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 4.5' left side yard where 10' is required;
- b) from Section 10.521 to allow 40% building coverage where 25% is the maximum allowed; 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.

SPEAKING IN FAVOR OF THE PETITION

Architect Anne Whitney was present on behalf of the applicant. She submitted some emails that the applicant sent to immediate abutters. She reviewed the petition and criteria, noting that a small kitchen and porch addition would allow better access to the home.

In response to Vice-Chair Johnson's question, Mr. Whitney said she didn't know whether a triangular portion of the lot was on the abutter's lot because it was so dense that she couldn't see it. Chairman Rheame noted that the building coverage percentage different in the Staff Memo and the petition description but was okay as long as it resulted in 40 percent coverage.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

- *As recommended by City staff, a plus/minus 6 inches to the left side yard setback would be included.*

Vice-Chair Johnson seconded.

Mr. McDonell said it was a straightforward application for a single-story small addition that would not affect any neighboring properties or the public. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said he

didn't see anything that would alter the essential character of the neighborhood or threaten the public's health, safety, or welfare. He said substantial justice would be done because he saw no harm to the general public. He said a neighbor could have concerns with the addition because of the way it was going to be built, but he didn't think it would be reasonable, and he noted that the immediate abutters were in approval. He said granting the variances would not diminish the value of surrounding properties because the addition was tasteful and modest. He said the hardship was that the special conditions were the location of the house that dictated the location of the addition and the lot was extremely small. He said he didn't see any fair and substantial relationship between the purpose of the ordinance. He said the addition was a single-story one with no light and air concerns and thought it was a reasonable proposal and should be approved.

Vice-Chair Johnson concurred. He said that, even though the new addition was quite close to the adjacent abutter's property, the angle and juxtaposition of that abutter, the dense screening, and very modest addition checked all the boxes. He said it wouldn't affect the nearest neighbor.

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

Mr. Parrott returned to his voting seat and Alternate Ms. Eldridge assumed a voting seat.

3) Case 7-11

Petitioner: Karen L. Bouffard Revocable Trust, Karen L. Bouffard, Trustee
Property: 114 Maplewood Avenue
Assessor Plan: Map 124, Lot 4
District: Character District 4-L1
Description: Replace existing rear dwelling with a two-story structure including garage and one-story addition with deck above.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from Section 10.5A41.10A to allow the following:
a) an 1.8' left side yard where 1.5' exists and 5' is the minimum required;
b) a 2.5' rear yard where 0' exists and 5' is the minimum required; and
c) a lot area per dwelling unit of 1.685 s.f. where 3,000 s.f. is required.
and the following variance:
d) from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance.

SPEAKING IN FAVOR OF THE PETITION

Architect Anne Whitney was present on behalf of the applicant. She distributed floor plans to the Board and reviewed the petition, noting that the existing building was in rough shape and that there would be no changes in the use of the site except for the garage use.

In response to Mr. McDonell's question, Ms. Whitney said she couldn't shift the addition to make the five feet because of the parking spaces and the fact that it was an angled site. Mr. Stith said there would be a site review due to the increase in footprint and height. Chairman Rheaume noted that the bay window stuck out past the setback but didn't count toward it. Ms. Whitney said a 24" projection was allowed but that she pulled it back to a 22" projection.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Mr. Parrott said it was a simple replacement in kind and place and almost in size. He added that it was an unusual situation because it was a small lot in the back corner that abutted a cemetery and part of the North Mill pond. He said the use wouldn't change and thought it made sense to replace a rundown building with a code-compliant building in the same nature, size, and purpose. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because the use would continue and not alter the essential character of the neighborhood or threaten the public's health, safety, or welfare. He said substantial justice would be done because the benefit to the applicant and the neighbors would be a new code-compliant building with modern amenities. He said granting the variances would not diminish the value of surrounding properties, noting that the values would be enhanced by a modern code-compliant building that would provide a garage space and increase parking on the lot by one car. He said the hardship was that the lot was what it was. He said the applicant and architect did a good job working in a small, confined area to make the new building fit in and look better. He said the confined size of the available space to build in was a hardship that met the criteria.

Ms. Eldridge concurred and had nothing to add.

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

Alternate Mr. Hagaman assumed a voting seat.

4) Case 7-12

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| Petitioner: | John A. Byron |
| Property: | 346 Bartlett Street |
| Assessor Plan: | Map 162, Lot 54 |
| District: | General Residence A |
| Description: | Construct a single family dwelling on an unoccupied lot. |

- Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from Section 10.521 to allow the following:
- a) a lot area and lot area per dwelling unit of 5,026 s.f. where 7,500 s.f. is the minimum required for each;
 - b) 53.87' of continuous street frontage where 100' is required; and
 - c) a 7' right side yard where 10' is required.

SPEAKING IN FAVOR OF THE PETITION

The applicants John and Jamie Byron were present to speak to the petition. Mr. Byron said he designed a house that would blend in nicely with the neighborhood. Ms. Byron said they wanted to place the house closer to the right side to be away from the neighbor on the left. She reviewed the criteria and said it would be met.

In response to Mr. Hagaman's questions, Ms. Byron said a piece of the vacant lot was used as an extension to their yard and that the purpose of the project was to live in the house and not sell it.

Becky Bardell of 314 Bartlett Street said she was the abutter that the Byrons went out of their way to be respectful to by moving the house over and thought they were wonderful neighbors.

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

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

DECISION OF THE BOARD

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

Mr. Mulligan said that two variances were driven by the lot size and that the third variance for the setback was to minimize conflict with the next-door property. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance; the essential character of the neighborhood would not be altered because the modest home in a neighborhood of modest homes would be in keeping and would not affect the public's health, safety, or welfare. He said substantial justice would be done because if strict compliance with the ordinance were required, the applicant would have an unbuildable lot. He said granting the variances would not diminish the value of surrounding properties because the applicant proposed a new construction, code-compliant home that would increase property values. He said it was an existing lot of nonconforming size and frontage that couldn't be fixed and that the applicant had rights to develop it. He said the applicant could conform to the setback by sliding the house over, but it would potentially conflict with the built environment next door. He said the modest 3-ft

relief request was appropriate, and there was no fair and substantial relationship between the purpose of the side yard setback and its application to the property. He said the use was a reasonable one, a residential use in a residential zone, and should be approved.

Mr. Lee concurred and had nothing to add.

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

Mr. Mulligan recused himself from the petition. Both Alternates took voting seats.

5) Petitioner: J&S Investments LLC
Property: 14 Market Square
Assessor Plan: Map 107, Lot 29
District: Character District 5 and the Downtown Overlay District
Description: Appeal an Administrative Decision regarding signage or, alternatively, to allow two murals, 124 s.f. and 68 s.f.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
a) from Section 10.1251.10 to exceed the allowed maximum aggregate sign area; and
b) from Section 10.1251.20 to allow two wall signs that exceed 40 s.f. each where 40 s.f. is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech was present on behalf of the applicant and addressed the administrative appeal part of the application. He noted that the Planning Department considered the two murals to be signs, which would require a sign permit and variances. He said the applicant appealed it because there were numerous instances of wall art in town that were not considered signage that had never obtained sign permits. He showed examples of them to the Board. He said the HDC had liked the Tuscan Market murals, which were reproductions of posters from Italy, and had thought they wall art. He showed the Board some alternatives to the murals. He said he didn't understand how the two original murals fit the definition of a sign because they weren't intended to advertise the business but rather to improve an ugly area of the building.

Vice-Chair Johnson asked Attorney Pelech if his client had asked the Planning Department why they considered the murals signs. Attorney Pelech said he was told that it was the decision of the Planning Director Juliet Walker and Vincent Hayes that the wall art murals fell into the sign definition. In response to Mr. Hagaman's questions, Attorney Pelech said the murals were simply intended to make an ugly portion of the building more attractive and not to identify a place of business, and that none of the other city's wall art images were ever deemed signs.

Chairman Rheaume asked Attorney Pelech if he would agree that the art posters were intended to advertise a product of past history. Attorney Pelech said the product was available at one time. Mr. Parrott asked whether there was a connection between the Daniel Street projecting sign that said ‘Tuscan Market’ and the two posters, and Attorney Pelech said there wasn’t.

Vice-Chair Johnson said the sign ordinance’s definition of a sign was broad and that anything on any wall anywhere could be used to identify it. He said he had a hard time with the definition of a sign and didn’t feel that the murals were signs. He said he disagreed with the Planning Board memo and would approve the appeal. Mr. Hagaman said it was hard to ignore the connection between the two posters and the Market. Chairman Rheaume said the posters identified a product with a symbol, so it constituted the definition of a sign. He thought there was enough of a correlation that he could understand why the Planning Board thought it was a sign.

DECISION OF THE COMMISSION

*Vice-Chair Johnson moved to **deny** the Request to Appeal, and Mr. Parrott seconded.*

Vice-Chair Johnson said he would set his personal feelings aside. He didn’t feel that the City’s definition of a sign allowed the Board much flexibility and didn’t think it was the Board’s purview to consider any other mural designs, symbols, or displays. He said the symbol on the poster could identify or advertise that particular business at that location.

Mr. Parrott concurred and had nothing to add.

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

Attorney Pelech then addressed the request for variances. He reviewed the criteria, noting that the hardship in the lot was the fact that it had frontage on two streets and a vast blank wall on Daniel Street, which made the lot and building different from others.

In response to Mr. Hagaman’s questions, Attorney Pelech said he didn’t think the signs would distract drivers approaching them from the intersection because the intersection was well-signed and the posters were to the left of anyone driving down the one-way Daniel Street. He said the motive for the large espresso sign was to mirror the height of Tuscan Market’s wraparound front façade, and the other sign was designed to fit under the granite banding.

Chairman Rheaume noted that 125 square feet of existing signage was presented, yet the City memo indicated 144 square feet. Mr. Stith said the 125 square feet included signage on Daniel Street and Market Square, and it was further discussed.

Chairman Rheaume opened the public hearing.

Ronald Fitz of 6 Pheasant Lane said he didn't understand how the word 'Pellegrino' would advertise a business. He thought it was attractive and should be approved, noting that it was a plus compared to some other wall art in the city.

**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 application, and Mr. Hagaman seconded.*

Vice-Chair Johnson said that granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the signage would not affect Market Square or the character and nature of the neighborhood. He pointed out that the intersection was well signed and self-regulated as well as monitored by police. He said the signage was a good compensation for the storefront that didn't really go around the building, and the size was dictated by the architectural elements of aligning with the storefront around the corner and the granite banding. He said granting the variances would do substantial justice for the applicant and would not negatively affect surrounding property values because there was an interest in tasteful artwork and it would have the HDC's oversight as well. He said that, although the sign ordinance did consider the separate facades of the building, the fact that the lot was a corner lot added to the hardship. He said it was a very active area and the size would not add any more distraction and confusion that there already was. He said the size and blankness of the wall made it inappropriate not to have something there.

Mr. Hagaman concurred, adding that the signs would improve the character of the neighborhood and that the location was appropriate for the tasteful signage and would fit with the size and style of the building. He said it was a reasonable use and that signage would not be overly distracting.

Ms. Eldridge said she wanted to ensure that the original mural signs would be used and not the alternative ones. Vice-Chair Johnson noted that the HDC weighed in on a specific design. Chairman Rheaume said a new owner could change the signs in the future.

*The Board **stipulated** that any current and future sign's design must be approved by the HDC.*

Chairman Rheaume said he would not support the motion because he felt that there was plenty of signage already that advertised what was in the Tuscan Market. He said the blank wall wasn't that big and he didn't see the hardship.

*The final motion with the added stipulation **passed** by a vote of 5-2, with Chairman Rheaume and Mr. Lee voting in opposition.*

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

Alternate Ms. Eldridge assumed a voting seat.

6) Case 7-14

Petitioner: Bacman Enterprises
Property: 140 Edmond Avenue
Assessor Plan: Map 220, Lot 81
District: Single Residence B
Description: Expansion of a non-conforming use (after-the-fact).
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
a) from Section 10.333 to allow a nonconforming use to be extended into other parts of the building;
b) from Section 10.1113.20 to allow off-street parking spaces to be located in the required front yard or between a principal building or the street; and
c) from Section 10.1114.32 to allow vehicles to enter or leave a parking area by backing out, into or from a public street or way.

SPEAKING IN FAVOR OF THE PETITION

Attorney Derek Durbin was present on behalf of the applicant and introduced the applicant Paul Bacman and the project engineer Alex Ross. Attorney Durbin stated that it was an after-the-fact application. He said the applicant previously applied for similar variance relief in 2005 and was granted chiropractic use of the building's bottom level. He said the building was a mixed-use one and that the applicant lapsed in reinstating his approvals due to financial circumstances.

Chairman Rheume asked whether the applicant had been using all the square footage as a business. Attorney Durbin said he had but that it was not compliant, and that he was coming back before the Board because he was getting close to retirement age and wanted to continue the business for another five years. Vice-Chair Johnson asked where the handicapped parking space went to. Mr. Ross said there was an access aisle next to it. Attorney Durbin said there were three spaces for the residents, but the handicap spot was shared use for the business and residents. Mr. Stith said he had recommended that the tandem spaces be used for residential. Vice-Chair Johnson noted that the parking lot was underutilized 80% of the time and asked if particular events caused it to be full at other times around 5 or 7 p.m. Attorney said he didn't know but thought people pulled up as a convenience.

Mr. Parrott asked what happened to the 2005 approval stipulations. Attorney Durbin said he knew that a certain parking arrangement was approved and separate conditions were imposed by the Board. Mr. Stith confirmed that the 2005 approval stipulated that the size and location of the parking spaces would be provided and would meet current codes as referenced in the Staff

Memo to the Board. Mr. Parrott asked why the city didn't follow up after all that time. Attorney Durbin said the financial hardship was recognized at the time but didn't remember anything specific except that 15 parking spaces were required and that wetlands and drainage issues were outstanding. He said the current parking requirements were more stringent. Mr. Hagaman asked what had changed in the last decade in terms of the applicant's ability to comply with the stipulations. Attorney Durbin said it was a change in financial circumstances.

Chairman Rheume asked if there was an easement for the shared driveway. Attorney Durbin said he had not seen an easement or written agreement but knew the property owners agreed to share the driveway. He said there were sliding doors to allow wheelchair access.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Mr. McDonell said it was a frustrating situation because the applicant was asking for forgiveness, but he thought it could be due to an intention to sell the business. Given the fact that the use was not intended to change and had been going on for decades, he thought all the criteria would be met but didn't make it less of an unfortunate situation. Chairman Rheume said he was confused about the proposed parking, including who owned the driveway, whether there was an easement, and how the other business parking would work out., and lack of a parking plan and was also concerned about the excuse of financial means because the photo showed a building and landscaping that didn't look cheap to him. Mr. Mulligan said the applicant would go before the Planning Board for a Conditional Use Permit for parking relief. Chairman Rheume said there were lots of questions because two variance requests spoke to the parking and another spoke to a parking space for commercial use. Vice-Chair Johnson suggested tabling the petition.

DECISION OF THE COMMISSION

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

Mr. Mulligan said there was a lot going on that the Board probably didn't have the full story on, but based on what was before them and whether or not the applicant should have complied with the prior stipulations, he said the use had a track record, and the way the site was organized, he thought the Board could rely on that to see that the criteria would be met. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance, noting that the essential character of the neighborhood would not be altered because it had a longstanding mixed-use development without any conflict with the neighborhood. He said substantial justice would be done, noting that requiring that offstreet parking be anywhere other than the front yard was not permitted and would be a hardship, given the nature of the lot that had wetlands and topographical issues. He said there was no way to have parking in the back, so

placing it in that location made sense, and that allowing vehicles to enter and leave by backing out into the public way was a practical effect of having residential uses parking there. He said it was common for parking to be stacked. He said it wasn't a dense portion of the city or heavily traveled, so he didn't see how requiring strict compliance with the ordinance provided any gain to the public that wasn't outweighed by the loss to the applicant. He said granting the variances would not diminish the value of surrounding properties because the use had been ongoing for some time. He said the hardship was based on the special conditions that stemmed from the uses that surrounded the property, including that there were no real residential abutters, so there were special conditions that distinguished it from others such that there was no fair and substantial relationship between the purpose of the ordinance and its application to the property. He said it was a reasonable use of the property and a chance to get it right.

Mr. McDonell concurred. He asked whether it should be stipulated that the two stacked parking spaces next to the building be assigned to the residential units. Chairman Rheame said the Planning Board could address it.

*The motion **passed** by a vote of 6-1, with Chairman Rheame voting in opposition.*

Alternate Mr. Hagaman took a voting seat.

7) Case 7-15

Petitioners: Alex W. & Kathleen N. Greiner
Property: 88 Lincoln Avenue
Assessor Plan: Map 113, Lot 2
District: General Residence A
Description: Renovation/addition.
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 3'7" rear yard where 10' is required; and
b) from Section 10.321 to allow the expansion of a nonconforming structure.

SPEAKING IN FAVOR OF THE PETITION

The contractor Matt Silva was present on behalf of the applicant. He noted that the project was before the Board the past December and the design had not worked. He described the renovations that were done to the addition and reviewed the criteria.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Greg Sullivan of 3 McNabb Court said he lived behind the house and that his only issue was the window that looked into their backyard, but he said the applicant had agreed to alter the window and he wanted to ensure that it was in the new plan.

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

DECISION OF THE BOARD

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

Mr. Mulligan said that granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance, and that the essential character of the neighborhood would not be altered. He said substantial justice would be done because the loss to the applicant if denied would not be outweighed by any gain to the public because there was already a setback encroachment that would just be increased by a vertical expansion. He said the values of surrounding properties would not be diminished, and he thought they would be improved. He said the hardship was that the special conditions were that it was a corner lot with frontage on two sides, and the existing dwelling already encroached on the setback. He said there was no fair and substantial relationship between the side yard setback ordinance and its application to the property. It was a reasonable use, a residential use in a residential zone, and was less conforming than what was previously approved in 2018. He said the petition met all the criteria.

Mr. Parrott concurred, adding that the lot size on a corner presented its own challenges.

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

Alternate Ms. Eldridge took a voting seat, and Mr. Hagaman returned to alternate status.

8) Case 7-16

Petitioners: Mathew Allen Reichl & Beth Richmond
Property: 5 Sylvester Street
Assessor Plan: Map 232, Lot 41
District: Single Residence B District
Description: Construct a 2-story addition at the rear of an existing structure.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including
a) from Section 10.521 to allow a 10.8' rear yard where 30' is required; and
b) from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance.

SPEAKING IN FAVOR OF THE PETITION

The project contractor Timothy Horung stated that the project would not affect the wetlands. He reviewed the criteria and said they would be met.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

- *That the plus/minus 6-inch to the rear side yard setback be included.*

Mr. Lee seconded.

Mr. McDonell said the location was very isolated and the addition to the existing home was reasonable. He said granting the variances would not be contrary to the public interest and would meet the spirit of the ordinance. It would not alter the essential character of the neighborhood or threaten the public's health, safety, or welfare. He said substantial justice would be done because it would be an obvious benefit to the applicant and would pose no harm to the public. He said granting the variances would not diminish the value of surrounding properties, pointing out that there was no testimony to the contrary and that he couldn't see that such a small increase would do so. He said the hardship was due to the small building envelope and the way the home was oriented on the property that drove the construction outside the required setback. He said the wetland buffers also constituted special conditions. He said there was no fair and substantial relationship between the general purposes of the ordinance and its application to the property. He said it was a reasonable use and should be granted.

Mr. Lee concurred and had nothing to add.

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

Mr. Hagaman took a voting seat and Ms. Eldridge returned to alternate status.

9) Case 7-17

Petitioners: Drew & Brittany Schulthess
Property: 15 Mt. Vernon Street
Assessor Plan: Map 111, Lot 33
District: General Residence B
Description: Construct an addition over an existing garage.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from Section 10.521 to allow the following:
a) a 2.5' front yard where 5' is required;
b) an 8.9' right side yard where 10' is required; and;

- c) a 20' rear yard where 25' is required;
and the following variance:
- d) from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance.

SPEAKING IN FAVOR OF THE PETITION

The applicant Drew Schulthess was present and said he would go before the Historic District Commission (HDC) in August. He reviewed the petition and criteria.

Vice-Chair Johnson noted that no floor plan was presented, and he thought it was awkward to have a front dormer over the garage, with nothing else on the front roofline. Mr. Schulthess said she shed dormer was for their master bedroom and bathroom, and that the two existing bedrooms would be the children's rooms. In response to Mr. Hagaman's questions, Mr. Schulthess said the neighbors had reviewed the plan and felt that the additional windows would not invade their privacy. He said he would keep the garage door and shape, even if the HDC questioned whether the original barn door feel should remain, because there was nothing historic left in the house.

Mary Lou McElwain of 259 South Street said her backyard abutted the applicant's property and that she favored the addition because it was modest and would keep the neighbors in the area.

Jean Spear of 49 Mt. Vernon Street said she loved the design and was excited to have a neighboring family update their house to meet their needs and remain in the neighborhood.

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

Mr. Hagaman said it was a modest addition above the garage that didn't worsen existing setbacks or building coverage and that granting the variances would not be contrary to the public interest or the spirit of the ordinance. He said it would not alter the essential character of the neighborhood and that expanding a home within the existing footprint wouldn't threaten the public's health, safety, and welfare. He said substantial justice would be done because the loss to the property owner if he wasn't able to expand the existing property to enable his children to occupy rooms comfortably was not outweighed by any benefit to the public. He said granting the variances would not diminish the value of surrounding properties and thought the values were

likely to increase. He said there was a hardship due to the property's small lot and the fact that the home was placed close to lot lines, and any reasonable expansion would require a variance. He said the project would be done within the footprint and would not worsen any setbacks or building coverage. He said it was a reasonable residential use in a residential zone.

Mr. Parrott concurred. He said it was a type of infill, in a sense, and that the modern upward expansion would have no deleterious effect on the neighborhood.

Vice-Chair Johnson said he could see the application coming back before Board for design changes because it hadn't been presented to the HDC yet. Chairman Rheaume agreed that it was important that the HDC get the first pass and thought there were unique architectural characteristics about the house that the applicant was getting rid of. He said the Board also needed to set guidelines about tolerances and create a baseline that would decrease the number of related petitions they received.

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

IV. OTHER BUSINESS

There was no other business to discuss.

V. ADJOURNMENT

*It was moved, seconded, and unanimously passed to **adjourn** the meeting at 12:25 p.m.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary