

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE**

MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

**January 28, 2014 Reconvened
From January 22, 2014**

MEMBERS PRESENT: Chairman David Witham; Vice-Chairman Arthur Parrott;
Susan Chamberlin; Charles LeMay; Christopher Mulligan;
David Rheume; Alternate: Patrick Moretti

MEMBERS EXCUSED: Derek Durbin

ALSO PRESENT: Juliet T. H. Walker, Transportation Planner

III. PUBLIC HEARINGS - NEW BUSINESS

7) Case # 1-7

Petitioners: Robin Bellantone, Karen Bouffard, George Dodge, Erica Dodge, Martha Fuller Clark, Clare Kittredge, Susan Lager, Paul Mannle, Dr. Barry F. McArdle, Natalie Roman-Nelson, Neill DePaoli, Doug Roberts, Jerry Hejtmanek, Debra Dumont, and Slattery & Dumont, LLC

Property: 111 Maplewood Avenue

Assessor Plan 124, Lot 8

Zoning District: Central Business A, Historic and Downtown Overlay

Description: Appeal Decisions of the Historic District Commission.

Requests: Appeal the decision of the Historic District Commission to grant a Certificate of Approval for this property.

Chairman Witham reviewed the Board of Adjustment rules for speakers to allow the proponents and the appealing parties equal time to speak as well as allowing public comment.

Mr. Rheume asked if they might consider extending the time allowed for general public comment to give everyone a full opportunity to speak on the matter considering that the public did not feel they had adequate opportunities to speak while still being respectful of everyone's time. Mr. Rheume moved to suspend the rules, but his motion received no second.

Chairman Witham said he understood Mr. Rheume's concerns. He said the Board had discussed time limitations in depth, but considering there would be many people speaking, that could amount to a few hours before the Board would be able to ask one question. While three minutes was limiting, he thought they would hear what was needed from the speakers collectively.

Chairman Witham then read the petition into the record to appeal the decision of the Historic District Commission to grant a Certificate of Approval for 111 Maplewood Avenue.

SPEAKING IN OPPOSITION TO THE APPEAL

Attorney Peter Loughlin addressed the Board and spoke on behalf of RJ Finlay and Company, owners of the property at 111 Maplewood Avenue. Mr. James Pennington and Ms. Lisa Bissonette with RJ Finlay, Ms. Lisa DeStefano with DeStefano Architects, Mr. Patrick Crimmins with Tighe and Bond Engineering and Ms. Roberta Woodburn of Woodburn Landscaping were also in attendance.

Attorney Loughlin said that during the Board's discussion at the January 22 meeting, members questioned the logic of the Board having to hear the appeal as if it was a new application to the Historic District Commission. He said that it seemed illogical and unfair for the Board to have to digest any project of this magnitude, that took months to evolve, and then apply fourteen criteria that were far different from the five criteria that they usually applied. He said it was unfair to the landowner that obtained State and municipal approvals over a fourteen-month period and spent many tens of thousands of dollars. Nonetheless, he agreed with the City attorney that this was a *de novo* hearing and the Board was not required to give deference to the HDC's previous decision. However, although the Board was not obliged to refer to the HDC's decision, he said they had full knowledge that the application went through many months of review with that Commission.

Attorney Loughlin said this year marked the 40th anniversary of the HDC Ordinance. He said he was not aware of a single project that had not benefited from going through the HDC process, which complied with the directives of the NH Supreme Court. He said the HDC works with landowners to assist them to satisfy the terms of the Ordinance. He said it took many months of hard work by commissioners who, by statute, were required "...to have a demonstrated interest and ability to understand and appreciate and promote the purposes of the Historic District".

Attorney Loughlin said the Zoning Board of Adjustment regularly heard from appraisers, architects, engineers and other experts on requirements related to the applications under consideration. He said the law was clear that the Board was free to accept or reject any evidence presented. While they were not required to refer to the HDC, he suggested that the HDC was equivalent to an expert on interpreting the Ordinance. He said they did not have to discard the work the HDC did over many months. He said he appreciated that the Board was attempting to be as fair as possible to all parties and asked the Board to appreciate that the applicants were giving a summary of presentations that went on for many hours before the HDC. He said it would be a significant challenge to explain any project of this magnitude in the time allotted.

Attorney Loughlin said Ms. Lisa DeStefano spent many hours working with the HDC to achieve a design that met the goals, objectives and criteria of the Historic District Ordinance. He said she was there to answer any questions the Board members might have on why she chose doors, windows, materials, lighting, or architectural features. Ms. Robbie Woodburn was available to answer questions on the landscaping details and Mr. Patrick Crimmins with Tighe and Bond Engineering would answer any engineering questions.

Attorney Loughlin stated that the proposal met every detail of the zoning requirements except one because the building was surrounded by roadways on four sides and it was impossible to design an entrance to the parking garage that would not be visible from at least one street. He said the Board granted the required variance in November 2012. He said the proposal also satisfied the 50' height requirement, which came into effect two weeks after the applicant appeared before the Board and they were vested for subsequent changes to the height requirements. He said the building had front and side setbacks where none were required and provided 39% building coverage where 95% was permitted with 31% open space where none was required.

Attorney Loughlin said the goal of the HDC Ordinance was not to guarantee that the construction of buildings would satisfy everyone's tastes. He said to some degree they were dealing with personal taste that was somewhat subjective. He said the goal of the Historic District Ordinance was to ensure that all new construction or renovation in the Downtown was appropriate and conformed with the terms of the Ordinance. He said any attempt to satisfy everyone would remove the predictability and consistency from the land use process and effectively diminish or remove property rights. He said if a building reasonably addressed the criteria of the Historic District Ordinance, as his clients felt the proposed building did, then it was entitled to a Certificate of Approval.

Mr. Jamie Pennington of RJ Finlay and Company stated that they conceived this project as a rental project in response to the need for widely diverse housing within walkable downtown Portsmouth. He said ordinarily their architect and engineers would walk the Board through the big picture, then drill down through the design to be sure everyone understood the design as it applied to the Ordinances, then review the criteria, and discuss how the project met each. He said that type of presentation would take several hours and numerous meetings as they did in twelve HDC meetings and included comments from the public. He said they also had a site walk with feedback and heard additional comments from the public. He said it would be impossible to replicate that process in one evening, but he hoped they could impress upon the Board the high degree of consideration they took in preparing the proposal and enough of an understanding before their review of the applicable criteria. He said they would give a broad overview of design and a handful of the most relevant details in response to specific criteria. He noted that, while he was an architect by trade, this project was designed by Ms. Lisa DeStefano.

Mr. Pennington referred to the design plans and materials that were discussed at all the HDC and Technical Advisory meetings. He said in 2011 the owners tried to obtain a variance for a one-story bank, but were denied because it was not considered in keeping with the City's Master Plan. Mr. Pennington said they were only developing the western half of the site, with a small amount of parking between the building and the street that received an approval for a variance in November 2012. He said they did not propose a zero setback as permitted by the zoning Ordinance because they felt a setback was important as this would be the first urban building people would encounter when entering the downtown area from Maplewood Avenue. He said their design featured wider sidewalks, a curved pedestrian arcade, substantial landscaping, and pocket parks. Mr. Pennington presented slides showing the overall aesthetic theme. He said the design was in response to the industrial historic character of the North Tier, but with softened architectural details like sloped glazing along the top, a pedestrian scale on the first and second floors, jewel box store entries, use of setbacks at upper levels for balconies, a hierarchy of window sizes, canopies at entrances, and a two-storied curved arcade feature. He presented another slide looking at the corner of Vaughan and Raynes Streets with a lot of activity on the street and retail. This was added in response to the

HDC, neighbors, the Planning Board and the Planning Department. He said there was substantial stepping back and terracing of the upper level so the full height would not be visible from the street level. He said the parking and utility area at the rear entrance would be heavily screened to create another “front”.

Mr. Pennington said there were many fronts to the building, but the Maplewood frontage was the primary focus with all of the themes in one place. He said despite the historic character of the Historic District, the Northern Tier was one of the most eclectic neighborhoods, consisting of smaller residential parcels, larger warehouses and industrial uses. He said the neighborhood remained commercial in nature including the preserved homes on the south side of Maplewood Avenue that were converted to commercial uses. He pointed out that the design met the height Ordinance changes and they were vested with those limits.

Mr. Pennington read the Purposes and Objectives of Section 10.631.20 and provided the following responses:

1) The proposal preserved the integrity of the District by adding vitality and making it economically vibrant, attracting more residents that would appreciate the area, and assist with preserving the few remaining structures rescued from urban renewal. The projects program for multi-family housing above retail was specifically called for in the City’s zoning and Master Plan.

2) The proposal maintained the special character of the District with regard to scale, mass and location. The project was smaller than what was allowed by the zoning Ordinance and sat back from the lot line. The transitions in height were gradual from one to two or to three-story forms. The fourth story had sloped glazing angling away from the façade to give the appearance of three stories from the sidewalk. The building took inspiration from the industrial and warehouse buildings of the neighborhood, which were a significant component of the Northern Tier even prior to urban renewal.

3) The proposal acknowledged and preserved the integrity of the Historic District by evoking Portsmouth’s wharves and ship building past by using architectural details such as historic water struck brick, Flemish bond and soldier brick sidewalks, and historic style lighting. It was a thoughtfully conceived new building for the times that would be an important part of the revitalization of the Northern Tier.

4) The proposed project would not replace an older building with a new building, but would replace a parking lot with a new building that complimented both the older and new buildings in the neighborhood.

5) The proposal would fill a gap that currently existed between a residential district and Downtown and by connecting that residential neighborhood to Downtown, the project would enhance the City’s tax base as well as the value of surrounding properties. It would likely spur further revitalization of Downtown. Substantial offsite sewer improvements, storm water drainage, system upgrades, pedestrian access upgrades, traffic signal upgrades, and the rededication of land to realign Maplewood and Raynes Avenue intersection would be made through the approval of TAC and the Planning Board, bringing direct economic benefits to the City and neighboring properties.

6) The proposal would provide Downtown housing, fulfilling one of Portsmouth's Master Plan goals of becoming a more walkable community. The project supports the pleasure and welfare of residents through improved sidewalks, landscaping, and pocket parks. The project would support education indirectly by its contribution to the expansion of the tax base and will provide space for more local businesses to thrive and create jobs.

Mr. Pennington then read the Review Factors and responded to each as follows:

- 1) As previously mentioned in response to item 3 of the Purposes and Objectives, the new building was conceived in the present time that would be an important part of the revitalization of the Northern Tier and not a "Disneyesque" replica taken out of context.
- 2) As previously discussed in response to several criteria, this building took inspiration from the industrial and warehouse buildings of the neighborhood, which were significant components of the Northern Tier even prior to urban renewal, using numerous design elements without replication. The building envelope also remained within the maximum zoning allowed, which was consistent with the City's Master Plan for buildings in the area.
- 3) The proposal would use a large degree of existing technologies and materials that were familiar in the district, but used in unique and innovative ways.
- 4) The proposal would improve the site for the first time since urban renewal in the 1950's and 1960's. The commercial and industrial history of the Northern Tier, with early maps showing a substantial portion of the area consumed by the shipyard and wharf were also part of the historic reference. The building would be respectful of the historic influences in a modern way that would respond to the City's Master Plan, which acknowledged that urban renewal provided an opportunity for expansion in the Northern Tier with a desirable mix of buildings and uses as codified in the Zoning Ordinance.

Mr. Pennington read the Review Criteria with the following responses:

- 1) Careful thought and consideration was given to design of the structure and styles that harkened to, but did not replicate Portsmouth's waterfront and industrial history in the selection of materials and details that would make the proposal consistent with the special and defining character of surrounding properties as discussed previously. In addition, the building's proportions would be appropriate for the 60-foot right of way on Maplewood Avenue and scaled to enhance views down the street and to the sky.
- 2) The purpose and objectives for which a Certificate of Approval was sought would be accomplished by keeping the building off the property line and breaking down the scale and massing of the building through numerous terraces, as well as taking inspiration from the industrial and warehouse history of the Northern Tier.
- 3) The materials used would be compatible with the former Portsmouth Herald building on site, and with numerous other buildings throughout the Historic District of Portsmouth. The building would be responding to the larger neighborhood and the District as a whole to be compatible with what exists today in an eclectic and largely commercial context with a new architectural type,

compatible with historic commercial architecture in the neighborhood with familiar building materials.

4) The curved pedestrian arcade which would greet pedestrians is an innovative use of metal and pre-cast stone as is the use of lifts within the covered portion of the garage to add 48 additional parking spaces. These were added through the TAC and Planning Board process in response to concerns for adequate parking from neighbors. As previously addressed, the materials would be familiar within the District, but used in unique and innovative ways.

Mr. Pennington concluded with slides of their proposal and a quote from an HDC Commissioner that said recreating two-story wood structures similar to the preserved historic buildings across the street “would make a lot of people happy..., but (wouldn’t) be appropriate for the District. It would not be true to this point in time. It would not be true to the function of the building.”

Ms. Chamberlin asked for clarification on when the structures on page 11 in the packet were built. Mr. Pennington said he was not sure, but thought they might have been built in the late 1700’s or 1800’s. He said he was sure there were people in the audience who would know, however. Ms. Chamberlin went on to ask how the proposed design responded to those buildings. Architect, Ms. Lisa DeStefano, said they researched how the building would relate to the neighborhood context, especially to the buildings across the street and they set their building back from the street edge. She said they also designed the building with features, such as glazing on the roof, to create the appearance of a three-story building and tiers from four stories down to one-story bays to bring down the scale.

Ms. DeStefano said page 11 showed the wider view going down Maplewood Avenue and the height of the curved pedestrian arcade related in size to the two-story buildings across the way. She said the curved pedestrian arcade was used to soften the approach. She said they focused on the size and scale within the context of the neighborhood versus replicating details and materials of a different era. However, she said the one-story bay “jewel boxes” were purposely detailed with wood with small-scaled window patterns to reflect the residential feel across the way, whereas the back resonated to the industrial context.

Ms. Chamberlin asked for confirmation that there was never a warehouse on the site, but that the design echoed warehouses in the area. Ms. DeStefano said that was correct, that Maplewood Avenue was the separation of smaller buildings on one side and industrial buildings in the back, and so they purposely designed their building to reflect the warehouse area, instead of carrying over the residential wood framed buildings across the street.

Ms. Chamberlin asked if the former Portsmouth Herald building was under the same ownership and asked if there were any plans for it, or was it incorporated into this design. Ms. DeStefano said the building had long-term leases and there were no plans to modify it.

Mr. Rheume asked for clarification on the setbacks and building heights along Maplewood Avenue and Raynes and Vaughn Streets. Ms. DeStefano explained that the zoning Ordinance had different requirements, which were confirmed by the Planning Department. In some places the setbacks were 0’ to 10’, the building could be no higher than 40’, which was also determined by the slope of the property line and they met that requirement. In other places the setback was 10’ to 25’, the building could be no higher than 50’, and the front right corner of the lot was a higher

grade than the back left corner so they calculated all the points around the building to find the average grade. She said nowhere could the building be higher than 50' other than rooftops which had to be less than 2' high. She said they met that criteria which was confirmed by the Planning Department.

Mr. Rheume asked if there was only one elevator for the entire building and Ms. DeStefano said there was only one elevator on the right side of the building. She said all mechanicals were designed to be in the center of the building so there would be no visibility from the street. Mr. Rheume asked Ms. DeStefano what was going to be located on the first and second floors. Ms. DeStefano said the first floor would be commercial space except the access way into the residential units on the upper levels. Residential units would be on the second floor.

Mr. Rheume asked if the commercial space had multiple entrances and Ms. DeStefano said there would be a major entrance in the center of the building, but they also accounted for other entrances, replacing windows with doors around the perimeter when more tenants were acquired. She said they would go back to the HDC for amendment approvals for any changes. Ms. DeStefano said the corner could also have an entrance to allow a restaurant to have a major entrance. Mr. Rheume asked for clarification on whether the jewel boxes would be entryways. Ms. DeStefano said the jewel boxes were intended as ornamental display areas. She went on to say there were challenges with grade changes in creating ADA access for the main entrance and other areas along Maplewood Avenue so they would need to analyze the grade further if a tenant wanted an entrance at one of the jewel boxes to see if it was possible.

Mr. Rheume asked Ms. DeStefano to explain the inspiration and durability of the materials used, which Ms. DeStefano reviewed. Mr. Rheume said he was particularly concerned with the windows on the Maplewood side that appeared to imitate a roofline in some of the renderings. Ms. DeStefano said they looked at many options and they were able to find sloped glazing windows.

SPEAKING IN FAVOR OF THE APPEAL

Attorney Chuck Meade stated that he was filling in for the appellants' attorney, Duncan McCallum and asked that the Board not forget the purpose of the Ordinances for the Historic District, which included the Northern Tier. He then read from the HDC's Review Criteria that they were to consider the special and defining character of surrounding properties and pointed out that the houses across the street from the proposal were an original part of the Northern Tier that were not wiped out during urban renewal. He said the Master Plan that the City adopted in 2005 specified the integration of mixed uses in the downtown area that emphasized human scale architecture. He said the appellants were suggesting that the scale of this building was inappropriate considering the purposes and objectives of the historic Ordinance. He said the appellants understood that the Northern Tier would be redeveloped, but objected to the huge scope and scale of this building that was over 250 feet long on Maplewood Avenue with a width wider than anything else in the Historic District or Downtown. He said the average height was 50', but only 9% of the thirty buildings downtown exceeded 50'. Attorney Meade submitted that the approval of the building could set a precedent for future buildings in excess of 45'.

Ms. Martha Fuller Clark of 152 Middle Street appeared before the Board as one of petitioners. Ms. Clark said she attended the HDC public hearing on August 7, 2013 and was cited as an unqualified endorsement for the project. She said that it was true that she mentioned the 111

Maplewood Avenue project in a complimentary fashion compared to Port Walk. However, she also said it was a difficult challenge in terms of the residential buildings across the street and there was a need to have a better understanding of the interface between this building and those buildings. She said she never thought the HDC would approve the proposal after the issues of context were raised. Ms. Clark asked that the criteria be reviewed to preserve the integrity of the Historic District. She said it had nothing to do with the economic rationale, but with the special character of the District itself. She said the scale and mass of the 111 Maplewood proposal contradicted three, if not four sides of this area and were not in relation to the Christian Shores neighborhood. She said it was important to ask if this development would compliment the architectural character of Portsmouth. She said no one was arguing that this was a valuable part of the City, but they were saying this proposal did not take the special and defining character of the surrounding properties into consideration.

Ms. Clark asked if this building was what they wanted as a signature building on a major thoroughfare into the City. She said the building was overpowering in mass, scale and height. She said the lack of adequate visuals made it extremely difficult for the HDC to grasp the size and scale of the building in relation to the surrounding buildings.

Ms. Karen Bouffard of 114 Maplewood Avenue said she purchased her property in 1986 and restored and maintained it in full accordance with the HDC believing it was protected by the HDC Ordinances from this kind of oversized development. She said a building this wide and tall would dwarf the antique buildings across the street. She said this project did not preserve the integrity of the Historic District, which was a criteria of the HDC approval.

Ms. Natalie Roman-Nelson, business and property owner of 151 Congress Street said the project was inconsistent with the HDC's objectives. Ms. Roman-Nelson said the proposal clashed with the historic North Cemetery across the street. She said the street was also lined with eighteenth and nineteenth century homes and the design of 111 Maplewood did not compliment these structures or the character of the neighborhood. Ms. Roman-Nelson asked that the development be scaled back to be more in keeping with the historic aspect of the neighborhood.

Mr. Rheame asked for clarification on a reference on page 2 of the appellant's documentation that said the certificate of approval was granted by the HDC with a 4-3 vote. Attorney Meade said it was actually a 5-2 vote and the motion for a rehearing was 4-3.

Mr. LeMay asked for an example of the type of development that they thought would be appropriate. Attorney Meade said the size, mass and scale of the current proposal was overwhelming to the Christian Shores neighborhood and across the street on Maplewood Avenue so something on a smaller scale should be considered.

SPEAKING TO, FOR OR AGAINST THE PETITION

Mr. Jeff Kissle of Maple Haven said he met with the architects and developer for the project who he felt put a lot of effort in project. He said he didn't agree that the project was inappropriate and overwhelming. He said he understood the historical integrity of the Northern Tier, but he did not agree that the cemetery or other historical properties would be negatively impacted by the placement of this building across the street.

Ms. Barbara DeStefano of 99 Hanover Street said she followed the project over several months and felt there had been ample time for public comment. She said the project was not as large as zoning rules allowed and there would be ample green space and wide sidewalks for a friendly pedestrian experience. She felt it would serve as a great gateway building that would fit in with the mostly industrial look of the area. She said she understood there was about the impact on the houses on the opposite side of Maplewood Avenue, but several were already used as businesses. She noted that this section of Maplewood Avenue was quite wide so the new structure would not overwhelm those houses. She compared the project to other developments in town such as the apartments at 245 Middle Street, 140 Court Street and the Rockingham Towers which are tall structures in historic residential areas. She said this project would bring life to that part of the City. She said property owners had rights and a project should not be halted for appearance of the building alone. She pointed out that this property was not directly across the street from the cemetery and added that the cemetery was also surrounded by a parking lot, railroad track, salt piles, and other uses.

Mr. Greg Whalen of 118 Maplewood listed some of the larger buildings throughout the City and suggested that today's zoning and development standards would not approve many of those buildings, yet they still had historic significance. He added that he was struck by the appellants' reference to the historic character of the neighborhood and made reference to the commercial and manufacturing uses that were in the area which had no unifying historical character.

Mr. Tony Coviello of 341 Dennett Street said he worked at the former Portsmouth Herald building on Maplewood Avenue every day. He said this was a project to create work force housing, not low-income or luxury condominiums. He said this building was smaller than the Portwalk project and would be appropriate for this entrance to the City. Mr. Coviello said that he didn't believe the model was an accurate representation of the context of the project.

Mr. Joseph Caldarola of 170 Dennett Street said the HDC presentations did not accurately represent the project's context. He said this was a major project that residents and visitors would see coming across bridge from Maplewood. He said the model provided at the meeting was to scale although it didn't include the grade changes, but the point was to show the context in relation to the historic buildings in the area.

Chairman Witham asked Mr. Calderola what was inaccurate about the architectural renderings provided by the project's proponent. Mr. Calderola said it had to do with the round, wide-angled lens that distorted views, making houses across the street look wider.

Mr. Richard Bagley of 213 Pleasant Street said the zoning Ordinance addressed appeals to the Board of Adjustment in a limited way regarding HDC decisions. He said the Board of Adjustment staff report noted that the Board should conduct a new hearing using HDC criteria and references as guidance. He said the Board should be considering the Historic District guiding principles as provided in the Ordinance not the economic well-being of the applicant or other interested parties with a vested interest in the project, and not to the wishes of the City to generate additional tax revenue.

Mr. Bill Haggarty from White Cedar Boulevard said he was against the project mainly because of the style. He said the special character of Portsmouth could be seen in the festooned rooflines of the Athenaeum in downtown and the mansions on Middle Street.

Ms. Joan Jones of 35 Merrimac Street said she had attended an HDC meeting where an alternative design was presented by Mr. Caldarola. However, she felt the HDC had not considered those suggestions or any of the other objections by residents. She expressed concern that the public comments had not been adequately considered by the HDC.

Mr. Jeff Cooper of Park Street thought the project could have more green space for pocket parks and improvements to support walkability. Mr. Cooper asked the Board to use the tools that were available to obtain a better proposal.

Mr. Bill Healy of Dennett Street expressed confusion over conflicting information on dimensional calculations in the notices, during the process and the final decision. He said the public, the Planning Board and the HDC were all confused as a result.

Mr. Lawrence Cataldo of 133 Islington Street agreed that the coverage and footprint figures were off. He said he was not opposed to the business plan for 111 Maplewood, but thought the size and the mass was not appropriate for a city like Portsmouth.

Ms. Diana Guilbert of 15 Thornton Street said she walked into town every week and although she had no problem with the development or design, she agreed that the proposal was too big in scale and height. She also expressed concern that the Northern Tier should be considered as an entire area.

Mr. Joe Almeida identified himself as a resident of Blossom Street and Chairman of the HDC. He said he did not find it difficult in any way to read or translate the drawings or documents that were provided, nor did he feel they were misleading or misrepresenting. He said he had not made up his mind prior to approval of the proposal until everything had been presented and public comments considered. He said he agreed that the model presented did not accurately represent the setbacks or scale of the project proposal. He said it was not appropriate to compare a large, 2.327-acre site to an eighteenth century structure on 10,000 square feet and it would be counterfeit to try to recreate something of that nature on this site.

A brief discussion followed between Mr. Calderola and Chairman Witham regarding the scale of the model.

Attorney Meade said they were there for a de novo hearing and not there to judge the HDC. He asked the Board to consider whether the scale and mass of the proposal followed the directives of the HDC rules and Ordinances, adding that this proposal set a precedent for the future of the Northern Tier when looked at by other developers.

Attorney Loughlin said he realized some people in the room supported the proposal. Petitioners were within their rights to express their displeasure. He noted the difference in the Board's rules compared to those of the HDC. He said analysis and judgment of design elements of a building were more elastic and subjective. The Ordinance did not require everyone to like all the designs in the Historic District. He said the test was whether the proposed building reasonably satisfied the purposes, objectives, review factors and review criteria of the Ordinance. The project proponents outlined why they felt their proposal met the criteria of the Ordinance, but any building might score better on some criteria than others. It was determined at last week's meeting that the Board

would go through 14 criteria to see if each was satisfied, but he suggested they did not need to go through all 14. He said it was clear that a great deal of time and effort went into the building and while it could be said that there could be another design that would satisfy others, that was not the test.

*Mr. Rheaume made a motion to **suspend** the rule and to allow more time for public comments. Vice-Chair Parrott seconded. The motion **passed** 4-3, with Ms. Chamberlin, Mr. Mulligan, and the Chair opposing.*

Mr. Caldarola again addressed the accuracy of his model by saying he used the dimensions that were provided in the site plan.

Attorney Meade referred to comments by HDC Commissioner Katz and Chairman Almeida that he said were based on inaccurate information about the project. Attorney Meade outlined alternatives that had been considered in previous planning studies of the Northern Tier. He said regardless of the economic benefits on developing the Northern Tier, the Board had a judiciary obligation to the public to deny the Certificate of the Approval, which would allow the applicant to reapply to the HDC, where they would review the application according to the guiding principles.

Chairman Witham said they had received numerous memos on the guiding principles and were quite familiar with them.

Councilor Esther Kennedy of 41 Pickering Avenue thanked the Board for listening to the public and the developer. She said she felt everyone had been heard and treated fairly and appropriately.

With no else one rising to speak, the public hearing was closed, followed by a ten-minute recess at 9:28 p.m. and resuming at 9:38 p.m.

DECISION OF THE BOARD

Chairman Witham said the motion would be to uphold the HDC decision to grant or to deny the Certificate of Approval.

Mr. Rheaume said he wanted to make sure it was clear that the comments on the HDC process and the Planning Department reports were useful, but the HDC process had no bearing on the decision of the Board, which was to determine whether the building met the criteria or not. Chairman Witham said the maker of the motion needed to address the six items under the Purpose and Objectives and the four items under Review Criteria.

Chairman Witham said though they have dealt with some HDC issues before, this was new territory and language. They were being asked to deal with what the HDC dealt with over many months in much less time.

Chairman Witham said they should consider the role of the HDC. He said he understood that some felt the project did not fit with the historic character of Portsmouth but no historic structures were being removed or replaced. He said these large lots in the Northern Tier presented a challenge for building in an historically appropriate manner where no pattern and rhythm of

development existed. He said the developer, architect and City Hall followed the rules, requested a variance for parking and adapted the project following HDC guidance. Other aspects of the Ordinance were specific, but the HDC was subjective on mass, scale and design. He had heard arguments on both sides and it was not an easy decision.

Vice-Chair Parrott reiterated that this lot was significantly larger than many of the other lots in the Central Business District, but noted that there were 0' setbacks for this district meaning the developer could build right up to the property line. He pointed out that the zoning for this area was decided by City Council some time ago, and the HDC followed the zoning district rules.

Ms. Chamberlin expressed concern about the impact on historic homes.

Chairman Witham commented that the Rockingham building did not necessarily compliment the nearby John Paul Jones or other homes across the street. He agreed that some developments could be viewed as having an adverse effect on their surroundings, such as the six-story housing project on Middle Street. He thought the developer's attempt to address the size differences by attaching the arcade entrance that was similar in height to the historic homes.

Mr. Mulligan acknowledged the height, scale and massing difference between this development in relation to the four structures across the street, but he wondered how much of a problem that was considering the distance of two lanes of traffic, two parking lanes and bike lanes. He said the relation of the building to other buildings on Raynes and Vaughn streets was not the issue, but the core issue was whether that expanse was wide enough so that the building would not dominate the other buildings across the street.

Mr. LeMay said they heard a lot about the historic homes, which were the most valuable piece of context in the argument, but they were not the only piece. They also heard arguments about other examples of inappropriate developments in the downtown but they were all part of the existing context. This building met requirements. He said the area had changed during urban renewal. He said the goal of zoning was not to create homogeneous development.

Mr. Rheume said he was still struggling with the relationship between this piece of land and the remaining historic pocket of properties of the old north end neighborhood. He said he had attended some of the City's urban design meetings and transition zones with medium buildings between lower and higher buildings had been discussed. He was uncertain whether the attempts to reduce the perception of height were adequate in respect to the homes across the street. He said there were some things he did not like about the building such as the arcade. He said there was probably some feature that not everyone liked and he suspected it would be difficult to come up with a design that everyone liked. However this was created by the architect for the project and had been adapted through the HDC process. It came down to Attorney Loughlin's question of whether it reasonably met the criteria. He said fostering Portsmouth's heritage and economic well-being was one of the criteria they had to consider.

*Mr. LeMay made a motion to **uphold** the HDC decision to grant a Certificate of Approval and Vice-Chair seconded the motion.*

Mr. LeMay began with the first criteria, saying the proposal was consistent with the special and defining character of the surrounding properties including architectural details, design heights,

scale, mass of surrounding structures, street frontages, types of roof, façades and openings. He said this particular criteria made more sense in an area that was well developed. He acknowledged that there were some nice buildings from the 1800's on one side, but the rest was a mix with some larger structures within view and he thought they formed the general context. He said the proposal was sensitive to the general character of the architecture in Portsmouth with the setbacks and attempts to do a few stories and then a smaller roof area as seen throughout the City.

Mr. LeMay noted that the criteria for significant historical or architectural value of an existing structure didn't apply in this case and the general size and consideration of factors such as height, width, material and architectural details were discussed along with the fact that it was substantially smaller than the zoning allowed for the lot and he thought in that respect it met that criteria.

Mr. LeMay said the extent to which the proposed exterior design, scale, arrangement, texture, detailing and materials complement or enhance the existing structure were compatible with surrounding properties. He commented that Portsmouth was a brick city and it would be hard to say that the brick part of this development was a problem. He said this was an area that the HDC probably spent a great deal of time discussing the fenestration and the materials. He pointed out that they heard no particular complaints in that regard.

Mr. LeMay concluded by addressing the innovative use of technologies, materials and practices, compatible with the character of surrounding properties. He said anything on the property was going to be a lot more up-to-date than what the surrounding properties would have. He said the arcade and window construction were relatively new design details that appeared to satisfy that requirement.

Mr. Parrott read the six items under the purpose and objectives and addressed them as follows:

Regarding preserving the integrity of the District, Mr. Parrott said this portion of the district was pretty well fractured unfortunately as a result of urban renewal. He said the rest of the Downtown such as Market Square was all historic and very different, whereas this part of the historic district varied tremendously from the antique houses on Maplewood to the buildings on the back side of this project, which consisted of functional buildings of little or no historic significance or architectural character.

In regard to maintaining the special character of the district, Mr. Parrott said the character of this portion of the historic district was unique. It had water on one side, a railroad track running through it, industrial buildings which were all different in size and in configuration so it was hard to define the special character of this district was a whole. He said the most important part from a historic point of view was the antique houses across the street, which defined one corner of the neighborhood, however he didn't think modern design had to be consistent with those. He said it was hard to make the connection between an 1810 building and a newer building but he concluded that this new building would not harm the special character of the district and might advance it.

Considering an assessment of the historical significance, Mr. Parrott said the antique houses had historic significance and they heard some explanation from the architect as to how they attempted to carry forward some of the features of those houses and reflect them in up-to-date ways with the design features in their new proposed building.

Whether the project would complement and enhance the architectural and historic character, Mr. Parrott said it sounded similar to the first objective, which was to preserve the integrity of the district. Short of replicating the houses, he said he didn't know how they could do any better than this project proposed, which complimented them to the extent possible with a building that fit on the lot.

Mr. Parrott said the conservation and enhancement of property values was not touched upon by any expertise or opinions, but from his own perspective he didn't think the existing parking lot had much value to anybody, except those who used it. He said this building would have a lot more value than a parking lot and would enhance the value of surrounding properties, including the antique houses across the street, which were used mostly for commercial purposes as the lower floors of this building would be.

Lastly, Mr. Parrott said the proposal would promote the education, pleasure and welfare of the District to the city residents and visitors because it would provide stores and perhaps services as well as another place for visitors and residents alike to go to appreciate that part of the city.

Mr. Mulligan read an excerpt from the criteria of the purpose and objectives part of the Ordinance that listed scale and mass, beginning with Section 10.631.20 (2). He said there was a strong attempt to evoke the industrial buildings on the back side, the Raynes and Vaughn Streets side of the site while also respecting various design elements on the Maplewood side, the scale of the buildings across the street, which were pretty far across the street. He concluded that those two criteria, which dealt with scale and mass were met.

Mr. Mulligan added that he thought the project would foster Portsmouth's heritage and economic well-being by increasing foot traffic in an important transitional area. He said it would also contribute to the pleasure and welfare of City visitors, which was another criteria. Although he had some reservations about how big it appeared, the application of the criteria adequately addressed the questions.

Ms. Chamberlin said she thought the proposal went too far toward the industrial neighborhood and didn't give enough balance toward the historic homes and cemetery. She said she would like to see a building that was actually three stories and not attempting to look as if it was three stories, but was really four stories. She said she appreciated that there was an element of industry in the Northern Tier, but felt they were compounding the mistakes of urban renewal from which they were trying to recover. She said the mass and scale was too big for the neighborhood. She said they could have a similar, but smaller, mixed use building that would retain the nature of the historic house and would transition into the rest of the City. She said she thought the mass was too large and it didn't meet that criteria.

Mr. Rheame said he was o.k. with most of the project but was concerned about the size in relation to the historic properties across the street. He said the HDC decision should be upheld. He said he thought the proposal was respectful enough to meet the criteria required to judge these projects.

Mr. Moretti said he grew up a few streets over and remembered some of the buildings that had been in the area previously. He said he thought this project was in good taste, but he was a little concerned with the size and scale but it still met the criteria for acceptance and it went through

extensive design and redesign to fit into the neighborhood. He said the road in front of the building was wide so he didn't think it would overshadow the smaller buildings. He said he thought the project was in good taste.

Chairman Witham said he would support the motion and hoped his decision wouldn't be perceived as having no regard for history. He said he served as vice chair with Portsmouth Advocates and formed a group to save the Lafayette School from being torn down and he did care a great deal about Portsmouth. He said there was a big difference between sitting in the public and serving on the Board. He said his personal opinion and emotions drove how he felt about things, but once he joined the Board, his decisions had to be based on the Ordinance. He said there might be parts of the project he liked and other parts he didn't, but he felt the project still met all the criteria of the Ordinance. He said they addressed all the issues and based on the HDC criteria, he felt they met the purposes and objectives set forth in the zoning Ordinance.

The motion was passed by a vote of 6-1 with Ms. Chamberlin opposing.

IV. OTHER BUSINESS

No other business was presented.

V. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 10:31 p.m.

Respectfully submitted,

Jane K. Kendall
Acting Secretary