

**BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE
Remote Meeting via Zoom Conference Call**

Per NH RSA 91-A:2, III (b) the Chair has declared the COVID-19 outbreak an emergency and has waived the requirement that a quorum be physically present at the meeting pursuant to the Governor's Executive Order 2020-04, Section 8, as extended by Executive Order 2021-01, and Emergency Order #12, Section 3. Members will be participating remotely and will identify their location and any person present with them at that location. All votes will be by roll call.

7:00 P.M.

MARCH 23, 2021

MINUTES

MEMBERS PRESENT: Chairman David Rheaume, Vice-Chairman Peter McDonell, Jim Lee, David MacDonald, Christopher Mulligan, Arthur Parrott, Alternate Chase Hagaman

MEMBERS EXCUSED: John Formella and Alternate Phyllis Eldridge

ALSO PRESENT: Peter Stith, Planning Department

Alternate Chase Hagaman took a voting seat for all petitions.

I. PUBLIC HEARING – NEW BUSINESS

Vice-Chair McDonell recused himself from the following petition.

A) Petition of **Rita Abelson & Briana Spechuilli, Owners**, for property located at **80 Sapphire Street** whereas relief was needed from the Zoning Ordinance for a second floor addition on existing single family dwelling which includes the following: 1) Variances from Section 10.521 to allow: a) a 5 foot right side yard where 10 feet is required; and b) a 14 foot front yard where 30 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 220 Lot 43 and lies within the Single Residence B (SRB) District.

SPEAKING TO THE PETITION

The applicants Brian and Briana Spechuilli were present and reviewed the petition. They referred to their previously-submitted written criteria.

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

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. MacDonald moved to **grant** the variances for the petition as presented and advertised. Mr. Hagaman seconded.*

Mr. MacDonald said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the project would pose no unfavorable impact to the neighborhood nor any harm to the public. He said it would do substantial justice because the benefit to the applicant would not be outweighed by any harm to the general public. He said granting the variances would not diminish the values of surrounding properties, noting that there was no outcry from the neighbors or abutters that indicated such. He said literal enforcement of the ordinance would result in unnecessary hardship due to the property's special conditions. He said the proposed use was a reasonable one and that the criteria were satisfied.

Mr. Hagaman concurred and said the modest addition would not alter the essential character of the neighborhood. He said the nonconforming property on the current lot as it was positioned already violated the front yard and right side yard setbacks, so any modifications or expansion of the property would require a variance request. He said the request was reasonable because it was adding a residential home in a residential neighborhood and putting a slight covering over a very small porch at the front of the house.

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

Vice-Chair McDonell resumed his voting seat.

B) Petition of the **Hoerman Family Revocable Trust of 2019, Owners**, for property located at **56 Dennett Street** whereas relief was needed from the Zoning Ordinance to install a condenser unit which requires the following: 1) A Variance from Section 10.515.14 to allow a 5 foot side setback where 10 feet is required. Said property is shown on Assessor Map 140 Lot 13 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

The applicants Walter and Mary Ellen Hoerman were present and reviewed the petition. Mr. Hoerman said they wanted to place a small condenser on the ground within ten feet of the property line because there were no other optimal locations and that the unit would be screened from the public. He said the criteria would be met.

In response to Chairman Rheume's question, the applicant said the condenser would be flush up against the porch.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Vice-Chair McDonell noted that the applicant explained the reason why the variance was needed and that there was no alternative location available for it. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said he saw no conflict with the purposes of the ordinance, no alteration in the essential character of the neighborhood, and no threat to the public's health, safety, and welfare. He said the condenser would be screened and invisible to everyone except the immediate abutter, who also had no windows on that side of the house. He said granting the variance would do substantial justice because the benefit to the applicant would not be outweighed by any harm to the general public. He said it would not diminish the values of surrounding properties, noting that the Board heard nothing to suggest that it would. He said literal enforcement of the ordinance would result in unnecessary hardship due to the property's special conditions – a long and narrow lot and the way the house was situated on it, which made the chosen location for the condenser the only logical space. He said those were special conditions that distinguished the property from others in the area and that he did not see any fair and substantial relationship between the general purposes of the ordinance and their application to the property. He said the proposed use was a reasonable one and the condenser was something that thousands of people would want attached to their house and that it would be unreasonable to deny it to the applicant. For those reasons, he said the request should be approved.

Mr. Lee concurred and had nothing to add.

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

C) Petition of the **Laura G. Koulet Revocable Trust of 2019, Owner**, for property located at **45 Gardner Street** whereas relief is needed from the Zoning Ordinance to install two mechanical units which requires the following: 1) A Variance from Section 10.515.14 to allow: a) a 6 foot rear yard setback; and b) an 8 foot side yard setback where 10 feet is required for both. Said property is shown on Assessor Map 103 Lot 21 and lies within the General Residence B (GRB) District.

SPEAKING TO THE PETITION

Builder Chris Atwood was present on behalf of the applicant. He said the units would be located underneath the porch, with screening that was approved by the Historic District Commission (HDC), there would be no noise issues, and the units would not be visible to the public. He reviewed the criteria and said they would be met.

Mr. MacDonald said that normally condenser units were out in the open. He asked if there would be enough air circulation for the unit to function. Mr. Atwood agreed and said the unit was specifically chosen to accommodate the location.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Mr. Mulligan said the property was unique and at the intersection of two very small streets in the historic south end, and that the physical layout of the property caused the house to be almost on the street in two locations. He said granting the variance would not be contrary to the public interest or to the spirit of the ordinance, noting that the essential character of the neighborhood would not be negatively affected by what was proposed, nor would the public's health, safety, or welfare be implicated. He said substantial justice would be done because the loss to the applicant if the Board required strict compliance with the side yard and rear yard setbacks would far outweigh any gain to the public. He said there were no other places to make the improvements due to the layout of the property and its small size. He said granting the variance would not diminish the values of surrounding properties because the improvements would enhance the applicant's property and the ones around it and would also remove the unsightly window units. He said literal enforcement of the ordinance would result in unnecessary hardship due to the property's special conditions. He said it was a corner lot that had no real front yard, hardly any backyard, and a small side yard, and there was nothing to do to improve the property without impacting the setbacks. He said the applicant's design would minimize any negative effects. He said there was no fair and substantial relationship between the purposes of the setback ordinance and their application to the property. He said it was a reasonable use, a residential use in a residential zone, and met all the criteria and should be approved.

Mr. Parrott concurred. He said the units would be out of sight and the project would be a substantial improvement for the property owner as well as future owners. He said the improvements would have no detrimental effect on the neighbors, who wouldn't even see the units. He said the project easily passed all the criteria.

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

Chairman Rheume recused himself from the following petition, and Vice-Chair McDonnell assumed his seat as Acting Chair.

D) Petition of **Cornwall Properties, LLC, Owner**, for property located at **50 Cornwall Street** whereas relief was needed from the Zoning Ordinance for partial demolition of existing structure and construction of new two-story rear addition to convert into two-family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a 1 foot right side yard where 10 feet is required; b) to allow 36.5% building coverage where 35% is the maximum allowed; and c) to allow a lot area per dwelling unit of 2,000 square feet where 3,500 per dwelling is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 144 Lot 2 and lies within the General Residence C (GRC) District.

SPEAKING TO THE PETITION

The applicants Charles and Laurie Moreno were present to review the petition, as well as project architects Jeremiah Johnson and Richard Desjardins. Mr. Moreno said the current addition was not compatible with the main Colonial home and also had functional issues, so he wanted to rebuild the addition and renovate the main structure. He said the criteria would be met.

Mr. Lee asked how much tree shade would be on the condominium complex across the street. Mr. Desjardins said there was one tree that delivered a lot of shade in the area, a Norway maple in the backyard that blocked the sunlight toward the condominium building, and two 35-ft trees on the condo's patio that shaded the building. Mr. Parrott said some of the concerns in the abutters' letters were about the height, and he asked why the proposed addition was designed to be four feet taller than the 28-ft tall house. Mr. Johnson said the dimensions on the plan were in error. He said the roof slope from the original house would be used on the back building and the addition's ridge would surpass the main house's ridge by under two feet, so there would be no increase in building height. He noted that the triangular peak itself was two feet taller than the existing building and that the new pitch would match existing.

In response to Acting-Chair McDonell's questions, Mr. Desjardins said the existing total square footage of the entire building was 2,200 square feet and the proposed square footage was 3,400 square feet. He said the six-bedroom building had been rented out for the past ten years to a group of 5-6 people, all of whom had cars that they had to park in the street. Acting-Chair McDonell asked why the back part of the home couldn't be adequately renovated and if it would be possible that some part of the house would not be built up quite as high as proposed. Mr. Johnson explained that the issue was the foundation and the slab underneath it. He said part of the building didn't have to be built up so high due to the size of the unit in the back, but doing so would pose a challenge in fitting the desired program.

Acting-Chair McDonell opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Peter Stith said three letters of approval were received.

Adriane Moreno said she was the applicants' daughter and that it had always been her parents' dream to move to Portsmouth. She said she was in support of the project.

SPEAKING AGAINST THE PETITION

Melissa Kalled of 43 Cornwall Street said she was against the project for two reasons: 1) she was concerned that granting permission to convert a single-family home into a two-family home for that residential zone and almost doubling the square footage of the property would set a precedent in the neighborhood; 2) she was concerned that two on-street parking spots would be removed because of the proposed entryway and would also set a precedent. Acting-Chair McDonell said granting a variance in one case would not set a precedent to grant it in another because the Board considered things that were specific to the applicant's property. Ms. Kalled asked if the granting would guarantee that the owners would reside in the house and not turn it into a two-family rental. Acting-Chair McDonell said any variance that the Board granted would run with the property and not the owners.

Tania Pulkowski of 43 Cornwall Street said the condo association spent a lot of money for their patio and she was concerned that the proposed building would block the sun from the patio and living space and have an adverse effect on the condominium owners. She said the area between 40 and 50 Cornwall Street currently had a lot of sun during a large part of the afternoon.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Ethan Moreno said he was the applicants' son and that his parents' goal was to live in the house permanently and not to flip the property.

Richard Desjardins said the shadow study was expanded after the neighbors spoke of their concerns. He said there would not be much difference between existing conditions and proposed conditions during leaf season, so there would be a minimal effect throughout the year.

Board member Christopher Mulligan asked about the two street parking spaces that would be sacrificed due to the curb cut. Mr. Johnson said two cars would be parked in tandem and two parked next to each other, so only one parking spot on Cornwall Street would be sacrificed.

Project architect Jeremiah Johnson said he was also speaking as a resident at 4 Fairview Drive. He said the applicants did not expand the house in any direction and that the only area of change was in the back. He pointed out that not all zoning dimensional parameters always fit within the neighborhoods, and that the applicant's neighborhood was a very mixed-use one that had several multi-unit properties, so adding one unit was a very minimal request. He said the building was an unusual one with six bedrooms, and splitting it up into two family homes would be a less intensive use. He said the project was sensitive to the future neighbors.

No one else was present to speak, and Acting-Chair McDonell closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Mulligan said it was a substantial proposal for a significant addition to the property but that it was a vertical expansion over an existing footprint, which was something the Board usually favored, especially for a property with an antique structure. He said there was an unfortunate pair of additions stapled onto the back of the main home and there were a lot of challenges when an owner was faced with the expense of maintaining the integrity of a 1800s home but bringing it into the modern era. He said the proposal gave him no pause at all and that he had no problem with the density request because it wasn't unusual in that neighborhood to get additional density. He said an additional unit would not be out of character with the neighborhood. As far as the concerns of the neighbors across the street about the building causing intolerable shade and shadows and depriving them of light, he said the Board normally was concerned about setbacks due to light and air and overcrowding between structures, but the condominium complex was far away from the applicant's home and the addition did not violate any front yard setback or affect the light and air on the other side of Cornwall Street. He said it was a good project and fit into the neighborhood and that he would support it. Mr. Lee agreed. He said during his site visit he noticed several deciduous trees that would cast their own shadows and that the shadow that might be generated by the back addition would have a minimal impact across the street.

DECISION OF THE BOARD

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

Mr. Lee said he would incorporate his and Mr. Mulligan's comments. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because it would not alter the essential character of the neighborhood, or negatively impact the public's health, safety, and welfare. He said the tasteful addition would be an asset to the neighborhood and that substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the general public. He said granting the variances would not diminish the values of surrounding properties because having a renovated circa-1800 home with a modern addition on the rear that conformed to all the codes would be an asset and increase the value of surrounding properties. He said literal enforcement of the ordinance would result in unnecessary hardship due to the property's special conditions, including the rickety addition on the back that was a challenge to maintain, especially in the snow, and that a more modern structure with a pitched roof would shed the snow and would be an asset. He said there was no fair and substantial relationship between the general purpose of the ordinance and its special application to the property and that the variances should be granted.

Mr. Mulligan concurred. He said the parking situation would improve in the neighborhood, with a net gain of at least two spaces, which addressed the criteria of substantial justice and whether the value of surrounding properties would be diminished. He said the property had a unique hardship of an existing nonconforming structure that was built in the 1820s with a very substandard addition that needed to be brought into the 21st century and was an existing condition that distinguished it from others in the area. He said there was no fair and substantial relationship between the purpose of the setback ordinance or the density requirements and its application to the property, noting that there were numerous examples of similar density and

setbacks in the neighborhood and throughout Portsmouth, yet the values of surrounding properties didn't seem to be harmed. He said it was a reasonable and residential use in a residential zone and met all the criteria.

Vice-Chair McDonell agreed and said he was initially concerned about the neighbors' shadow concerns. He said a lot of what was driving the upward movement of the back part of the building was the increase in lot-area-per-dwelling unit. He said there would be some increased blockage of the sun at times during the day in during the year, but he thought the applicant's shadow study was persuasive and that the existing build infrastructure and trees were enough to not cause enough of an issue that would cause the Board to say that it didn't meet all the criteria.

The motion passed by unanimous vote, 6-0.

Chairman Rheame resumed his seat and Acting-Chair McDonell resumed his seat as Vice-Chair. Mr. Mulligan recused himself from the following petition.

E) Petition of **64 Vaughan Mall, LLC, Owner**, for property located at **64 Vaughan Street** whereas relief was needed from the Zoning Ordinance for the addition of a fourth story as part of redevelopment of the existing structure which requires the following: 1) A Variance from Section 10.5A41.100 to allow a secondary front yard of 50.2 feet where 5 feet is the maximum. 2) A Variance from Section 10.5A41.100 to allow a building height of 52.5 feet and four stories where 40 feet and three stories is the maximum allowed. Said property is shown on Assessor Map 126 Lot 1 and lies within the Character District 5 (CD5) District.

SPEAKING TO THE PETITION

Attorney John Bosen was present on behalf of the applicant to review the petition, with the owner Steve Wilson and property manager Shayne Forsley. Attorney Bosen said they wanted to convert the building into a mixed-use building and add a fourth floor, underground parking, and a public park. He reviewed the petition and criteria in detail.

Mr. Hagaman asked whether the artist who did the whale mural would return to repaint the mural. Attorney Bosen said didn't think the artist was willing to come back. Mr. Hagaman asked if the pocket park would be advertised as a public space. Attorney Bosen said the park was an important element of the project and would be given to the City.

Vice-Chair McDonell noted that a neighbor raised concerns about obstructed views caused by the fourth floor. He asked if there would be mechanicals on top of that floor. Attorney Bosen said he read the abutters' letters and that those who signed the purchase-and-sale agreements were not misled because the elevations were made public afterwards. He said he didn't think their views or light and air would be impacted. Mr. Forsley said mechanical systems had to be placed on the roofs of the new buildings due to the new building code and that the project's mechanical systems would be hidden from sight. Mr. Parrott said he had the same concern with respect to the elevator shaft and asked where the top of it would be. Mr. Forsley said the two windows to the left of the driveway would house the shaft and that it wouldn't be taller than the

peak shown on the photo. Mr. Lee noted that the elevator went up to the penthouse and asked if there was anything on top of the roof that would lift the elevator cables up. Mr. Forsley said the elevator would have direct access to the penthouse's two units. Mr. Hagaman asked how the different sides of the building would engage the streetscape and if the first-floor commercial use would have public access points. Attorney Bosen said the goal was to activate the Worth Lot side and have businesses with entryways on the front and side of the building. Mr. Hagaman asked how the applicant would ensure that the streetscape would be engaged and not just a block on one side that didn't engage at all. Attorney Bosen said the HDC wouldn't allow it and that the commercial space on the first floor had to be made into an inviting accessible space.

Mr. Parrott said he wanted to ensure that the height levels shown were being measured from the asphalt as it currently was. He asked if 'Level 41' meant 41 feet from the current pavement. Mr. Wilson agreed and said the elevations were calculated from the existing average elevation of the building. Mr. Parrott said the Board had had misunderstandings in the past, when construction was done and the elevation was measured from a post-construction ramp-up of earth. He said the summary sheet from the City indicated that the present height was 40 feet and three stories and that Exhibit 5.A showed that 41 feet was not even up to the top of the brick structure, which was already a conflict in height, and he asked which one was correct. Mr. Wilson said the elevations considered a step up from the existing roof to the new floor elevation, which was included in the overall elevation of the building. He said what Mr. Parrott saw as a differentiation was the reconstruction of the parapet wall as it was, but the floor of the building was set down below the top of that parapet wall. He said the retail entrances of the building would be on the Vaughan Mall side, the perpendicular entrance on the Worth Lot side would be a third entrance to the commercial level, and the Hanover side would have a single residential entrance.

Chairman Rheume verified that the intent of the 2,000 square-foot park was to deed it to the City and make it a public park, and he asked who would be responsible for developing and maintaining it. Mr. Wilson said that whoever owned the park would be at the City's discretion but that the applicant might continue to own it and grant easements to the City. He said the developer would work with the Planning Board to design the park and sidewalks and then approach the City Council and Legal Department to see their preferences for who would have the actual title. He said the park would present itself as a public one but that he didn't yet know how it would be organized. Chairman Rheume asked if the park would be used to access the residential entrance. Mr. Wilson said the driveway was a driveway and that the preliminary park plan would have a sidewalk in a horseshoe shape toward the residential entrance that would loop back to the Hanover Street sidewalk. Chairman Rheume deduced that part of the park would allow access to the residential spaces. He asked if a sunlight study was done for the park. Mr. Wilson said a study was not done but there would be direct sunlight on the park at certain times of the day and that all the buildings on all sides would get more sunlight with the park there instead of a potential building replacing the penthouse.

Chairman Rheume asked how far set back the penthouse would be from the building's edge. Mr. Wilson said there would be a setback of 10 feet on all sides of the building. He said the south elevation had the alley side, so in response to the abutters' concerns, they would pull it back to ten feet instead of three feet and eliminate the railing. He said the 10-ft setback would give the penthouse almost no exposure to the street from a 45-degree angle and that the HDC would

approve how much of the roof would be used. Chairman Rheume asked if the applicant was willing to only have the penthouse on the original structure on the Vaughan Street side and not have it on the newer portion toward the alley side of the building. Mr. Wilson said it would cut to the other residents on 25 Maplewood Avenue and in order to overcome the loss of that building, the applicant had to keep it in balance somewhat. He said there was under 7,000 square feet of penthouse to compensate for the lack of expansion to Hanover Street, so the more they diminished the penthouse, the larger it would lean to the original acquisitions and redevelopment of the project. He noted that one abutter thought the penthouse was a money grab to add extra profit to the project, but he said the owner would not make any more money with the penthouse. He said the park made sense because once the building was built out to Hanover Street, the opportunity to have open space in the neighborhood would be lost.

Chairman Rheume opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

David Mansfield said he was the CEO of Provident Bank at 25 Maplewood and thought the addition of the park would be fantastic because the area was presently an eyesore and more greenspace was needed in the City. He said adding a building there instead wouldn't be right.

John Ducci said he owned the 172 Hanover Street property. He said he applauded the applicant for the project's remarkable design and greenspace and had no problem with the building height.

Chairman Rheume noted that some correspondence in favor of the petition was received.

SPEAKING IN OPPOSITION TO THE PETITION

Alison Griffin of 25 Maplewood Avenue said her unit would face the new building's wall. She said she chose her particular unit so that she could see the historic city, but her views of the North Church and other buildings and her sunlight would be blocked. She said she was promised that the building would be kept as a 3-story one. She said the loss of her views would diminish her unit's value and that the building would block the sunlight on the Vaughan Mall's outdoor seating. She said a modernized 4-story building would not compare to the historic 3-story buildings and the park could pose a problem because it could encourage loitering and vandalism. She noted that the letters of support were from the condo owners who would not be affected like she would. She said the relief wasn't needed and that the petition did not meet any of the criteria.

Edward Anastasi of 25 Maplewood Avenue said he opposed the project because of the negative impact on his unit that would result from the applicant taking away the promised retail space along Hanover Street. He said he would lose some views and would be looking into a penthouse. He said the applicant promised that the original plan would be kept and had told the HDC, who had concerns about the fourth floor, that he liked both plans. He said the proposed park was not the only true greenspace in the City and would feel very private instead of public because it would benefit only the single residence entries.

Michael De La Cruz said he owned the Franklin Building and was familiar with the district. He said the original plan was great but then was radically changed. He said he looked down into Vaughan Mall through all the windows in his building and concluded that the building would change the perception of the CD5 District. He said the proposed plan was too much and was like taking the top of 100 Market Street and sticking it into a zone of small buildings. He said the block material instead of brick gave the building a big-city institutional look. He said the front of the building might work great but the back of it and the overall look and mass were not appropriate for the CD5 District. He said the park would also pose a problem at night.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Bosen said the project would not change the CD5 zone's character. As far as massing and scale, he said the building was shorter than the ones across the street and next door. He reminded the Board that there were nine condo units at 125 Maplewood Avenue and that only the residents of two units were against the project. He said there were no elevations when the purchase and sale agreements were signed and that the condo residents didn't have a view easement. He said someone who lived downtown had to be aware that they became part of a changing urban environment. He said the abutters' floor elevations would be the same as the penthouse floor, so their views would not be affected and their light would not be blocked.

Edward Anastasi said the developer did not tell him and others before they closed on their units, otherwise they would have gotten out of their contracts.

Michael De La Cruz said when the districts were created, the way light and air would be addressed was by eliminating the number of stories. He said he would be in favor of the project if the penthouse could be smaller and didn't present as a fourth floor

Alison Griffin said Portwalk Place was in the shade most of the day and Vaughan Mall was in sunshine, and the proposed buildings would take away the sun and open space. She asked why the developer couldn't just build the 3-story building if he was okay with both plans.

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

*At this time, it was moved, seconded, and passed unanimously to **suspend** the 10:00 p.m. time limit for the meeting.*

DISCUSSION OF THE BOARD

Mr. MacDonald asked whether the Board should postpone the petition until after the HDC weighed in. Chairman Rheaume said the Board tended to render a direct decision, whereas other boards were more interactive. Mr. Stith said the HDC required BOA approval first and that applicants went to the BOA before the Planning Board for site plans and subdivisions.

Mr. Lee said it was a great project but the last 12-1/2 feet were too much for him. He said there was a lot of conflicting information about the park and that he hadn't heard a clear answer. He

said historic buildings were lost every year, and once they were gone, they were gone. He also noted that the presentation seemed a bit unfocused. He said he would not support the petition. Mr. Parrott agreed. He said the testimony of the people who lived in the area and owned property were well thought out, sincere, and knowledgeable and that they knew what they were talking about because they lived there. He said the project was perhaps a bit too ambitious for that particular building, with respect to increasing its height and having an unknown amount of additional mechanicals on top that weren't even shown. He said a reasonable alternative was presented by the applicant that the Board should take into consideration. Mr. Hagaman said he was torn and kept going back and forth between looking at a plan that built out the entire property and continued as a straight line of building down the road versus something a little more thoughtful that included greenspace and public access. He said he understood Mr. Lee's and Mr. Parrott's comments as well as the abutters' concerns about views and shadowing, but when he looked at the project as a whole and adding a 3-story addition to the front of Hanover Street relative to adding 10 or 12 feet on top of the existing structure that would be set back, he was torn. He said it seemed like a relatively easy tradeoff.

Vice-Chair McDonell said he felt similarly. He said the setback request was driven by something that was desirable and made sense in that context. Regarding the height request, he said there would be some views of the penthouse but it wouldn't be as massive as a sheer-sided 4-story building going up to 51-1/2 feet. He said the concerns of the neighbors who had condo units were greater than those of a ground-level pedestrian's because the neighbors would be able to see much more of the building. He said he wasn't sure if it would diminish their property values because they were set back a fair way. He said there would be an impact of someone's views but as whole, what was requested and what the public could get out of it didn't seem like an unreasonable tradeoff. He said it wasn't fair to say that the applicant would be happy with the original plan because it didn't mean that it would drive the Board's decision of whether they should approve the petition or not. He said he could see both sides. Mr. MacDonald said he wanted the Board to do what the City needed and expected them to do, which came down to meeting the five criteria. He said the choices between the two alternatives both had detractors and thought a third alternative was needed. Mr. Lee said the choices were yes or no and that it was the constant balance of living in the 21st century and preserving the past. He said he was in favor of preserving the character of the past and was firmly opposed to the petition.

Chairman Rheaume said there was very little value to the proposed park. He said the applicant was saying 'give me something, and here's what I'll give you' and that it was a trade. He said the City was getting a 2,000 square-foot park between an alleyway and a driveway, with an accessway on one side and a street on the fourth side, and part of the park was a pathway for the building's residents to get to their unit. He said the building was surrounded by tall structures and was on the north side, so the park may get an hour of sunlight in the summer and would provide some greenspace downtown. He thought there were larger future opportunities for the City to take advantage of the parking lot on the other side, like replacing it with a far more useful park space and some kind of structure with more of a full-year use. He said the City would get a park in return for a substantial fourth floor that would be visible from public view from at least two sides. He said the City spent a lot of time, money, and effort to set up character districts and create a more detailed zoning ordinance and that the Board should be respectful of that effort, but that he had not heard a compelling argument and thought the City was getting very little in return

for giving up a lot. He said he had a hard time seeing how it met all the criteria, especially the hardship one. He said there were other alternatives to make the project work, including the benefit to the public as opposed to what was being offered. He said the abutters had a legitimate concern about the ordinance being upheld and had an expectation that the project would not negatively impact them without substantial cause. He said he didn't see a substantial cause and that it was cut-and-dry to him that the petition should be denied.

DECISION OF THE BOARD

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

Mr. Lee said the petition had to meet all the criteria, but it failed on several. He said it was contrary to the public interest and the spirit of the ordinance based on the zone it was in, and that the benefit to the applicant outweighed the general public's interest. Mr. Parrott concurred and referred to his previous comments. He said his specific problem was that the applicant did not demonstrate that there was a hardship that allowed the Board to approve the project as presented.

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

Mr. Mulligan resumed his voting seat for the following petition.

F) Petition of **SAI Builders, Owners**, for property located at **84 Rockland Street** whereas relief was needed from the Zoning Ordinance for partial demolition of existing home to allow the addition of dormers and a two-story garage addition which requires the following: 1) Variances from Section 10.521 to allow: a) a 4 foot secondary front yard where 15 feet is required; b) an 8 foot primary front yard where 15 feet is required; and c) 27% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.321 to allow a non-conforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 113 Lot 26 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

Attorney Derek Durbin was present on behalf of the applicant. He noted that the Board received a letter of approval from the direct abutter at 11 Elwyn Avenue. He reviewed the petition and said the criteria would be met.

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

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Mr. Mulligan said the project wasn't requesting a lot of relief. He said the setback relief was a pre-existing condition and the real relief was the building coverage but wasn't aggressively so for a lot that size. He said the applicant would have to sacrifice a lot of modern amenities to stay within the required building coverage percentage. He said granting the variances would not be contrary to the public interest or to the spirit of the ordinance, the essential character of the neighborhood would not be upset, and the public's health, safety and welfare would not be negatively impacted. He said substantial justice would be done because the loss to the applicant if the Board required strict compliance with the ordinance would not be a gain to the public. He said the modest increase in building coverage wasn't unheard of in that neighborhood and wouldn't alter it. He said granting the variances would not diminish the values of surrounding properties, noting that the applicant recently did a lot of work in that neighborhood that improved surrounding property values. He said the special conditions of the property included the current built environment that already encroached on the setbacks. He said the covered porch-type improvements and the rear exposed deck on the second floor were previously done by someone who had to work with limitations, and it was a good opportunity to correct them. He said those were special conditions of the property in addition to it currently violating the setbacks on a corner lot, so there was no fair and substantial relationship between the purpose of the setback and building coverage requirements and their application to the property. He said it was a reasonable use, a residential use in a residential zone, and should be approved.

Mr. Parrott concurred. He said a corner lot property presented difficulties dimensionally for the owners and that the 100-year-old structure would have some nice updating.

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

II. OTHER BUSINESS

There was no other business.

III. ADJOURNMENT

The meeting was adjourned at 11:10 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary