

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

7:00 P.M.

**May 28, 2019
Reconvened From
May 21, 2019**

MEMBERS PRESENT: Chairman David Rheaume, Vice-Chairman Jeremiah Johnson, Jim Lee, Peter McDonell, Christopher Mulligan, Arthur Parrott, Alternates Phyllis Eldridge and Chase Hagaman

MEMBERS EXCUSED: John Formella

ALSO PRESENT: Peter Stith, Planning Department

The alternate Ms. Eldridge assumed a voting seat.

I. PUBLIC HEARINGS – NEW BUSINESS

1) Case 5-8

Petitioners: 75 NH Ave LLC and Two International Construction Co., LLC, applicant
Property: 85 New Hampshire Avenue
Assessor Plan: Map 306, Lot 3
District: (Pease) Airport Business Commercial
Description: Signage
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Pease Development Ordinance including the following variance:
a) from Section 306.01(d) to allow aggregate signage of 256.75± s.f. where 200 s.f. is the maximum aggregate allowed.

SPEAKING IN FAVOR OF THE PETITION

The project manager Burns Barford said they were seeking a variance for monument and building signage for their anchor tenant. He reviewed the petition and said the criteria would be met. In response to the Board's questions, Mr. Barford said the building had only one suite that wasn't currently built out and there was no obligation to any other tenant for future building-mounted signage. He said the name of the tenant would appear on the building-mounted sign and the monument sign would indicate the building's location.

Minutes Approved 6-18-19

Chairman Rheume noted that the Board recommended in 2010 that the variance be granted for 219 square feet of aggregate sign area, but the drawing showed the applicant taking advantage of 166 square feet of that. Mr. Barford said they were asking for 256 square feet of signage. He said some tenants had cycled out of one of the buildings since the previous application was approved, so some of that signage had changed, but the 75 New Hampshire Avenue tenants used to have building-mounted signage that was no longer there. He said there were currently three tenants at 85 New Hampshire Avenue and that the one getting the sign had been there since August.

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

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

DECISION OF THE BOARD

Chairman Rheume noted that the request was only a recommendation to the Pease Authority for approval or disapproval.

*Mr. McDonnell moved to **recommend approval**, and Ms. Eldridge seconded.*

Mr. McDonnell said the request was for a couple of signs, one for the header of the building and one address sign at the front of the driveway. He said that both were in keeping with the vicinity, despite not being the same design as the signs next door and elsewhere in the area. He noted that the Board could only recommend approval if the request was in harmony with the general purpose and intent of the regulations. He said there would be no adverse factor or diminution of values of surrounding properties because the building was similarly sized and shaped to the other buildings, and the requested signs were similar. He couldn't imagine any adverse effect on nearby properties. He said that recommending approval would benefit the public interest because the signs would help people find the building. He said the hardship was the fact that people had trouble finding the business. He said substantial justice would be done. He didn't see any harm to anyone else and it wasn't contrary to the spirit of the rule. He noted that the sign ordinance didn't really address the particular situation, pointing out that it was the fourth building constructed and that all the buildings had reasonable signage. He said there was nothing not in keeping with signage in the area, but because the rule applied to the lot as a whole rather than to pieces with individual buildings, the literal application of the rule would conflict with the spirit of the ordinance, and he felt that the Board should recommend approval.

Ms. Eldridge concurred and had nothing to add.

Chairman Rheume said he would support the motion in terms of unnecessary hardship related to the property. He said it was unusual to have the large lot with room for four structures on it, which probably strained the concept of the 250 square feet originally in the zoning ordinance, so he thought it made sense and was a modest, reasonable request.

*The motion **passed** by unanimous vote, 7-0.*

Ms. Eldridge returned to alternate status, and Mr. Hagaman assumed a voting seat.

2) Case 5-9

Petitioners: Lonza Biologics, Inc.
Property: 101 International Drive
Assessor Plan: Map 305, Lot 6
District: (Pease) Airport Business Commercial District
Description: Add two new generators, above ground storage tanks, a transformer pad, and gear/switch enclosure.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Pease Development Ordinance including the following variances:
a) from Section 308.02(c) to allow above ground storage tanks (AST) exceeding 2,000 gallons per facility.

SPEAKING IN FAVOR OF THE PETITION

Patrick Crimmins of Tigue and Bond was present on behalf of the applicant. He reviewed the petition, noting that the tanks would require other State approvals. He said the project would involve construction of new electric equipment to support it. He noted that there were already four generators that exceeded 2,000 gallons. He referenced his letter that addressed the criteria.

In response to the Board's questions, Mr. Crimmins said the following:

- Two generators and tanks would be added and not replace the existing ones. Some of the tanks were smaller;
- There had been no spillage and the tanks were regularly inspected;
- One tank exceeded the 2,000 gallons and had no issues. The tanks would be replaced in kind if they failed or the applicant would return for approval if a larger tank were necessary;
- The material of the new tanks consisted of a rubber lining, with steel on the outside;
- He didn't know the percentage of space that had not been outfitted in the existing envelope but said a shell was done in 2008 and was dormant for eight years but was in the process of being fit up. He said they were getting close to capacity because generators were catching up to existing space as new projects evolved;
- In a catastrophe, there were pits under the tanks to contain any leakage;
- Generators would routinely be tested to ensure that they were operating efficiently;
- Tanks greater than 2,000 gallons were necessary because they wanted generators that were similar to those on other sites and were running out of space due to the limited footprint.

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

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

DECISION OF THE BOARD

*Mr. Parrott moved to **recommend approval**, and Mr. Lee seconded.*

Mr. Parrott said it was a straightforward request and similar to what was used in many other facilities. He noted that the applicant would have a regular auditing program to check the integrity of the tanks and that the secondary backup of the pit arrangement would allow any adverse effect to be detected before getting out to the environment. He said the project would have no adverse effect or diminution of value of surrounding properties because it was just a continuation of existing machinery and facilities and there was plenty of room. He said it would be a benefit to the public interest to see the business prosper and would not pose any harm to the environment. In terms of the hardship, he said the company was the best one to know about backup or emergency power to keep their operation running smoothly, and denying the request would be detrimental to them and not have a positive effect on anyone else. He said substantial justice would be done and could see no effect on the public interest. He said the proposed use was not contrary to the spirit of the zoning of the rule, noting that people operated their businesses as they needed to in a safe and responsible fashion. He said he was satisfied that the request met all the criteria.

Mr. Lee concurred and had nothing to add.

Chairman Rheume said he would support the motion. He noted that Lonza at some point should consider whether there was a better way to provide a central tank location that would be easier to inspect than all the smaller tanks. He said it might be a positive benefit to think longer-term about having one large tank so that they didn't have to return before the Board.

*The motion **passed** by unanimous vote, 7-0.*

Mr. Hagaman returned to Alternate status, and Ms. Eldridge assumed a voting seat.

3) Case 5-10

Petitioners: Weeks Realty Trust, Kaley E. Weeks, Trustee and Chad Carter, owners and Tuck Realty Corporation, applicant
 Property: 3110 Lafayette Road and 65 Ocean Road
 Assessor Plan: Map 292, Lots 151-1, 151-2 and 153
 District: Single Residence B
 Description: Construct 23 townhouses on three merged lots.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
 a) from Section 10.513 to allow more than one dwelling per lot;

- b) from Section 10.521 to allow a lot area per dwelling unit of 4,205± s.f. where 15,000 s.f. is required; and
- c) from Section 10.440, Use #1.40 to allow townhouses in a district where they are not permitted.

SPEAKING IN FAVOR OF THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant. He introduced Michael Garrity and the architect Michael Keane. He reviewed the petition in detail, emphasizing that the project was in a transitional area between the SRB District and the Gateway. He reviewed the criteria and said they would be met.

In response to Mr. Hagaman's questions, Attorney Phoenix said the units would be just under 2,000 square feet and that it hadn't been determined whether they would be condominiums or not. He said the units would be a standard size and that they had not considered more workforce-oriented units. He said the pantry on the corner was for sale.

Ms. Eldridge said the Gateway District's standards were to create quality places by allowing site development with meaningful public centers and to encourage high-quality housing for a variety of household types and incomes. She said she wasn't sure that the applicant was meeting the spirit of the ordinance in terms of having no workforce housing or public space. Attorney Phoenix said the project was one of transition and that it was unlikely that the two front lots would be developed residentially. He said he didn't know what the leasing price would be or who a public park would draw. Mr. Garrity said they would consider a mix of unit sizes, smaller units, and opportunities for different incomes.

Mr. McDonell said he saw the traffic report and agreed that there might be a minimal change in overall volume but wondered about issues with traffic queues. Attorney Phoenix said the findings indicated that the queues were expected to be minimal. Mr. Garrity said the traffic analyst re-evaluated the traffic for the new design and said there was an adequate queuing on Ocean Road, but that they could evaluate whether two entrances were appropriate or having a dedicated turn lane. Mr. McDonell noted that the applicant said the site was unlikely to be re-developed into single-family homes. He asked if that was because it hadn't been done yet or the economics of building a house on Lafayette Road were not as good as elsewhere. Attorney Phoenix said the project made sense based on the cost of building homes and the value of land in Portsmouth. He said the property had been vacant for a long time and thought someone would have bought it by now if they thought it was viable.

Chairman Rheame said he thought the new proposal came back with less workforce housing and that he was also wondering whether the application would not be fully compliant with everything in the Gateway District. Attorney Phoenix said the Board's main concern at the previous hearing was the mass and height of the buildings. Mr. Stith said he did an analysis and found that the project was doing one building type, but if they had more than one type, it would

kick them into a development site. He said the applicant was not asking for a density incentive that would require them to provide workforce housing.

Chairman Rheume said one of the requirements was to modulate the front façade of the buildings. He asked the applicant if they had considered varying the heights and setbacks, noting that the project looked monotone. Mr. Keane said they had some room for the height to go up but not room to go down. He agreed that the buildings needed modulation and that they tried to get some variation by creating the dormer-like roof. He noted that the conceptual design could be developed further. Mr. Hagaman asked if the roofline could be adjusted if the size of the units were altered. Mr. Keane said they might have to eliminate the indoor garages to make the units smaller. Chairman Rheume asked whether the driveway corner could be made to look more aesthetically pleasing for the neighborhood. Mr. Garrity explained how they could incorporate it into the design and eliminate the giant curb cut.

SPEAKING IN OPPOSITION TO THE PETITION

No one rose to speak.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Rick Becksted of 1395 Islington Street said he was happy the building was reduced to three stories. He said he felt that the area was not considered as the Gateway due to the single-family homes around it, and he explained why there was no hardship.

DISCUSSION AND DECISION OF THE BOARD

Mr. Mulligan said he disagreed that there was no hardship. He said the requested relief was significant but the project was in a unique area that was ill-suited to the uses permitted in the SRB zone. He pointed out that one lot hadn't been developed for years, and the other lot that had a single-family home was very close to the intersection of Lafayette and Ocean Roads and had a traffic island fronting it, so it wasn't a typically desirable neighborhood for SRB. He said the applicant had acquired a few parcels and proposed to amalgamate them into a substantial land area for the vicinity, which he felt were special conditions to the property and created a hardship. Mr. Lee agreed, noting that the Board had several previous proposals to develop the property but that the applicant's proposal came closer to the best use of the property.

Mr. McDonnell agreed that there was some hardship with the property but not to the extent that it required that much relief. He said the Gateway Zone standards were relevant and thought it was reasonable to put more than a few single-family homes on the corner but that what was requested might be too much. On the other hand, he said the standard encouraged high-quality housing for a variety of household types and incomes, which leaned in favor of allowing a denser development, so he was torn. He said he still didn't think the 2,000-s.f. units would be appropriate but felt that a somewhat lower number and a variety of sized units might help and may be closer to appropriate relief for the hardship. He noted that the property was at the edge of

a very large chunk of the SRB zone and that it wasn't unreasonable to expect that it would stay that way. He thought it could stay somewhere in the middle. Vice-Chair Johnson said the fact that the property was located at an edge of a zone was a good opportunity for that type of development, noting that the zoning didn't really account for a buffer zone. He explained it in further detail. He said he wasn't completely sold on the number of units and thought it might be too much for the location, but he also thought it was close.

Ms. Eldridge said it seemed like a reasonable development at the end of single-family units and that it wouldn't take away from property values, but she was troubled by invoking the Gateway District for an increase in density and wanted to see more affordable units involved. Vice-Chair Johnson said it wasn't the Board's place to put that type of stipulation on a project of that nature. He said the Board was being asked to consider something more intense than the zone around it despite the fact that there was a residential zone there. He said he found it interesting that none of the multiple residential abutters were present to speak in opposition.

Mr. Parrott said that for him, the area was logically one-sided on Lafayette Road. He said the logical dividing line between the SRB area and the Gateway area across the street was almost irrelevant because the road was so big and busy that it was a logical barrier and that it wasn't surprising that the two sides of the road were very different. He said the lots represented a proposed corner of a substantial residential zone, and what was being asked was ambitious for that amount of land, especially in terms of density in an SRB. He said the proposal was much better than the applicant's previous one in that it was totally residential, but he thought it was still too intense and not at the level that would meld with the adjacent properties.

Chairman Rheume said he thought the applicant met the hardship because the lots were unusually large, relative to the majority of the lots in Maple Haven, and that part of the reason the lots didn't sell was that there was a value to the actual land. To put a single-family home on it, the value of that home relative to the value of the large lot made a lot less sense than there would be for a smaller subdivision of the properties. He said he didn't know how it ended up that some of the other areas were broken up with streets and smaller lots were created that had the 1950s feeling of smaller single-family homes. He said it was a huge amount of land in an odd configuration that didn't lend itself to being usable for accessory uses for a single-family home. He said it had an awkward feel to it and was on an edge zone as well, which created a hardship. He said the applicant struggled more with the spirit of the ordinance in terms of requesting a lot of relief regarding the SRB. He said he was concerned that the Board might be spot-zoning the property by granting the relief. He said it was a big step in being more in keeping with the public interest and the character of the neighborhood, but that the number of units and massing would have an artificial creation feeling that the rest of the neighborhood didn't have. He said that more effort in creating variety and in the number of units might make him more comfortable.

Mr. McDonell moved to deny the request. Mr. Parrott seconded.

Mr. McDonell said the Board had a good conversation and that he agreed with most of the comments. He thought the petition failed to meet the hardship. He said there was some hardship but didn't think it reached the level that it needed to in order for the Board to grant such an

extensive request. He thought there was a possibility that it would change the character of the neighborhood because there were uniform small, single-family homes on that corner, and in order to be in keeping with the character of the immediate neighborhood, the project needed to be closer to that. He said he didn't think the project observed the spirit of the ordinance because a transition zone wasn't a thing. He said the Board was required to look at it as the SRB and, while it was sort of a transition area, it would be too much of a transition and wouldn't provide the buffer between the interest of the neighborhood in the Gateway District and other areas of the vicinity. He said for those reasons he didn't think the petition met the criteria.

Mr. Parrott concurred and had nothing to add.

Vice-Chair Johnson said he would reluctantly support the motion. He thought the project was close but felt that, based on the commentary, there was a little bridge that needed to be gapped to get there. Chairman Rheume agreed that it was very close and that good things were proposed, but it was still an SRB zone. Ms. Eldridge said she would not support the motion because, even though the project was significantly different from the Maple Haven area, she didn't see that it would infringe or change lifestyles in that area and also didn't think that what presently existed added anything to the neighborhood.

*The motion to deny **passed** by a vote of 4-3, with Mr. Lee, Mr. Mulligan, and Ms. Eldridge voting in opposition.*

Ms. Eldridge returned to Alternate status, and Mr. Hagaman assumed a voting seat.

4) Case 5-11

Petitioners: Michael R. & Denise Todd
 Property: 254 South Street
 Assessor Plan: Map 124, Lot 9
 District: Single Residence B and the Historic District
 Description: Install A/C unit.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:
 a) a variance from Section 10.521 to allow a 6.5'± left side yard where 10' is required.

SPEAKING IN FAVOR OF THE PETITION

The applicant Denise Todd reviewed her petition, noting that a fence would shield the air conditioning unit but that the piping would run up the building.

In response to the Board's questions, Mr. Todd said her neighbors approved the project. She said other areas on the property would not be suitable because the piping would have to run all the

way around the house and would still have to go upstairs. She said the unit had to be on the ground versus mounted to the wall. She said the unit and the piping would match the house.

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

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

DECISION OF THE BOARD

*Vice-Chair Johnson moved to **grant** the variance for the petition as presented and advertised, and Mr. Hagaman seconded.*

Vice-Chair Johnson said granting the variance would not be contrary to public interest and would observe the spirit of the ordinance. He said it was a small mechanical unit placed on the side of the house on a narrow lot and would not affect the essential character of the neighborhood nor threaten the public's health, safety, or welfare. He said it was a common amenity and that other properties had similar units. He also noted that, even though it would be close to the property line, it would be low and quiet. He said substantial justice would be done because it would be modern mechanical system that would benefit the applicant but have no effect on the general public. He said granting the variance would not diminish values of surrounding properties because the unit was common on surrounding properties. He said the hardship was that the lot was narrow and skewed in a parallel shape, so it created a unique geometry. He said the driveway on the other side of the property was another logical reason to place the unit in its location. He said that denying the variance would penalize the applicant and create a hardship. He said it was a reasonable request.

Mr. Hagaman concurred and had nothing to add.

*The motion **passed** by unanimous vote, 7-0.*

Mr. Mulligan recused himself from the petition, and Alternates Eldridge and Hagaman assumed voting seats.

5) Case 5-12

Petitioner: PNF Trust of 2013, Peter N. Floros, Trustee
 Property: 266 -278 State Street
 Assessor Plan: Map 107, Lots 78, 79 & 80
 District: Character District 4, the Downtown Overlay District and the Historic District
 Description: Construct mixed use three story building with penthouse.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:

- a) from Section 10.5A43.31 to allow a 55' height where 45' is the maximum allowed for 2-3 stories (short 4th);
- b) to allow a structure to be designated as a penthouse without meeting the 15' setback from the edge of the roof as outlined in the definition of a penthouse;
- c) from Section 10.5A41.10C to allow 93% building coverage where 90% is the maximum allowed and a 3' rear setback from the lot line at the center building where 5' is the minimum required.

SPEAKING IN FAVOR OF THE PETITION

Attorney John Bosen was present on behalf of the applicant and introduced members of his team, including the architect Michael Keane. He reviewed the petition, noting that the Historic District Commission (HDC) felt that it met their terms of mass and scale. He reviewed the criteria and said they would be met.

Mr. Hagaman asked if the Times Building would have a connection to the new building. Mr. Keane said they would integrate all three properties and have a shared elevator and stairway egress, but it was complicated because the floor plans didn't match. He further explained it.

In response to Vice-Chair Johnson's questions, Mr. Keane said they had not ruled out an internal connection of the two buildings. He said the plan for the back of the building was to have the façade for the Times Building on the alley side but that it might not be possible. He said they would work it out with the HDC. He said the south side had not been determined. He said they were discussing with the HDC whether the maximum opening percentage would be maintained between 15 and 25 percent. He believed that they could get some windows in as well. He noted that the applicant had a condition of sale with 84 Pleasant Street and they could have more flexibility to diminish some requirements for the fire wall. Vice-Chair Johnson asked what the HDC's feedback on the penthouse was. Mr. Keane said two or three Commissioners were uncomfortable with it but agreed to see what happened with the BOA approval. He said those Commissioners were uncomfortable with the height but were considering tradeoffs between restoring the Times Building and getting something back with the penthouse.

In response to other questions from the Board, Mr. Keane said the Times Building was 53 feet tall and the new building was 55 feet tall. He said the elevator would extend five feet over that and that they needed to figure out how to hide the mechanical equipment appurtenances.

Chairman Rheaume said he couldn't think of anything else in the neighborhood that had a similar penthouse above a Victorian mansard style. Mr. Keane said there were stepback roof penthouse designs in more traditional projects throughout the city. He said they wanted the more traditional mansard and that it also gave them the definition of a short story. He said there was no other way to recover the square footage lost from the Times Building. Chairman Rheaume said the penthouse would be very visible from Pleasant Street and asked what drove not having the 15-ft setback on the back end. Mr. Keane explained how the penthouse would be unusable. He said the intent was to merge all three lots. Vice-Chair Johnson asked if the roof appurtenance had

eight feet leeway above the building height, noting that if the Board approved the height, the appurtenance went with it. Mr. Stith said he would research it.

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

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

DISCUSSION AND DECISION OF THE BOARD

Mr. Lee said he liked the look of the project and would approve it. Mr. Hagaman said the penthouse felt out of character with surrounding properties. Vice-Chair Johnson said the penthouse approach was one that was seen all over town and that he thought it could work, and he didn't think the penthouse would be seen by people walking in the area.

Chairman Rheume said he understood that the cornerstone to downtown required a substantial building. He said he liked the first four stories and thought the building was subservient to the Times Building. He said it needed to be the focal point of the block as far as being historically significant and architecturally significant. However, he said the view corridor down Pleasant Street was important and the penthouse would be very visible from the downtown's hub. He said no matter how it was styled, it would stick out and detract from the Times Building. He said he was also concerned that the penthouse was moved all the way back from the property. He asked what the hardship was, noting that the structures behind it were much shorter and there would be a view sight of the penthouse. He said it would seem very awkward and was contrary to what the Board usually asked for in building height. He said he wasn't sure what the added benefit was. He noted that economic burdens were not part of the Board's criteria. He said he was okay with everything else except the penthouse.

Ms. Eldridge said she thought it was unusual for a penthouse to go up with new construction but said she could support the project.

*Mr. Lee moved to **grant** the variances as presented and advertised, and Ms. Eldridge seconded.*

Mr. Lee said the lot was vacant for two years and the applicant went to great lengths to retain the Times Building. He said the difference between the Times Building and the new building would be only two feet and that the applicant was asking for 10 feet, so he didn't feel that the applicant was asking for too much of a variance. He said granting the variance would not be contrary to the public interest or to the spirit of the ordinance. Substantial justice would be done because it was a nice-looking building and the Times Building would be restored. He said granting the variance would not diminish the value of surrounding properties and that literal enforcement of the provisions of the ordinance could result in a hardship. He said there were special conditions, which included having to incorporate the Times Building into the new building design.

Ms. Eldridge concurred and had nothing to add.

Mr. McDonnell said he agreed with Chairman Rheume's comments. He said where it failed for him was that it didn't look like it was in keeping with the character of the neighborhood. He said he had no issue with the first four floors and liked the design, but the fifth floor looked like it was added on after the fact. He said it didn't comply with the height requirement and that he didn't think it needed that much mass. Mr. Hagaman agreed, noting that there didn't seem to be much hardship with regard to the penthouse. He said he would be in favor of granting a motion with the exception of the penthouse variance.

Vice-Chair Johnson said he would support the motion but thought the hardship was not tied to the criteria. He said he fire put the applicant in that position, and he also considered the extent of the position the applicant was put into for having to maintain the existing Times Building. He said the prominent location of the corner lot and the fact that the applicant was forced to have to create the building by nature of its relationship to the Times Building weighed on him enough to look past where the application might fall short. He said he placed his faith in the HDC process that a resolution would be worked out with the applicant for a design that was pleasing to everyone. He said it wasn't the height, it was the penthouse.

Chairman Rheume said he would not support the motion because for him, it was the height. He said they worked hard to preserve the Times Building and that the new building had to respect it, but the penthouse would look like it wasn't. He said the views of the area were such that the penthouse would stick out and would not be in keeping with the characteristics of the neighborhood. He said the lot had been empty for a few years but that he was hopeful the building would be there for the next couple of hundred years.

Mr. Stith said that if the 93 percent building coverage was approved, it would implicate that the open space was 7 percent. He said the Board should acknowledge that they were also allowing less than the required open space.

Chairman Rheume requested a stipulation that the Board allow seven percent open space. Mr. Lee and Ms. Eldridge agreed. The motion was amended to include the stipulation.

*Mr. Lee moved to **grant** the variances with the following stipulation:*

- *That seven percent of open space be allowed.*

Ms. Eldridge seconded.

*The motion **passed** by a vote of 4-3, with Mr. McDonnell, Mr. Hagaman, and Chairman Rheume voting in opposition to the motion.*

Mr. Mulligan assumed his voting seat. Mr. Hagaman resumed his Alternate seat, and Ms. Eldridge retained her voting seat.

6) Case 5-13

Petitioners: 2219 Lafayette Road LLC
Property: 2219 Lafayette Road
Assessor Plan: Map 272, Lot 1
District: Single Residence A and Gateway Neighborhood Mixed Use Corridor (G1)
Description: Parking space size and location.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
a) from Section 10.1113.20 to allow parking between a principal building and a street;
b) from Section 10.1114.21 to allow 8.5' x 18' parking spaces where 8.5' x 19' spaces are required.

SPEAKING IN FAVOR OF THE PETITION

Corey Colwell was present on behalf of the applicant. He said the applicant was Portsmouth Used Car Superstore and was located in the Gateway neighborhood/mixed use corridor. He reviewed the petition, noting that the owner wanted to turn the dealership into an Acura one and needed three additional small buildings that would alter the parking layout. He said the new spaces had to transition to the existing spaces and that parking was needed between the street and the principal building. He reviewed the criteria and said they would be met.

In response to Mr. Mulligan's questions, Mr. Colwell said the gross number of parking space would increase because of the size increase in the building. He said the vehicle display parking would be the same stall setup proposed but the only difference would be that the vehicles displays would not be lined, while the customer and employee parking spaces would be. He said the dealership facility was built in 2000. Chairman Rheume asked whether the Superstore animated sign would be removed. Mr. Colwell said it would be replaced by the Acura sign.

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

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

DECISION OF THE BOARD

*Mr. Mulligan moved to **grant** the variances for the petition as presented and advertised, and Mr. Parrott seconded.*

Mr. Mulligan stated that most of the parking would be for display vehicles, so there was no fair and substantial relationship between the dimensions of the parking and their application to auto display car lots. He said the other parking would be for visitors and employees and would work well with the smaller dimensions that were previously approved. He said granting the variances would result in substantial justice because the loss to the applicant if denied would outweigh any

corresponding gain to the public. He said it would not be contrary to the public interest and that the essential character of the neighborhood would not be altered. He said no one driving by would notice anything different other than nicer cars and a more tasteful sign. He said the same reasons would apply to the value of surrounding properties not being diminished. He said the hardship was that the existing built environment was a special condition because it was already built as a dealership and had parking between the principal use and the street, so there was no fair and substantial relationship between that prohibition and its application to the property. He said the size of the parking stalls were historically smaller than what was now required and didn't seem a problem, so there would be no fair and substantial relationship between that requirement and its application to the property. He said the proposal met all the criteria.

Mr. Parrott concurred and had nothing to add. *The motion passed by unanimous vote, 7-0.*

II. OTHER BUSINESS

There was no other business.

III. ADJOURNMENT

It was moved, seconded, and passed by unanimous vote to adjourn the meeting at 9:50 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary