

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

**August 26, 2008, Reconvened
From August 19, 2008**

MEMBERS PRESENT: Chairman Charles LeBlanc, Vice Chairman David Witham, Thomas Grasso, Alain Jousse, Charles LeMay, Arthur Parrott

EXCUSED: Carol Eaton, Alternates: Derek Durbin, Robin Rousseau

ALSO PRESENT: Lucy Tillman, Chief Planner

I. PUBLIC HEARINGS

8) Petition of **Catherine R. Whelan, owner**, for property located at **660 Middle Street** wherein a Variance from Article III, Section 10-302(A) was requested to subdivide one lot into three lots with: a) proposed lot 1 to have 70'± of street frontage on Middle Street where 100' is the minimum required, and b) to allow proposed lots 2 & 3 to have access off a right-of-way. Said property is shown on Assessor Plan 147 as Lot 19 and lies within the General Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard W. Pelech stated that this property was unique because of its unusual shape as well as size. He indicated Lot #19 and another large lot next to it on the tax map, noting that these were the two largest in the area and most uniquely shaped. Although the address was on Middle Street, there was no conforming frontage on that street. The property was also bounded by Chevrolet Avenue, which runs along the entire back of this property, from Cass to Plaza 800. The avenue was divided into three segments, which were highlighted on the table he passed out, listing the length of each segment. This included the 30' right of way which the City maintains and plows. The Public Works Facility survey plan in his packet, designated "D-27228," showed the entire length of Chevrolet Avenue, beginning at Cass Street and running past the Whelan property. It was then designated as a right of way from the old Public Works entrance to Plaza 800.

Attorney Pelech stated that there were properties utilizing Chevrolet Avenue as their frontage and a number of driveways exiting onto it. They were asking to have two lots with Chevrolet Avenue as their frontage, one with 113' of frontage and the other with 114'. To minimize the impact on the evergreen trees, they would share one driveway onto the street. He stated that,

while it might be legally correct that Chevrolet Avenue was not a street, the City acknowledged it to the State as a street and received aid based on that acknowledgement.

Attorney Pelech stated that the other variance they were seeking would be to allow the existing home to have 69.83' of frontage. Addressing a letter in the file from the Neilsons, he stated that they had misunderstood the application and thought it was for property abutting them, which it was not. There would be adequate buffering around these lots, as indicated in the aerials he had provided that evening. All three lots were conforming as to size.

Addressing the criteria, Attorney Pelech stated that granting the variance would not be contrary to the intent of the ordinance, which required that lots have a certain area and frontage on a public way so that emergency personnel, services, etc can have access. These lots were served by municipal water and sewer. They were oversized for the area and would not result in overcrowding the land or result in an over-intensification of use. He stated that, with the need for housing in Portsmouth, it would be in the public interest to create two additional lots. They were not going to require extra services or result in increased traffic or obnoxious noise.

Attorney Pelech stated that the special condition of the property was its 1.3 acre size with only 68.7' of frontage and the practically triangular shape. He stated that the hardship on the owner would not be outweighed by any benefit to the general public in denying. The two lots would not affect the front lot or other lots. He stated that the value of surrounding properties would not be diminished by this reasonable use of the property. On the additional aerial photographs he had submitted, he had put an "N" on the Neilson house so the Board could see where it was in relationship to the Whelan property.

Chairman LeBlanc referred to the tax map on which it showed a right of way along the back part of the lot and asked if part of that area was included in the size of the lot. Attorney Pelech stated he did not believe it was, although it might. He didn't know how the City calculated. The right of way had been paved and was part of the roadway. He distributed a deed from 1910 which confirmed the 1890 deed setting forth the right of way, basically granting it to the people of the City of Portsmouth. When they built the Malthouse Exchange in the 1980's, they agreed that a portion of the right of way and a portion of the Malthouse Exchange property would be paved over to create travel lanes which made up Chevrolet Avenue from the old Public works driveway to the first entryway to the Malthouse Exchange parking lot.

In response to further questions from Chairman LeBlanc, Attorney Pelech stated that the properties had not been recently surveyed. He confirmed that buildings could be erected on the two new lots without further variances as the lots would be in excess of 15,000 sf.

Mr. Parrott asked if Legal Department had taken a position as to the status of this section of the roadway, considering that there was some question between the 1997 Easterling Survey showing the right of way along the back of the lot and this other more recent plan. Ms. Tillman stated they had not. The Legal Department had taken a position on where it was shown as Chevrolet Avenue and no position on the rest. Mr. Parrott asked if he was correct that they could, if they were asked. Ms. Tillman stated that it would involve a great deal of legal research and it would be better for the applicant to present it to them for review rather than the Legal Department doing the research.

SPEAKING IN OPPOSITION TO THE PETITION

Mr. Scott Brown stated that he was speaking for his mother, Judith, whose family had owned Lot 3 on the tax map for 75 years. They had no opposition to the lots as proposed. One of her concerns was that she does have trees and, if the variance was granted, wanted it recognized that the trees not be disturbed. There was also a sewer line on the left side of her property and she was concerned that they not hook into this very old system. They wanted to ensure that the water and sewer issues were addressed.

Chairman LeBlanc stated that, if the trees were on his mother's property, they couldn't be touched. Mr. Brown stated they wanted to ensure that there was no damage to the roots by construction vehicles.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Pelech stated they would make a stipulation to not remove any trees along the property line. If and when they went to the Planning Board, they would be required to supplement the trees or put up a fence. Regarding the sewer, when the abutter received approval to turn the carriage house into a residence, they discovered that her sewer line comes out the back onto the right of way and along their property fronting Chevrolet Avenue and ties into the sewer there. This was a new line put in within the past few years and they would not be using the sewer along the Brown property. Water was also accessible without affecting the Brown property.

Mr. Brown stated that, with those representations and no tie-in to their sewer, then they had no objections.

Mr. John MacDougal stated that he lived at 34 Friend Street. There was ground water under his property and a number of others, which affected them after heavy rainstorms. If the house were lower than the original, how would ground water be affected? Chairman LeBlanc stated that was something the Site Review Committee would deal with. Attorney Pelech stated that the land slopes up from Chevrolet Avenue to Middle Street and the Planning Board may require some adjustment. They wouldn't put basements below any high ground water tables they encountered.

DECISION OF THE BOARD

Mr. Witham made a motion to grant the petition as presented and advertised, which was seconded by Mr. Jousse.

Mr. Witham stated that he didn't want to take on trying to define Chevrolet Avenue. The way he viewed it the applicant's property line went to the middle of the avenue and then there was a 15' easement resulting in a 30' right of way, which the City maintained. To all intents and purposes, except for ownership, it was a city street.

With reference to the first variance request for the Middle Street frontage, this could be a 50 acre lot that went back forever and it would still need a variance because of the way the lot is

configured. This was an existing condition which predated zoning and the City was able to provide the necessary services with no problem. The second variance had been discussed somewhat in his initial comments. On the site map, it was listed as a right of way, but in consideration of the paving and the striping and the maintenance by the City, he felt it was a street and not an accessway.

Mr. Witham stated that he would like to add a stipulation that the Planning Board be requested to provide a 20' buffer along the property line to the north for tree protection and to protect root systems along the property. Mr. Jousse concurred.

Chairman LeBlanc stated that he would like to propose another stipulation, which was that there would be only one curb cut as was mentioned in the presentation. Messrs. Witham and Jousse agreed to add the stipulation.

Mr. Witham stated that the public interest would not be affected. Creating three lots out of one large one was not going to change the character of the neighborhood. The lots would still be larger than most in the area. The special condition was that the front property line predated zoning and its reasons for requiring 100' of frontage. That amount of frontage had functioned well and there was no other reasonable way to fulfill the 100' requirement without a variance. With regard to the use of the right of way, the spirit of the ordinance was to control developments so that there would not be two off a dirt path. This was not a dirt path, but functioned as a street for a large plaza and a number of other properties. Two houses could be supported on one driveway. He felt that denial would be an injustice to the owner. Mr. Witham stated that there would be no diminution in the value of surrounding properties. One neighbor had no problem and they had heard from another neighbor who ultimately supported the project once their concerns were addressed.

Mr. Jousse stated that the hardship in the property was that there was less than 70' of frontage on Middle Street and nothing could be done without a variance. With regard to the second variance, he had always been under the impression that Chevrolet Avenue was a public road. It's been viewed and treated as a public street.

Mr. Witham added that he was not disregarding the letter of opposition from the Neilsons, but felt they were referencing the wrong lot and counsel had clarified that there was, indeed, a large lot which separated them from this property.

Mr. LeMay stated he would not support the motion. If they stipulated, for the sake of argument, that Chevrolet Avenue was a public right of way or a full-fledged street, that meant that the lot right now was conforming. It had a lot of frontage on a public street. Granting this variance would make this a nonconforming lot and it didn't seem to him that was justification for the amount of development done, although he would agree that these lots were a very good size. The applicant wasn't prevented from doing some development on the lot with enough frontage to meet the requirements of the zoning without requiring a variance.

Mr. Parrott felt that the Board should not usurp the intent of the ordinance. The City's submission to the State did not constitute legal proof. He felt that the right of way as shown on the 1997 map was in dispute. If the property owner wanted to develop the property, they could

have a survey done and find out the status. If that wasn't acceptable to them, they could apply for relief. This Board should not take it upon itself to declare the right of way a street.

Chairman LeBlanc stated that the variance was to grant a sub-division with access off a right of way. It was not saying it was a public street.

Mr. Parrott stated that his point was that, if the variance was granted, it would be used as an argument. He reiterated that they were overstepping their authority to rule on this. It had been made clear by the Planning Department that this was in dispute and it could readily be solved by an up-to-date survey.

Mr. Witham stated that he didn't feel they were trying to overstep their bounds by getting involved. He felt the property lines were clear and that the City doesn't own the right of way. The City had entered into an agreement to bring a street down the right of way for access to facilities, such as the Malthouse Exchange and Public Works. They entered into an agreement as to how it could be used, paved and maintained it, and allowed traffic to businesses. The request was for access off a right of way, which he felt could handle a driveway for a few cars.

Mr. Parrott stated that he didn't think the Board should grant a sub-division off this right of way and didn't think it even met the standards of a public street in Portsmouth.

The motion to grant the petition as presented and advertised, with the stipulations that, 1) the Planning Board be requested to specify a 20' buffer along the property line to the north for the protection of existing trees and root systems; and 2) that, as presented, there would only be one curb cut for lots 2 and 3, was passed by a vote of 4 to 2, with Messrs. LeMay and Parrott voting against the motion.

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9) Petition of **7 Islington Street, LLC, owner**, for property located at **29 Tanner Street** wherein a Variance from Article III, Section 10-303(A) was requested to allow a lot line relocation resulting in: a) the lot area decreasing from 3,342 sf to 3,025 sf in a district where the minimum lot area is 7,500 sf., b) the house having a 11.24'± rear setback where 15' is the minimum required; and, c) the existing deck having a 10.72'± rear setback where 15' is the minimum required. Said property is shown on Assessor Plan 126 as Lot 49 and lies within the Mixed Residential Office district.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Paul McEachern stated that he was there with a representative from Ambit Engineering who was distributing some plans. Referring to the blow-up of the tax map, he indicated Bridge Street at the top along with the Bridge Street parking lot. Islington Street was on the right and Hanover Street on the left. At the bottom was Tanner Street. This was one of the older sections of the City and the common division line between lots was a meandering straight line except for the bite that the 29 Tanner Street property took out of the property to its back. This application was for a lot line adjustment to bring the property into alignment. It would take 1,000 s.f. from the Tanner Street property and give it to the Bridge Street lot, these lots under common ownership. As a part of this, the applicant was going to remove a portion of the Tanner Street structure.

Attorney McEachern stated that all of the lots along Tanner Street were nonconforming to one degree or another. This lot line adjustment would make it less nonconforming because the rear setback would be increased with the removal of that portion of the structure from the Bridge Street lot and also allow the building on the Bridge Street lot to eliminate two 90° angles. He stated that the Tanner Street lot would continue to be nonconforming as to lot coverage and setbacks, but with the rear setback less nonconforming.

Addressing the criteria, Attorney McEachern cited the Mulcahey v. Chichester decision, which held that to be contrary to the public interest, a proposal must violate the basic zoning objectives of the Zoning Ordinance. He stated that this lot line readjustment did not conflict with the objectives or alter the essential character of the locality. The other considerations were public health, safety or welfare, none of which were in jeopardy here. The hardship and special condition of the property was that the property line intrudes into the Bridge Street property and it would be a reasonable use of the property to allow the applicant to construct a building without two extra 90° angles. He stated that there would be no gain to the general public in denying the variance, but the applicant would lose. He noted that there were Central Business properties all around this lot and property values would likely increase because of the changes. Attorney McEachern stated that the Planning Department staff had a question as to whether a single family house had room for parking and referred them to an exhibit provided that evening which showed that there was room for parking. He noted that, with a single family dwelling, vehicles can back out onto the street.

Mr. Grasso asked if the existing stockade fence would be moved. Attorney McEachern stated he didn't know. There would be a building on the Bridge Street lot, which was zoned Central Business B and had a zero lot line, so they will be building up to the line.

Mr. Grasso stated that the fence was on the Tanner Street property and, with the proposed lot line change, would be on the Bridge Street side. Attorney McEachern stated it would come down and he didn't know if they would put up another. He didn't see the need for a fence.

In response to questions from Mr. Jousse, Attorney McEachern confirmed that Lots #49, #51 and #52 were under common ownership. They were not considering combining all into one lot as with #52 and #51, there had already been a lot line adjustment. Lot #51 was in condominium use and will be owned by the unit owners.

Mr. Parrott asked if the engineering review had indicated a reason for the odd lot line in the ground structure. Attorney McEachern stated the properties go back to the middle 1800's and the lot line adjustment probably conformed to then existing buildings. There may have been a swap of land from #51 to #50 at some point. He didn't think there was any physical reason.

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

With no one rising, the public hearing was closed.

### **DECISION OF THE BOARD**

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

Chairman LeBlanc asked if the maker was agreeable to a stipulation that the parking be as delineated on the plan submitted to them and that the one-story structure to the left rear of the building be torn down.

Mr. Parrott stated he was. The motion, with stipulations, was seconded by Mr. LeMay.

Mr. Parrott stated that it made sense to square off the lot. It had less than half the required area in any case, so the reduction of 317 s.f. was not a serious difference in terms of compliance with the Zoning Ordinance.

Mr. Parrott stated that there was no real public interest in this line between two properties, interior to the block. The special conditions resulting in a hardship were in the argument made regarding development of the adjacent lot. Literal enforcement would hinder that development. The special conditions were also the orientation of the lots and the placement of the buildings. This was the only way to improve the situation as there was no other way to square off the lot and the harm to the Tanner Street lot was negligible. He stated that it would be in the spirit of the ordinance to facilitate a reasonable use of the property while not infringing on neighbors or the public. Regarding justice, there would be no damage to the public that would override the benefit to the applicant. There would be no perceptible change to the functionality or value of the adjacent lots.

Mr. LeMay stated that granting the variance would not go against the objectives of the Zoning Ordinance. There was no public interest involved and the lots would be consistent with abutting properties.

The motion to grant the petition as presented and advertised, with the stipulations that 1) the parking be as delineated on the parking exhibit submitted at the hearing (Tax Map 126-Lot 49, dated August 26, 2008), and 2) that the one-story structure to the left rear of the building (as shown on the Area Calculations Plan dated April 28, 2008) be torn down, was passed by a unanimous vote of 6 to 0.

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Chairman LeBlanc stepped down for the following petition and Vice-Chairman Witham assumed the Chair.

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10) Petition of **Mitchell Shuldman and Diane L. Schaefer, owners**, for property located at **620 Lincoln Avenue** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow an irregular shaped 311 sf one story addition with a 17'± rear setback where 20' is the minimum required. Said property is shown on Assessor Plan 148 as Lot 16 and lies within the General Residence A district.

Vice-Chairman Witham noted that there were only 5 sitting Board Members and 4 votes votes would be needed for approval. He offered the petitioner the option to postpone the hearing. Ms. Anne Whitney, representing the applicant, indicated they would go forward.

### **SPEAKING IN FAVOR OF THE PETITION**

Ms. Anne Whitney passed out a list of abutters in favor of the project. She reviewed the submitted packet which included a tax map with the lot circled. The existing garage was not shown, but she indicated it was in the lower left corner. She stated that there was a mix of moderate and large size lots in the neighborhood. The lower photograph showed the side yard and part of the original house. They would take off where the doorway was and remove the deck. The top right photo was the side view of the garage and the final photograph showed the side entry where the ell would be removed. The proposal was to remove the shed structure and deck. The head room at the eaves was only 5' so it was not usable. They would like to rebuild part as a mudroom with a higher roof line and bump out an additional 3' to provide for a room off the kitchen and access to the yard. They would be adding 95 s.f. of coverage, 66 s.f. of which would be within the setback.

Ms. Whitney referred to the floor plan and elevations and outlined the various options they had considered before asking for the small relief from the rear setback. Referring back to the tax map, she stated that lot #17 was actually generous compared to other properties and the configuration allowed for a fair amount of open space. There was over 80' to lot #11 and over 40' to the garage of the other abutter.

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

With no one rising, the public hearing was closed.

### **DECISION OF THE BOARD**

Mr. Grasso made a motion to grant the petition as presented and advertised, which was seconded by Mr. Parrott.

Mr. Grasso stated that the applicants were partly rebuilding something that was there, but slightly larger and providing better interior access to the home. He stated that granting this small degree of relief from the rear setback would not affect the public interest. The special conditions resulting in a hardship were the current layout of the garage and the existing building, which would only allow the proposed addition to go where it was proposed. The applicants had testified that they had looked at other options and they did not flow without major renovations. This was a minor request. They would be demolishing some of the existing structure and just rebuilding slightly larger. He stated that the proposal would fulfill the spirit of the ordinance by allowing sufficient light and air to surrounding properties. Justice would be done and the value of surrounding properties would not be diminished.

Mr. Parrott stated that he agreed with Mr. Grasso's comments and had nothing to add.

The motion to grant the petition as presented and advertised was passed by a vote of 5 to 0.

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Chairman LeBlanc resumed the Chair.

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11) Petition of **Paul G. and Patricia L. Elkins, owners**, for property located at **35 Rogers Street** wherein Variances from Article III, Section 10-303(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 6' x 11'6" one story porch with a 2'± left side setback where 10' is the minimum required. Said property is shown on Assessor Plan 116 as Lot 42 and lies within the Mixed Residential Office district.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Paul Elkins stated that the small porch shown in the photographs in his package had probably been added to the building 70 or 80 years ago. It was constructed of older materials and now the roof leaked, there were rotted boards and the floor was collapsing. They could possibly repair it as it was, but due to its poor construction, it should all come down. They were requesting permission to replace it with a structure of the same size, same footprint. This would be more open and more appropriate to the house. The design would have to be approved by the Historic District Commission. Due to the condition of the existing structure, there was a rear door which they cannot use for access to the backyard, creating a hardship. He felt that it would be a benefit to the neighborhood to remove this unsightly structure.

In response to questions from the Board, Mr. Elkins indicated that the new structure would remain one-story and would be open, with columns. It would essentially be a platform with a hip-style roof over it, open to the backyard.

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

With no one rising, the public hearing was closed.

**DECISION OF THE BOARD**

Mr. Grasso made a motion to grant the petition as presented and advertised, which was seconded by Mr. Witham.

Mr. Grasso stated that this would simply replace a current porch which was in disrepair with one in the same footprint, but open. He stated that he could see no public interest in this petition other than to present a structure which was in decent shape. The hardship and special conditions were the size of the lot and the way the house runs parallel to the porch 2' from the property line. With these conditions almost anything done to update the porch would require a variance. He noted that they were proposing to build in the same footprint, so there would be no further intrusion into the setback. He stated that a nice upgrade for the neighborhood and the property would be in the spirit of the ordinance and not result in any diminution in the value of surrounding properties. There would be no benefit to the public in denying the variance.

Mr. Witham stated that, if they wanted to stretch the criteria, they could say that the proposed porch would be less nonconforming because it was an open porch. This would be more beneficial and in keeping with the intent of the ordinance than the existing structure. He noted that there was no abutting structure in close proximity.

The motion to grant the petition as presented and advertised was passed by a unanimous vote of 6 to 0.

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12) Petition of **Paul Nakrosis and Millie Nakrosis, owners, and Michael Brandzel, applicant**, for property located at **39 Dearborn Street** wherein the following were requested to place a 7'10" x 13'9" one story shed: 1) a Variance from Article IV, Section 10-402(B) to allow said shed to have a 4'± left side set back where 10' is the minimum required, and 2) a Variance from Article III, Section 10-301(7)(b) to allow said shed to have a 65'± setback to salt water marsh or mean high water line where 100' is the minimum required. Said property is shown on Assessor Plan 140 as Lot 3 and lies within the General Residence A district. *This petition was postponed from the August 26, 2008 meeting.*

Chairman LeBlanc stated that the applicants had requested to postpone this hearing to the September 16, 2008 meeting.

Mr. Grasso made a motion to postpone the hearing to the October 21, 2008 meeting, which was seconded by Mr. Parrott and approved by unanimous voice vote.

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13) Petition of **Joseph Gobbi Supply Corporation, owner, and Kevin Gilman, applicant**, for property located at **685 Islington Street** wherein the following were requested: 1) a Special Exception as allowed in Article II, Section 10-208(36) to allow an automobile repair facility, and 2) a Variance from Article II, Section 10-208(f) to allow said facility on a lot less than 1 acre and having less than a 50' front, rear and side setbacks. Said property is shown on Assessor Plan 164 as Lot 12 and lies within the Business district.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Bernard W. Pelech stated that he was there with Kevin Gilman and Mr. Joseph Gobbi, of the Gobbi Supply Corporation. This had been a gas station/garage from the 60's until the late 1990's and then Mr. Gobbi rented to others with similar operations. The property was located at the intersection of Bartlett and Islington Streets in a highly commercial area. He listed a number of area businesses. This was a small lot of 9,800 s.f. but similar to other operations which he listed, some of which no longer sold gasoline. Attorney Pelech stated that, because of the small size of these lots, these were all nonconforming uses. No auto repair facility in Portsmouth conforms to one acre. He noted that the auto repair business was in a resurgence and there was a niche for these services. It would not be contrary to the public interest as it provides a public benefit.

Addressing the Special Exception, Attorney Pelech stated that this was a use allowed by Special Exception in a Business District and he reiterated that there were many similar businesses. He stated that there would be no hazard presented to the public by explosion or

release of toxic material and, in general, auto repair facilities don't present these issues. There would be no venting of gasoline products. There would be no detriment to property values or change in the essential characteristics of the neighborhood as these buildings were not being expanded. There would be no increase in parking or unsightly storage. Inoperable vehicles would be stored on site no longer than provided for in the Zoning Ordinance. He stated that the back would be screened from the residential structure and noted that Mr. Gobbi lived back there. There would be no glare or vibration generated.

Attorney Pelech stated that the hours of operation would be 8:00 a.m. to 6:00 or 5:30 p.m. This was not a gas station and there would be no creation of a traffic or safety hazard or increase in traffic congestion in an already busy intersection. There would be no additional demand on municipal services and the water and sewer would be less than the previous owner. With no physical changes and a surface already 100% impervious, there would be no increase in storm water runoff. He noted that the Board had granted similar Special Exceptions in the same area on a number of occasions.

Addressing the variance, Attorney Pelech stated that, without demolishing 85% of the building, 50' front, rear and side setbacks were not possible due to the lot size. There was a railroad abutment on the right hand side and there was no reasonably feasible alternative as the lot can't be made bigger. This was a reasonable use, which is allowed by Special Exception. These facilities have existed for many years and this was an appropriate and reasonable use which met the spirit of the ordinance. Regarding the justice test, he stated that the hardship on the owner if denied would not be outweighed by any benefit to the public. The surrounding properties were mainly commercial so there would be no diminution in value caused by this not overly intense use, confined to business hours.

Mr. Jousse noted that the address was on Islington Street, but presently the entrance and egress were indicated on Bartlett Street. He asked if the Islington Street curb cut would be reopened.

Attorney Pelech stated he didn't know. Mr. Grasso stated it had never been closed. Attorney Pelech stated they would like to maintain it as a way to get in or out.

There was a brief discussion among Mr. Jousse, Attorney Pelech and Chairman LeBlanc about whether a stipulation regarding the curb cut had been attached to previous requests from Coast Cadillac and Motorcross. A check of the file indicated it had not.

Attorney Pelech stated that the way they proposed putting two stacks of vehicles in that area would discourage people from driving through anyway. If it became a problem, they would be happy to readdress the issue.

## **DECISION OF THE BOARD**

Mr. Parrott made a motion to grant the petition as presented and advertised, which was seconded by Mr. Grasso.

Mr. Parrott stated, with respect to the Special Exception, that the criteria designed to protect neighbors would only apply to the rear because the other sides were busy streets. He stated that there would be no hazard due to the release of toxic materials. The property had been used

similarly for a long time and he was not aware of any problems created by the use. This was long established as a commercial property and there would be no detriment to values due to a change in the essential character of the area. He stated that this was already a busy intersection, served by a traffic light, so no traffic or safety hazards would be presented. No change in traffic would be even noticed. Continuing a use similar to those in the past would not create an excessive demand on municipal services. This was all hard surface, which sloped down so the impact on storm water runoff would not be changed by this use, or any other which the building could accommodate. There would be no modification of exterior features as the applicants were not looking to change the size of the building or the layout. The special considerations outlined in the Zoning Ordinance would not apply due to the nature of the property and the long history of similar uses.

Mr. Parrott stated that the variance related to the size of the lot, which was less than 50' on one dimension. He stated that the public interest would be served by this type of facility and the continuation of a long established use. The hardship lay in that there were not too many uses for this building and the special conditions were its location and the size and shape of the lot. The property was what it was and couldn't be expanded so there was no other method to pursue except to request the variance. He stated that the spirit of the ordinance includes support for small local businesses and this was consistent with the neighborhood. Regarding the justice test, he stated that there would be no overriding benefit to the public in denying the variance. With no change in the property and with uses similar to those in the past, the value of surrounding properties would not be diminished.

Mr. Grasso stated that he agreed with the comments on the Special Exception. On the variance, he wanted to add that, with the 127' property length, there was no way the building could fall outside the setbacks.

Mr. LeMay asked if the maker and second of the motion would be amenable to stipulations similar to those added before which prohibited vehicles for sale, confined work to inside the building, and limited hours of operation to 8:00 a.m. to 6:00 p.m. weekdays and to noon on Saturday.

Mr. Parrott stated that he agreed with the first, but would like to discuss the second.

Mr. LeMay proposed the stipulations as an amendment to the motion, which was seconded by Mr. Jousse for discussion.

Mr. LeMay stated that the intersection was busy enough without cars advertised for sale. Regarding the restriction that all work be done within the building, he felt it was a very busy area and to have more activity on display was not desirable. He wanted to confirm what the proposed hours of operation would be.

Chairman LeBlanc stated they would be 8:00 a.m. to 6:00 p.m. Monday through Friday, as they requested and up to noon on Saturday.

Mr. Jousse stated that he had seconded for discussion and had nothing to add.

Mr. Parrott stated that he thought the stipulations were reasonable and similar to those previously imposed.

The motion to add the stipulations that had been attached to the August, 2003 decision, namely: 1) that no “For Sale” vehicles will be displayed on, or sold from, the property; 2) that all work will take place within the building; and, 3) that the hours of operation will be from 8:00 a.m. to 6:00 pm. Monday through Friday, and 8:00 a.m. to noon on Saturday, was passed by a unanimous vote of 6 to 0.

The motion to grant the petition as presented and advertised, with the approved stipulations, was passed by a unanimous vote of 6 to 0.

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14) **Dennis F. Casey, Maryka Ford, Anarita Droukas, John C. Russo, Stephanie A. Lane, John Miles Evans, and Rose C. Eppard** appealing the Historic District Commission’s Decision of July 2, 2008 granting a Certificate of Appropriateness concerning the Petition of Jonathan Watson Sobel Trust, Jonathan W. Sobel Trustee, owner, for property located at **49 Sheafe Street** wherein permission was requested to allow demolition of an existing structure (partial demolition of garage) and allow new construction to an existing structure (repair and reconstruct garage with residence above) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 107 as Lot 21 and lies within the Central Business B, and Historic A districts.

Chairman LeBlanc stated that the Board of Adjustment, according to the latest ruling of the Supreme Court, assumes all the duties and responsibilities of the Historic District Commission when hearing cases that come before the Board from the Commission. In hearing the petitions, the Board needs to consider the Scope of Review for the Historic District Commission as laid out in Article X, Section 10-1004 of the Zoning Ordinance. He read the objectives for the Board.

SPEAKING IN FAVOR OF THE PETITION

Ms. Maryka Ford, of 61 Penhallow Street, stated that this particular application to the Historic District Commission had a long history beginning with work sessions in late 2006 and continuing into 2007. The application was first denied in June of 2007 and the applicant returned in May of this year with a second application which was also denied. He requested a rehearing, which was held on July 2. She stated that many of the Commissioners were absent and one stated this was the first time he was looking at this application. She noted that in Section 10-1004 of the Zoning Ordinance, the HDC was directed to take into certain objectives, which she cited, including maintaining the special character of the area as may be demonstrated through scale, location or style.

She stated that their primary objection had always been to the scale of the proposed building. It was 30’ wide and deep and somewhere between 39’ and 42’ tall. The actual height had always been unclear, but it was taller than it was wide. The existing building was 17’ tall. It was characterized as 2½ stories but was as tall, or taller than, the 3-story house she lives in. She stated that the building would be adjacent to two much lower structures and tower over the structures in the immediate vicinity. She stated this had not been depicted on the streetscapes

provided by the applicant. She continued that several of the HDC Commissioners were new since the first round of work sessions and hearings.

She felt a site walk, which they had requested, would have allowed them to see that this building would be out of scale. She stated they were not opposed to replacing the existing structure. They just want the new building to be in scale and character with the rest of the neighborhood.

There was a brief discussion among Mr. Jousse, Chairman LeBlanc and Ms. Ford of which building, of the ones Mr. Jousse had viewed, was being discussed. Ms. Ford stated it was the red brick structure at the end of Custom House Lane, which was a service alley.

Mr. Parrott asked if she had attended the 8 work sessions mentioned in the packet of material. Ms. Ford stated that some of the neighbors had attended, but she had watched them on television. Mr. Parrott wondered why, after all the discussion, the height was not understood by all. Ms. Ford stated that it had been listed in the application as 35' but a question about height had been raised at one of the meetings where it had been estimated as 42'.

Ms. Tillman stated she might be able to clarify how building height is determined. On a gable roof, it was to the midpoint, but it could be a different height to the ridge. When Chairman LeBlanc stated that, then, the height in the application was 35', she stated, to the midpoint. Ms. Ford stated that, to the ridge, it could be 38' or 42', depending on who you talked to. Chairman LeBlanc stated it was an 8/12 pitch to the roof and they could figure it out. Ms. Ford stated that the Custom House in which they live 38' to the roof and she guessed the two adjacent structures to be 25' on one side and lower on the other.

Mr. John Russo stated that he had lived in the area all his life and felt that the proposed building was overwhelming and did not fit. It would be located at the back of an alley which serviced the buildings on Sheafe Street. He stated that there had been only 5 members at the last meeting, one of whom admitted being unfamiliar with the project. Two of the three members who had originally voted against the proposal were not there. He claimed that every neighbor was in opposition.

Mr. John Evans stated he lived at 17 Sheafe Street and had been there time and time again. He concurred that the proposed building was too massive and did not fit. It dwarfed 3 or 4 of the wooden houses on Sheafe Street. He was glad that the Board had zeroed in on the height because he felt there was confusion at the last HDC meeting about the actual height of the building. He asked that, if the Board denied the appeal, that they also pass a stipulation of the structure be not more than 35', if that was the way it was described in the application.

Diane Giese stated that she lived on Daniel Street and that the back of her property abuts 49 Sheafe Street. It was her understanding that the role of the HDC was to preserve the character and ambiance of the district. She believed it was not in their interest to allow this restructuring of the property. She felt her quality of life property was already impacted by a neighboring building and was concerned about another over-large building at the end of the alley. While it would not impact her visually, she felt it would impact her neighbors.

Mr. James Russo stated that his property directly abuts that of the applicant. He stated there had been a lot of opposition at all of the meetings and at the first two, the public interest

prevailed. At the last meeting, they were absent two votes. He stated that there were no photographs depicting this building with any others adjacent. There were only the streetscapes, which he felt were deceptive. He stated that the applicant had brackets proposed to help support the overhang, which Mr. Russo felt infringed into the right of way and would obstruct parking or a moving truck, for example. It was not a good design and didn't fit. He stated that the area was a flood zone and every time it rained, there was a huge puddle. Right now, the applicant had a shed style roof that directed water away. He was not opposed to taking the building down and rebuilding it, but was opposed to the incredible size.

Mr. Todd Spencer, of 37 Sheafe Street, stated he also abuts the property. Touching quickly on height, his house to the beginning of the roof line was 17' and to the top is 20' to 22', the way the City measures. The proposed building would be about double that. Adding to the confusion at the July 2nd meeting was whether they would remove the cupola and how it was with and without the cupola. He reiterated that some of the Commissioners had never gone on a site walk. He would like to see some resolution either going back to the Historic District Commission or putting a cap on the height.

Ms. Stephanie Lane, of 99 Daniel Street, stated that the parking space for her business was directly abutting the easement. On numerous occasions, she was delayed and had to interrupt business because the applicant had people doing construction work in the public area who hadn't been told they couldn't do that. Chairman LeBlanc interjected that she should limit her comments to the issues. Ms. Lane continued that the magnitude of the building didn't fit in and was way more than improvement. It was out of control.

SPEAKING IN OPPOSITION TO THE PETITION

Attorney John Bosen stated he was there on behalf of Jonathan Sobel, the owner and wanted to go on record and state his objection to going forward with this appeal. On July 2, they appeared before the Historic District Commission and received a Certificate of Appropriateness. The abutters did not first file a request for rehearing as outlined in Section 10-1009 of the Zoning Ordinance which directed appellants to, within 20 days apply to the Commission for a rehearing. Instead, on the 29th, they filed an appeal with the Board of Adjustment. He maintained that, according to state statute, the aggrieved party had a right to appeal, but only after applying for a rehearing and that did not happen this case.

Chairman LeBlanc asked if the appeal was legally before them.

Ms. Tillman stated that, according to the Legal Department, it was. The ruling number of days to appeal was 30 days and they were advised by the Legal Department to file directly with the Board of Adjustment. If there were any questions, they could be asked of the Legal Department, but it was properly before this Board.

Chairman advised Attorney Bosen that his objection was noted.

Attorney Bosen stated that the property owner had made application to reconstruct an existing garage to one with two and a half stories. There had been two years of work sessions. The appellants alleged that their appeal was to the massing and they state that the proposed building was much larger than adjacent structures and that the streetscapes do not show those structures.

What was approved by the Historic District Commission was the culmination of two years of work sessions, with revisions which they could see from the plan of what had been first submitted to the HDC and where it ended up. He pointed on his exhibit boards various submittals from 2006 and 2007 showing the height and width and the cupola from 2007. He stated that some also showed the massing of the existing buildings. Pointing to the designs submitted in 2008, he stated that they showed the amount of changes and how the massing and height were appropriate for the Custom House Court.

Mr. Witham asked the scale of the 2007 proposal, which looked smaller but seemed to be a different scale.

Attorney Bosen indicated that their architect would know exactly but he was out of town. Those photographs and the ones to the right were on the same scale, which was an eighth of an inch. They show where the back and overhang were reduced. They had shrunk every element of the building, reducing the width and length and finally removing the cupola. Their process of working with the Historic District Commission, as well as listening to the public, resulted in the final design and approval.

Ms. Tillman noted that, early in the process, there was a portion that overhung a right of way and was not able to be built. She asked Attorney Bosen if that was shown in any of the depictions?

Mr. Jonathan Sobel stated that had been eliminated.

Ms. Tillman asked if it was shown on the first depiction and Mr. Sobel indicated that had been eliminated also. When she asked if it was shown on the upper exhibit also, he stated it had been eliminated. Mr. Sobel indicated the two view of the same structure. Ms. Tillman stated she understood, but was trying to figure what was the portion on the upper depiction that was eliminated. Mr. Sobel stated that this was the bay on Custom Court which was ultimately reduced by 4' and the staircase also reduced. He pointed out also that the building abutted and constituted an entire section which was 142' long. A single picture makes it look tall and unreasonable, but it was attached to 142' of building.

Attorney Bosen stated that one of the pieces of evidence they had provided was the topographical analysis in the packet showing the building equivalent or smaller than a number on Custom House Court, Sheafe Street and Daniel, several of which are two and three stories. He maintained that the height of their building was equal to, or less than, many of those surrounding and noted that it lay in the Central Business B zone where heights could be up to 60'. The building was 35' to the middle of the roof. From the top to the bottom it was 37' high.

In response to a question from Chairman LeBlanc regarding the height of the roof, Mr. Sobel stated that, at the last HDC meeting, additional elevations were submitted which showed the exact height of each building and he submitted some to be passed around. He thought they had been included in their packet.

When Ms. Tillman asked if they were all the same, Mr. Sobel indicated what had been submitted. The compromise plan, which had been approved, was A-8. This showed that the

first story, floor to floor, was 12' and yields a 10' ceiling in a commercial garage space, and the second floor was 10', yielding a 9' ceiling. The third floor was a 4' knee wall. They lowered the roof for the quarter of the building which transitions into the adjacent building which leaves a 4' knee wall.

Attorney Bosen then walked the Board through the rest of the exhibits, which included streetscapes from various views that, he stated, showed that the height of this building was in line with other existing structures.

Mr. Witham stated he was not sure why they were calling these three story buildings when they were calling their building, with two full stories and a full gable, two and a half.

Mr. Sobel stated that the architect had covered this. He pointed out a building which was 30' to the ridge and theirs was 37' to the ridge and the building gave one perception in isolation, but the variation in comparison could be seen in the viewscape. He stated that the Custom House Court was almost 40' in height. The row houses were three complete stories with a 6' to 8' attic.

When Mr. Witham asked if they could walk in their attic, why was it not a story, Mr. Sobel stated that anything with less than a 6' side wall was less than a story, according to architectural standards. The analysis was the same for all the buildings so the comparison held. Mr. Witham stated that it was the same for these other buildings. He felt they were picking and choosing a little.

Attorney Bosen stated that included in their packet were letters of support from a number of architects. Unlike the abutters, they had third party opinion as to the height and massing being appropriate for the area. He read an excerpt from the July 2, 2008 HDC meeting where Mr. Katz, in making his motion to grant the Certificate of Appropriateness referred to structures in the area which were afterthoughts which fulfilled a utilitarian need. Among other comments, he stated that when neighborhoods undergo change, they usually go bigger, and referenced the height and lot coverage allowances in the Central Business B district. Mr. Katz had stated that it was a garage and would remain a garage, but would like to see the cupola withdrawn, which Attorney Bosen stated they did.

Attorney Bosen also stated that the abutters also raised the issue that the building was in the wrong location because it was at the end of a street and this issue was also discussed before the HDC. It was their specific intent to establish a terminus onto Custom Court. He quoted comments from Mr. Steve McHenry, one of the area architects, which were in the packet, which Attorney Bosen felt supported the terminus effect they were intending to create. The abutters raised issue about a site walk and the inference was that there wasn't one. Attorney Bosen stated there was one, a formal site walk and also informal site walks by various members of the HDC. In fact, minutes of the July 2 meeting reflect the fact that the Board voted 4 to 1 not to perform another site walk because they had a clear understanding of the height of the building.

Lastly, the abutters had stated that the petition was denied twice, which was not true. It had only been denied once. The ordinance encourages applicants to come back and work on their design. They followed that dictate and worked with the HDC and ultimately removed the

cupola and satisfied them. This had been the culmination of two years of hard work. The existing condition of the garage was quite rough. The south side wall was collapsing and something needed to be done, which would fit in architecturally and yet be feasible. The end result was a 37' high, stick style building which would provide 1,300 s.f. of living area and be consistent with many of the buildings in the area. It would be architecturally appropriate and a huge improvement over what currently existed. He asked that the Board deny the appeal.

Mr. Jousse stated that there was a form letter in the packet, signed by a number of people in favor of the project. He wondered why the picture depicted on the form letter that they were asked to sign was not a picture of the property on which they were commenting.

Mr. Sobel stated that, over the two year period, many of the supporters had attended the work sessions. He had prepared the letter for the supporters, but they signed voluntarily and after reviewing the entire packet.

Mr. Jousse noted that a lot of the signers were not abutters but came from all over town.

Attorney Bosen stated it cut both ways. Some of those who have appealed do not have standing because they are not property owners, but tenants or family members, but some supporters have businesses in the area and weight should be given to them as well. They have to look at the existing garage. He stated there was also support from people who were abutters.

Mr. LeMay asked if they had simulations of what the proposed building would look like from Sheafe Street. Mr. Sobel stated they had been requested from Daniel Street and Custom Court, but not Sheafe Street. The Daniel Street streetscape would give approximately the view you would see. You would not be able to see it from the far side of Sheafe Street as it would be covered up by other buildings.

Mr. Jousse noted it had been mentioned several times, but he wanted to ask again why they did not have a representation of this building adjacent to other buildings in the area. There was a minuscule picture on the top right of the exhibit board adjacent to a picture of what was there today. The picture of the proposed building was much smaller.

When Mr. Sobel, stated that was a digital, Mr. Jousse stated he knew it was a digital image of what they were hoping to have, but he would like to know why the two pictures were not the same size so they could compare apples to apples.

Mr. Sobel stated that, in the packet, there were two pictures on the same scale. They had prepared the exhibit board in the absence of the architect and ideally it would be the same size. In the packet, the before and after depictions were exactly the same. He stated that they had not provided the materials so did not know what would be in the packet.

Mr. Parrott stated that they seemed to be going after this in a difficult fashion. He understood the issue to be that of the height and not the number of stories. The abutters were saying that they did not want that height. He asked what the height was from the ground to the ridge of the building.

Attorney Bosen stated it was 36'.

Mr. Parrott stated that information meant a whole lot more than how to define a story. Typically, architects make an elevation in outline form, which shows all the heights of the buildings relative to each other so the Board could make an honest assessment as to whether the proposal was in or out of scale with relationship to height. If that had been provided, why had it not been given to the Board.

Mr. Sobel stated that these were provided at the various meetings and a number of times the HDC members did visit and they had provided the absolute height of the buildings. They had not gone out and measured all of the buildings, but it was obvious that 80% of the buildings were taller, and after everyone looked at this, they were satisfied that this building, relative to the others, would not be as tall. He stated that there was a variation in this alley, which the architect had described as a pre-zoning mix of eclectic sizes, but this would be an architectural end point to the end of Custom Court. When they reviewed the project after site visits with several of the area architects and two of the HDC members who were architects, they had agreed that the final size and massing was appropriate for the location.

Mr. Parrott again stated that there were no elevations provided showing the height to the ridge line. He felt they lacked critical information which pointed directly to the concerns of the neighbors and it was inconceivable to him that, after two years of work on this project, the presenters didn't get the message that the height of the building was a huge issue.

Mr. Sobel stated that, in the minutes of the last meeting of the Historic District Commission, they document that they materially considered the relationship of the structure to the heights of neighboring structures. They asked the members if they understood the height. They had viewed it as appropriate and issued the Certificate of Appropriateness. He stated that he had hoped that they could focus on whether the HDC had made an error or whether there was something they had not addressed. It was clear from the Minutes that they addressed each and every point they were trying to redo that evening. He reiterated how long they had been going through the process and the changes they had gone through to reduce the design, in response to the wishes of the HDC and the public. He stated that the HDC had come to their conclusion in a parliamentary and correct fashion.

Chairman LeBlanc asked where the lot line was to the left of the building and Attorney Bosen stated it was a zero lot line. Building on the lot line was one of the challenges they faced. Mr. Sobel stated that, in the original packet every member received, there was a full size plot plan.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. Russo stated that the supporters on the list did not live anywhere near the property. One business person had stated they would not sign the petition again.

When Ms. Ford stated she had a few points, Chairman LeBlanc advised that he would give them a few moments to consult together and then one person could come up and present their collective views.

After the consultation, Ms. Ford stated that the building on Daniel Street, which would be directly abutting, drops down and she indicated a photograph on which they could not see the

adjacent building, but it was a lot lower. This 35' or 38' proposed building would be abutting a much lower structure.

When Chairman LeBlanc asked how tall, Ms. Ford stated it would be 38' not including the chimneys. She had used a ruler to compute on the plan. She stated further that the only site visit that had taken place had been followed by a denial by the Historic District Commission and, at the later meeting there were a lot of new Commissioners. She stated that some of the Sheafe Street buildings were taller at the street but stepped down to service ells and buildings which were much lower. They had also submitted a petition which had been signed by many people who actually lived or worked in adjacent structures. She stated that the photographs had been taken at an angle so that the subject property could not be seen. They will be able to see this building from Sheafe Street. She stated that the new Commissioners were not familiar with the process and only 5 members attended the meeting where the Certificate was issued. She believed it was purposeful that they never received the height of the building. All they asked was that it fit in with adjacent structures.

DECISION OF THE BOARD

Mr. Witham made a motion to deny the Certificate of Appropriateness, which was seconded by Mr. Jousse.

Mr. Witham stated that he was very familiar with this alleyway. It was a very unique part of the City. They now had to put on their Historic District Commission hats and not look the HDC had done. Per decision of the court, he stated, they were acting as HDC members now and a lot of the history was irrelevant.

Stating that the issues they needed to consider were include in the previously cited Scope of Review in the Zoning Ordinance, Mr. Witham stated that one of the criteria was that the essential character of the area be maintained. This was a very unique part of Portsmouth, an alley on the back side of all these residential and commercial structures. It was the only example I could think of where you had the main structures fronting on Daniel Street and Sheafe Street with this tiering down effect which was unique to the area. Scale was a difficult issue and he strongly believed in property rights, but this wasn't a building along a street. He felt it was plopped down in everyone's back yard and it felt inappropriate. He could see a structure of a certain size and larger than now, but this structure, to him, did not reflect a carriage house. It seemed one story too high and he felt it would be overpowering in the alleyway. He stated that it could clearly be seen from Sheafe Street and from a part of Daniel Street. The property owner had stated that there had been a lot of compromise and scaleback, but he didn't see the scaleback. It had started out as a structure with a lot of mass and ended up there. I also didn't see a lot of compromise. As an example, the project at the Martindale had ended up eliminating an entire story to get the scale down, but he didn't see similar compromise here.

Mr. Witham stated that one of the considerations they were supposed to look at was style, which this Board never has to deal with. He didn't what would be the best style for the area, but felt it should at least look like some sort of renovated carriage house. The tiering effect would be lost with this structure and he didn't feel it fit in and would affect the neighborhood. Mr. Witham felt that the project needed to go back to the drawing board and that the

presentation had been very selective to put this in the best light which had not worked for him. He stated that the proposed building was out of scale in terms of mass and size and even design wise.

Mr. Jousse stated that it was necessary to preserve the integrity of the district. This was an impressive proposal for the end of an alleyway. The proposed building had a 10' ceiling on a garage and, if they were trying to represent the 1800's or 1900's, a 10' high garage was not appropriate, nor was 9' for a second story. His house had 7½' on the first and about 6' and change on the second, which he believed was representative of the first part of the 20th century. The design didn't seem to fit anything, even on adjacent streets. He couldn't picture anything on Daniel Street or Sheafe Street which resembled what had been proposed and it just did not seem to fit the area. Replacing the rundown garage with, maybe, a one-bay garage and a one story building would be, he believed, more appropriate – something that would be the same height as the other structures facing this particular alley. This was simply the wrong building in the wrong spot.

Mr. LeMay stated that the particular section of the ordinance that related to their concerns was Article X, Section 10-1004(B)(3), the compatibility of exterior design, scale, arrangement, texture, detailing and materials proposed to be used in relationship to the existing structure(s) and its setting to properties located in proximity of the project site. This structure would lie in an alley with structures of 35' or so, but all stepping down to this alley. The structure was too tall.

Chairman LeBlanc stated that he agreed. The structure, for want of a better word, looked too formal and ornate at the terminus to an alley. For all the reasons cited that evening, a Certificate of Appropriateness was not warranted.

The motion to deny the Certificate of Appropriateness was passed by a vote of 6 to 0.

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**III. ADJOURNMENT**

It was moved, seconded, and passed by unanimous voice vote to adjourn the meeting at 10:50 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary

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