

**MINUTES OF THE BOARD OF ADJUSTMENT WORK SESSION  
PORTSMOUTH, NEW HAMPSHIRE**

**MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**CONFERENCE ROOM B**

**6:00 p.m.**

**September 8, 2009**

**MEMBERS PRESENT:** Chairman Charles LeBlanc, Vice Chairman David Witham, Carol Eaton Thomas Grasso, Alain Jousse, Charles LeMay, Arthur Parrott

**EXCUSED:** Alternates: Derek Durbin, Robin Rousseau

**ALSO PRESENT:** Rick Taintor, Planning Director, Lee Jay Feldman, Principal Planner

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**I. ZONING ORDINANCE REVISION – UPDATE AND OVERVIEW**

Mr. Rick Taintor stated that the purpose of the work session was to talk about where they were going with the zoning ordinance and get feedback from the Board on the proposed changes along with issues they might have. He planned on providing a general introduction, then discussing specific current changes which would affect the Board of Adjustment, as well as touching on issues they may address in the future. In order not to affect any pending issues, they would keep the discussion theoretical.

General Introduction

Mr. Taintor stated that this Board along with the Planning Board, Conservation Commission and Historic District Commission struck a nice balance between members with more experience and newer members. The staff wanted to provide the support they needed and would be looking at the best ways to do that. One possible difference would be to move toward a type of staff recommendation similar to that made to the Planning Board. This might be of help to them and the staff would like their thoughts on that. He noted that there may have been concern that some things might have fallen through the cracks during the transition but he thought that was not the case and there had been a good overlap. What was different was that they were taking a new look at the ordinance and might be interpreting it differently. They had found that practice had moved away from the letter of the ordinance which might have led to the discrepancy between past practice and the current viewpoint. He stated that staff were not trying to be the know-all experts and were aware of the experience brought by the people who have been on board for a long time.

Mr. Taintor stated that they had been working on the ordinance for 3 years to simplify it, bring it up-to-date and bring it into sync with state law. He distributed a draft Table of Articles for the new ordinance stating that they would be highlighting key items which would affect the Board. They would be holding the third of three public hearings with the Planning Board on September 10<sup>th</sup> and on the 24<sup>th</sup> would review all comments from the public hearings, this work session and the on-line response. He noted that, while they were working on the ordinance a big issue concerning continuing care had come in separately as a referral from the City Council. Initially, the Planning Board had decided to consider the two together and continuing care became a lightning rod for the ordinance changes. They have now decided to pull back on combining the two as they don't want to hold back or lose all the work that's been done.

### Key Changes

Mr. Taintor stated that one of their objectives was to try and reduce or realign the workload on the boards. The changes included the following:

1. Front yard averaging. In addition to a firm front yard requirement, there would be a provision that a front yard could be the average of the setbacks within a certain distance from the property. This addressed the question of the Board being asked to grant petitions because the situation on the property was like others in the neighborhood, which was the opposite of what was set out in the ordinance and state statutes. The 105' front yard setback along Lafayette Road was another issue. They had talked to the state highway department which wanted to preserve a 92' right of way so they were now looking at the setback as being a certain distance from the center line of Lafayette, a 20' to 30' front setback rather than 105', or 76' from the center line to the edge of the road. The result would be to bring buildings closer to the street. Mr. Taintor noted a recent example with a plaza on Lafayette Road proposing a stone wall structure 22' back from the edge of the road which was supposed to meet the 105' setback requirement. While the placement might make sense from a planning perspective, it did not conform to the current ordinance. A front yard change would hopefully reduce these types of requests.
2. Tidal wetlands – Inland wetlands were handled through the Conservation Commission while tidal wetlands were handled through a zoning and variance process. For consistency, they were proposing to also put the tidal wetlands under the Conservation Commission.
3. Shifts which might result in an increase in the Board of Adjustment workload.
  - a. Permitting drive-throughs by special exception. The use would remain a variance but the drive-through for a fast food restaurant or bank, for example, would require a special exception and application of standards relating to traffic and site planning. It was felt that drive-throughs should have a little more involvement of the Board of Adjustment in reviewing those applications. They were proposing standards under Article 8, Section 10.836, Accessory Drive-Through Uses, and he mentioned some of the issues which would need to be reviewed, which roughly paralleled site review regulations. Ms. Eaton asked about requiring traffic studies and Mr. Taintor stated that there were certain things that were firm like the setbacks which would be looked at in the zoning and there were things that were more appropriate to site review regulations. They were looking at both.

b. Conversion of older residences into up to 4 units. This was another area that might in some ways be an additional responsibility. Currently there was a distinction based on the width of the street. They proposed eliminating the differences so that all would be subject to special exception. There had been a lot of discretion about some changes in Islington Street in the past year, in particular one structure which was called a conversion but vastly increased the size of the structure. The Planning Board came down and stated they wanted to allow these only if there were no exterior changes, strictly a conversion not an addition. This change might result in an increase in the number of potential special exception applications and, perhaps if people wanted to expand, some additional variance requests. Chairman LeBlanc cited a particular example which he believed was actually an expansion. Mr. Taintor stated that was one of the key cases which had become an issue with the Planning Board and the staff. That was the type of thing which should have a review incorporating public input.

c. Signs. They were establishing 6 sign districts as a way to be more focused on what was allowed. In the Central Business district, they were allowing more signage in some cases than was permitted now. Mr. Taintor noted that the amount allowed on the Portwalk project was tiny in relation to the ordinance. Under the proposed ordinance, there would be a more proportional sign allowance. In other areas, there was a reduction, the biggest change was the reduction in allowed sign heights for free-standing signs to 20' with discussion of even smaller heights. They would probably be seeing more of this. Mr. Jousse related his visit to Sonoma, California where all signs were monument signs and even McDonalds was not allowed their yellow arch. Mr. Taintor stated it was the same in Santa Barbara, but noted that, by law, you couldn't interfere with trademarks. Citing another example on a section of Route #125 near Haverhill where all signs were all 15' to 25' high, he stated that studies had shown that 15' high signs were perfectly adequate to see over cars. He was sure this would come at the Board where there were routes with quite a few signs and it would be a challenge when applicants maintained that everyone around them had what they were requesting.

4. Zoning map changes – Not this year but the next, Mr. Taintor stated, they would look at neighborhoods where the majority of the homes were nonconforming. He described a 2006 study where he had looked at lots and color coded them by their percentage below the minimum lot requirement. He held up his map, noting a few examples including one whole neighborhood which was nonconforming. They would be looking at not so much the lot area as the coverage limitations. They would review side yards, etc. He noted that, if they looked at state standards, they couldn't really grant a variance for a lot because it was similar to others. While many had been granted for that reason, the Board needed to look at the exception. At some time within the districts, lot sizes were increased to benefit one area but that then impacted other areas. They would try for a more rational approach.

5. Relationship among various boards – An example was a lot on Woodbury Avenue whose owners were coming for a variance but who also needed conditional use, while a Wentworth House Road petition was going for conditional use but was not yet before this Board. They would look for a logical sequence which would work better. Mr. Feldman stated that what the staff heard and saw internally was somewhat different from what the Board saw. He cited an example of a proposal going first the Historic District Commission and then to the site review process. The Technical Advisory Committee members had issues and the

consultant stated that the Historic District Commission had already approved it and that the Commission ruled. While this was not necessarily the case, it demonstrated a mind set. As no one board was the ruling board, they would look at the beginning and end of the development and the issues to determine a logical sequence.

Mr. Taintor stated as one final point that part of their goal was to help get applications before them and not have them languish in planning department review, although time was necessarily spent with staff. They were trying to strike a balance between getting an application perfect before it reached the Board and timeliness. He mentioned watching a video of one meeting where an issue had been raised of some information not straightened out or not provided. This was due to Mr. Feldman's effort to bring the matter before them. He asked for their concerns and stated they were open to criticism, suggestions, or issues on which the board members would like to have some help.

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## II. ZONING ISSUES Q & A

Issues in the following areas were raised by the attending board members and discussed:

### Zoning Ordinance – Changes, Interpretation, Implementation

#### 1. Replacement in kind.

Mr. Jousse stated that there were cases where somebody just wants to replace a nonconforming back porch in kind, the same footprint but new material. He believed that should be handled at the departmental level and not have to come to them. It was a lot of hassle and expense just for a replacement. Ms. Eaton stated they also had to consider whether they were replacing the foundation or not.

Mr. Feldman stated that the ordinary process was that he reviewed the building permit application to see if it had to go to the Board. He cited an example of an application received for a deck and stairs replacement where he was pointing out to the contractor how they could avoid having to go before the Board by replacing the structures piecemeal in kind. A building inspector then discovered that the structures had been already ripped out. As all that was left was an unsafe doorway leading to air, he continued to work with them to find a way to avoid a hearing. When Mr. Taintor asked how he had done this, Mr. Feldman stated that he had looked at the definition of a structure in the ordinance as any physical thing that was built over 18" in height. They were allowed to average so they took the side of the hill as zero and the bottom step as 22" which averaged out so that the structures could be replaced without coming to the Board. This was one example of working with the ordinance and finding ways to make it happen. Mr. Jousse stated that some kind of formal provision for replacement in kind would be nice and clean and Mr. Feldman stated that maybe that was something they could look at.

Mr. Witham stated that he had been proposing an in kind replacement for years as they get so many requests and 99 out of 100 passed 7-0. He noted that the town of Newcastle had it written very concisely in their ordinance. The previous staff position had been that a

replacement was the chance to bring the property into greater conformity. He wondered if a balance could be found. He cited an example of a garage 6' from the property line where you didn't necessarily want it replaced in kind but you also didn't want it done piecemeal, which would be more expensive, more time consuming, less safe. He questioned whether that was their goal. He was on board with the replacement in kind but, if the department had concerns about bringing the property into conformity, maybe there could be stipulations such as in the Newcastle ordinance which allowed replacement in kind if the proposed structure met the setback by 50%.

Mr. Taintor stated that some properties were so far out of compliance that this was a good chance to bring about greater conformity. They could also, in the case of an accessory structure not a two story house, talk about replacing in kind with a different type of structure. For example, there could be an open deck instead of a covered one.

Mr. Feldman stated that a related frustration was that there were professionals who know the ordinance well enough and know their client has to go before the Board and they don't talk with him about it but come in five minutes before the deadline. They submit the whole package with no advance conversation with staff to see what else could be done.

## 2. 18" Rule

Mr. Witham stated that this was where anything below 18" did not count toward the setback or lot coverage requirements. His opinion was this should be done away with altogether. Somebody could have a half acre back yard and build a half acre deck 16" off the ground. He talked of the difficulty of treating stairs and bulkheads in drawing up site plans. Mr. Feldman stated that in Maine, stairs weren't even considered part of the structure, which was the house or the deck. If the stairs encroached in the setback, they encroached.

Mr. Taintor stated that one of the problems was the definition of a structure as any assemblage of materials so did a brick patio count as part of the coverage? In the south end, for example, that could have more impact. He agreed when Mr. Witham suggested that maybe it should be anything above grade. Mr. Taintor asked if there were any counter arguments to the proposal and none were raised.

## 3. Definitions

"substantial improvement" terminology – Mr. Witham asked why this was not in the definitions and Mr. Taintor replied that some sections had their own definitions. FEMA required the adoption of certain language and this terminology should be defined, and only appear, in the flood plain sections at the bottom of page 63 or 64.

abutter – Mr. Witham asked if this word was defined. Mr. Taintor replied that it covered notification to persons owning property within 300' but that the word itself was not defined. Mr. Witham further asked if any member of the Board who received an abutter notice had to recuse themselves from the hearing and Mr. Taintor stated that the issue was not that they were an abutter but whether they had an interest in the proceeding.

#### 4. Setbacks

There was a discussion of setbacks as they related to corner lots and what would be designated the front, sides and back. Mr. Feldman stated that he was trained that the front yard was at the street address but in Maine, all street frontages were front yards. Mr. Taintor noted that, on page 218 of the draft ordinance, a front yard was that which bordered the street address. There was a brief discussion of specific situations, such as on Walker Bungalow Road, with the end of the property line going to the middle of the street and Mr. Taintor stated that they perhaps should be more specific on those points.

Mr. Parrott mentioned that he had a communication from the state issued in 1985 regarding widening programs which went from the state line up to Portsmouth. Mr. Taintor stated that they had met with the district engineer and outlined some of the issues they had discussed, particularly the requirement for 105' setback along Lafayette and some anticipated changes. In the meantime, the setback created parking lots fronting on the street.

#### 5. Signs

Mr. Witham asked how two issues would be dealt with in the ordinance, the first being huge company logo signs on trucks parked out front and the second the regulation of window signage and how could they stop someone from putting up a poster or temporary sign. Mr. Taintor stated that signs on trucks were hard to regulate and Mr. Feldman noted particularly where a registered vehicle was allowed to park on the street. Regarding window signs, Mr. Parrott noted that they had denied some signage on Peverly Hill Road and they subsequently put up window signs. Mr. Taintor stated that there had been discussions in the Planning Board about signs, for example when does an interior illuminated sign or video display become a regulated sign.

Ms. Eaton asked if they would be adding anything about light carrying over property lines. Mr. Taintor replied that there were dark sky regulations in zoning as well as site review regulations. The problem was that it dealt with lighting and not signage. One of the issues was that you could have a display which was really brighter and which projected straight outward. He referred to page 169 of the draft ordinance where it defined foot-candles and nits and the three types of illumination, external, internal and direct, the last being neon tubes and led's where the sign itself was the illumination. What was talked about, but not included, were holographs and laser created signs on distant buildings. They would have to catch up with these.

#### 6. Windmills

Mr. Jousse stated that he had read the whole draft and the reference was to horizontal shaft windmills. There was a new technology employing a vertical shaft, which required much less space and those had not been mentioned. Mr. Taintor asked how those would affect what was in the regulations right now. A brief discussion followed among Chairman LeBlanc and Messrs. Jousse and Parrott and Taintor on possible problems posed by windmills as to the applicability of height and space requirements and where a windmill could be located. Mr. Taintor noted that the ordinance was based on the new state regulations from July which gave authority to the building inspector, who had to send out an abutter notice and hear comments

and so forth. They had just issued the first permit in the city which was mounted on a roof and on this particular site, fortunately, it had only one abutter which was the railroad. He noted that they had tried to cover as much as they could in keeping with the state regulations, but if there was something specifically related to windmills that they could fix, they would. Mr. Jousse stated he was probably reading more into it and Mr. Feldman stated that, whether the orientation was vertical or horizontal, it was still a pole height issue and clear zone issue.

7. Rezoning

a. Waterfront Business District – Ms. Eaton asked if there would be any change to this zoning. Mr. Taintor stated there had been a lot going on and they didn't want to change too much at this point, but they would look at it again. They might achieve the purpose of the ordinance by approaching from a different direction, for example, changing it to a district in which businesses were allowed, not mandated.

b. Office Research into Business - Mr. Parrott questioned the move and Mr. Taintor stated it just seemed more of a business use. Any changes made were dimensional, not use.

c. Gateway District - Mr. Parrott asked what the rationale was for the district. Mr. Taintor stated that came out of the master plan to improve the quality of development in the corridors. There were not too many changes to the use regulations for the properties in that district, but primarily setbacks and location of parking. They had added a special provision in Article VII, Section 10.740. Somebody could develop a property under the basic gateway standards, or take this option which allowed them to incorporate residential uses and have a higher coverage and reduced setbacks by meeting a whole range of design standards. Basically, this option would allow a development of a property with more density, but less impact.

d. Atlantic Heights – Mr. Grasso asked if there would be residential zoning for the heights. Mr. Taintor stated he felt it needed to be done. There could be different dimensional regulations and a separate historical district, limited in scope, to maintain the character and standards of the area. He noted that there was some disagreement within the neighborhood and that they would be looking at the heights, but not this time around.

8. Regulation of curb cuts

Chairman LeBlanc noted that in Section 10.232.37, there was mention of regulation of design of access drives, sidewalks, crosswalks and other traffic features. On a previous petition the applicant had stated that the Board could sanction the curb cut, but the Board had maintained it fell to Public Works. This seemed to indicate otherwise. Mr. Taintor clarified that the section referred strictly to those regulations as a condition of granting a special exception.

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Enforcement and Follow-Up

1. Trees, greenery and parking at shopping plazas

Mr. Witham stated that this was more of a pet peeve but he was concerned about the trees and greenery shown on site plans and how developers could be held accountable for the trees and green space they had depicted. He would like to see either a credit for parking spaces in the requirements to allow for green space so that the parking islands became 15' instead of 5' and they actually had trees which offered shade. He noted that even with the newer developments at holiday time, the lots were not full.

Mr. Taintor stated that one of the things they were putting into the revised site review regulations was a requirement that an island be a minimum of 9' wide. They had tried to beef it up and were actually looking at buffer overhangs. Mr. Feldman added that Mr. Taintor had put in a maximum amount of parking spaces instead of minimum so rather than saying you've got to have 25 when they want 75, it will say you can have up to 25. Chairman LeBlanc asked if that also included a minimum. Mr. Taintor stated there was a minimum and a maximum. They tried to adjust some of the parking requirements. One of the big things they were proposing were changes to simplify the downtown parking requirements and make them more rational.

Mr. Witham stated that the Planning Board needed to be cognizant of the applicants signage as a part of their plans and asking them if the plan was going to work for them. If the landscaping and greenery placement was not going to work for them, don't present it. He and Mr. Parrott cited examples where trees had been cut down due to signs. He asked again how they held people accountable for the trees shown on their plans and ensured replacement if they died. Mr. Feldman stated that a lot was holding the contractor's feet to the fire in inspection. Mr. Grasso stated that he felt Mr. Witham was also talking about following through a few years down the road after a project was built and Mr. Witham agreed. Set the standards so that the trees and green space at least had a chance to survive.

Chairman LeBlanc asked if the city had a biologist or arborist and Mr. Taintor stated he didn't believe so although there was a trees and greenery committee. Mr. LeMay suggesting that an arborist could be required as part of the plan. The plan was what the developers were selling them, but they were not delivering. Mr. Taintor stated that maybe some sort of follow-up could be required.

## 2. Audit process

Mr. Parrott stated that he would like to see something in the ordinance requiring a review of a project within a certain period of time by the code enforcement officer to say that the regulations were working. Mr. Taintor stated that they had been asked to start doing that and the task would be divided among the staff. The staff had just been overwhelmed but would get into their issues and also those of the Planning Board with regard to follow-up. Mr. Parrott stated that his concern was more for the Planning Board. Where certain aspects of projects that were requested or presented were not in place or not working, code enforcement should be sent out and report back so that the viewers on television would see the feedback loop.

Mr. Grasso stated that there could be a random audit as well. When Mr. Taintor stated they would not want to target properties, Mr. Grasso suggested it could be by random permit



number. Mr. Jousse noted that he called the code enforcement officer when he noticed that what he observed was not what the Board had approved.

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### Process and Procedures

#### 1. Work Sessions

Chairman LeBlanc wondered if there should be required work sessions with a deadline separate from the application submission. Mr. Witham commented that their Board might then become like the HDC where they end up designing the project. Regarding work sessions, Mr. Taintor noted that it had come up that the ordinance did not require abutter notification for work sessions which could result in a situation where there had been a number of work sessions and the Historic District Commission had more or less bought into the project. The first time the application came up for a public hearing and abutters were notified, you could have the neighbors on one side and the Commission on the other. There was a recommendation that they require abutter notification for work sessions for the HDC as well as public hearings.

#### 2. Deadlines and packet preparation

Chairman LeBlanc suggested that there be a requirement that petitioners meet with staff prior to submittal and Mr. Taintor stated that had been talked about but they would have to push up the deadline to allow time. This might be considered as a change to the Board of Adjustment Rules & Regulations.

Mr. Witham asked about whether the order of petitions on the agenda and was it first-in-first-out. Mr. Taintor stated there had been one meeting where it was sorted by residential and commercial and Mr. Feldman commented that there were quite a few petitions so they felt they would do all of one type at one time. Mr. LeMay felt that led to applicants comparing the disposition of their requests. Mr. Taintor asked if they would prefer “FIFO” and Mr. Witham stated they would.

#### 3. Complete packets

Mr. Parrott stated that they have been seeing several submittals where the written material was not in conformance with the rules and regulations. The proposed ordinance on page seven states that “requests for variances and special exceptions shall include layout or plot plans conforming to the Board’s rules and regulations.” The packets often lack half the information but there was no penalty. He felt there should be something included which would strengthen the staff position. He suggested that staff be obligated to advise the applicant of the rules and regulations and, if they chose to go ahead, a statement would be included in the summary memorandum that the applicant had been advised that the submission was inadequate. He cited a recent example where an engineer was questioned about sound levels at the property line and he didn’t know but could look it up. The Board had found the information, but that was not their job. When it was the homeowner themselves presenting, he cut them some slack, but a professional should not be allowed to be so unprepared.

Mr. Jousse felt that they had a responsibility to set a precedent and postpone the hearing until all of the required information was presented. Ms. Eaton stated that if it were denied, then they could not come back. Mr. Jousse recalled a few years ago when some of the attorneys were coming in with a lot of material presented first at the meeting and they had to put their feet down. Mr. LeMay felt they couldn't be shy about saying that the application did not meet the requirements in the rules and regulations. Ms. Eaton stated that she did not like non-surveyed data but remembers applicants saying it was too expensive. Mr. Parrott stated that his point was that with professionals, the Board shouldn't have to drag out the information because it was incomplete or the numbers didn't add up, but should have some teeth which they could use. Mr. LeMay stated that was a good point and shame on them for allowing that. Ms. Eaton stated that one of the dangers was that with inadequate information they might deny it and then the applicant would try to come back. There followed a brief discussion of new information in general versus new information which was not available at the time of the initial hearing.

Mr. Feldman stated that requesting adequate information was just what he was trying to do and they would see in this month's applications where he had said a survey would be needed prior to construction. The hard part was drawing a line between what would be required of a professional as opposed to a small individual property owner submitting on their own, although nine times out of ten they did a good job.

There followed a brief discussion about the current requirement for a site plan, not specifically surveyed and whether one could be required with a waiver for certain situations. Whether just a lot line survey should be requested or whether there should be attached stipulations requiring a survey prior to the building permit being issued. The departmental report could be written stating that it should be required, but then it would be up to the Board. They also considered the options of postponing. Mr. Taintor suggested that perhaps, in the regulations, there could be an option for early submittal and pre-review by the staff, which Mr. Parrott strongly encouraged.

#### 4. Access to properties

The Board would like something in the ordinance, such as had been provided for the Historic District Commission, allowing access to properties. Chairman LeBlanc read from Section 10.634.30 the language applicable to the Historic District Commission and Mr. Taintor stated that could be put into the Board of Adjustment section.

#### 5. Aerial photographs

The Board would like to receive these again as part of their packet and Mr. Taintor and Mr. Feldman stated they would be provided.

#### 6. Departmental memorandum format & content

a. Memorandum – content. Ms. Eaton stated that she didn't always know the existing conditions and, especially with a nonconforming property, she had to figure them out. Mr. Taintor asked if a table would help and she confirmed that would be it exactly, showing the existing, proposed, and allowed conditions. Ms. Eaton stated that she was always looking to the intent of the ordinance. Where they don't have the history of the intent, she wanted to ensure

they weren't departing entirely. Mr. Taintor stated that they could add a brief summary of the District purposes to the memorandum.

b. Memorandum – departmental recommendation. Mr. LeMay stated that they had to be careful in the memorandum that they were not misquoted. Sometimes the synopsis was great but he didn't recommend the mentions of the special conditions of the lot and coming to conclusions about them. When Mr. Taintor noted that staff made a recommendation to the Planning Board but it sounded like he didn't like that, Mr. LeMay stated it should be mild. Mr. Jousse agreed that a hint about stipulations was welcome but not the detail on the special conditions. Ms. Eaton added that it was helpful to give the lot size and dimensional information. They agreed when Mr. Feldman stated that they didn't want him to try and frame the decision for them. When he asked if it was alright to indicate any staff concern with the project without getting into their decision, Messrs. Jousse, LeMay and Parrott indicated agreement.

#### 7. Applications and Building Permits

Ms. Eaton asked if they had reviewed the BOA application as she felt it was not well defined and the same questions must come up. Mr. Taintor stated it was often not filled out well and Mr. Feldman noted that many of the questions were handled at the front desk and they were a second line and often had to figure out what the applicant was trying to do. Mr. Taintor said they had not yet looked at the application but could. Currently everything was started by a building permit application which then went to staff and the Board of Adjustment and/or Planning Board, which process sometimes took years. They would like to set up a land use application process separate from the building permit application and also look at ways to put information on line.

#### 8. Petition flow through boards and appeals

Mr. Parrott asked if it would make sense, when multiple boards were involved, to designate authority to the principal planner to set the order in which it should progress. Mr. LeMay noted that a petition did not come to them from another board unless it was an appeal. Mr. Taintor outlined a current petition which was the most confusing they had had where they were applying for a conditional use permit, then variances and a special exception and then planned to go back to the Planning Board. Mr. Parrott reiterated that somebody should make the call and say it would be done in this order. Mr. Taintor stated that it was also confusing when an application went first to the Historic District Commission, where it often took a long time to go through the process, before coming before the Planning Board. They then needed to deal with a lot of issues while the applicants felt they had done all this work and couldn't change the plan. It made sense to have a standard sequence.

Ms. Eaton asked about the appeal process citing a recent example with an abutter who actually was appealing a decision of the HDC. Chairman LeBlanc noted that the letter of decision outlined the rights of appeal and Mr. Feldman believed it was included in a punch list that the applicants received, but he would check on that. There was a brief discussion of the cited instance where it was noted that the HDC had different appeal times than the Board of Adjustment. Mr. Taintor stated that they had made some changes in the statute that year in

terms of how long a period we had to file a decision. He was not sure if the appeal period was also changed, but he would check.

9. Postponements, denials without prejudice, abutters following process

There was a discussion about the number of recent postponements and how that affected abutters and their responsibility, and ability, to follow the petition. Postponements to a date certain allowed the public to see when the petition would again come up as a new notice was not sent. A petition postponed indefinitely had to be readvertised with new abutter notices. There was concern that extended postponements might be done deliberately in some cases to discourage an abutter. Some specific recent petitions were discussed and options in handling the postponement requests. They discussed the ramifications of denying a petition without prejudice if the petitioner was not prepared to go forward. It was noted that, once a public hearing was opened, a decision had to be made. They also considered putting a set number of postponements into the Board of Adjustment Rules and Regulations or some wording that if an application was not before the Board within a certain stipulated time, it would be considered withdrawn and the applicant would have to re-apply. It was decided to discuss the options with the Legal Department.

10. Applicant Preparation

Mr. LeMay asked if there was a fairly strict protocol for an applicant to follow when they want to present their case. Mr. Feldman stated that when people came in to talk, they were given a sheet with directions. He would like a meeting up front with the applicant who could be guided on how to proceed without handling the application for them. Mr. Parrott stated that he recommended to people that they come to a meeting or watch one on television so they could see how the proceedings were conducted.

11. Findings of Fact, Motions, & Minutes

Chairman LeBlanc mentioned the importance of looking at the minutes as they were a legal record. Mr. Jousse stated they were a synopsis and Mr. Lemay agreed they were not a transcript.

Mr. Taintor mentioned Mr. Feldman's feeling about the inclusion of findings of fact in the decision making process. Chairman LeBlanc stated that this was mentioned at OEP sessions and some towns go through and list the findings of fact gleaned from the testimony and the motion flows from that agreement that those conditions existed. When the Board went through the standards, they should be saying, for instance, that there was hardship because of x and y and z. Mr. Taintor stated that right now their procedure was for somebody to make a motion, which received a second and then the maker and second went through the standards. Should there be a different procedure? Ms. Eaton stated yes and Mr. Grasso noted she had brought that up years ago.

There was a discussion about how the decision making process should flow, including discussion before or after the motion, a motion to approve and second and then the findings of fact, or as is done in some towns, an assumed motion to approve, followed by the findings of

fact and the vote. If a majority were not convinced to approve after the findings, the motion failed, the advantage being that there is no need to deny a failed motion to pass. Seconding for discussion was also covered, with Chairman LeBlanc stating it was sometimes necessary to get the ball rolling and Mr. Grasso stating he had done this in July and then become convinced by the maker's arguments. Mr. Taintor noted this wouldn't be needed if discussion always followed the motion. He also pointed out the new state regulations effective in January where there would no longer be a distinction in the hardship test between use and area variances. Some of the other possibilities included the importance of addressing the standards, discussion first with the motion pulling it all together, the motion first followed by a discussion with someone then addressing the standards for the record, and whether they wanted everybody commenting on each point.

Mr. Taintor stated they would look at some of those options. He noted that this had been a good discussion and they would be happy to be called back if the Board wished.

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### **III. ADJOURNMENT**

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 8:25 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary