

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

**MAY 17, 2016
TO BE RECONVENED
MAY 24, 2016**

MEMBERS PRESENT: Chairman David Witham, Arthur Parrott, Charles LeMay, Patrick Moretti, Jeremiah Johnson, James Lee, Peter McDonell

MEMBERS EXCUSED: Vice-Chairman David Rheaume, Christopher Mulligan

ALSO PRESENT: Juliet Walker, Planning Department

I. ELECTION OF OFFICERS

NOMINATED FOR CHAIR

*It was moved, seconded and passed by a vote of 7-0 to **nominate** David Rheaume for Chairman.*

NOMINATED FOR VICE-CHAIR

*It was moved, seconded and passed by a vote of 7-0 to **nominate** Charles LeMay for Vice-Chairman.*

II. APPROVAL OF MINUTES

- A) April 19, 2016
- B) April 26, 2016

*It was moved, seconded, and passed by unanimous vote to **approve** both sets of minutes with minor corrections.*

III. OLD BUSINESS

Chairman Witham stated that the Wibird Street petition was withdrawn.

A) 525 Maplewood Avenue

Ms. Walker stated that the Board of Adjustment, at its regular meeting on April 19, 2016, considered a request for a rehearing for the 525 Maplewood Avenue application, but the item was not listed on the agenda for that evening. Therefore, after discussion with the applicant's attorney, Ms. Walker said the Staff is recommending that the board vote again and that their recommendation would be to make a motion that referenced and incorporated the motion from the April 19 meeting. As the application was not listed on the agenda on the night that the board previously considered the request, Ms. Walker said the action was being done for the purpose of clarifying for the applicant the effective date of the decision, which would be this evening.

Ms. Walker stated that the previous action was that the Board voted to deny the Request for Rehearing, determining that no new information had been provided relevant to the Board's reasons for the denial, and that the Board had carefully considered all the information and had not made an error in their conduct of the review of application of the law.

DECISION OF THE BOARD

*Mr. Johnson made a motion to **take into record** the previous comments from the April 19, 2016 meeting and use today's date of May 17, 2016. Mr. Moretti seconded the motion.*

*The motion **passed** by a vote of 7-0.*

IV. PUBLIC HEARINGS – OLD BUSINESS

- 1) Case #4-7
Petitioners: Stewart Whitney & Haiyan Chao Whitney
Property: 180 Wibird Street
Assessor Plan 148, Lot 1-1
Zoning District: General Residence A
Description: Construct two second story decks.
Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.521 to allow 30.3%± building coverage where 25% is the maximum allowed.
(This petition was postponed at the April 17, 2016 meeting and withdrawn by the applicant.)

The Board noted that the petition was withdrawn.

- 2) Case #4-8
Petitioner: Wentworth Sagamore, LLC
Property: 1150 Sagamore Avenue
Assessor Plan 201, Lot 22

Zoning District: Mixed Residential Business

Description: Install a wall sign and a second free-standing sign on a lot.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.1243 to allow a second free-standing sign on a lot.
2. A Variance from Section 10.1251.20 to allow a 28.4± s.f. free-standing sign where 20 s.f. is the maximum allowed.
3. A Variance from Section 10.51251.20 to allow a 25± s.f. wall sign where 16 s.f. is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

Attorney John Bosen was present on behalf of the applicant and introduced Michael Bean and the architect. He reviewed the criteria and explained how they were met.

Mr. Johnson asked Attorney Bosen to elaborate on the relief requests for the square footage on the freestanding sign. Attorney Bosen stated that the hardscape exceeded one foot allowed in order to keep in line with the existing stonewall.

Mr. Moretti asked whether there would be times when the lighting on the sign was off. The architect said the sign would be dark lit and the backlit lighting for the logo would most likely be on a timer. Mr. Moretti asked whether there were restrictions for hours of lighting. Mr. LeMay clarified that the sign would not be illuminated between 11 p.m. and 6 a.m., according to the Ordinance. It was further discussed.

Attorney Bosen said the three parking lot lights existed for safety reasons and that the signs would tie in together. Chairman Witham said the parking lot lighting wasn't an issue.

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

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

DECISION OF THE BOARD

Chairman Witham noted that it was a unique situation driven by the Wentworth sign. Mr. Moretti asked whether the Wentworth sign would be lit, and Attorney Bosen said it would be lit at night.

*Mr. Moretti moved to **approve for discussion**, with a stipulation that the freestanding sign conform to the City Ordinance lighting standards for the hours of operation. He said there was no issue with the wall sign.*

Ms. Walker stated that both signs had to comply with the Ordinance's lighting standards.

*Mr. Moretti then moved that the **stipulation** would state that both signs had to conform to the City Ordinance lighting standards. Mr. Parrott seconded the motion.*

Mr. Moretti stated that the sign request was for a non-conforming sign on a site that already had a sign on it but wasn't the owner's sign. He stated that granting the variance would not be contrary to the spirit or intent of the public interest because no one from the public had spoken against it. He said the sign was in good taste and would enhance the property's character, and that the variance was driven by a sign that was already on the property, which extended the hardship. He said granting the variance would not diminish the value of the surrounding properties because the building was a new one and improved the corner lot as well as the businesses and properties surrounding it. Special conditions were that the property was new and required signage, but the second hardship was the existing sign that drove the variance and was a reasonable use for the property and sign. Although the sign was slightly larger, the design was in the character of the neighborhood, especially with the stone wall beneath it, and the distance from the road was sufficient.

Mr. Parrott said he agreed with Mr. Moretti, adding that the building was big enough to carry the oversized wall-mounted sign. He said he could support the second freestanding sign because the property was on a corner, so the traffic pattern was such that people would not be aware that the sign was there.

*The motion to **grant** the variance with the stipulation that lighting for both signs conform to the City's standards outlined in the Ordinance **passed**, with 6 in favor and Chairman Witham voting against the petition.*

3) Case #4-9

Petitioner: Michael De La Cruz

Property: 75 Congress Street (63 Congress Street)

Assessor Plan 117, Lot 5

Zoning District: Character District 5, Downtown Overlay District

Description: Construct five residential use dormers and one office use dormer, with walkways and decks. Restore pediments.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, enlarged or structurally altered without conforming to the Ordinance.
2. A Variance from Section 10.5A43.31 and Section 10.5A21.22 to allow the following building heights where the maximum building heights allowed per Map 10.5A21B are 40' for a 2-3 stories height requirement area and 45' for a 2-3 stories (short 4th) height requirement area:
 - a. 62'11" for the proposed pediments
 - b. 64'6" for the proposed office dormer, and
 - c. 60'5" for the proposed residential dormers

(This petition has been revised since its initial publication, with the changes indicated in italics.)

SPEAKING IN FAVOR OF THE PETITION

Mr. Johnson recused himself from the petition.

Attorney Bernie Pelech on behalf of the applicant, the architect Jeremiah Johnson, and the owner Michael De la Cruz were present to speak to the petition. Attorney Pelech reviewed the history of the building and passed out context photos to show the height difference. He explained in detail how the criteria were met.

Mr. LeMay asked Attorney Pelech whether he had all the original designs for the pediments and whether they were being reproduced. Mr. De la Cruz replied that he had a collection of photos of the building from different time periods and therefore knew which modifications were made at which time and had figured out how to rescale everything.

Mr. Lee asked who would have access to the decks on top of the building, and Mr. De la Cruz said the residents would. Chairman Witham asked about the railings along the top. Mr. De la Cruz said they were historic details and were replicated, noting that they went around three sides of the building and were purely decorative.

Chairman Witham noted that the colored photos indicated a new dormer with a roof deck and concluded that there would be people standing behind the railings. Mr. Johnson stated that the individual dormers each had their own roof deck and further explained what the color coding meant. Chairman Witham verified that the railing was 42 inches and that the Historic District Commission was on board. He said his concern was outdoor deck furniture and umbrellas that would be visible from the street. Mr. De la Cruz replied that the decks were moved behind the pediments and would be difficult to see from the street, and that he intended to restrict what was placed on the decks. Chairman Witham stated that the furniture should not be higher than the railing, and Mr. De la Cruz agreed. They further discussed the visual aspects.

Mr. Moretti asked about the previously-approved recessed decks. Mr. De la Cruz said they were approved to reduce visual clutter and would sit inside the faux roof section.

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

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

DECISION OF THE BOARD

Chairman Witham said he liked the pediments and thought the dormers were set back enough, but he wasn't sure about the railing being an appurtenance. He said he was concerned about rooftop activities with umbrellas and grills because there were no covenants in place. Mr. LeMay said it was a legitimate concern but wasn't sure how the Board would deal with it without being arbitrary. He said the railing was four feet high and that everything would be above it. Chairman Witham said that if the furniture was kept low, he could agree to it.

Mr. Parrott stated that it would be helpful to see cross-dimensions and sections of the proposed raised structures to clearly show the height. He said the Board needed dimensions on all aspects of construction, like the railings. He said he couldn't visualize the height dimension on the pediments. Attorney Pelech said they would provide dimension drawings and impose restrictions on things like umbrellas. Mr. Moretti asked for lighting dimensions as well. Chairman Witham said he wanted to see 3-dimensional aspects and sight-line views from the street. Mr. Parrott noted that page 5 made the rooftop structures look a lot bigger than some of the other drawings and didn't seem consistent. Mr. De la Cruz agreed.

Chairman Witham summarized the items to be brought to the next meeting, which included 3-dimensional renderings showing the roof, cross-sections with dimensions, exterior light drawings, notes on any covenants, and renderings with people inserted to give an idea of scaling.

*Mr. Parrott made a motion to **postpone** the petition for the purpose of obtaining the additional information outlined above. Mr. LeMay seconded the motion.*

*The motion **passed** by a vote of 6-0.*

4) Case #4-10

Petitioner: Robert McDowell

Property: 379 New Castle Avenue

Assessor Plan 207, Lot 4

Zoning District: Single Residence B

Description: Construct a 20' x 20' detached garage.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.521 to allow a front yard setback of 7.25' where 30' is required.
2. A Variance from Section 10.521 to allow 20.6% building coverage where 20% is the maximum allowed.
3. A Variance from Section 10.571 to allow an accessory building to be located in a required front yard.

SPEAKING IN FAVOR OF THE PETITION

Mr. Johnson resumed his voting seat.

Attorney Bernie Pelech on behalf of the applicant was present to speak to the petition. He reviewed the petition and explained how the criteria would be met.

Chairman Witham asked Attorney Pelech if he had been before the Historic District Commission, and Attorney Pelech replied that he had not.

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

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

DECISION OF THE BOARD

*Mr. Parrott made a motion to **grant** the petition as presented and advertised. Mr. Lee seconded the motion.*

Mr. Parrott stated that the actual relief asked for was modest, except for the front setback, which was all that could be done with the property due to its size and orientation. He said the increase in building coverage was less than 1%, and he felt the project was straightforward.

Mr. Parrott stated that granting the variance would not be contrary to the public interest because there was no discernible public interest. It was simply replacing two structures with one, with a smaller overall footprint. The adjacent properties, especially the one on the right, were close to the street and mitigated it a bit, and the neighborhood was small. He said that granting the variance would be in the spirit of the Ordinance because it was really two aspects of the same basic concern. It would do substantial justice because the tipping test was that the value to the owner was substantial and the value to anyone else was difficult to see. Granting the variance would not diminish the value of surrounding properties because it was simply replacing two structures with one and would look more appropriate. The lot was narrow and there were no other feasible alternatives for installing a modest garage. Mr. Parrott said that the unnecessary hardship was the size and orientation of the lot layout and the house, and it was desirable to save the large tree.

Mr. Lee said he concurred with Mr. Parrott and had nothing to add.

Mr. Moretti stated that he would not support it due to the 2004 Board action which denied the eight feet of front yard but then accepted it. He said the applicant was asking for less frontage. Mr. LeMay agreed with Mr. Moretti and said he didn't see the hardship.

Chairman Witham said his concern rested with the Historic District Commission because the proposed garage was a detriment to the historic flavor of that area, and he wasn't aware of the previous Board's decision in regards to the setback, so he would support the motion.

Attorney Pelech explained that the Historic District Commission had requested that the garage door facing the street be turned sideways, which made it become 14 feet away.

*The motion **passed**, with 5 in favor and Mr. Moretti and Mr. LeMay voting against the motion.*

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- 5) Case #4-11
Petitioners: Natan Aviezri Revocable Trust, Debra Klein & Natan Aviezri, Trustees
Property: 75 Monroe Street (Middle Road at Ward Place)
Assessor Plan 168, Lot 27 (merged from Lots 34 & 35)
Zoning District: General Residence A
Description: Construct a single-family home and garage on two re-merged lots.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.521 to allow a lot area of 5,954± s.f. where 7,500 s.f. is required.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 5,954± s.f. where 7,500 s.f. per dwelling unit is required.
3. A Variance from Section 10.521 to allow continuous street frontage of 85.59'± where 100' of continuous street frontage is required.

SPEAKING IN FAVOR OF THE PETITION

Chairman Witham stated that the petition was approved by the Board in February but some of the dimensions had changed during construction.

Attorney F. X. Bruton on behalf of the owner was present to speak to the petition and stated that the project had been in the process of unmerging five lots and would go back to the Planning Board as a merging of three lots into one and two lots into one. He said the five criteria were the same ones that had already been granted.

The Board members agreed that it wasn't necessary for Attorney Bruton to present the petition again, as far as the criteria. Mr. McDonell noted that he had reviewed a copy of the presentation because he wasn't present at the original presentation.

Attorney Bruton noted that an abutter made a comment to the Planning Department about a sewer line on his property being depicted on the final site plan that didn't relate to the two parcels he was presenting. Ms. Walker said the Planning Department was unclear about where the sewer line was going, but as long as the abutter and applicant were in agreement, there was no stipulation required.

Ms. Kate Toivanen stated that she was an abutter and was in favor of the petition.

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

Richard Hopley stated that he owned the property to the rear of the applicant and said his sewer line as well as his neighbor's at 1375 South Street crossed in. He said that he and his neighbor had the only two parcels that were landlocked and wanted to nail down the location of the sewer line. Ms. Walker said it would appear on the subdivision plan.

Joseph Yarborough of 746 Middle Road stated that he was concerned about the way the Board treated unmerged lots differently from other lots. He discussed the Statute regulations for the frontage requirement, noting that the City's Legal Department had recently stated a new purpose for frontage in the SRB District which, he stated, was to establish a low-density neighborhood with a limited number of developed lots. He emphasized that it was important to determine whether there was a relationship between the purpose of the Ordinance provision, which was to

limit the number of developed lots, and its application to the property, which was to increase the number of developed lots.

Attorney Bruton replied that the GRA zone was different from the SRB zone, so he wasn't sure whether it was applicable or not. He said the applicant met the requirement.

Susan McCann stated that she lived directly across the merged lot and asked where the driveway would be located. Attorney Bruton said the Planning Department would address the issue. Chairman Witham added that the Board would choose the safest spot for the driveway.

No one else rose to speak, and the public hearing was closed.

DECISION OF THE BOARD

*Mr. LeMay moved to **grant** the petition based on the same rationale, criteria, and stipulations that were brought forward. Mr. Johnson seconded the motion.*

*The motion **passed** by a vote of 7-0.*

6) Case #4-12

Petitioner: Seacoast Trust LLP

Property: 150 US Route One By-Pass

Assessor Plan 231, Lot 58

Zoning District: Single Residence B

Description: Construct four-story, 40 unit, multi-family building.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

- 1A. A Special Exception under Section 10.335 to allow a lawful nonconforming use to be changed to another nonconforming use.

If the Special Exception for the proposed use is not granted, then the following is requested:

- 1B. A Variance from Section 10.440, Use #1.40 to allow a multifamily dwelling with 40 dwelling units.

The following dimensional relief is also requested:

2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 3,254 s.f. where 15,000 s.f. is required.
3. A Variance from Section 10.521 to allow a structure height of 50' where 35' is the maximum allowed.
4. A Variance from Section 10.522 to allow a multifamily dwelling with a building length of 246' where 160' is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

Attorney Rob Ciandella on behalf of the applicant, Eric Weinberg of Altus Engineering, the developer Eric Katz of the Katz Group, and Robbi Woodburn of Woodburn and Company were present to speak to the petition.

Attorney Ciandella stated that the property was the Atlantic Orthopedic and Sports Medical site and that the applicant wanted to replace it with a multi-family building. He noted that the City Council created a tool to address the situation of replacing an existing non-conforming use with another non-conforming use. He said that it would be a less adverse impact because they proposed a residential use in a residential zone, which would be more appropriate to the SRB zone than the existing medical office use. He distributed the revised site plan to the Board.

Mr. Weinberg discussed the parcel and its boundaries, and also the wetlands, parking, setbacks and lot frontage. He stated that the open space would increase, the demand for utilities would decrease, and there would be no excess demand on municipal services.

Mr. Katz stated that the concept for Middle Hill was based on his experience from a similar development in Exeter. He explained what the building would consist of and said the demographic would be self-sufficient seniors. He emphasized that they went from a two-building concept to one building. He explained in detail how they met with the neighbors and abutters and tried to be collaborative in reducing some of the building's height at the two ends.

Ms. Woodburn discussed the buffers and mitigating the height of the building.

Attorney Ciandella reviewed the zoning standards and special exception criteria, and then addressed the dimensional variances for the height, length and lot area per dwelling unit. He referred to the White Report and reviewed the variance criteria.

Chairman Witham asked Attorney Ciandella whether he could present the use variance if the special exception was denied. Attorney Ciandella said it would be difficult and that he preferred to see whether or not the special exception could be accepted first.

Mr. Johnson asked whether the underground parking was at grade or close to grade. Mr. Katz replied that the depth was dictated by the water table and that the garage would be placed 4-5 feet in the ground. He said the grade would be brought up around the building. Mr. Johnson asked whether there was shuttle service or community transportation planned for the building residents, and Mr. Katz said there was not.

Chairman Witham asked whether the requested height was measured from the proposed grade or the existing grade. Mr. Katz said it was the proposed grade. Chairman Witham confirmed that the actual height of the building plus another five feet would be based on proposed grade.

Mr. Parrott asked what the height to the top would be. Mr. Katz said the proposed building had a flat roof with a cupola in the center of it. Mr. Parrott said a cupola was not shown on the rendering and asked again what the height would be to the top of the building. Mr. Katz said he estimated the cupola to be 6-8 feet. Mr. Parrott then stated that 52 feet had grown to 60 feet.

Mr. McDonnell asked how people coming southbound on the bypass would get to the building. Mr. Weinberg replied that a U-turn was allowed on the new intersection.

SPEAKING IN OPPOSITION TO THE PETITION

Matt Turk of 152 Hillside drive stated that there was no U-turn allowed after making a left onto Greenleaf Avenue, so a left would have to be made on Hillside Drive, which would become a developed traffic pattern. He said there were lots of children in the neighborhood and also noted that he was concerned about the height of the fourth-floor residences compared to his home.

Alice Carey of Middle Road said she wasn't opposed to the change in use, except for the scale of the building. She said the applicant could have been more forthcoming about where the structures were proposed and thought it was easy to imagine someone looking into a bedroom window due to the height of the building.

Barbara McMillan of 84 Hillside Drive stated that she was not in favor of the project as presented because it didn't meet the spirit and intent of the Ordinance, and she felt it would change the character and safety of the neighborhood. She thought that the large number of units would cause people to go around Hillside Drive on a regular basis.

Michael Gass of 120 Hillside Drive said that as a parent of three small children, he supported the previous comments about the increased traffic pattern.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Ciandella said the traffic would be less than existing and disagreed with the premise that people who knew the area would use Hillside Drive as a shortcut. He said the City Council created a calibrated ordinance to deal with the circumstance, and he felt that it fit.

Mr. LeMay asked whether the Greenleaf Avenue intersection was legal for a U-turn, and Attorney Ciandella said it was not legal and didn't hold up in terms of the argument.

Nancy Craig of 135 Hillside Drive said she was an abutter and looked down on the property. She said she liked the idea of residential units but not the height and number of units, and she was concerned about the pitch and how high each floor would be, as well as the lighting.

Attorney Ciandella stated that the people most affected by the height would be at the ends of the building, which were stepped down.

No one else rose to speak, and the public hearing was closed.

DECISION OF THE BOARD

Chairman Witham questioned whether the Board could apply Section 10.335 to hear the use change under a special exception, noting that it needed to be a use that was equally or more appropriate to the District, with a less adverse impact on adjacent properties. He said the Board had to weigh the scale and size of the new use compared to the medical office building, so he said he was inclined to say that it would need a variance and not a special exception for the change in use. He said the Board would have to view it as a 36-unit structure and not just a residential structure.

Mr. LeMay said he understood Chairman Witham's point about the size and number and thought it was legitimate, but he said it was a lower mountain to climb than a variance for the same use.

Mr. Johnson said a multi-family use was considered a commercial use from a building code perspective, from a use perspective, and possibly from a municipality perspective and didn't fall under the single residence code.

Mr. Parrott stated that the way the Ordinance was written invited comparison between the present and future use. He said the flat part of the existing building was about 12 feet, and the proposed was multiples of that, which was a huge difference. He said the residential use was valid, but the closest houses on Hillside Drive were pretty close and quite a bit higher than the existing building. In terms of comparison, he said it was a stark change in terms of impact on the adjacent residential properties, which had been there a long time. The Board further discussed whether Section 10.335 applied or not.

*Mr. LeMay made a motion that **Section 10.335 did not apply**. Mr. Moretti seconded the motion.*

Mr. LeMay stated that a case could be made that the new use had qualities that were adverse to the neighborhood that were different from the current commercial use. As an example, he said the parking in the impervious surface was worse than it would be in the new one, but the case of the new building, it was substantially more massive, and the use in which it was occupied might be more adverse to the neighborhood. He said it was hard to say which of those two instances of use would be more adverse to the neighborhood and felt that it wasn't that clear cut.

Mr. Moretti said he concurred with Mr. LeMay.

Chairman said they could say that Section 10.335 did not apply that the new use had qualities that would be adverse to the neighborhood and different from the current commercial use.

Mr. McDonell said he didn't think anyone was saying that the use was less appropriate but rather, they were just not making a determination that it was more appropriate or less appropriate. Mr. LeMay agreed. Chairman Witham said he would support the motion because he thought the project had a greater impact than existing, as far as mass and scale and all the things that went along with that.

*The motion to not accept the special exception request **passed** by a vote of 7-0.*

Attorney Ciandella then highlighted the three variances and reviewed the criteria.

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

Barbara McMillan stated that she spoke to the use variance previously and asked why it was suited for multiple units if it wasn't suited for single-use homes.

No one else rose to speak, and the public hearing was closed.

DECISION OF THE BOARD

The Board discussed the regular dimensional variances. Chairman Witham said he was supportive of a multi-family dwelling unit on the site but was concerned about the height. He said he was comfortable with the building's length and the traffic situation. He pointed out that the building would be on top of the proposed berm, which would push the height higher and increase it five feet more. Mr. Lee said he had a hard time with the 52-ft building and that, even with the trees around it, it would still be 52 feet high. Mr. LeMay said the arguments were in the right direction but felt that it was an intense use largely driven by the height.

Mr. Johnson said he was in support of the application because it was similar to the SRB project on Maplewood Avenue from the previous month. Chairman Witham said it was abutted by something much different. Mr. Parrott said he shared some of the concerns expressed. He said he liked the style but the sheer size of the building worked against it. He said it was a 130,000 s.f. lot but had a wetland and a good portion that wasn't usable, and the setback was 50 feet from the Hillside Drive side of the lot, so some of the houses were pretty close. He said 50 feet was not really much of a setback, considering that it was going from single-family homes to a 4-story building at that height. He thought the use was excellent for the lot and felt that if the building were smaller, it would work better and be compatible with the area. He said the area was zoned SRB, so the relief requested was huge, and he felt that the design was very aggressive for the lot.

*Mr. LeMay made a motion to **deny** the variances for the petition, and Mr. Parrott seconded.*

Mr. LeMay stated that he would incorporate the prior comments and said the Board felt that the petition failed on a few counts. He said there was some hardship of the lot, but not enough to overcome the asked, and it would alter the characteristics of the neighborhood when one considered the neighborhood was SRB and not just the immediate context, which he thought was appropriate. Mr. LeMay said the project possibly would pass on not diminish property values but felt there was a less intensive use for the lot that could be more compatible with the immediate neighborhood. He referred to the previous comments about the height and mass.

Mr. Parrott stated that he would incorporate his previous comments and said he concurred with Mr. LeMay.

Chairman Witham stated that the problem was the hardship test and that he felt, in terms of the special conditions that included the wetlands and the shape of the lot, that the property could be reasonably used without going up to 36 units. He said a height variance was difficult to get, and he didn't feel the height variance got by all five criteria.

Mr. Parrott stated that the particular aspect that he had problems with was the first criteria, namely that the variance would not be contrary to the public interest. He said the public interest was represented by the nearby neighbors, and he thought that the large building, no matter how good it looked, could be contrary to the public interest.

*The motion to deny **passed**, with 6 in favor and Mr. Johnson voting against the motion.*

7. Case #4-13

Petitioners: Blueberry Lafayette Investors LLC & Edward Walsh, owners, William P. Walsh, applicant

Property: 3605 (3607) Lafayette Road

Assessor Plan 298, Lot 2

Zoning District: Gateway & Rural

Description: Motor vehicle repair

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Special Exception under Section 10.440, Use #11.20 to allow a motor vehicle repair use in a district where the use is allowed only by Special Exception.
2. A Variance from Section 10.1111 to allow a change in use that does not meet the requirements for off-street parking.
3. A Variance from Section 10.843.12 to allow more than two 40' wide curb cuts or access or egress points on each abutting street.
4. A Variance from Section 10.843.21 to allow areas for parking, outdoor storage and outdoor display of vehicles or equipment to be set back less than 40 feet from the street right-of-way.

SPEAKING IN FAVOR OF THE PETITION

The petitioners were not present.

*Mr. Johnson made a motion to **postpone** the petition, and Mr. Parrott seconded. The motion **passed** by a vote of 7-0.*

VI. OTHER BUSINESS

There was no other business.

VII. ADJOURNMENT

*It was moved, seconded, and **passed** by unanimous vote to adjourn the meeting at 11:08 p.m.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary