BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE

Remote Meeting via Zoom Conference Call

7:00 P.M. **DECEMBER 15, 2020**

MINUTES

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

MEMBERS ABSENT: None

ALSO PRESENT: Peter Stith, Planning Department

I. ELECTION OF OFFICERS

Chairman Rheaume noted that Vice-Chair Johnson would not be a Board member in 2021.

Mr. Mulligan moved to reappoint Chairman Rheaume as Chairman and appoint Mr. McDonell as the new Vice-Chair. Mr. Hagaman seconded.

Mr. Mulligan stated that Chairman Rheaume was doing a great job, especially lately under trying circumstances. He said the Board would miss Mr. Johnson and would welcome Mr. McDonell, who had made cogent and persuasive motions as a Board member.

*The motion **passed** unanimously, 7-0.*

II. APPROVAL OF MINUTES

A) Approval of the Minutes of the November 17 and 24, 2020 Meetings

*It was moved, seconded, and **passed** by unanimous vote (7-0) to **approve** both sets of minutes as presented.*

III. OLD BUSINESS

A) Petition of **150 Greenleaf Avenue Realty Trust, Owner**, for property located at **150 Greenleaf Avenue** for Appeal of an Administrative Decision that the following are required: 1) A Variance from Section 10-208 Table 4 - Uses in Business Districts (2009 Ordinance, Section 10.592.20 in current Ordinance) that requires a 200 foot setback from any adjoining Residential or Mixed Residential district for motor vehicle sales. 2) A Variance from Section 10-1201, Off-

Street Parking (2009 Ordinance, Section 10.1113.30 in current Ordinance) that requires a 100 foot setback for business parking areas from any adjoining Residential or Mixed Residential district. 3) A Wetland Conditional Use Permit for development within the Inland Wetlands Protection District. Said property is shown on Assessor Map 243 Lot 67 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

Mr. Mulligan recused himself from the petition, and Mr. Hagaman took a voting seat.

SPEAKING TO THE PETITION

Attorney John Kuzinevich was present on behalf of the applicant. He said the applicant James Boyle bought the property in 2004 and converted it into an auto dealership, but at the time there was no 200-ft buffer for auto uses, so he was grandfathered into not having the 200-ft buffer. He said several changes were made to the buffer between 2006 and 2010 and that the Planning Department's version of the ordinance was incorrect because it was not validly cast. He said there was no provision of free copies of the ordinance as required by the Charter, so they had to go back to the 2006 version, which stated that there could be no outdoor storage in the 200-ft buffer. He said the court determined that the displayed vehicles did not constitute outdoor storage. He said the second issue was parking. He said the Statute prohibited parking in the 100-ft buffer, but he said storage of new vehicles for sale and display did not constitute parking and they could display up to the 50-ft buffer line. He said the court in the eminent domain found that the City was trying to raise points to further delay development. He said the Board should not be a tool for preventing that development and should apply the zoning laws. Relating to the third request, he said the Conditional Use Permit (CUP) issue for supposed wetlands should not have to be dealt with by his client because the jury had determined that the wet areas were a nuisance created by the City. He said his client did not need a CUP because the land should be all dry lands and the City's actions were a ploy to alter the course of litigation and prevent development. He said his client had the appropriate dressage and alteration of terrain permits pursuant to a remedial decree approved by the Rockingham Superior Court. He cited the Village of Arlington Heights case, which held that a remedial consent decree approved by the court trumped zoning or planning and land use regulation. He said the City Attorney said the case from Illinois didn't have to be followed. He said all the City's actions were unfair and illegal.

Mr. McDonell said Attorney Kuzinevich's first point regarding setbacks for motor vehicle sales was that the 2006 and 2009 ordinance amendments were not validly adopted, and that the City Charter stated that the public was to be notified of the availability of a copy of the proposed amendment at no charge. He said he looked at the Charter's current version about the publication of a notice in a daily City newspaper and asked Attorney Kuzinevich for an explanation of what he was suggested had happened, and Attorney Kuzinevich stated that the City had not published notice stating that a copy of the ordinance would be made available without charge and that the City had not in fact made such a copy available.

Regarding Attorney Kuzinevich's second point, Mr. McDonell said the setback for parking areas was cited in a few cases, and he asked if there were any cases about controlled parking in New Hampshire. Attorney Kuzinevich said the only cases he found with that kind of zoning for a car

dealership were the ones he cited. Regarding the wetlands issue, Mr. McDonell said the City's responsibility relating to the applicant's proposition was that the consent decree required the grant of some permits to be issued by the DES and at least one of the permits expressly says that granting the permit did not relieve the applicant of the obligation to get required local, state, or federal permits. Attorney Kuzinevich said they didn't have an issue with federal permits but were only looking at the City, which created the problem of being the source of the permit. Mr. McDonell said he had a copy of the permit but not the actual decree, and he asked Attorney Kuzinevich if the order required the applicant to make the work happen. Attorney Kuzinevich said it ordered them to apply and get the work done and it ordered the State to grant the permit. Mr. McDonell asked if it ordered the municipality to do anything. Attorney Kuzinevich said no, that the municipality was aware of the legal action and received notice, so it could have been heard on the day the consent decree was approved, but he believed that the City was in court that day and wasn't made a party. He said it was probably the only consent decree concerning wetlands where one was told to build a parking lot. He said the wetland area had been a dump and chemicals were leaching, so doing the remediation would cap them. He said his client was strengthening the berm where the sewer line was and doing other environmental work, which caused the City to issue cease-and-desist actions and seek remedies against him. He said the City tried to keep it as a polluted wetland and that there was no rationale regarding how to address the site. He said it went back to 2004 or 2005, when his client had offered to give City the sewer line for free if there weren't obstacles to development, but the City dug in harder to prevent development.

Mr. Parrott said there was a note in the 2009 plan about the third wetland area stating that it was less than a half-acre and that no buffer zone applied, yet there was a buffer zone line drawn around it. He asked what the actual area was of the dumped wetland. Attorney Kuzinevich said he didn't know and that the small wetland was not in the area they were talking about.

Chairman Rheaume said the concern stated in Attorney Kuzinevich's brief was that the 2009 ordinance didn't apply. He asked what difference that made. Attorney Kuzinevich said it was the language, which was very different from 2009 and 2006. He said he quoted the 2006 language and that the 2009 ordinance expanded the prohibition of the 200-ft buffer use as opposed to a clause that talked about outdoor storage. Chairman Rheaume said the 2009 ordinance that the City Attorney provided was slightly different and talked about motor vehicle sales and provided areas for parking, display and storage materials being 200 feet from residential or mixed-residential districts. Attorney Kuzinevich said that language should not apply. Chairman Rheaume said the 2010 meeting minutes showed that the City was arguing that the more recent 2010 version should apply, which indicated to him that it should go through the normal process and that the applicant had agreed. Attorney Kuzinevich said they were looking at the global issue back then. Chairman Rheaume verified that in 2009, the applicant had not made any argument that the 2009 version was invalid for some reason. Attorney Kuzinevich said he didn't remember but didn't think so because they didn't get far enough into the process. Chairman Rheaume said the City Attorney provided a plan recently dated November 2016, and he asked Attorney Kuzinevich if that was the 2010 plan that he and his client had submitted to the City. Attorney Kuzinevich said he believed it was. Chairman Rheaume said the 200-ft buffer would apply along the north property line and was also the boundary between the zone that 150 Greenleaf Avenue was in and the SRB properties. Attorney Kuzinevich said the City owned the property on the

bypass, so it was a municipal zone. It was further discussed. Attorney Kuzinevich said that, under the 2006 version, they had not anticipated any outdoor storage of materials because the version was loaded with materials. He said there would be a display of vehicles rather than storage because the law determined storage as being more in the back of the property as opposed to where consumers would go. Chairman Rheaume asked what all the parking was used for if it wasn't for storing or parking vehicles. Attorney Kuzinevich said they were displaying the vehicles. Chairman Rheaume asked what was being done to prevent vehicles from parking there, noting that there was a handicap parking spot, which was odd if the intent was to display vehicles rather than allow customer parking. Attorney Kuzinevich said the parking for the customers was in the front of the building and was the only logical place to park. He said there would be new cars all along the side and at times would be stacked parking. Chairman Rheaume asked what would be done to ensure that cars would not be parked in the area for displaying vehicles. Attorney Kuzinevich said it was subject to signage. Chairman Rheaume asked if there was anything in prior approvals from land boards indicating that using unpaved areas for vehicle storage was an acceptable use. Attorney Kuzinevich said the issue had never come up and that his client was forced to do it for some time, but the City never objected to it. He said his client had envisioned a 2-3 dealership campus from the beginning, and when they met with the City for the first renovation of the building, the concept that it was just one unified automotive site came up.

Regarding the wetlands permit, Chairman Rheaume said the consent decree required development of the property and the issuance of AOT and wetland permits, and he asked what those were. Attorney Kuzinevich said the AOT was alteration of terrain, and if more than 100,000 feet of soil was moved around, one had to prove that they weren't flooding other properties or changing the property's water drainage flow. He said wetland permits were dredge and fill permits. Chairman Rheaume reasoned that it would then be the responsibility of the City to look at other aspects of what their requirements were for wetlands, and that perhaps other things the client was doing were separate from the decree that could be of concern to the City and would require the CUP. Attorney Kuzinevich said he didn't think there were any. Chairman Rheaume read the New Hampshire Department of Environmental Services (NHDES) permit and said Attorney Kuzinevich's argument was that he was required to move forward with all the development to meet the consent decree. He asked why Attorney Kuzinevich was discounting local permits. Attorney Kuzinevich said it was because of the Arlington Heights case that stated that that a consent decree requiring remediation trumped any zoning or other land use regulations. He said the City could not hold up the remediation. He said the reason the back property was wet was a result of the City creating a nuisance and that the City should be responsible for returning it to a dry state.

Mr. Hagaman asked if the applicant had a deadline to complete the remediation regardless of whether the expansion of the property occurred. Attorney Kuzinevich said there were dates set for when the permits had to be applied for and that the developments would occur after getting the permits. He said there was no timetable given. In response to further questions from Mr. Hagaman, Attorney Kuzinevich said the client had to solve the problem in the back under the consent decree, and it had to be capped to prevent the other pollutants from leaching. He said the NHDES and the court were concerned that there wasn't a good enough structural integrity of the berm with the sewer line and that it could be overwhelmed in storm conditions, so a good

environmental situation had to be provided. Relating to the fact that his client was grandfathered into using the property for car display or storage and the buffer should not apply, he did not consider it an expansion of an existing use, but rather a modification of putting down pavement where there was none. He said the site had always been a single automotive use. He said the Supreme Court determined in the 2006 case that his client wasn't engaged in storage by displaying cars and that it addressed the outdoor storage materials.

Planning Director Juliet Walker was present and summarized the key points from the review letter that she had submitted. She said the City in 2010 determined that the dealership was subject to zoning for 2009, which included an expansion of the parking area and the addition of one building. She said it was postponed and the owner had indicated that he wanted to proceed with securing his land use for the expansion. She said the Planning Staff reviewed the updated plan and the display of cars had to be set back 200 feet from any residential parking. She said she based her review on the site plan application that was submitted, which also referenced the 2009 zoning. City Attorney Suzanne Woodland was present and said the NHDES was a separate agency pursuing its own regulations, and enforcement decisions did not prevent the City from pursuing its own ordinance and policies relating to environmental issues.

Mr. Hagaman asked if there was evidence to contradict the allegations that the ordinance changes were not properly publicized or that proper notice was not given, and if there were additional changes in 2009 that would impact the plan being considered in 2009. Attorney Woodland said the proper publication of the ordinance did come up in the Superior Court and that it included affidavits from the City. She said efforts were made to make the ordinance change available and that the applicant had participated in some of the public hearings.

Chairman Rheaume asked if the 2009 change effective in 2010 or earlier changes would have impacted the ordinance in 2009. Attorney Woodward said the focus was the 2009 and 2010 change and that she could supply the changes in 2006 for the 200-ft setback. She said there was an affidavit from the Planning Department Director explaining what the ordinance was. She said prior to 2006, the City ordinance included the provisions about outdoor storage areas having to be more than 200 feet away from a residential district. In 2004, for expansion of the dealership, the City said that the phrase 'outdoor storage areas' meant vehicle inventory or display. She said the client appealed the City's action, and in 2006 the Superior Court supported the City's interpretation. She said it was 'cars on a lot', whether you called it display or storage. She said they had a favorable ruling at Superior Court, and then it was appealed to the Supreme Court. She said the City gave the same kind of notice in terms of publication on the website and available copies. Chairman Rheaume said the talk about outdoor storage areas must have been the pre-2006 wording, and between 2006 and 2009, the wording 'provided areas for parking, display, and storage of vehicles' would have been in effect. Attorney Woodland agreed.

Mr. McDonell pointed out that one section of the restriction setbacks for parking specifically called out parking, display, and storage of vehicles, and another section said it defined parking setbacks. He questioned whether parking under Section X.1201 also meant the display and potential storage of vehicles and asked how that played into the calculation of what offsite parking was required. Ms. Walker said those two requirements in the ordinance were not mutually exclusive and that both applied. She said in order to determine parking in terms of off-

street parking requirements, they needed to know that parking was designated for such, other than display, and ensure that the applicant met the requirements for minimum parking.

Chairman Rheaume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Kuzinevich said that a big issue relating to the mechanism for publication and getting the correct ordinance passed out to the public was that the Charter did not indicate that posting on a website was sufficient notice for publishing an ordinance change. He said the City posted it on the website instead of making hard copies available. He said there was discussion about 2009 versus 2010 in the courts, but there was no adjudication about the 2006 versus 2009 issue.

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

DISCUSSION OF THE BOARD

Mr. Hagaman said the applicable ordinance with the language change that captured storage and display seemed to be in effect for the 2009 application or plan and that, based on the City Staff's testimony, there was no indication that the revision had an abnormal process that would not have involved the same public notice that all ordinance changes went through. Mr. Formella agreed but said he was more sympathetic to the applicant's issue of whether the 100-ft buffer of parking applied. He said the applicant made a persuasive argument that what he was doing wasn't really parking within the meaning of the ordinance but was more display or storage. Mr. Formella also noted that another section of the ordinance broke out the terms 'display' and 'storage' from 'parking', so they were different things. He said he was wrestling with the issue of the CUP permit but thought the argument about the consent decree with NHDES should be made before the Planning Board. He said he would probably grant the appeal on the determination of the 100-ft buffer but deny the 200-ft buffer for storage and hold off on the third request for the CUP.

Mr. McDonell said he agreed with Mr. Formella and Mr. Hagaman. He said the second request dealt with parking and access ways. He said he wasn't convinced on the parking question and hadn't seen anything controlling in New Hampshire of what constituted parking, but there seemed to be a discrepancy in what the ordinance said and how it dealt with parking, display, storage, and other uses of vehicles. He said he didn't know how to counter the applicant's argument that the display cars were moved and didn't create the noise, traffic, and other impacts that parking would cause. He said there was less of a reason for the City to want to restrict something like that. He said the effective use of the area would also be governed by the setbacks for vehicle sales. He said he was inclined to rely on the affidavits that stated that the City had followed the requirements for publication, and if the 2009 ordinance applied, he thought it was clear. He said the bad faith discussion in the applicant's memo talked about a case where an application was delayed by the municipality on purpose until a law could be amended that would allow the municipality to authorize denial of the application, but that he didn't get the sense that it was applicable to the applicant's case. As far as the wetlands, he said the consent decree was between the State and the landowner and it imposed obligations on the landowner. He didn't

think the City should try to throw up roadblocks to prevent the landowner doing what he was required to do by the State, but he didn't think it relieved the applicant of getting other permits.

Vice-Chair Johnson said he agreed with Mr. Formella and Mr. McDonell about the parking and the intent of restricting parking near a residential area. He said he didn't think of the parking lot as a typical one that had exhaust from cars, night headlights, and so on. Mr. Hagaman agreed and said there was a bit of a distinction for the parking. He said he was okay with the 100-ft setback from residential areas but wasn't sold on the CUP. He said the decree stated that local ordinances could impact the process. He said he was inclined to deny the appeal on the first and third requests but was leaning toward granting the second request for the setback as it pertained to actual parking. Mr. Lee said the cars for sale on the lot were a product for sale and that it was irrelevant whether they were parked or displayed.

Mr. Parrott said the applicant claimed that, because the City didn't advertise the ordinance change perfectly, the dealership was in the dark as to what was going on, yet another part of the City's Memo stated that the dealership was actively involved in the drafting of the ordinance changes. He said the applicant couldn't complain after the fact that they didn't know what was going on. He said the discussion of whether a vehicle was on display or parked or stored was mute because the objective of those setbacks was to protect the residential areas from activities that weren't friendly to them. He said the reason why the vehicle was there was less important than the fact that it was there. He said it was a complicated issue because the City acted in good faith and the dealership was trying to maximize their business. He thought it was unfortunate that the applicant was using more of the lot for parking vehicles than had been agreed to, but if the argument was that less than perfect enforcement of an agreement eliminated the need to ever enforce it and that someone could do what they liked, he couldn't buy that argument either.

Chairman Rheaume said he was in favor of not granting the appeal for any of the three items. He said the first request came down to whether the 2009 ordinance was in effect at the time the plans were put into place and whether providing the information on a website was equivalent to distributing hard copies. He said if the argument was that the 2009 ordinance was in place, it made it clear that the Planning Department was in the right by stating that it was a potential concern and also a concern with the southerly property line because the SRB zone affected the parking there. He said the 100-ft setback verbiage was clearer but the 2009 one had a distinction between parking, display, and storage. He further stated the reasons why he thought the Planning Department was correct in saying that it should be subject to that based, on the information provided. He said the legal documentation did not negate the City's ability to recognize that the applicant had to get the CUP, but there might be other issues that the City should add on.

DECISION OF THE BOARD

*Mr. Formella moved to **deny** the appeal for Request 1, **grant** the appeal for Request 2, and **deny** the appeal for Request 3. No one seconded the motion.*

Mr. McDonell said the definition of parking on the second point was ambiguous as to how the spaces were going to be used. He referenced Chairman Rheaume's point of the handicap space

raising ambiguity about whether everything in the 100-ft buffer would be display vehicles and whether that was the reason that the Planning Department said a variance for the second point was required. He suggested amending the motion to deny the second request. Mr. Formella agreed and noted that Attorney Kuzinevich had said it would not be parking and that any vehicles in that area would be display or storage vehicles.

Mr. McDonell moved to ***deny*** *all three requests, and Mr. Parrott seconded.*

Mr. McDonell said the first request, the 200-ft setback for motor vehicle sales, came down to whether or not the 2009 amendment was properly adopted. He said the applicant said it wasn't the case, but the Board had an assertion by the City's Legal Department and the affidavit from the City Planner that the procedures were followed, so the 2009 version of the ordinance would be applicable and the 200-ft buffer clearly would apply, given the language of the 2009 ordinance. He said the applicant's representative made other points about whether the City had engaged in bad faith in enacting that amendment. He said it wasn't proven and that he didn't agree with that assertion. He said the case law that the applicant's representative cited did say that city municipalities can't act in bad faith in enacting amendments, but he didn't see any evidence that it applied to this case and that he didn't buy the argument that the entire site was originally approved for automotive use and that what was proposed was just a continuation of the use and not an expansion. He said it was clearly an expanded use.

Mr. McDonell said the second request relating to the 100-ft setback for business parking areas and what constituted parking had ambiguity under Section X.1201. He said he agreed with the applicant's representative that it was customer parking and that it was in line with the applicant's argument on what the purpose of the parking ordinance would be. He said the proposal did not clearly show that that was what was proposed within the 100-ft setback. He said if he had been in the Planning Department looking at it back then, he would say it wasn't clear to him that what was proposed in the 100-ft boundary didn't constitute parking, and he would think the applicant was required to get a variance. Regarding the third request for the wetlands CUP, he said the consent decree from 2013 stated that certain work was required and that the NHDES had to grant certain permits. He said the only permit the Board had seen indicated that it did not relieve the applicant of the obligations to comply with other laws or to apply for state, local, or federal permits, and that the City had asserted that a local permit was required.

Mr. Parrott concurred and had nothing to add.

Chairman Rheaume said he would support the motion and referenced his earlier discussion.

The motion ***passed*** *by a vote of 5-2, with Mr. Formella and Mr. Lee voting in opposition to the motion.*

B) Petition of **111 Maplewood Avenue, LLC, Owner**, for property located at **145 Maplewood Avenue** wherein relief is needed from the Zoning Ordinance for signage for new building which requires the following: 1) A Variance from Section 10.1251.20 to allow a 57 square foot freestanding sign where 20 square feet is the maximum allowed. 2) A Variance from

Section 10.1242 to allow wall signs above the ground floor on all sides of the building. 3) A Variance from Section 10.1242 to allow wall signs above the ground floor on a side of a building not facing a street. 3) A Variance from Section 10.1144.63 to allow illuminated signs above 25 feet from grade. Said property is shown on Assessor Map 124 Lot 8-1 and lies within the Character District 5 (CD5) District.

Mr. Mulligan resume his voting seat and Mr. Hagaman returned to alternate status. Chairman Rheaume noted that the Board approved Variances 1, 2, and 3 at the previous meeting and had postponed Variance 4 (noted as the second Variance 3 in the petition) for review.

SPEAKING TO THE PETITION

Attorney Chris Boldt and architect Chris Lizotte were present on behalf of the applicant. Attorney Boldt said he submitted a night view of the wall washer lights and that they were more of an architectural design and would not be glaring. He reviewed the criteria in full.

Chairman Rheaume verified that the reason the applicant needed the variance was for the wall washer lights and not for the internally-illuminated signs above 25 feet. Mr. Parrott asked what the functional purpose of the wall washer lights was, since there was already a good deal of lighting for other purposes on the building. Attorney Boldt said the purpose was for decorative architectural features. In response to other questions from the Board, Attorney Boldt said the signs attached to the building didn't have text yet but would be internally illuminated and not bright. Mr. Lizotte said they would be a standard white and would not change color. Attorney Boldt said they had a letter from the HDC stipulating that the lighting would not change color.

*It was moved, seconded, and **passed** unanimously (7-0) to **reopen** the public hearing.*

SPEAKING IN FAVOR OF THE PETITION

No one was present to speak.

SPEAKING IN OPPOSITION TO THE PETITION

Bruce Ocko said he owned a condominium unit at 233 Vaughan Street and thought the wall washer lights and illuminated signs would cast a lot of light toward his building and would diminish his building's property values. He asked what the hardship was for having the wall washer lights since they were just an architectural design.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Boldt said the ell near the underground parking garage would be lit as well as a light near the lobby. He said there would be no light from any luminaires on the outside of the building. He said the intention of showing the bars of lights was the worst-case scenario before the lettering went on and that the lettering would block a lot of the light. He said the hardship

was justified, given the special conditions of the property. He emphasized that they would not wash every wall panel but that it was an architectural feature that the owner wanted.

Mr. Ocko said the fact that the owner wanted the architectural feature did not create a hardship.

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

DISCUSSION OF THE BOARD

Vice-Chair Johnson said he didn't see the proposed additional lighting as being a big deal but had trouble finding a hardship as to why it had to be there. He said the renderings were helpful to understand where the signage and wash lights would be but wasn't a true depiction of the brightness of an area or a fixture. Mr. Lee said a Bridge Street building currently had a lot of exterior lights and lit up the parking lot and the side buildings at 5 a.m. and that the applicant's building had even more lights that would flood toward Mr. Ocko's building. He said it was the reason the Board denied the eyebrow light for the AC hotel. Chairman Rheaume said he would be in favor of allowing the variance, noting that the applicant was held hostage by some of the ordinance's oddities regarding building lighting. He said the applicant's building had a lot less light than the AC hotel and thought the hardship was that the property was more removed from its adjacent neighbors than the AC hotel and was more adjacent to commercial spaces.

DECISION OF THE BOARD

*Mr. Lee moved to **deny** the variance request, and Mr. Parrott seconded.*

Mr. Lee said the request was contrary to the public interest and did not meet the spirit of the ordinance due to the building's proximity to Mr. Ocko's building. He said the lights from the signage and the wall washer lights would create a hardship for Mr. Ocko's building and would diminish its value. Mr. Parrott concurred and said he couldn't see anything inherent in the property that constituted a hardship and that it was reinforced by the statement made by Attorney Boldt that the purpose of the wall washer lights was strictly decorative.

Vice-Chair Johnson said he would support the motion but thought the lighting and signage approach was respectful and that it wouldn't be that close to Mr. Ocko's building. He said there should be more flexibility when someone chose to live in a downtown commercial zone. Mr. McDonell said he would not support the motion because the variance request met the spirit of the ordinance. He said wall washer signs were not really dealt with in the ordinance, and the hardship was the nature of the building that had an undulating façade, which was enough of a special condition to make use of not only the signs with lettering but also the wall washer signs.

*The motion to deny **passed** by a vote of 4-3, with Mr. McDonell, Mr. Mulligan, and Chairman Rheaume voting in opposition.*

*It was moved, seconded, and passed unanimously (7-0) to **suspend** the 10:00 o'clock meeting ending rule.*

IV. PUBLIC HEARING – NEW BUSINESS

A) Petition of **Jonathan Sandberg, Owner**, for property located at **160 Bartlett Street** whereas relief is needed from the Zoning Ordinance to construct a 6' x 15' mudroom addition on the rear of the house which requires the following: 1) A Variance from Section 10.521 to allow 34% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 163 Lot 5 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

The applicant Jonathan Sandberg was present to review the petition. He said the house was very small and that its main entrance was in the back and went into the kitchen. He said the neighborhood was dense and that almost all the houses were built out to the street and all had mudrooms. He said the mudroom would provide storage and keep the house warmer and cleaner.

Chairman Rheaume asked if the small mudroom would be strictly a mudroom area. Mr. Sandberg agreed and said they might open an interior wall to have a window.

Chairman Rheaume opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Josh Pierce of 164 Bartlett Street said he and his wife were in support of the project.

Carla and Ed Rice of 25 Morning Street said they were neighbors and supported the project.

SPEAKING IN OPPOSITION TO THE PETITION 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 as presented and advertised, and Mr. Lee seconded.*

Mr. Mulligan said the lot was substandard and almost half as big as the minimum required, and the small home was right up on the busy street, so all the activity was oriented to the rear of the house where the primary entrance was. He said the mudroom made a lot of sense and would meet all the criteria. He said granting the variance would not be contrary to the public interest or the spirit of the ordinance because the essential character of the neighborhood would not change. He said substantial justice would be done and that the loss to the applicant would not be outweighed by any gain to the public. He said granting the variance would not diminish the values of surrounding properties, noting that there would be a slight increase in the

nonconformity but it was in a neighborhood that was dense and had a lot of nonconforming properties itself, so property values would not be negatively affected. He said the hardship was the property's special conditions were the substandard lot in size with a very small home on it that was built up against a very busy right-of-way, which oriented all the activity to the rear of the house. He said there was no fair and substantial relationship between the purpose of the lot coverage requirement and its application to the property because it was already nonconforming and wasn't an extreme increase. He said it was a reasonable residential use in a residential neighborhood and should be granted.

Mr. Lee concurred and said it might result in a slight increase in property values for the house and adjacent homes. Chairman Rheaume said he would support the motion, noting that there were some pocket areas in the neighborhood that were more of a General Residence C zone.

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

B) Petition of **The Rice Family Revocable Trust of 1988, Owner**, for property located at **25 Morning Street, Unit B** whereas relief is needed from the Zoning Ordinance to construct a 6' x 21' deck which requires the following: 1) Variances from Section 10.521 to allow a) a 2 foot side yard where 10 feet is required; and b) 32% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 163 Lot 19-2 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

The applicant Carla Rice was present and said the house was a two-unit building. She said the hardship was that the common area was split into two sections and that her side had the walkway going through it so it wasn't private. She reviewed the criteria and said they would be met.

There were no questions from the Board. Chairman Rheaume opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Josh Pierce of 154 Bartlett Street said he and his wife were in full support of the project.

Jonathan Sandberg of 160 Bartlett Street said the project would improve the neighborhood.

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

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

DECISION OF THE BOARD

Mr. Formella moved to ***grant*** *the variance requests as presented and advertised, and Vice-Chair Johnson seconded.*

Mr. Formella said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said it was already a dense neighborhood, and adding the small deck in the proposed location would not alter the essential characteristics of the neighborhood. He said substantial justice would be done because there would be no gain to the public by denying the variances and it would be a loss to the applicant because they would be unable to build the space for their family to use. He said it would not diminish the values of surrounding properties, noting that the neighbors had testified that the project would be an improvement and might increase property values. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the property was unique due to its odd location in the middle of all the other properties. He said the concerns of the building coverage and setbacks ordinance were based on light and air, and those concerns would be wiped away because the building was in the middle of the other properties, and increasing the nonconformity by adding a small deck would not cause any issues. He said there was no substantial relationship between the ordinance's provisions and its application to the property because the use was reasonable and the property was already nonconforming.

Vice-Chair Johnson concurred. He said the location in the center of all those other properties created a unique entrance to the property. He said it was a low-impact solution that would be a win-win for everyone. Chairman Rheaume said he would normally be concerned about a 2-ft setback, but the deck would be maintained due to the open area around it.

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

C) Petition of **Sean Miller, Owner,** for property located at **303 Thornton Street** whereas relief is needed from the Zoning Ordinance to construct an addition to an existing home which requires the following: 1) A Variance from Section 10.521 to allow a 5 foot front yard where 15 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 162 Lot 5 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

The applicant Sean Miller was present. He said he and his architect agreed that building the addition at the front of the house instead of the back would open up the house more and gain an upstairs bedroom. He reviewed the criteria and said they would be met.

There was no questions from the Board. Chairman Rheaume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

There was no one present to speak. Chairman Rheaume said the Board received a letter in support of the project. He closed the public hearing.

DECISION OF THE BOARD

Mr. Parrott moved to ***grant*** *the variance requests as presented and advertised, and Vice-Chair Johnson seconded.*

Mr. Parrott said granting the variances would not be contrary to the public and would observe the spirit of the ordinance because the house was small and very close to the street, which was typical of that neighborhood, and the proposed addition was in the logical place. He said substantial justice would be done because the project would make the house more useful and there would be no harm to the general public. He said granting the variances would not diminish the values of surrounding properties because the house was similar to nearby ones and the addition would make the house look nicer and reflect well on adjacent properties. He said enlarging the living space of a small house was a reasonable request and that the hardship was the narrowness of the lot. He said all the criteria were satisfied.

Vice-Chair Johnson concurred. He said one of the special conditions of the property was that the property line was deceiving as it related to the street. He said that matching the 15-ft front yard setback would make the property much more of an outlier than the rest of the properties.

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

V. OTHER BUSINESS

The Board wished Vice-Chair Johnson well. Chairman Rheaume said he appreciated having Mr. Johnson on the Board, especially in the Vice-Chair role, and that his valued advice and opinions on architectural matters would be greatly missed. Mr. Johnson said he enjoyed his time on the Board and had learned a lot. He said the work the Board did was important and that they put a lot of dedicated time into fostering the community.

VI. ADJOURNMENT

The meeting was adjourned at 11 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary