

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

7:00 P.M.

**NOVEMBER 15, 2016
TO BE RECONVENED
NOVEMBER 22, 2016**

MEMBERS PRESENT: Chairman David Rheume, Vice-Chairman Charles LeMay, Arthur Parrott, Jeremiah Johnson, James Lee, Patrick Moretti, Peter McDonell, John Formella

MEMBERS EXCUSED: Christopher Mulligan

ALSO PRESENT: Jane Ferrini, Planning Department

Chairman Rheume called to order the 6:30 work session on the Conflict of Interest issue with City Attorney Robert Sullivan.

Attorney Sullivan stated that he was present to discuss ethical matters relating to conflict of interest. He said he attended a presentation by the New Hampshire Municipal Association and received a book about Conflicts of Interest for Land Use Boards written by authors that included Matthew Serge and Maureen Burn, who gave him the authority to use some of their words.

Attorney Sullivan then discussed the law on ethics and conflict of interest and the fact that it needed to be clear so that the Zoning Board members could follow it. He said if it wasn't followed, it could result in the Board member appearing to be on one side or the other. He gave an example of a judgment being overturned because a member voted on an application instead of recusing himself or herself, which would result in a reversal. He stated that the highest conflict of interest standard, the quasi-judicial capacity, always applied. He said the Board was part of the City government and what the Board members did had an effect on the City government's reputation as well as their own, so it was important that the members acted in a way that led the citizens to have confidence in the Board's ethics. In a conflict of interest situation, he advised that the person who raised the question should not participate in the matter if he or she had a conflict of interest.

Attorney Sullivan then reviewed the City statues and ordinances and summarized that the City Council should have the power to remove, censure, suspend or reprimand any member of the Council or any Council appointee who was found to have violated any provision of the municipal code of ethics. He also noted that no officer or employee shall engage in any business or transaction or shall have a financial or private interest in conflict with the official discharge of

his or her duties. Attorney Sullivan also reviewed the code of ethics and judicial capacity. He said that he or the Legal Department was always available to discuss a conflict of interest matter. A second source was the Board of Adjustment members. He reviewed the process of a Board member recusing himself and emphasized that if the Board member had a conflict of interest, he or she should not speak to the matter.

Chairman Rheume noted that the Board members were also members of the Portsmouth community and had ties to many individuals, so there had to be a threshold or an overlap at some point. He gave an example of Strawberry Banke. Attorney Sullivan said that if a Board member was a member of Strawberry Banke, that Board member should not sit on any application applying to it. Chairman Rheume said the Board of Adjustment was the first stop for citizens to get their issues resolved, and because the Board members were not remote from anyone in the community, it was difficult for them to meet a truly remote standard that some may expect. Attorney Sullivan agreed but noted that he didn't believe there was another board or commission in the City that had a more immediate and measurable financial effect on people's lives, so the role that the Board served had high scrutiny due to the great responsibility placed on the Board.

Mr. Parrott asked how far away a Board member had to be from a homeowner who wanted to renovate his property in order to recuse himself. Attorney Sullivan said he didn't think there was an objective measurement of 300 feet away or a half-mile away, as long as the applicant was someone that the Board member knew.

Ms. Ferrini stated that she could contact the New Hampshire Municipal Association for resolution to questions.

Chairman Rheume closed the work session.

I. OTHER BUSINESS

- A) Board of Adjustment Rules & Regulations (*This item was postponed from the October 25, 2016 meeting.*)

DISCUSSION/ACTION

Chairman Rheume stated that the Board previously had a work session and discussed a few changes. He said they had one of the two changes ready to be presented by the Planning Department. He asked that consideration of the rules and regulations be delayed to a future BOA meeting, when other changes could be further refined. He said the time limit change was done.

*It was moved, seconded and **passed** unanimously (7-0) to table the consideration of Board of Adjustment Rules and Regulations to a future meeting.*

II. APPROVAL OF MINUTES

- A) October 18, 2016.

Minutes Approved 12-20-16

*It was moved, seconded and **passed** unanimously (7-0) to approve the October 18, 2016 minutes.*

B) October 25, 2016.

*It was moved, seconded and **passed** unanimously (7-0) to approve the October 25, 2016 minutes as amended.*

Chairman Rheame then stated that he and Mr. McDonell would recuse themselves from the Public Hearing. Vice-Chairman LeMay assumed Chairman Rheame’s seat.

III. PUBLIC HEARINGS

1) Case #11-1

Petitioners: New England Marine and Industrial Inc., owner, Great Bridge Properties, LLC, applicant

Property: 200 Spaulding Turnpike
Assessor Plan 237, Lot 56

Zoning District: General Business & Single Residence B

Description: Construct two 40-unit workforce housing & apartment buildings.

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 10.440, Use 1.43 to allow more than 8 dwelling units where no dwelling units are allowed.
2. Variances from Section 10.591 to allow buildings to be located 28.6’ and 44.5’ from a property zoned residentially where 100’ is the minimum distance required.
3. A Variance from Section 10.1113.31 to allow off-street parking areas and accessways to be located 0’ from a Residential District where 100’ is the minimum distance required.
4. A Variance from Section 10.522 to allow a building length for a residential structure of 244’± where 160’ is the maximum allowed.
5. Appeal of an Administrative Decision if Variance request #4 is denied. Appeal the determination that a Variance from Article V, Section 10.522 is required to allow the building length of a residential structure on this lot to exceed 160’ in length.

Acting Chairman LeMay read the petition into the record. He addressed the timing rules but acknowledged that the application presenters needed more time due to the petition’s complexity.

*It was moved, seconded and **passed** unanimously (6-0) to allow 30 minutes for the presentation and adhere to the 3-minute rule for public speakers.*

SPEAKING IN FAVOR OF THE PETITION

Attorney Tim Phoenix was present to speak to the petition. He introduced his team members, who included the principles of Great Bridge Properties Chris Davies and Bill Castleton; the MSC Engineer John Lorden; the developer Lisa DeStefano, the traffic engineer Steve Pernaw, and the appraiser Pete Knight.

Mr. Castleton stated that he was part of a New Hampshire-based company that developed rental housing targeted to moderate income renters who worked in the City. He discussed the various affordable housing projects that they built in the State and gave a brief history of the NH Workforce Housing issues as well as the tax credit program. He reviewed income levels, maximum allowable rents, vacancy rates, and other data studies and emphasized that the workforce program was necessary.

Mr. Lee asked whether the low rents would continue once the mortgage was paid off. Mr. Castleton said they would continue in perpetuity.

Mr. Moretti asked whether the rent would include utilities. Mr. Castleton said it would include heat and hot water.

Acting Chairman LeMay asked whether periodic incomes checks were done. Mr. Castleton said there was an annual income check and that the renter had to meet the income guidelines. He also noted that a recertification was done each year.

Mr. Lorden reviewed the site design and pointed out several restrictions, like the wetlands, easements, and slopes. He said they would meet the parking requirements and thought the development fit into the area very well.

Acting Chair LeMay asked how many parking spaces were planned and whether visitors could park under the building. Mr. Lorden said there were 122 spaces planned and that the spaces under the building were reserved for tenants, which left 15 outside spaces for each building.

Mr. Parrott noted that 46 spaces per building were indicated on the plan, and not the 47 spaces that Mr. Lorden stated. Mr. Lorden agreed that 46 spaces were correct.

Ms. DeStefano stated that some of the benefits of the location would be the ability to maintain more green space and screen vehicles. She said the brick materials were sustainable and that all the energy codes were met. She showed views of the project from nearby streets and noted that the building had the appearance of a 3-story one due to the berm.

Mr. Johnson asked whether there were any efforts to mitigate highway noise, and Ms. DeStefano said they had discussed the building envelope in detail.

Mr. Lee asked what the square footage of each apartment was. Ms. DeStefano said it was 700 s.f. for a one-bedroom apartment, and almost 1200 s.f. for a 3-bedroom apartment.

Mr. Johnson asked Mr. Lorden to discuss the relationship of the new buildings to the current plantings. Mr. Lorden replied that the buildings would provide the best buffer. He said they wanted to keep as many trees as possible, which would also create a buffer.

Mr. Pernaw said he did a study by researching daily traffic variations, which he discussed in detail. He reviewed the crash history of the neighborhood, the intersections, trip generation estimates, peak hours, and so on. He said the intersection capacity would be well below the average. He discussed the two points of access and said they would mitigate traffic issues. He summarized that the apartment building was the best use of the site.

Mr. Johnson asked whether the factor of traffic quantity for an apartment varied based on whether it was a studio or one-bedroom and whether the relationship of a residential unit to public transportation affected that factor. Mr. Pernaw said they normally based their estimates on the Institute of Transportation Engineers (ITE) figures and that the number of bedrooms did not have an impact. He said ITE did not have trip rates for workforce housing but simply used a standard apartment rate. Mr. Johnson said an average person couldn't survive on that site without some type of vehicular transportation. Mr. Pernaw said it was comparable.

Mr. Parrott asked how many cars Mr. Pernaw credited for the total number of apartments based on his model. Mr. Pernaw replied that the model did not credit any but said they went to a similar site with 90 units and counted 24 hours a day for three days and then divided the number of trips by the number of apartments, thereby coming up with a trip rate.

Mr. Davies stated that they studied vehicular needs for all their projects. He said they would provide 1.5 parking spaces for each unit and noted that they never needed more than that. Mr. Parrott said Mr. Davies didn't answer his question. He emphasized that he was talking about people who worked and that the location would not suit anyone who didn't have a car. He again asked what the baseline was as to how many cars would be garaged at the complex. Mr. Pernaw said they didn't have that number and were only dealing with trips. Mr. Parrott again stated that it was workforce housing and that people would be going out every weekday to work, and he wanted to know the facts for that location. Mr. Pernaw said the trip rate for the Rochester development was .5 trips per unit, which was comparable. Mr. Parrott concluded that there was no number and that the applicant would not assume that 80% of the renters would have two cars. Mr. Davies replied that the Rochester example was relevant.

Mr. Knight discussed the issue of diminution of property values and the fact that a lot of the homes in the area were influenced by several externalities, like the freeway noise and tension lines. He said he had determined whether adding an 80-unit complex into such a neighborhood would make an impact by breaking it into two analyses of traffic and traffic with a view of externalities. He compared nearby home sales with others on Peberly Hill Road and Lafayette Road and said the homes sold for about the same price due to the demand for houses in Portsmouth and the fact that people were willing to overlook externalities. He said the complex would not diminish property values.

Attorney Phoenix stated that workforce housing was a unique aspect of the complex and noted that the Board was required to consider the Statute for workforce housing as well as the need for

it. He read the Statute and said that premium locations were not available so they had to find other locations. He said they had to have the right combination of property and development costs for workforce housing to work economically. He also noted that they shared the neighbors concerns about traffic but that they still had the right to develop their property and believed that the complex would have a lesser effect on traffic than other possible developments. Attorney Phoenix then reviewed the variances and explained why they were necessary, and he reviewed the criteria and said they would be met.

Mr. Johnson stated that the workforce housing need was identified and should be a layer of consideration that the Board should address. He felt it was a big stretch to have 80 proposed units where eight were allowed. He asked why the applicant wasn't before the City Council to get the area rezoned. Attorney Phoenix replied that the City once moved the zone line to the far side of the property. He emphasized that the lot was 12 acres and that the layering had to consist of a certain size, scale and density to make it worthwhile to finance the project. He added that the Rochester complex had 90 units and worked. He said if the project could be economically viable with fewer units, they would do it, but they needed 80 units to make it work.

Stephanie Schurler of 380 Ocean Road stated that she as on the Board of Housing Partnership and the New Hampshire Housing Planning Authority. She noted that the housing would help the average workers like the child-care and senior assistant living ones to take care of the community and asked that the development be supported.

Robin Comstock, Executive Director of Workforce Housing Coalition for the New Hampshire Seacoast and Maine, stated that there was a critical need for affordable housing for the middle class and asked that the project be approved.

Maria Sillari of 171 Jones Avenue said that, if she lost her home, she could not afford to replace it. She said the lack of affordable land and the density needed made it a good location.

Valerie Rochon, President of the Greater Portsmouth Chamber of Commerce, said she supported the development of affordable housing and said business owners were struggling to find workers.

SPEAKING IN OPPOSITION TO THE PETITION

Due to the large number of residents who were opposed to the petition, only the names and addresses and main issues are listed below. Refer to the video or audio tape for more detail.

People opposed to the application:

- Peter Anania, 197 Woodlawn Circle
- Kevin Drohan, 1240 Maplewood Avenue
- Dave Cosgrove, 174 Echo Avenue
- Jo McCafferty, 35 Hillcrest Drive
- Mark Brennan, 225 Union Street
- Karen Valley, 30 Echo Avenue
- Francesca Fernald, 1000 Maplewood Avenue

- Carolyn McMullin, Opal Street
- Tom Heany, 30 Wholyway
- Joseph Lavin, 1250 Woodbury Avenue
- Stephanie Culver, 155 Echo Avenue
- David Columbo, 181 Echo Avenue
- David Calkins, 175 Woodlawn
- Will Gatchell, 120 Hillcrest Drive
- Chad Hillen, 220 Woodlawn Circle
- Tina Hillen, 220 Woodlawn Circle
- Yasmin Yayoi, 200 Woodlawn Circle
- Dmytri, 200 Woodlawn Circle
- Levine Dovev, 96 Woodlawn Circle
- Aaron Jones, 103 Woodlawn Circle
- Jean Burbank, 155 Echo Avenue
- Bruce Osborn, 2 Echo Avenue
- Brenna Cavanaugh, 140 Summer Street
- Bill Charland, 45 Clover Lane
- Paul Mannle, 1490 Islington Street
- Cathy Gray, 32 Farm Lane
- Cathy Cosgrove, 174 Echo Avenue
- Sherry Hogan, Woodbury Avenue
- Lenore Bronson, Woodbury Avenue and Farm Lane
- Suzanne ford, 88 farm lane.
- Sara Reed, 125 Echo Avenue
- Todd and Kristy Ford, 171 Echo Avenue
- Howard Mangold, 1275 Maplewood Avenue
- Rick Beckstead, 1395 Islington Street
- Fred McMullin, 1000 Woodbury Avenue

Issues

- Views of homeowners would be impacted by the project.
- Limited partners are not New Hampshire Seacoast-based and contrary to public interest.
- Project would destroy the neighborhood fabric.
- There is no hardship for the applicant.
- Property values would be diminished and significantly impacted.
- The location is wrong for the project because of the existing traffic issue.
- City officials are involved.
- Traffic would be increased.
- The magnitude of the development is too much.
- No one should be housed under the power lines due to risk of leukemia.
- The requested variances are too many.
- The buildings are too large and don't fit into the neighborhood.
- The request is for something illegal due to the density.

- The developers just want to make money.
- The project would reduce the integrity of the neighborhood.
- The project would affect nearby handicapped tenants.
- The traffic studies are not believable.
- The traffic and safety issues would be increased dramatically.
- The density could set a precedent for other developments.
- The due diligence of the data studies is questionable.
- The project does not pass the reasonability test.
- The zoning rules should be respected and adhered to.
- Increased pedestrian traffic, which would be dangerous in that area.
- Too many variances requested.
- Commercial traffic, like deliveries, would be impacted.
- The City should focus on the current needs of the current residents.
- Contrary to public interest because the applicant is asking for a permanent zoning change
- The streets are too small, with no sidewalks.
- The number of allotted parking spaces is insufficient.
- The project's tenants would not be as committed as homeowners.
- The corner is dangerous, with lots of accidents and traffic.
- Would adversely affect the health and welfare of the neighborhood.
- Enough workforce housing units exist that are more compatible with their neighborhoods.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. Pernaw stated that they collected the traffic data by using video technology and that they counted all the commercial traffic. He said he was sticking with his original points.

Mr. Knight said that an additional room in a house couldn't be called a bedroom because it didn't have a closet in it. He said he stood by his grid results as well as his traffic analysis.

Mr. Castleton stated that the New Hampshire Housing Authority did an annual renting survey and that none of the Portsmouth ones met the State's definition of workforce housing. He also noted that they would be the main partners for the project.

Attorney Phoenix stated that the reason for a high number of variances was that three of them were due to the 100-ft setback for a residential zone. He said the number of units was necessary for the economics of workforce housing and that the building length was also necessary. He pointed out that no expert support had been made against them.

Tom Heany, Kevin Drohan and Dave Cosgrove approached the podium and refuted those points by stating that the density didn't reflect any zone in Portsmouth and that it wasn't a valid argument to say that something worse could be added in that location.

Attorney Phoenix said they met the City's requirements for parking, which should be sufficient. He also noted that a number of support letters were submitted.

Sherry Hogan stated that some of the neighborhood residents were experts, such as builders. Chris Osmond said the City had to work with the project and find another spot. Peter Anania asked whether a crime study was done.

No one else rose to speak, and Acting Chairman LeMay closed the public hearing. Acting Chairman LeMay noted that several letters of support for the project were received, including those from Nissan, Suzuki, the Workhouse Housing Coalition of the Greater NH Seacoast, Amadeus Hospitality, Murphy Architecture, the Economic Development Commission of the City of Portsmouth, Evergreen Homeowners Association in Conway, and Great Bay Community College.

DECISION OF THE BOARD

Mr. Johnson said that people thought the project was asking too much because of the large number of variances requested. He noted that six variances could be necessary for a shed, depending on the location, so it wasn't really reflective of what someone was truly asking for. He said he fell on both sides of the application but believed it was an issue for the City Council and felt that it was worthier of City Council rezoning rather than variances.

Acting Chair LeMay reviewed the variances requested.

Mr. Moretti stated that the raw piece of land had to be done right. He said he agreed that it was a far reach. He cited an example of a Maplewood Avenue application for a large development that was denied by the Board, then denied by the Planning Board, and then denied again by the Zoning Board. He also gave other examples. He said the building was a very large density one and, although he understood the need to develop it, he felt that the requested density wasn't even close to the Zoning Ordinance.

Mr. Formella said he was on the fence because he felt that the location was good but understood the increased traffic issue, especially on Echo Avenue. He said there was a need for workforce housing. He felt that the traffic report was persuasive but noted that the neighborhood testified about what the traffic they saw. He said he leaned toward supporting the proposal but was on the fence.

Mr. Parrott stated that the basic proposal was a huge reach in terms of what was asked for. The use was not allowed in the zone, and the applicant's provided packet made a point of saying that the property as zoned could be used for lots of different things. He said it was hard to find hardship from that perspective. He noted that the Board didn't zone the area and it was zoned the way it was, which made sense for its location. He said the property was odd to develop because it was up against a wetland, with high tension power lines. He said a great deal was being asked for, particularly in the sheer size of the mass of the buildings. He also gave a great deal of credit to the neighborhood residents who turned up in force and spoke against the project.

Acting Chairman LeMay said the application differed from the Subaru one, the latter of which had to do with traffic and had a different nature and frequency. He said the project seemed more benign from a traffic standpoint. He also noted that people driving on those roads would at least be familiar with the area. He said he agreed with the comments about it being such a large

change for the area, and he felt that the City Council was probably the most appropriate committee to deal with that type of use because of the large change.

He suggested that the Board deal with the variances as one package. He said if Variance #4 was denied, the appeal of an administrative decision was requested and he felt the point was mute unless the other items were approved. Attorney Phoenix stated that he didn't think it would make it mute because they would have appeal rights.

Acting Chairman therefore suggested that the Board deal with Variances #1 through #4 first.

*Mr. Parrott moved to **review** Variances #1 through #4 and to **deny** those four variances. Mr. Johnson seconded the motion.*

Mr. Parrott stated that the first two criteria of the variance not being contrary to the public interest and to the spirit of the Ordinance were observed. He said that the Board usually stated that the proposed use must not conflict with the implicit or explicit purpose of the Ordinance and must not alter the essential character of the neighborhood, threaten the public health, safety and welfare, or otherwise injure public rights. He said the Board had heard public testimony from people who actually lived in the neighborhood for decades that spoke to the present safety issues, such as the narrow, winding nature of the two roads and the concept of dumping dozens of more cars onto those roads due to the workforce housing nature of the building. He said he thought the proposal did not satisfy those two requirements.

Mr. Parrott said that testimony from the public was compelling because so many people had different aspects to address and all came to the same conclusion that the proposal was not logical and would not benefit them, the neighborhood, or the City. He said it wasn't a case of being against workforce housing. The tenor of the comments was pertinent and based on not just a few hours of observation or studies from somewhere else, but on people's personal observations of living there. He said no one knew the neighborhood better than those who lived there. He said that denying the variances would do substantial justice because of the tipping benefit to the owners versus the public rights of the other people who were also owners of their property. He said his judgment was that the hardship to the general public would be greater than the opportunity for the present owner of the property to generate a sale for that particular purpose. He said the value of surrounding properties would be diminished. The Board heard conflicting information as to whether the study assessment was valid and whether properties were accurately discussed or not included in the study, so he said the jury was out on that issue, but he agreed more with the folks in the neighborhood who owned their properties as well.

As for the literal enforcement criteria, Mr. Parrott said that one of the most important aspects was to ask whether there were any other allowable, reasonable uses for the property as it was presently zoned, and the answer was that there were lots of other uses, as the applicant pointed out, as a matter of right that would not require a large variance situation. He said that use variances were difficult in most situations, but in that particular case, more so than most, so what was being asked for was something that did not meet the requirement because there were other legitimate, acceptable methods of developing the property that required minor variances of a dimensional nature and not a large use variance. He said the property was going from business

use to multi-unit residential use, which was treated throughout the Zoning Ordinance as separate things. He said the applicant was asking for a lot and that it didn't quite pass the test.

Mr. Johnson said he didn't agree that it was the wrong place for the project but thought they were going down the wrong road to get there. He said he felt it was a good place for mid-range housing because properties in Portsmouth were at a premium and it was the nooks, crannies and outskirts of the City that were the properties that would make sense economically to develop. He felt, however, that the intensity of the application was too much.

Relating to the first three criteria, Mr. Johnson said the application was in an SRB Zone and the Board protected those zones heartily, so the application was too much of an intense addition to the neighborhood. He pointed out that the equations for traffic tended to make sense, and the numbers were probably right. He believed that, even though there was an amazing amount of support, it was pretty biased, so there was a filter through what people who had been living there for a while said. However, he felt that there was no way an 80-unit apartment building would not significantly alter the neighborhood and that it would be like one hundred residences, which came close to doubling the size of the neighborhood. He said it was too much intensification. Mr. Johnson also didn't feel that the two different roads used for the property would be sufficient because they were very narrow, with no shoulder or sidewalk. As for substantial justice, he said an argument could be made that he could be convinced, but he felt that the potential for decreasing safety for the current residents as well as for the new ones tipped the scales to the general public and outweighed the loss to the applicant.

Mr. Moretti said he would support the motion. He said he was for workforce housing but the application was asking for ten times the amount that the City allowed. He also noted that other issues weren't brought up, like the impact of adding possibly 40 or more students to the local school and the impact to the water, sewer, and public safety. He said he hoped the applicant could work with the neighborhood and come up with something more viable.

*The motion to deny **passed**, with four in favor and Mr. Lee and Mr. Formella voting in opposition to the motion.*

*It was moved, seconded, and **passed** unanimously (6-0) to proceed after the 10:00 time limit.*

Acting Chairman LeMay stated that they had another issue to deal with, which was a new hearing on Variance #5 regarding the length of the building in that particular zone and an appeal of an administrative decision.

SPEAKING TO THE PETITION

Mr. Johnson said he believed that the material addressed the building length, and he agreed that the zoning specifically called out the residential zone requirement. He said the project was not technically in a residential zone and that the applicant should not have to adhere to the 160 feet.

Attorney Phoenix agreed with Mr. Johnson and noted that the section indicating that the buildings could be no longer than 160 feet was under the residential zone section of the

Ordinance. He said there was nothing in the commercial business zone that limited the size of the building. He said they felt that the Planning Department did not have the right to interpret that an Ordinance that applied in one zone also applied in another.

SPEAKING AGAINST THE PETITION

Mr. Healy said it was lawyer logic and asked that the administrative decision be upheld.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Phoenix said the neighbors were against it because it was a residential use in a business zone. He said the Ordinance stated that there couldn't be a building over 160 feet in the residential zone.

No one else rose to speak, and Acting Chairman LeMay closed the public hearing.

DECISION OF THE BOARD

*Mr. Johnson moved to **overturn** the determination regarding the 160-ft maximum length allowed due to the nature of it not being in the residential zone, where the language of the zoning called for it to be in a residential zone.*

Mr. Moretti seconded the motion.

Mr. Johnson stated that it was black and white. Mr. Moretti agreed, noting that it was hard to make a judgment because it was clearly based on the surveys that both the buildings were in the business zone, so he didn't think they could apply the residential zone to it.

Mr. Parrott noted that the Planning Director's memo on the subject was pretty clear. He asked whether the Legal Department took a cut at it, and Ms. Ferrini said it didn't. She said it was up to the Board to determine the decision of the Planning Department.

*The motion to overturn the determination **passed**, with 5 in favor and Mr. Parrott opposed.*

IV. ADJOURNMENT

*It was moved, seconded, and **passed** by unanimous vote to adjourn the meeting at 11:15 p.m.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary