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

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m. **April 21, 2009**

MEMBERS PRESENT: Chairman Charles LeBlanc, Vice Chairman David Witham, Carol Eaton, Thomas Grasso, Alain Jousse, Charles LeMay, Arthur Parrott, Alternates: Derek Durbin, Robin Rousseau

EXCUSED: None

ALSO PRESENT: Lucy Tillman, Chief Planner

I. PUBLIC HEARINGS

1) Petition of **2422 Lafayette Road Associates, LLC, owner**, for property located at **2454 Lafayette Road a/k/a Southgate Plaza** wherein a Variance from Article XII, Section 10-1204 Table 14 is requested to allow 731 parking spaces to be provided where 1,090 parking spaces are required in conjunction with renovations to the existing shopping center consisting of a 23,545± sf addition, a loading dock and a new freestanding 27,335± sf one story building. Said property is shown on Assessor Plan 273 as Lot 3 and lies within the General Business district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard W. Pelech stated that he was there with Greg Mikolaities of Appledore Engineering and Doug Richardson representing the developer of the property. Southgate Plaza was one of the city's oldest, dating back to the 70's and had been virtually unchanged since that time. He outlined a brief history of the anchors and tenants at the plaza, which now had a new owner, the 2422 Lafayette Road Associates LLC interested in remodeling and updating the plaza. They had actually been in the site review process when it was discovered by the City that a parking variance was required. Up to this point, the pre-1995 ordinance had been used to calculate the parking requirements for the shopping center, including those for Taco Bell and the 99. Under that ordinance, individual uses were assigned parking which was added up to arrive at the total for the plaza and they would satisfy that ordinance. Under the 1995 ordinance, which set out retail center parking requirements, it was determined that a variance was needed.

Attorney Pelech pointed out the existing conditions plan and the surrounding properties. He noted that the areas for the 99 and Taco Bell occurred after the center was built. What was being proposed, in addition to a complete renovation of the façade of the building,

were parking lot improvements with the requisite landscape islands, trees, crosswalks, sidewalks, all to bring it into what shopping centers look like today and into compliance with the site review standards of today. He also pointed out an 8' hill which would be removed and the grade taken down so that the buildings could be seen from Lafayette Road. He noted that part of the needed rejuvenation to the building had already been done.

Attorney Pelech stated that what they required was a parking variance due to change in the ordinance in 1995. He reiterated that the individual uses were calculated for the existing center and, if that were the standard, no variance would be required. They believe that allowing the renovation of the shopping center will benefit the public interest by virtue of an aesthetically pleasing, newly renovated structure and parking area which is code, site review and ADA compliant. The increase in the assessed valuation of the property will also benefit the public interest while not requiring an increase in municipal services. He stated that the special conditions were its 18.7 acre size and the properties and road bordering it. There was no ability to enlarge the parking lot to comply with today's standards. In order to provide the required 1,090 parking spaces, they would have to demolish some of the existing structure, which was not reasonably feasible. Attorney Pelech stated that, in this case the aggregate of the uses is more than met by the parking spaces in the lot so the variance would be consistent with the spirit of the ordinance. In the justice balancing test, the hardship on the owner was not outweighed by any benefit to the general public. The center has cried out for some renovation and rejuvenation and justice would be served by letting the renovation which is underway be finished. He stated that the Board could see from what had already been done and from what was planned for the parking lot, that surrounding property values would be enhanced.

Mr. LeMay asked how many parking spaces were there now and Mr. Greg Mikolaities stated there were 699. When Attorney Pelech added that they were adding 32 spaces, Mr. Mikolaities explained that they were taking down a portion of the building that he indicated on the plan and creating more parking in its space.

Chairman LeBlanc asked if the parking in the back of the building was included in what was indicated as being provided. Mr. Mikolaities stated that was correct. In the existing parking of 699, 624 were required by individual uses and 830 using a shopping center so right now, even doing nothing, it was short 130 parking spaces.

Mr. Jousse asked what was planned for the proposed building adjacent to Water Country and Mr. Doug Richardson from the Waterstone company stated they did not have a specific tenant at that time. They were trying to come in with one comprehensive package, but would actually have two phases. As they filled up the center, that would be the second phase. In response to a further question from Mr. Jousse, he stated they were expecting a 5,000 s.f. restaurant, but in the same location as the previous Chinese food buffet.

Ms. Rousseau noted that they were saying there were 699 spaces based on the standards then in effect and asked what those were per square foot were in the 1960's and how they arrived at the 699.

Attorney Pelech stated that he assumed they used the standards in place at the time when the requirements for the individual uses were added up. He noted, although, that when the 99 Restaurant came in, they still used the old formula and were found to be in compliance.

Ms. Rousseau noted that they were asking for a 30% variance. She had considered the health and safety factors and traffic pattern factors what could go wrong, what was the risk, if they granted a variance for that sort of large percentage based on what's required now - what was the worst case scenario to grant the variance? She had called the America Planning Association who came up with the standards that the City uses, and they indicated that 1 space per 200 s.f. was pretty standard. She was surprised to learn that there was really no "empirical data" behind determining the one per 200 or 250 s.f. It actually passes from one city to another without a whole lot of support behind the requirement itself.

Attorney Pelech stated that he agreed as to her assessment of the worst case scenario. Probably that would be sometime between Thanksgiving and Christmas when somebody may actually drive in and not find a parking space, the last thing the owners would want. Were that to be the case, probably they would try to rectify that somehow.

Ms. Rousseau noted that, in thinking also about some of the shopping plazas in the City today, which were theoretically in compliance, they had excess parking. Attorney Pelech agreed. She felt there was the risk for the 30% variance. Attorney Pelech stated it was a reasonable request. Ms. Rousseau continued that it was really based on the 250, or even 200. One space for 250 s.f. seemed to be what was sort of standard around the country. There didn't seem to be any hard and fast support for that. Attorney Pelech stated that especially in the situation that they had here, with big box users like Rich's and Shaw's at a retail ratio of 1 per 400 (s.f.), the parking need was really lessened. Ms. Rousseau stated that was interesting and noted that it appeared that the boards themselves had some latitude to make variances, maybe more so than in other situations. Attorney Pelech stated he would hope so. Ms. Rousseau continued, "where there was a direct correlation between the purpose of the variance and the, you know." Attorney Pelech stated he agreed.

Mr. Grasso asked if something had been proposed for snow relocation and Mr. Mikolaities stated that, on the site plan they submitted to Site Review, storage areas were indicated around the perimeter of the property. If they became too full, they will just remove the snow.

Ms. Eaton questioned why, in the calculations they had submitted based on the old regulations, zero spaces were indicated for several retail areas. Mr. Mikolaities stated those were actually replacing an existing vacant retail or restaurant space. They were

accounting for all, knowing they will have a 5500 s.f. restaurant and an extra 2,000 s.f. retail.

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

With no one rising, the public hearing was closed.

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

Mr. Grasso stated that the applicant was proposing to renovate an elderly shopping center and, with the new formulas, they were required to have more than 1,000 spaces, which was difficult with the current configurations of the buildings and surroundings limiting any expansion.

He stated that there was no detriment to the public interest in granting the variance. This was a shopping center which had existed for almost four decades and he's never known the parking lot to be full. The special conditions were the constraints of the property itself, with buildings on one side, Water Country on the other, and Route One at the front. There was no place to expand to add the several hundred spaces required under the new formula. There was no other method to pursue as the only other option would be to take down half the building which was not feasible. Allowing them to renovate and improve the existing building would be in the spirit of the ordinance and, in the justice test, there would be no outweighing benefit to the public in denying the variance. The value of surrounding properties would not be diminished.

Mr. Parrott noted for the record that the correct reference for the variance was Article XII, Section 10-1204, Table 15 instead of the advertised Table 14. With respect to the substance of the question, the shopping center was sorely in need of renovation and his observation was that he never recalled seeing the parking lot full on its best day with Shaw's and Rich's and he thought it very unlikely that this number of parking spaces would prove insufficient. These situations tended to be self correcting.

Mr. Jousse agreed that the situation would be self correcting, noting that, if the parking lot were full, no one would go there.

The motion to grant the petition as presented and advertised was passed by a unanimous vote of 7 to 0.

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2) Petition of **Harbour Place Group LLC, owner**, for property located at **1 Harbour Place** wherein an Appeal from an Administrative Decision regarding the determination of the Code Official requiring a building height variance for a protective
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3'6" high railing around a roof top deck and a 6'6" x 26' storage shed addition to an existing roof top mechanical enclosure which should be considered "roof appurtenances".

Notwithstanding the above if the Administrative Appeal was denied Variances from Article III, Section 10-304(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 3'6" railing around a roof top deck ranging in height from 4 13/16" to 6 15/16" and a 6'6" x 26' storage shed addition on top of an existing 71'7" high building in a district where 50' is the maximum building height. Said property is shown on Assessor Plan 105 as Lot 2 and lies within the Central Business A, Historic A and Downtown Overlay districts.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard W. Pelech stated that the applicants had been before the Board in 2005 with a much larger plan, which was denied, to put 7 rooms on the roof of this building. This was Plan B and was much less aggressive. They would like to place paving stones on the roof creating a deck and surround it with a metal railing so people don't wander outside the area. They would also like to put in an addition to the stair towers, attached to the existing mechanical shed, in which they could store their outdoor furniture out of the wind. These were depicted in the submitted plans. Listing the existing roof appurtenances, he stated that everything proposed would be lower in height and certainly more attractive.

Attorney Pelech stated that the basis of their Administrative Appeal was that the Planning Department felt that stair towers were roof appurtenances but the fence around the deck and storage area were not and needed height variances. The appeal turns on the definition of a roof appurtenance, which he read from the Zoning Ordinance. They felt the railing and the shed met that definition and a variance was not needed. The Planning Department took the position that, because people use them, they were somehow not roof appurtenances while their position was that people also use the stairway to access the roof and it was classified as a roof appurtenance. He noted there was no reference to how it would be used in the definition of a roof appurtenance. Should the Board not grant the appeal, then they were seeking a variance for the requested items. Attorney Pelech stated that he had an abutter's letter to submit which applied to either the appeal or the variance request. When they were before the Board in 2005, this abutter was in opposition, but now favors this proposal.

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. Witham made a motion to grant the appeal with regard to the railing around the rooftop deck and deny it with regard to the storage shed. The motion was seconded by Mr. LeMay.

Mr. Witham stated that he had looked at the definition of roof appurtenances, which included, "such structure shall not constitute a building as defined." He then went to the building definition in the Zoning Ordinance and it stated "any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of persons, animals or chattel." Chattel meant personal belongings which would be chairs and tables. In his opinion, the storage building fell under the building, not roof appurtenances, definition. He could understand the applicant's confusion because of the ruling the Planning Department made with regard to the stair towers, which he would have included as buildings, not roof appurtenances

Mr. LeMay stated that he had gone through the same process and had nothing to add.

Mr. Parrott stated that the Board had typically looked at appurtenances as of a mechanical nature, such as condensers or antennas needed to support the interior operation, and not habitable structures. If they wanted to get picky about definitions, they could consider this structure as creating a new roof on top of the old roof which, taking it to the extreme, would allow construction of a building with each story an appurtenance. He supported the department in the determination that at least the shed structure was not a roof appurtenance.

The Board voted to grant the Appeal for the railing and deny the Appeal for the storage shed by a unanimous vote of 7 to 0.

With the Appeal for the storage shed denied, Chairman LeBlanc asked for those speaking in favor of the petition for a variance to allow the 6'6" x 26' storage shed addition.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard W. Pelech stated that the shed was 6'6" wide by 28' long and would be attached to the existing mechanical room and elevator housing. He reiterated their concern about storing outdoor furniture so that it would not blow off the roof and which otherwise would have to be bolted down. The designer of the shed was there that evening and he had concentrated on fitting the storage function into an attractive structure which would also meet the requirements of the Historic District Commission. French doors had been included as it was difficult to put a patio table through a single door. He noted that the height was below that of the existing mechanical room.

Attorney Pelech stated that the special conditions were that the property began at the waterfront and then wrapped around and up Bow Street, creating a 20% grade differential. How the height of a building and grade were defined was changed in 1995 so that now they would need a variance. He noted that the top floors were being converted to residential use in accordance with the master plan. The building was similar

to othes in having a flat roof which the tenants would like to utilize. There was no other reasonable alternative. Bolting down the furniture would not be reasonable as it needed to be stored under cover and they could not create a backyard deck and patio at ground level. He added that it would be in the public interest to ensure that no lawn chair flew off and damaged property or people. Attorney Pelech stated that the ordinance does allow roof appurtenances and he listed again those currently on the roof. What they were proposing would be an improvement and present a more attractive appearance, although they won't be seen from most of the surrounding properties. In the justice test, there would be no benefit to the public in denying the variance, but a hardship would be created for the owner. The well designed shed would not diminish the value of surrounding properties and the exterior appearance would still need the approval of the Historic District Commission. He stated that Dan Plummer and Rene Rydell were there from Two International to answer any questions, along with Dann Batting and Oscar Morales, the architects.

In response to questions from the Board, Attorney Pelech stated that the height of the storage shed was 9'6" and the elevator penthouse would be another foot above it. The shed would be facing up the hill and would be used as common area and storage for all the nine units on the fifth floor. It would be a requirement of the condominium rules that the tables and other furniture would be put away at the end of the day.

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. LeMay made a motion to approve the petition as presented and advertised, which was seconded by Mr. Witham, with the stipulation that any exterior or interior light in the shed be controlled by motion sensors. Mr. LeMay stated that would be acceptable to him and added a second stipulation that the shed be used solely for storage. Mr. Witham agreed to the second stipulation.

Mr. LeMay stated that there were elements of a pre-existing nonconforming use given the change in dimension in height computations over the years. The proposed structure was lower than existing appurtenances and it would not be against the public interest to have an attractive shed on the roof. A chain-link area could be erected for the same purpose and called an appurtenance and would be less in the public interest. Nothing in the spirit of the ordinance would argue against the need for the use and justice would be served by allowing a place to store the outdoor furniture. This type of structure was common in the area and the value of surrounding properties would not be diminished.

Mr. Witham agreed and added that the point of his stipulation was that, with the french doors, the lighting needed to be controlled to avoid creating a lighthouse effect. The use should be limited to allowing the tenants to store their outdoor furniture and get out.

The motion to grant the variance for the storage shed, with the stipulations that the exterior and interior lighting be controlled by motion sensors so that a "lighthouse effect" will not be created and that the shed will only be used for storage, was passed by a vote of 6 to 1 with Ms. Eaton voting against the motion.

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3) Petition of **280 Heritage Avenue Condo Association, owner, Peter LeSaftre d/b/a Tour Auto of NH LLC, applicant**, for property located at **280 Heritage Avenue Unit F** wherein a Special Exception as allowed in Article II, Section 10-209(13) was requested to permit the sale of classic automobiles inside the building only. Said property is shown on Assessor Plan 284 as Lot 7 and lies within the Industrial district.

Ms. Sarah Elliott stated that she was appearing on behalf of the applicant who had purchased a condominium unit to house a dealership and, upon application for a license, learned that a certain acreage was required. She stated that their inventory, as indicated in the information they had presented, would be between 6 and 9 cars, all of which would be kept in the building, with no exterior storage. She noted that these were classic automobiles and cited a few examples in the owner's inventory, ranging up to 3.25 million dollars in value. She stated that they will not negatively affect the surrounding businesses and had the support of the condominium association. They likely would sell less than 6 automobiles per year, but in order to obtain their dealers permit, they have to apply for more.

In response to questions from Chairman LeBlanc, Ms. Rousseau and Mr. Parrott, Ms. Elliott stated that any necessary repair or retrofitting would be done in Newburyport, none on site, and there would be no toxic materials, except what might be within the engines. Their unit was located at the very end of the complex, closest to the building on the western side. They would be comfortable with a stipulation that there be no more than 10 cars and also that their parking spaces be limited to employee parking.

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

Mr. Witham stated that this was an extremely low use operation in terms of vehicular traffic and there would be no hazard to the public or adjacent property in terms of explosion or hazardous materials. There would be no detriment to neighboring property values due to noise or noxious substances. He felt that the petition met all the other
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criteria for granting a Special Exception, including no creation of a traffic or safety hazard or excessive demand on municipal services or increase in storm water runoff. The number of vehicles was a technicality that they needed to launch the business and he didn't see a need to stipulate a limit.

Chairman LeBlanc asked if Mr. Witham and Mr. Grasso would agree to a condition that all vehicles for sale would remain inside the building, as circumstances could change. Messrs. Witham and Grasso agreed.

Mr. Grasso stated that this was a good spot for a business of this nature and this action would allow them to obtain their state license.

The motion to grant the petition as presented and advertised, with the stipulation that all vehicles for sale remain inside the building, was passed by a unanimous vote of 7 to 0.

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4) Petition of **Jonathan Schroeder, owner**, for property located at **324 Maplewood Avenue** wherein the following were requested: 1) Variances from Article III, Section 10-303(A) and Article IV, Section 10-401(A)(2)(c) to allow a two story addition on an existing garage/storage building to house two additional dwelling units on a 3,210 sf lot (that also contains a second building with a commercial use on the 1st floor and a dwelling unit on the 2nd floor) with: a) a 5.47'± left side setback where 10' is the minimum required, and b) a 1'± rear setback where 15' is the minimum required; and, c) 1,070 sf of lot area per dwelling unit where 7,500 sf of lot area per dwelling unit is required for a total of three dwelling units on the property requiring 22,500 sf of lot area. 2) a Variance from Article XII, Section 10-1201(A)(3) to allow the required parking spaces to back out onto the street where such parking layout is not allowed; and 3) a Variance from Article III, Section 10-301(A)(2) to allow dwelling units in two separate buildings on a lot where all dwelling units shall be located in one building. Said property is shown on Assessor Plan 141 as Lot 1 and lies within the Mixed Residential Office and Historic A districts.

By unanimous voice vote, the Board voted to postpone this application to the May meeting as requested by the applicant.

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5) Petition of **55 Congress Street Condomimum Association, owner, New Cingular Wireless PCS, LLC, AT&T Mobility Corporation, manager applicant**, for property located at **55 Congress Street** wherein a Special Exception as allowed in Article II, Section 10-208(51) was requested to allow 3 additional antennas mounted to the penthouse façade and associated base station equipment cabinets to be mounted on a frame 5'4" in length. Said property is shown on Assessor Plan 117 as Lot 9 and lies within the Central Business B, Historic A and Downtown Overlay districts.

Ms. Rousseau stepped down for this petition.

SPEAKING IN FAVOR OF THE PETITION

Mr. John Coste stated that he was with SAI Communications who were acting as agent for New Cingular Wireless, doing business as AT&T. He submitted a Certificate of Merger connecting the parties who have all come together and will just be referred to as AT&T. They were seeking 3 additional panel antennas which would be mounted to the penthouse, the same size and mounting type as the existing 3, which would be painted to match. There would be a total of 6 antennas. There would be no additional base station equipment but, in order to distribute the load according to the specifications and federal and state codes, it was necessary to extend the existing frame by 5'4".

Mr. Coste stated that, in order to provide network connections, it was necessary to add additional antennas to prevent system overload with residents not able to access the cell system or losing a data connection. This could have dire consequences if traffic were heavy and there was an emergency 911 call generated which could not connect to the network. They felt this met the standards for granting a Special Exception. He referred to the submitted photographic simulations showing that the visual change was neglible and consistent with the rooftop and surrounding environments. They would extend the existing fence by the extension of the frame, screening the equipment from view. They would certainly accept a condition of replacing the entire fence so the look was consistent. They had submitted materials to show that they complied with all standards and there would be no material change to the existing facility.

When Chairman LeBlanc asked if the base equipment was being expanded or just reshuffled on a bigger platform, Mr. Coste referred to Sheet A1 and the configuration in the bottom right. He had highlighted the changes. AT&T was proposing 4 cabinets where currently there were 3. A frame extension was required to accommodate the cabinets as they were moved to spread out the load.

SPEAKING IN OPPOSITION TO THE PETITION

No one rose to speak.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Ms. Robin Rousseau stated that she was an abutter with a condominium at 80 Fleet Street and, when she had received the agenda, wondered why she had not received an abutter notice. When she investigated, she found that the notice had been sent to the management company who had never notified the 46 owners. She was told by the Planning Department that the notice was sent to the management company on which the City should be able to rely. Ms. Rousseau pointed out that, in their case, the management company did not represent the interest of the owners but only had a contract to clean. They really had no obligation to deliver the notices. There may be a disconnect because the contract for some management companies gives them representation rights. She questioned whether it was proper to hold a hearing when there were 46 owners who had no idea what was going on. This could been an issue of obstruction of view. They had

no way of knowing and there was no fairness there. She was asking that this be looked at procedurally regarding proper notification and that the Board consider postponing the hearing to allow for proper legal notice to abutters and not rely on a management company to deliver the notices if they felt like it.

A discussion followed among Ms. Rousseau, Chairman LeBlanc and Mr. Witham on how members of a condominium association were notified, with Chairman LeBlanc stating that the City had done due diligence and sent the notice in accordance with state statute and Ms. Rousseau stating she spoke to the current president of the condominium association who stated he was not even aware of the hearing. He had "called the management company and, 'oops,' they forgot to deliver the notice so," she concluded, as she had previously stated, "that was not constructive legal notice to property owners." She felt this presented a procedural problem and could be challenged. She reiterated her request that the hearing be postponed.

With no one further rising, the public hearing was closed.

Chairman LeBlanc stated that a request had been made to table the petition so that proper notice could be given to the condominium association in question.

Mr. Witham made a motion to deny the request, which was seconded by Mr. LeMay.

Chairman LeBlanc clarified that a positive vote on the motion would mean that the Board felt that the City had done due diligence in their notification and they could move forward with the decision on the petition.

Mr. Witham stated that he didn't see any fault in the manner in which the City had made the mailings.

Mr. LeMay stated that he felt that Ms. Rousseau had some legitimate points and pointed out that the condominium association was welcome to file an appeal. There was an appeal process they could follow.

Chairman LeBlanc noted that Ms. Rousseau had voiced her opinion as an individual. He asked that all in favor of proceeding say "aye." With all voicing "aye," Chairman LeBlanc stated that they would move forward to consider the Special Exception.

DECISION OF THE BOARD

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

Mr. Grasso stated that these three additional antennas posed no hazard to the general public or adjacent property. There would be detriment to property in the area, no creation of a traffic or safety hazard, nor increase in traffic. There would be no additional congestion or significant water runoff and no excessive demand for municipal services.

Mr. Parrott noted that Ms. Rousseau had a valid point, but it was beyond the ability of the Board to fix and, secondly, if they were to postpone considering the petition, it would be disadvantageous to the applicant in an unfair manner. If the City had complied with the procedure, which it appeared to have done, the fault was beyond the City's fix, but that didn't mean that it wasn't still a problem and he hoped it would be resolved. To the substance of the petition, the addition of these antennas to the building would have no impact whatsoever, just more of what was already up there. On balance, this was a simple request and should be approved.

The motion to grant the petition as presented and advertised was passed by a vote of 6 to 1, with Mr. Jousse voting against the motion.

Ms. Rousseau resumed her seat.

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6) Petition **of Christoph Wienands and April Guille, owners**, for property located at **307 Wibird Street** wherein Variances from Article III, Section 10-302 and Article IV, Section 10-401(A)(2)(c) were requested to allow the existing steps to be moved back to the original location and rebuild the steps 7'2" x 5'6" with a 0'± front setback where 15' is the minimum required. Said property is shown on Assessor Plan 132 as Lot 12 and lies within the General Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Ms. April Guille stated that she was the co-owner of 307 Wibird Street, which they had purchased in November of 2008. The existing enclosed porch was about five and a half feet from the sidewalk, with the stairs to the far right and, inside the porch another 3 stairs to enter the structure. They would like to open the porch, removing the glass panelling and relocate the steps under the peak of the roof. Their hope was that moving the stairs back and opening the porch would increase property values and the curb appeal of the home. They had a picture of the neighbor's property which was how they hoped theirs would look.

Mr. LeMay asked about the footing, which she responded was a concrete area for 7'2" along the length of the home and then stone. The concrete was under the original steps. Mr. Grasso noted that currently there were 4 steps and then the ground and they were proposing 6 steps in the same distance. Ms. Guille stated that they were trying to comply with building regulations and the steps were of varying heights, with the first just a few inches off the ground.

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

Ms. Eaton stated that the applicant proposed to restore the building to its historical nature with safer access and egress. What was there now was not to code and out of character with the neighborhood. She stated that it would be in the public interest to make improvements and return the historical look to the home. The special conditions were that the stairs and concrete foundation were originally there. The house was only 5' from the street and it was common to have stairs to the right of way. She stated that it was in the spirit of the ordinance to maintain the integrity of homes and, in the justice test, granting the variance would meet the homeowners' needs with no harm to the public. She felt that the value of surrounding properties would probably improve.

Mr. Parrott stated that he agreed and had nothing to add.

Mr. Grasso asked if the maker and second of the motion would be agreeable to a stipulation that the steps not extend into the city's right of way. Ms. Eaton stated that she thought that was taken care of by the zero setback, but was agreeable. Mr. Parrott agreed.

The motion to grant the petition as presented and advertised, with the stipulation that the steps not extend into the city's right of way, was passed by a unanimous vote of 7 to 0.

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7) Petition of **Pamela J and Joseph D. Pantelakos, owners,** for property located at **24 Central Avenue** wherein a Variance from Article II, Section 10-206(24)(b) was requested to allow a temporary mobile home for 90 days during the reconstruction of the single family dwelling destroyed by fire on March 24 & 25, 2009. Said property is shown on Assessor Plan 209 as Lot 28 and lies within the General Residence A district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Joseph Pantelakos stated that they were here for a 90-day permit. Construction would take longer so they would come back in 90 days. He asked that the petition be granted so that they would have a place to stay.

Chairman LeBlanc asked about the request not extending beyond 90 days. Ms. Tillman stated that what they discussed was that they had the ability to have a Special Exception for up to 90 days and, if the applicants need more time, they would just have to ask by letter form. This would be instead of asking for a variance for a mobile home in a single family residence district. They had reviewed the issue with the Legal Department and determined to treat the request as a Special Exception. They know the process will take longer so the concern was that, once completed, the home which was being rented by the insurance company would be removed.
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Mr. Witham asked if they only had to submit a letter for the extension and Ms. Tillman replied that was correct, or they could come in person. When Chairman LeBlanc asked about the advertising of the variance, Ms. Tillman stated the Special Exception could be granted as it would be less relief.

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 which was seconded by Ms. Eaton.

Mr. Parrott stated that the ordinance was pretty clear and asking for a mobile home to be placed temporarily on a lot for these purposes was not an unusual use. He felt that the criteria with respect to hazardous material and traffic and no excessive demand on services were obviously concerns that did not apply in a residential district. Other concerns in the criteria for a Special Exception were those that would only be looked at in a permanent situation, such as landscaping and parking. This was clearly needed and allowed by the ordinance.

Ms. Eaton stated that she agreed.

Mr. Jousse stated that his concern was whether 90 days was enough and he was comfortable that had been take care of. Ms. Tillman stated that they will stay on top of this and be sure that the deadline for notification is not missed.

The motion to grant a Special Exception as advertised and presented was passed by a unanimous vote of 7 to 0.

II. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 8:50 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary