

**MINUTES OF THE MEETING OF THE
HISTORIC DISTRICT COMMISSION
ONE JUNKINS AVENUE, PORTSMOUTH, NEW HAMPSHIRE**

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

**December 2, 2009
reconvened on December 9, 2009**

MEMBERS PRESENT: Chairman Sandra Dika; Vice Chairman Richard Katz; Members John Wyckoff, Tracy Kozak, Planning Board Representative Paige Roberts; Alternate George Melchior

MEMBERS EXCUSED: City Council Representative Eric Spear; Elena Maltese; Alternate Joseph Almeida

ALSO PRESENT: Roger Clum, Assistant Building Inspector

I. OLD BUSINESS

A. Approval of minutes – October 14, 2009

It was moved, seconded, and passed unanimously to approve the minutes as presented.

II. PUBLIC HEARINGS

1. **(Rehearing) Petition of Robert A. Ricci Revocable Trust and Elizabeth Batick-Ricci Revocable Trust, owners**, for property located at **31 Richards Avenue**, wherein permission was requested to allow exterior renovations to an existing structure (construct new railing system) and to allow a new free standing structure (remove fencing, install new fencing) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 128 as Lot 2 and lies within the General Residence A and Historic A Districts.

Chairman Dika explained that just before the meeting, the Commission received a very significant packet of supplemental information. She did not know who it was from but she said that it was unusual to receive so much information just before the meeting.

Attorney Doug Macdonald, representing the applicant, stated that he was the one who submitted the information. He informed the Commission that he provided a copy to the abutter prior to the meeting. He pointed out that there was nothing except for two pages in the document that was not either available to the public or observable by the public. He said that the packet included items that were submitted in the last hearing, tax cards, portions of the zoning ordinance, and photographs. He pointed out that one item was drafted by him regarding the Hassam painting.

Vice Chairman Katz asked Mr. Macdonald if he would be drawing on this information for his presentation. Mr. Macdonald replied that he was planning to walk the Commission through the packet. Mr. Wyckoff wondered whether the material was relevant. He said the Commission was essentially determining whether the fence existed. Mr. Melchior did not see the harm in going through the material. Vice Chairman Katz added that this was a process that they should not encourage.

Chairman Dika asked for a motion as to whether to accept the material into the meeting this evening. Ms. Roberts made a motion to accept the material into the meeting. The motion was seconded by Mr. Melchior. Chairman Dika asked for discussion.

Ms. Roberts stated that they should acknowledge that they at least received the material. She thought they could allow the applicant's attorney to make a presentation but she agreed with Vice Chairman Katz that they did not want to set precedence for last minute submissions of additional materials.

Chairman Dika thought it was not fair to the abutter to not have a chance to see what the applicant was presenting. Attorney Macdonald said that the abutter would have sufficient time to review it. He said that when he reviewed the initial hearing, some members of the Commission had thoughts or concerns relative to the Hassam painting and to the extent that those concerns existed tonight, he thought that the material submitted was relevant.

Chairman Dika called for the vote. The motion to accept the material into the meeting passed by a 4-2 vote with Chairman Dika and Mr. Wyckoff voting in opposition.

Chairman Dika explained that the abutter, who requested the rehearing, would proceed first.

SPEAKING TO THE PETITION

Mr. Tom Morgan of 39 Richards Avenue was present to speak in opposition to the application. He said that one of the primary points he wanted to make was that the only evidence of any fence that every existed in the historic district was the one that was depicted in the Hassam painting. He told the Commission that they have received no evidence of any fence being situated in the Historic District other than the Hassam painting.

Mr. Morgan pointed out that Attorney Macdonald stated in his submission that one of the staff at the Metropolitan Museum of Art (MET) speculated that there were some inaccuracies in the painting. He spoke in great detail concerning those inaccuracies.

One of Mr. Morgan's primary concerns was the safety of children walking on the public sidewalk on Richard's Avenue. Prior to the fence, drivers coming out of the driveway could see children about 20 feet away. With the fence, the line of sight has been reduced to about 5 feet. His goal was to eliminate this hazard that never used to exist. Mr. Morgan pointed out that some may say that safety was not part of their purview but he argued that scale was. He thought in this case, scale and safety lined up perfectly. He said that if the fence was reduced in height to the height in the Hassam painting, the safety issue would be solved.

Chairman Dika complimented Mr. Morgan on his submission. She thought the study of fences was very interesting.

Mr. Wyckoff asked that within the last few years, did the stockade fence go all the way up to Richard's Avenue. Mr. Morgan said no. He stated that he has lived at 39 Richards Avenue since 1985. He explained that the fence came from within 25 feet of the sidewalk which happens to coincide with the boundary of the historic district. He said that the fence fell down over the years due to lack of maintenance. He told the Commission he thought they should focus on what was inside the historic district. What was known was the only evidence of a fence they had was the Hassam painting.

Attorney McDonald, from the firm of Keane and Macdonald, spoke next. He stated that he thought the relevant question with regards to the historic district was not whether something was there within the last couple years but whether the fence was in the historic district. He said that Ms. Ricci recalled that when she purchased the property in 1972, she had to walk up the driveway and around the fence, to the sidewalk, to get to the porch of the neighbor. The same fence was replaced in kind, the same type of fence, the same setting, and the same view.

Attorney McDonald pointed out photos that showed a shadow line that followed all the way down to the side walk which he said was proof that a fence existed at one time. He also pointed out some of the pictures that showed post holes in the last section of fence, indicating that additional fencing at one time existed and extended into the historic district and right up to the street. He also showed a picture that showed a portion of the fence on the opposite side of the abutter's property where it had been moved. He said that during the first hearing, it was represented that the fence was the property of the abutter at one point in time. One of the reasons that the applicant thought the fence was the property of the abutter was the fact that he had moved a portion of the fence to access his back lawn to bring in loam. He commented that he did not know if that was relevant or not, but that was the reason that the fence had not been replaced sooner. When the Ricci's discovered through a survey that it was their fence, they put up the fence immediately.

Attorney Macdonald pointed out that boundaries are also addressed in Article 2 of the zoning ordinance. In Article 2, Section 10-203, 5.it stated that if a lot is bisected by a boundary line, then each district extends into the other by 20 feet. He asked the Commission to consider that interpretation as well.

In summary, Attorney Macdonald pointed out pictures 10 and 11 that showed other stockade fences within the historic district.

He added that since the Hassam painting has been seen of little relevance he just added that there are many reasons why the painting was seen as not being historically accurate. Instead, it was a historic depiction of properties in Portsmouth.

Attorney Macdonald stated that with regard to safety, he pointed out that the last section of fence was graduated down to the end post and was set back from the street by 4 feet.

Vice Chairman Katz asked Attorney Macdonald if a fence running to the street existed in 1972. Attorney Macdonald replied yes as far as the owner's recollection. Vice Chairman Katz asked when it ceased to exist. Attorney Macdonald said he did not have any information as to when it ceased to exist but he pointed out that from the pictures submitted for the record that it happened over a number of years. With respect to the piece that was moved, he did not know when that happened. With regards to the parts of the fence that have fallen down, he did not know when that happened but he could show the Commission pictures that proved that they used to be there. He also did not know when the section of fence from the existing fence forward came down but he surmised that it happened over time like the rest of the fence.

Vice Chairman Katz asked Attorney Macdonald if he would be willing to accept the abutter's contention that during the period of his ownership of the house, the fence was not there. Attorney Macdonald said no, he would not accept that. He added that he has not seen any proof of that. He did not think any proof of that had been submitted. The abutter submitted pictures that dated about to 2005-2006. Vice Chairman Katz asked Attorney Macdonald if he would say that somewhere between 1972 and 2006, the fence ceased to exist. Attorney Macdonald said that he did not have any information other than an undated aerial photograph.

Chairman Dika asked Mr. Clum if he was familiar with Attorney Macdonald's interpretation of Article 2, Section 10-203, 5. Mr. Clum said that in his opinion, the interpretation talks about zoning districts and the Historic District was considered an overlay district and not a zoning district. He added that the Commission would probably need the City attorney's opinion on the matter.

Mr. Wyckoff stated that this was a horribly drawn out argument over a fence. Chairman Dika commented that unfortunately fences often are.

Chairman Dika asked Mr. Morgan if he would like to respond to Attorney Macdonald's comments since he was not able to see the material submitted in advance of the meeting.

Mr. Morgan stated that he did not think that the material presented was conclusive. He said that his wife would like to speak to the matter.

Ms. Zelita Morgan said they have owned their property of over 20 years. She said that they produce pictures that showed that there has not been a fence on the portion of the property that falls within the historic district since they have resided there. She pointed out that the lawyer's photos did not have any dates on them to show proof of the fence's existence. Ms. Morgan reminded the Commission of a survey that they submitted that showed no fence on that portion of the property. She felt that the fence did not belong and it took away from the historic character of the neighborhood. She also felt that there was a safety issue as well.

Chairman Dika asked if anyone from the public wished to speak to, for, or against the application. Seeing no one rise she declared the public hearing closed and awaited a motion.

DECISION OF THE COMMISSION

Mr. Wyckoff asked for clarification on how to make a motion with this application. Mr. Clum explained that the Commission would either reaffirm the Certificate of Appropriateness granted or disallow the Certificate of Appropriateness.

Vice Chairman Katz made a motion to disallow the Certificate of Appropriateness for the application. The motion was seconded by Mr. Wyckoff. Chairman Dika asked for discussion.

Mr. Wyckoff stated that as a contractor, he has told many people that if you have a structure and you want to tear it down, do not touch it until you have gone through the proper channels. He pointed out that if you do not start a project then the approval expires. He said that they were looking at years that the fence was down and not put back in place. He added that he would support the motion.

Vice Chairman Katz said that he was not convinced by the new submissions of photos. He also asked that if this were a new application, would they approve a stockade fence for this location. He said he would vote to disallow the Certificate of Appropriateness.

Mr. Melchior stated that he would be voting to reaffirm the Certificate of Appropriateness. He said that new evidence has come forward since the original decision. He felt that this hearing has reaffirmed the previous decision.

Ms. Kozak commented that some of the photographs showing the property in the last few years was new evidence and it was helpful to see that there was not a fence there in the past twelve months or so. She felt a year was standard for the duration of the effectiveness of a permit. She said she would find the fence inappropriate for a new application, especially right up to the street. If the fence were grandfathered, that would be one thing but the photos from the last several years showed that a grandfathered clause did not apply here.

Ms. Roberts agreed with Ms. Kozak and appreciated Vice Chairman Katz's line of questioning concerning the timing. She said she would support the motion.

Chairman Dika said that she agreed with Vice Chairman Katz. She also said that if they were sitting down at a work session right now, they would not accept a stockade fence in that location. She added that she would vote against the Certificate of Appropriateness.

Mr. Wyckoff pointed out that they were shown pictures of other stockade fences in the historic district. He said that he did not remember approving any of those fences in his five years on the Commission. He thought that many of the fences were not approved. Vice Chairman Katz added that it had not been that long since fences became the purview of the Commission.

Chairman Dika asked if there was any more discussion to be had. Hearing none, she called for the vote.

The motion to disallow the Certificate of Appropriateness for the application passed by a vote of 5-1 with Mr. Melchior voting in opposition.

2. **(Rehearing) Petition of Middle Union Condominium Association, owner, and Alexandra Gamble, applicant, for property located at 496 Middle Street, wherein permission was requested to allow exterior renovations to an existing structure (replace clapboards with composite material) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 135 as Lot 21 and lies within the Mixed Residential Office and Historic A Districts.**

SPEAKING TO THE PETITION

Ms. Alexandra Gamble was present to speak to the application. She stated that she was before the Commission again to request the use of the Artisan series hardiplank. She explained that it

was a bit different from the standard hardiplank. The Artisan series was cut to look more like clapboard and was thicker to produce shadow lines. She also told the Commission that her contractor, Travis Murray, was present to answer any questions pertaining to the installation.

Ms. Gamble included some articles in her submission that supported the use of new technologies in the Historic District.

Mr. Wyckoff pointed out that the material comes primed but it would need to be painted. Ms. Gamble said that was correct.

Mr. Wyckoff asked if any changes would be made to the window trim and the front entrance sway over the front door. Ms. Gamble said that all of that would be preserved and would be painted. Mr. Wyckoff asked if the smooth or textured finish would be used. Ms. Gamble said that she planned to use the smooth finish.

Vice Chairman Katz stated that he took a walk down Middle Street and noted that there was a variety of materials on the houses. He saw aluminum and vinyl siding, asbestos and cementitious siding, and wood siding. His point was that he felt it was appropriate to the neighborhood. He also pointed out that in the winter, the front of the house suffered from the piling up of snow from the snow plows. He also reminded the Commission of the house across from the scrap metal piles on Market Street. The Commission approved a vinyl installation there because of the adverse conditions in that location. He felt this house fell in the same category.

Ms. Gamble also explained that the hardiplank was flame resistant and was another benefit to the product.

Chairman Dika asked if anyone had any additional questions for the applicant. Hearing none, she asked if anyone from the public wished to speak to, for, or against the application. Seeing no one rise she declared the public hearing closed and awaited a motion.

DECISION OF THE COMMISSION

Mr. Clum pointed out that the original motion was made without the use of a graduated reveal.

Vice Chairman Katz made a motion to grant a Certificate of Appropriateness as presented with the removal of the graduated reveal from the application.

Mr. Wyckoff had a question for the applicant concerning the installation. He had concern about blind nailing it. Mr. Murray said that it could be face nailed. Vice Chairman Katz said that if it was on board sheathing, it could be face nailed. Vice Chairman Katz asked the applicant if she would be amendable to that stipulation. Ms. Gamble responded yes.

Vice Chairman Katz amended his motion to stipulate that the siding would be face nailed. The motion was seconded by Mr. Wyckoff.

Mr. Wyckoff agreed with Vice Chairman Katz that this product needed to be used in this location because of its close proximity to the ground.

Chairman Dika stated that in the past, the Commission has not approved hardiplank on the street where it is so close to the sidewalk. This application would be a first.

Ms. Kozak pointed out that she supported the previous application and would support it again. She thought it was an appropriate use of materials in this location. She also said it was an important building on a major street but it was not the same situation on Bow Street which had a

steady stream of pedestrians passing by. She added that the product was a high quality one and she did not think it would visually impair the District.

Ms. Roberts stated that she would be voting against the motion. She disagreed with Ms. Kozak regarding the importance of nearby structures and their siding. She thought maybe those siding materials were applied prior to the adoption of the Historic District ordinance. She did not want to perpetuate what she saw as an inappropriate use of material within the Historic District.

Hearing no other discussion, Chairman Dika called for the vote. The motion to grant a Certificate of Appropriateness as presented with the following stipulations passed by a 4-2 vote with Chairman Dika and Ms. Roberts voting in opposition:

- 1) That the Artisan Lap series of hardiplank is used.
- 2) That the siding will be face nailed.

3. **(Rehearing) Petition of Richard K. Horowitz and Catherine J. Baker, owners,** for property located at **127 Gates Street**, wherein permission is requested to allow exterior renovations to an existing property, including but not limited to: replace with aluminum gutters and downspouts, replace with copper downspouts, and replace with aluminum gutters and downspouts. Said property is shown on Assessor Plan 103 as Lot 97 and lies within the General Residence B and Historic A Districts.

Request To Postpone

Chairman Dika explained that the applicant had originally asked to postpone the application to the February 2010 meeting but has instead, changed his mind and decided to follow through with the presentation this evening. Ms. Roberts asked if the application had been advertised. Chairman Dika responded yes.

SPEAKING TO THE PETITION

Mr. Richard Horowitz, owner of the property, was present to speak to the application. He passed out additional material for the Commission to review. He stated that when he was previously before the Commission, he received an approval with modifications. He felt he had a better solution and wished to present it to them. The new proposal was to keep the wooden gutters but replace the side and rear downspouts with copper downspouts. On the front of the house, they would retain the existing wooden downspout and create a second wooden downspout to match the existing one.

Vice Chairman Katz pointed out that when he drove down Gates Street recently, he observed that the wooden downspouts on many of homes had downspouts of a much smaller dimension than the aluminum downspouts that are encased in wood. He felt this new proposal was a perfect solution.

Chairman Dika asked if anyone had any additional questions for the applicant. Hearing none, she asked if anyone from the public wished to speak to, for, or against the application. Seeing no one rise she declared the public hearing closed and awaited a motion.

DECISION OF THE COMMISSION

Ms. Kozak made a motion to grant a Certificate of Appropriateness for the application with the following stipulations:

- 1) That all of the wooden gutters would be retained.

- 2) That a second wooden downspout would be added to the front gutter, matching the existing wooden downspout.
- 3) That the rear and side wooden downspouts would be replaced with 3” circular, non-corrugated copper downspouts.

The motion was seconded by Vice Chairman Katz. Chairman Dika asked for discussion.

Vice Chairman Katz reiterated that this was a great solution to a problem and he now did not have any reservations about the project.

Hearing no other discussion, Chairman Dika called for the vote. The motion to grant a Certificate of Appropriateness for the application with the following stipulations passed by a unanimous (6-0) vote:

- 1) That all of the wooden gutters would be retained.
- 2) That a second wooden downspout would be added to the front gutter, matching the existing wooden downspout.
- 3) That the rear and side wooden downspouts would be replaced with 3” circular, non-corrugated copper downspouts.

4. Petition of **Fifty-Five Congress Street Condominium Association, owner, and Metro PCS Massachusetts, LLC, and New England Wireless Solutions, LLC, applicants,** for property located at 55 Congress Street, wherein permission was requested to allow new construction to an existing structure (install six panel antennas and screened wall) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 117 as Lot 9 and lies within the Central Business B, Historic A, and Downtown Overlay Districts.

SPEAKING TO THE PETITION

Mr. Brian Grossman, representing Metro PCS was present to speak to the application. He gave the Commission a brief history of the company. He explained that they wanted to provide wireless services to Portsmouth. He also pointed out that the 55 Congress Street building was currently being used by two competitors so they could not achieve the necessary horizontal separation required. They would have to look at a vertical expansion. The applicant’s proposal was a modest increase in the height of the existing penthouse. It would require adding an additional 6 feet on top of the current height of the penthouse. They proposed to construct a faux addition with the antennas mounted behind the faux walls. It would be molded, painted, and textured to match the existing brick façade.

Mr. Melchior asked why it had to be at this location. Mr. Grossman said it was because of its downtown location. It was a population center, a business center, and a visitor center. He said that they could not cover the area from 5 or 6 miles away, the broadcast strength was not that strong. He also said that they needed to find a suitable height and roof situation. He felt this was the best and possibly the only location suitable to provide coverage to the area.

Chairman Dika asked what the overall height would be. Mr. Grossman said the actual height would be 81 feet, 9 inches.

Mr. Grossman explained that they would be mimicking the same surfaces that exist currently when constructing the faux walls. Mr. Wyckoff wondered if they thought about not using brick.

He would rather see the truthfulness of the addition by using the corrugated material. Chairman Dika agreed. Mr. Grossman said they could use the corrugated material on all sides.

Ms. Kozak asked if there was a step back on all four sides. Mr. Grossman replied yes and said it was a step back of about a foot.

Mr. Melchior felt the applicant had not exhausted all other locations. He pointed out that there are other projects underway that are of significant height. He wondered if they have talked to any other developers. Mr. Grossman said that anything that was currently under development was not anything that could be leased and completed within their timeframe. He explained that this was a very low powered installation so multiple facilities are needed. The range of a typical wireless facility in this type of environment was less than a one mile radius.

Chairman Dika had concern with its height. She felt it was going to be visible from a lot of different areas. She also said that it did not add to the attractiveness of the downtown. When she thought of other structures that are 81 feet, she thought of bell towers, spires, and steeples. She acknowledged that they do have mechanicals on top of buildings but she felt this was going to be very visible. She also thought it was a very awkward looking installation. Mr. Grossman commented that they have tried to keep it as low as possible.

Chairman Dika asked if anyone from the public wished to speak to, for, or against the application.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. Mike Delacruz of 75 Congress Street stated that he agreed with Chairman Dika and thought there might be other building owners around town who would be open to having a wireless company put their equipment on their roof. He told the Commission that fifteen years ago, a company approached him for a similar installation at the Franklin Block but he turned them down for a variety of reasons. He did not want to discourage the applicant but encouraged them to look for other sites.

Chairman Dika asked if anyone else from the public wished to speak to, for, or against the application. Seeing no one rise she declared the public hearing closed and awaited a motion.

DECISION OF THE COMMISSION

Vice Chairman Katz made a motion to grant a Certificate of Appropriateness for the application as presented. For the purposes of discussion, the motion was seconded by Ms. Roberts. Chairman Dika asked for discussion.

Vice Chairman Katz said he probably would be a little more exercised about the application if there was nothing on the roof. He pointed out that there was a structure there already so how much more terrible would it look. He did not see that it would do anymore damage that had not already been done.

Ms. Roberts thought that the height was significant. The height limit for buildings in the Central Business District was 60 feet. She said that the Planning Board has working hard to encourage developers to limit building height and create step back effects. She did not want to go in the other direction.

Mr. Melchior agreed and said that zoning ordinances in this country started on this very issue. In hindsight, he did not think this building should have ever been approved for the Historic District

and it should not have been approved for a height in excess of 60 feet. He felt they would be compounding two existing mistakes by allowing it to grow further.

Chairman Dika stated that she did not like to discourage business but the skyline was precious. She said she would be voting against it and cited Section 10-1004 B.1 of the zoning ordinance as her reasons.

Hearing no other discussion, Chairman Dika called for the vote. The motion to grant a Certificate of Appropriateness for the application as presented failed by a vote of 1-5 with Vice Chairman Katz voting in favor of the motion and Chairman Dika, Mr. Melchior, Ms. Kozak, Mr. Wyckoff, and Ms. Roberts voting in opposition.

5. Petition of **Elizabeth and Harold Cummings, owners**, for property located at **39 New Castle Avenue**, wherein permission was requested to allow exterior renovations to an existing structure (repairs to existing porch) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 101 as Lot 36 and lies within the General Residence B and Historic A Districts.

SPEAKING TO THE PETITION

Mr. Rob Gagnon, contractor for the project, was present to speak to the application. He stated that the covered porch was in poor condition and needed to be replaced. There would not be any footprint changes. The porch would be removed and reconstructed as it is. The only portion that would remain would be the roof frame but they did plan to re-sheath and re-shingle it.

Ms. Kozak asked Mr. Gagnon to point out the details that would be different than what was existing. Mr. Gagnon explained that to bring the porch up to code, they would need to add an additional post. The post style would remain the same. The railings would have turned baluster that would be mounted underneath the handrail.

Mr. Wyckoff asked if the roof design would remain the same. Mr. Gagnon explained that rotting areas would be removed and replaced to match what was there originally. Mr. Wyckoff asked if there would be a new porch ceiling. Mr. Gagnon replied yes. Mr. Wyckoff asked if the posts would have a cap or molding around the top of them where they hit the beam. Mr. Gagnon replied yes.

Ms. Kozak asked about the existing lattice that has a piece of trim directly under the post. Mr. Gagnon said he would mirror image the posts.

Chairman Dika wondered if the balusters being attached differently would make a difference in the Victorian appearance of the porch. Mr. Wyckoff pointed out that the rail that was there now was totally inappropriate to the structure.

Chairman Dika asked if the scrolls would be identical. Mr. Gagnon said they would be as close as they could get to the existing detailing.

Chairman Dika asked if anyone had any additional questions for the applicant. Hearing none, she asked if anyone from the public wished to speak to, for, or against the application. Seeing no one rise she declared the public hearing closed and awaited a motion.

DECISION OF THE COMMISSION

Mr. Wyckoff made a motion to grant a Certificate of Appropriateness for the application as presented. The motion was seconded by Ms. Roberts.

Mr. Wyckoff stated that it was an exact replacement of a Victorian porch in very sad shape right now. He felt it was appropriate to the District.

Ms. Roberts pointed out that the only changes not in kind were the adding of the fourth post and the changing of the balusters and they were both code issues.

Hearing no other discussion, Chairman Dika called for the vote. The motion to grant a Certificate of Appropriateness for the application as presented passed by a unanimous (6-0) vote.

6. Petition of **City of Portsmouth, owner, and Star Island Corporation, applicant**, for property located at **30 Middle Street**, wherein permission was requested to allow exterior renovations to an existing structure (repairs to existing porch) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 126 as Lot 21 and lies within the Central Business B and Historic A Districts.

SPEAKING TO THE PETITION

Ms. Victoria Hardy, of the Star Island Corporation, and Mr. Mark Adams, contractor for the project were present to speak to the application. She pointed out that the photos submitted showed the deck of the porch which was in very poor condition. She said they were able to find a historic picture, an original Wallace Nutting painting that showed the front entrance. She shared the painting with the Commission. She explained that the picture was painted when it was Miss Martha's Tea Room.

Ms. Hardy explained that the handrail would be replicated to match an existing handrail located across the street from the structure. She told the Commission that they were very happy to be in the house and have restored all of the interior rooms to historic accuracy. She invited the Commission to stop by and have a look.

Chairman Dika asked if anyone had any questions for the applicant. Hearing none, she asked if anyone from the public wished to speak to, for, or against the application.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. John Grossman of 170 Mechanic Street, representing the Portsmouth Advocates stated that Mr. Richard Candee and his group have done a wonderful job of preserving the buildings. He said they would love to support the application.

Ms. Hardy stated that they had a letter from the Portsmouth Historical Society to be placed on file in support of the project.

DECISION OF THE COMMISSION

Mr. Wyckoff made a motion to grant a Certificate of Appropriateness for the application as presented. The motion was seconded by Ms. Roberts.

Mr. Wyckoff felt the project was well documented and historically investigated and was appropriate to the building. He was happy that it was being done.

The motion to grant a Certificate of Appropriateness for the application as presented passed by a unanimous (6-0) vote.

7. Petition of **Unitarian Universalist Church, owner**, for property located at **292 State Street**, wherein permission was requested to allow removal of a free standing structure (remove one section of fencing and one granite post to allow for parking space) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 116 as Lot 8 and lies within the Central Business B, Historic A, and Downtown Overlay Districts.

SPEAKING TO THE PETITION

Ms. Martha Petersen, landscape architect for the project, was present to speak to the application. She stated that this part of the plan had been on the overall plan from the beginning. She inadvertently omitted it from the application that was heard and approved last month.

Ms. Petersen explained that the reason for the removal of the section of fence and post was to provide one parking space. She pointed out that the space collects trash. She also said that the section of fence that they wanted to remove was one of the sections in the worst shape. The granite post that would be removed would be relocated to the entrance on Court Place.

Ms. Petersen said that the blacksmith would be utilizing some of the rod iron pieces from the removed fence section to construct something that would signify the end of the fence. A parking space sign would be attached to it. She added that the Traffic and Safety Committee has approved this parking space.

Mr. Wyckoff commented that relocating the granite post was a good idea but he pointed out that there was no detail on how the fence would end. Ms. Petersen said that the Traffic and Safety Committee thought it best to remove the granite post to avoid any obstructions. She said that she did not have a drawing of the fence end because it has not been designed yet.

Mr. Wyckoff suggested postponing the application until they have a drawing of the design. Vice Chairman Katz agreed and pointed out that there was another meeting scheduled for next week.

DECISION OF THE COMMISSION

Mr. Wyckoff made a motion to postpone the application to the December 9, 2009 meeting. The motion was seconded by Vice Chairman Katz. The motion passed by a unanimous (6-0) vote.

8. Petition of **RRJ Properties Limited Partnership, owner**, for property located at **99 Bow Street**, wherein permission was requested to allow demolition of an existing structure (demolish north and south brick walls) and allow new construction to an existing structure (rebuild north and south brick walls) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 106 as Lot 54 and lies within the Central Business A, Historic A, and Downtown Overlay Districts.

SPEAKING TO THE PETITION

Attorney Malcolm McNeill was present to speak to the application. Also present were Mr. John Ricci, Mr. Butch Ricci, both principles for the project, Mr. Jeffery Nawrocki, structural engineer for the project and Mr. Mark McNabb, a construction consultant for the project.

Attorney McNeill gave a history of the structure pertaining to the project and the prior approvals it received. He said that when interior finishes were removed in the building, it became clear, upon professional review, that there were major structural defects in the north and south walls. After careful review by a structural engineer, it was determined that the demolition of both the north and south walls was necessary. He pointed out that this was never the original intent of the applicant. He also said that a copy of Mr. Nawrocki's report, dated October 16, 2009, was submitted with this application as well as at the time of the work session held on November 4.

Attorney McNeill reminded the Commission of the site walk that was held on October 31 where they were shown the condition of the interior of the building. Mr. Nawrocki conducted a further examination where it appeared that there was additional movement and that some of the cracks had widened since his last inspection. He felt that the wall was susceptible to immediate collapse and that the north wall should be considered a serious safety hazard. As a result, the wall was cordoned off and work was discontinued within the building. Attorney McNeill said that Mr. Nawrocki felt there should be controlled demolition of both the north and south wall as soon as possible. He said that the condition of the building was brought to the attention of Mr. Rick Hopley and Mr. Roger Clum and other City officials.

Attorney McNeill said that they were proposing to use Morin straight red brick with 1/4" mortar joints in a light buff color as well as new granite detailing. He said that the architectural drawings would have the same appearance as the elevations approved by the HDC on January 11, 2006 and as modified at the November 4, 2009 meeting. He also emphasized that the demolition action was not by choice. If it had been, they would have done it in the beginning. They wished they could have retained the original plan but were unable to do so. Attorney McNeill pointed out that they have completed the historic document that was requested by Chairman Dika at the work session. He said he would be happy to place a copy of the history in the library, the Athenaeum, and any other place that was appropriate.

Chairman Dika asked Mr. Clum what his knowledge of the situation was. Mr. Clum said that he had a great deal of respect for Mr. Nawrocki's abilities and knowledge. He said that when he learned that the applicants had taken steps to assure that no one would get injured should the building come down, he spoke with the City attorney and they felt it was appropriate to not issue an order to demolish and wait for the Commission to act upon the matter.

Mr. Wyckoff asked about the type of brick and mortar to be used. Mr. Butch Ricci explained in detail about the brick and how the mortar would be applied to achieve a particular look. Mr. Wyckoff asked if the brick on the Martingale portion would look slightly different than the new sections of the building. Mr. Ricci replied yes, and pointed out that it was the Commission's request. Mr. Wyckoff thanked Mr. Ricci for having the concern for that detail and for compiling the historical document.

Hearing no other questions, Chairman Dika asked if anyone from the public wished to speak to, for, or against the application.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. John Grossman, representing the Portsmouth Advocates, stated that they were very disappointed to see the second oldest building on the waterfront condemned and demolished. He read comments concerning the proposal from James Garvin, State historian at the Division of Historic Resources.

Mr. Jim Splaine of 201 Oriental Gardens presented written testimony to the Chairman and stated that he supported Mr. Grossman's and Mr. Garvin's comments. He urged the Commission to take an independent look at the proposal. He explained that he has been a lifelong resident of

Portsmouth and has seen a lot of buildings torn down resulting in the loss of history. He pointed out that he was on the City Council and Assistant Mayor in 1969 and part of the 1970's when they talked about creating a historic district commission. He became very concerned when he learned that the rest of the Martingale apartments would be no more. He emphasized that there is a story with the building but that story would be over if the proposal was approved. Mr. Splaine told the Commission that one of the pictures hanging in the Chambers showed the Martingale building. He felt the Commission should not allow destruction by "oops" by those who say they want to restore a building and then when the building gets more damaged; they come back and say "oops", we now want to demolish the building. He also told the Commission that they should be upset that this group has come in with this proposal at this point. He said that he knows the Commission has concern about safety and liability but Mr. Splaine said the liability would be greater if they lose the second oldest building on the waterfront. He urged an independent analysis.

Mr. Steven Parker Feld of 76 Bow Street spoke next. He stated that he was a member of the Concerned Citizens' Coalition, the agent of the abutter, Harborsquare Corporation, and a former elected ward moderator of Ward 5 which included all of downtown Portsmouth. He said that he has been both publicly and quietly involved with the Historic District Commission for over 25 years. He was also a member of the National Trust for Historic Preservation.

Mr. Parker Feld read a report by Captain Noah Thomas Blanchard, a historian with the Concerned Citizens Coalition and a resident of Bow Street. He gave the Commission copies of the report which included attachments.

Mr. Parker Feld made a procedural objection to the submission of documents this evening. He stated that he carefully checked to make sure that he was aware of all materials on file and felt it was a violation to not make them available to the public. He thought one document had been in the position of the applicant since November 16, 2009.

Mr. Parker Feld stated that construction of the building began at the end of April in 2008. Prior to that, approximately 12 families lived in the building and he had not heard or seen any evidence that the building was structurally unsound. He said that after construction started, several hundred cubic yards of rock was removed from the site with no effort to support the structure. He submitted photos showing various construction techniques used. He felt that because of that, serious damage was done not only to the Martingale building but to other buildings in the neighborhood. He pointed out that a complaint was filed with the City. He continued to point out how the various construction methods resulted in the current condition of the structure.

Chairman Dika instructed Mr. Parker Feld to state his reasons for not demolishing the building and not the causes of the current conditions. Mr. Parker Feld pointed out that the Harborsquare building across the street suffered thousands of dollars of damage. Attorney McNeill interjected that he did not feel this was relevant to the discussion. Mr. Parker Feld felt it was relevant because they were talking about safety and concern for the neighborhood.

Chairman Dika reminded Mr. Parker Feld that the Historic District Commission's job was to only make a decision as to whether permission is given to demolish the building or not. She told him he would have to state a case for why it should or should not be demolished.

Mr. Parker Feld continued to show and submit supporting evidence as to the damage caused by the construction process. Chairman Dika pointed out to Mr. Parker Feld that he was supporting the fact that maybe the building should be demolished.

Mr. Parker Feld stated that St. John's Church objected to the way the project was proposed some time ago. Attorney McNeill interjected and said that there was no evidence in the record and this had nothing to do with this demolition. He pointed out that Mr. Parker Feld lives across the street; his view has been covered up and he has objected to this project. Chairman Dika asked Mr. Parker Feld to stick to what they were here to determine, whether to demolish or not.

Mr. Parker Feld submitted a photo of the west side of Harpoon Willy's showing damage from the blasting and rock splitting that was done. He also submitted an email sent from Mr. Nawrocki to Mr. Clum on September 16, 2009. He also showed the Commission shale and granite from the work site.

Chairman Dika stated that the Commission needed to move on to make a determination. She told Mr. Parker Feld that he was interested in determining the reason for the demolition and that was not the Commission's purview. Mr. Parker Feld said that he had information that showed the history of the Historic District Commission and that this should never be allowed to happen again. Chairman Dika said she had heard enough and asked Mr. Parker Feld to take his seat.

Mr. Parker Feld stated that he had a Concerned Citizen's Coalition petition dated December 2, 2009, signed by eleven people and asked the Chairman if he could submit it. Chairman Dika replied yes but she would not allow him to continue the course of topic that he had been on. Attorney McNeill asked to see the petition. Mr. Parker Feld also submitted an additional document. Attorney McNeill asked to see it as well. He asked who the letter was from. Mr. Parker Feld's response was inaudible. Chairman Dika asked Attorney McNeill to return the letter to Mr. Parker Feld.

Mr. Parker Feld stated that if the Commission was refusing to accept these documents, he requested that they be marked for ID and put on the record in that way. Attorney McNeill expressed concern that he did not know what Mr. Parker Feld was presenting.

Mr. Parker Feld said that he has not heard one thing about the south wall except that in the letter to Mr. Clum, it would be an economic issue and a pain, as well as inconvenient to repair. To allow a treasure of Portsmouth to be torn down for expediency as was the Foye block in 1981 and 1982 would be a travesty to the taxpayers, to all of the people who are supporting the saving of the Memorial Bridge, and anyone else who supports historic preservation here or anywhere else.

Chairman Dika asked if there was anyone else wishing to speak to, for, or against the application.

Attorney McNeill stated that the issue in this case was to whether the building may be demolished. There was no evidence advanced by Mr. Parker Feld to cause them to come to any conclusion that the building should not be demolished. There was no evidence in the record to question the competence, the integrity, or the experience of the report that was before the City as it related to the need to demolish the building. He also pointed out that there has been no recommendations by City officials that there be a review by a third party with regard to the condition of the building. Attorney McNeill said that the Riccis, a family that has been in the community for years, has not attempted to go forward with the construction project so as to destroy a building. They could have proposed demolition from the beginning. He asked Mr. Nawrocki to speak to issue.

Mr. Nawrocki stated that he was glad that most of the Commissioners could attend the site walk. Vice Chairman Katz stated that he was out of town and was not able to attend. Mr. Nawrocki said that it was quite obvious that the north wall was powderized brick. He pointed out that

additional movement has occurred and the north wall is bowed outward towards the water and there are no ties to any of the floor systems except on the upper level of the east side. He said the wall was tall and slender and basically powder and thus, very dangerous.

Mr. Wyckoff asked Mr. Nawrocki if he was experienced at looking at brick historic buildings. Mr. Nawrocki responded by saying that he has been in business for 22 years with the majority of the time being in Portsmouth. He has been involved in hundreds of historic renovations not just in Portsmouth but all around New England. He added that he felt the same urgency with the old bookstore on State Street and said both buildings were similar in deterioration. Mr. Nawrocki stated that the north wall was in worse condition than the south wall but that the south wall was also in poor condition. He added that the plans call for the whole first floor to be replaced which would make it dangerous to maintain while construction takes place.

Chairman Dika asked if there was anyone else who would like to speak. Seeing no one rise she declared the public hearing closed and awaited a motion.

DECISION OF THE COMMISSION

Mr. Wyckoff stated he would reluctantly make a motion to grant a Certificate of Appropriateness for the application as presented. The motion was seconded by Ms. Kozak.

Mr. Wyckoff stated that he had a great respect for everyone involved. He said that he was a lifelong resident of Portsmouth and remembered the beginning of the historic district and the buildings that were being knocked down on State and Daniel Streets. He felt confident that the applicants would do the best they could to rebuild the structure as close to the way that it looks today. He respected the opinion of the professional engineer who was putting his word and his career on the line by saying that the second oldest building on the waterfront needs to come down. He also pointed out that Mr. Clum could have ordered the demolition without HDC involvement. In summary, he said that he supported the demolition but he wanted to see it rebuilt as the Martingale.

Vice Chairman Katz said that he takes the judgments of Mr. Nawrocki to heart but he is a paid authority and person of knowledge. He intended to rely on the judgment of the City's building department.

Mr. Melchior stated that he was not present for the site walk or the work session. He said that he also had experience with this type of situation as he was a licensed engineer. He indicated that the current state of the building and its safety concern should take precedence over all else. If it was the opinion of the builders and the designers that it cannot be internally buttressed then it should come down.

Ms. Roberts commented that this was a situation that she felt very ambivalent about because of her strong feelings about preservation. She respected the presentations by the developers and those from the public who came to speak to the issue. She pointed out that in all of her years on the Planning Board, there were very few occasions where they have questioned the integrity of an engineer. She said that she would sadly have to vote for the demolition.

Ms. Kozak stated that she was on the site walk and did see the deterioration of the building. She also has worked on a number of restorations and understands when things are beyond what is feasible and what is safe. This was always the first concern. She pointed out that there was very strong diligence to recreate what was being torn down. She did not feel it would be a loss and it would help preserve the District by making it safer and by replicating every detail that is there currently.

Hearing no other discussion, Chairman Dika called for the vote. The motion to grant a Certificate of Appropriateness for the application as presented passed by a unanimous (6-0) vote.

Chairman Dika informed the Commission that a hearing on the proposed zoning ordinance would be held on December 7 at 7 p.m. She said that one of the proposed changes was the extension and modification of the historic district map. She hoped that some of the Commissioners would attend. Ms. Roberts urged the public to come out and speak to, for, or against the proposed zoning ordinance.

In other business, Vice Chairman Katz asked Mr. Clum if the Portsmouth side of the Memorial Bridge was in the Historic District. Mr. Clum said it probably was but only up to the point where it becomes federal waters. He said the City attorney could make that determination.

III. ADJOURNMENT

At 10:00 p.m., it was moved, seconded, and passed unanimously to adjourn the meeting.

Respectfully submitted,

Liz Good
HDC Recording Secretary

These minutes were approved at the Historic District Commission meeting on January 6, 2010.