

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE**

MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

September 21, 2010

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

EXCUSED: Carol Eaton, Alternate: Derek Durbin

ALSO PRESENT: Principal Planner, Lee Jay Feldman

I. APPROVAL OF MINUTES

A. Board of Adjustment Meeting May 18, 2010

It was moved, seconded, and passed by unanimous voice vote to approve the Minutes as presented.

B) Board of Adjustment Meeting June 15, 2010

It was moved, seconded, and passed by unanimous voice vote to approve the Minutes as presented.

C) Planning Board and Board of Adjustment Work Session June 23, 2010

It was moved, seconded, and passed by unanimous voice vote to approve the Minutes as presented.

II. OLD BUSINESS

Minutes Approved 10-19-10

A) Motion for Rehearing regarding 180 New Castle Avenue

Mr. Jousse made a motion to deny the request for rehearing, which was seconded by Mr. Grasso.

Mr. Jousse stated that there were two criteria for granting a rehearing, first, that the Board made an error in the application of the law, and he didn't find any such error, and the other was that new information had been presented which was not available at the time of the original hearing. This didn't exist so he saw no grounds in what had been submitted to them for granting a rehearing.

Mr. Grasso agreed that there was no error in the original finding and no new information that had not been available at the time of the original hearing.

Mr. Witham stated that, in the seven page letter from an attorney representing the abutter, he found mostly generalities and there was no substance to make him believe that a rehearing was due or that there was new information. He felt the decision had been well thought out, the information before them had been clear, and he would support the motion.

Mr. Parrott stated that the application for rehearing had cited a 20% increase in lot coverage but there was no calculation or plan to back that up. On the other hand, the architect for the property owner submitted a plan addressing the same issue and came up with a 4.5% increase. Secondly, the motion for rehearing spoke to the visual environment for the surrounding property owners which he felt was trying to say that views were obstructed. He wanted to point out that, as he understood it, views were not protected. The architect had also estimated that at the extreme, the view might be impacted by 10% from the corner of the house. Again, the memorandum from the attorney made no estimation of the extent or direction or anything with respect to the visual environment. There were no specifics which the Board could consider to say that an error had been made or that something had been overlooked.

The motion to deny the request for rehearing was passed by a unanimous vote of 7 to 0.

(Minutes Notes: An Excerpt of Minutes for the following Item B) was approved as presented at the September 28, 2010 meeting of the Board of Adjustment.)

B) Remand to the Board of Adjustment from the Superior Court, State of New Hampshire, to allow testimony on Fisher v. Dover regarding property located at 187 Wentworth House Road

Chairman LeBlanc advised that Mr. Witham would be stepping down for this petition so there would be only six members sitting on the Board, which was enough. He read the agenda item and emphasized that this was only for Fisher v. Dover.

SPEAKING TO THE PETITION

Mr. J. P. Nadeau stated that he was representing himself as the property owner and Witch Cove Marina Development LLC. He distributed a memorandum which addressed why he felt the Board should not invoke Fisher v. Dover. Noting that he would go over the submittal in summary

fashion, he stated that Paragraph 1 related to the fact that the original petition was filed November 23, 2009 and sought many different variances, one of which was to add a full second story to the building in question. At the hearing on the variance, no abutters spoke against its granting and the only two abutters affected by raising it a full second story submitted letters of support. The attorney representing him and the LLC presented facts to support the other variances requested but did not present any facts to support the variance for raising this building a second story. Deliberations having been concluded they could not then submit those facts. Mr. Nadeau stated that, on January 26, 2010, he filed a new application for a variance. Recognizing that there should be a material change, the request was merely to raise the roof 4' and add two 4' x 6' dormers. It was intended to be responsive to the observation made by a Board member during deliberations that no facts were presented on which the Board could have granted the variance requested to raise the building a second story.

He submitted that the Board should not invoke Fisher v. Dover for several reasons. One was that this was a 30 year old case decided in 1980 based on facts where the applicant repeatedly abused the Dover Board of Adjustment and repeatedly abused abutters who spoke in opposition. Not only did the applicant repeatedly file requests for variances, he filed identical variances and admitted to that fact. In 2002, the Supreme Court modified that decision in Morgenstern v. the Town of Rye. The Supreme Court said that where there were distinguishing facts with an applicant coming before them intending to be responsive and making a material change, Fisher v. Dover should not be invoked.

Referring to Paragraph 3C, Mr. Nadeau reiterated that all the abutters supported his original application and none had to come back and speak and defend their rights. There was no abuse of the Board by repeated, identical applications. Additionally, one of the main purposes of the Board of Adjustment was to grant variances where justice and fairness would result. He submitted that, considering the factors in this case and weighing them against the 8-year old Morgenstern decision and the 30-year old Fisher decision, it would not be fair or just to invoke Fisher v. Dover and prevent them from addressing the second application requesting variances.

Additionally, from the materials he received subsequent to raising the issue over the propriety of invoking Fisher v. Dover, it appeared that this Board had, on at least one prior occasion in almost identical circumstances in the same zone, not invoked Fisher v. Dover and I cited that one in there. That case was 14 Sagamore Grove Road, which was also dealing with a nonconforming residential building in the Waterfront Business District. In fairness since there was no similarity whatsoever with Fisher v. Dover and where the applicant merely wanted to have a better use of the building, making it more code compliant and more livable by adding air and light, Fisher v. Dover should not be invoked and he should be allowed to address that.

Finally, Mr. Nadeau stated that, in researching and comparing these decisions, he believed that the NH Constitution protected nonconforming use. He recognized the wording of the ordinance that regulated the expansion of nonconforming structures and changes in nonconforming uses, but there was a longstanding constitutional right protected to nonconforming uses. He respectfully submitted that invoking Fisher v. Dover in this case would be tantamount to depriving an applicant of the constitutional protections to nonconforming uses. He referenced the citations in his submitted material, noting that they related to a hearing on the merits, but he did want to present for the purpose of this hearing his argument that there was also a constitutional issue raised should they elect to invoke Fisher v. Dover. He felt it would be a further unjust

infringement on the applicant's rights to try and seek relief from this Board so they could have a reasonable use of the property.

When Ms. Rousseau stated that he was then saying that this was materially different because they wanted to add on a second story and the original application did not provide facts to support their variance request where before they looked at dormers only, he stated that was not correct. She asked for clarification on how the first application was materially different from the second request and he stated he appreciated the question as, if he recalled correctly, she was the one who reflected on the fact that they had not presented facts to support the variance. He stated that the first one asked to add a full second story to the building, which was not granted because no facts were submitted. They then came back with the second one, on which they wanted to have a hearing, which asked only to raise the roof 4' and add two 4' x 6' dormers.

Ms. Rousseau stated that she was hearing raising the roof on both so why was that materially different. Mr. Nadeau responded that a second story with a 10' story height was considerably different from raising the height and adding two dormers. As it was, they only had two what he would call gable windows. There was no light from either side of the building and no air or cross ventilation. They were trying to make this marina more code compliant by moving them, (the buildings) meeting setbacks, and really upgrading. He stated that not being able to address the Board on making the building more livable lay at the heart of whether or not it was feasible to even move the building if it was not be able to be improved. They considered it a material change and it was intended to be responsive to the Board.

Ms. Rousseau added, but a material change from one application to the other, and he agreed. She stated that he was then saying that adding a story was different than raising the roof and that's what it came down to, a material change in his opinion. Mr. Nadeau stated that it was more than twice the raise, but the bottom line was also the fact that Fisher v. Dover stood for abusive applications, which he again described. He asserted that was not the same case here at all.

Ms. Rousseau stated that he was then saying his intention in raising the roof was simply to accommodate dormers, simply to do that structural change rather than add a second story. Was that his position? Mr. Nadeau responded, "yes." And to add headroom, light, air and the dormers. He stated it was significantly lower in height from the first application as he recognized that they had to present something materially different. He continued that the materiality was one issue but the more he looked into this, his bottom line if he had to summarize it was, again, that Fisher v. Dover should not be applied here because the circumstances were radically different. He again reiterated it was an abusive situation which was why that decision was rendered 30 years ago. He noted again that, 8 years ago, the Supreme Court said that they should take the facts a little differently, distinguish the facts and he was saying that their facts were radically different from Fisher v. Dover.

When Chairman LeBlanc stated that then his assertion was that they were not creating a second floor on this building, Mr. Nadeau responded that the second already existed.

Chairman LeBlanc stated so he was just adding; he was raising the roof. Mr. Nadeau responded, "headroom and light." Chairman LeBlanc stated, "and raising the roof" and Mr. Nadeau responded, "yes" and adding two dormers. Chairman LeBlanc stated that it sounded the same to him.

DECISION OF THE BOARD

Chairman called for the decision of the Board. Did they uphold their previous decision of invoking Fisher v. Dover or go for a new hearing?

Ms. Rousseau stated that she would make a motion for a rehearing. She stated it was a judgment call, adding a second story vs. adding some sort of roof height.

Chairman LeBlanc asked if there was a second and Mr. Grasso stated that he would second for discussion.

Ms. Rousseau stated that just adding some roof height, in some people's opinion, could be materially different so it was sort of a borderline situation and she would like to err on fairness to the applicant to hear this and hear his position on this new application. To outright say no didn't, she thought, accomplish his ability and fairness to present his case. She reiterated that it was a judgment call but she thought it did no harm to allow him to speak to his position on this new application. The decision would come down as it might but she thought there were arguments that could be made that adding a second story vs. adding height could be a different structural change, a material structural change, depending on the property, so therein lay the reason for her decision – to allow him to move forward.

Mr. Grasso stated that he seconded the motion for discussion and wouldn't be supporting it. The application presented, he believed in February, a packet for this second rehearing and he thought they all had a good chance to look at what he was presenting in relation to what he thought had been presented three months prior. At that time he voted to invoke Fisher v. Dover and at this time he was voting to uphold it, their decision made on that day.

Chairman LeBlanc stated that he also would not support the motion. They had both applications before them and, at the time, believed that they were so close together that it was actually the same variance being requested, although maybe in a slightly different form. The reason for this hearing was that they did not allow the applicant to speak to it because that had been the practice of the Board. The Board had since changed its position and they now allowed applicants to speak to Fisher v. Dover, which they had done that evening.

Mr. Parrott stated that he did not think this was a significant change. They couldn't have it both ways to say the Board had important new information in front of it but, at the same time, it was a very minor change. He felt a strong argument had been made for moving the houses, with which he entirely agreed. On the other hand, this was an incremental change from the last application and he just didn't think it rose to the level of a substantial change so he would not support the motion.

The motion to grant a rehearing failed to pass by a vote of 1 to 5, with Messrs. Grasso, Jousse, LeMay, LeBlanc and Parrott voting against the motion.

Mr. Witham resumed his seat and Mr. Parrott stepped down for the following petition.

C) Case # 8-5

Petitioners: Kent Scherr & Kristina Rogers Scherr

Property: 300 Rockland Street Assessor Plan 129, Lot 10

Zoning district: General Residence A

Requests: To allow the expansion of a nonconforming residential structure with the following variances:

- Variance from Section 10.321 to allow the expansion of a nonconforming structure
- Variance from Section 10.521 Table of Dimensional Standards to allow a 8' rear yard where 20' is required
(This petition was postponed from the August meeting)

Mr. Grasso made a motion to take the petition off the table, which was seconded by Mr. LeMay and passed by a vote of 6 to 1 with Ms. Rousseau voting against the motion.

SPEAKING IN FAVOR OF THE PETITION

Attorney Peter Loughlin stated that the previous month, he had been pinch-hitting on behalf of Attorney Pelech and was there that evening on behalf of the applicants. Also with them with was the builder, Mr. Steve Roy. He stated that the applicants were trying to do something positive for themselves and the neighborhood. A tired looking classic property was being restored, not for condominiums, but for a young family with children. He stated that he was disappointed with the departmental memorandum and found it off the mark although the planner may not have been given the information he needed to make a proper analysis.

Attorney Loughlin submitted some plans, stating that this was one of the special Victorian homes constructed in the late 1800's. The owners were seeking to update the home while preserving the Victorian layout. They would restore the wrap around porch, adding a deck on a portion at the back and slightly expanding the south side entrance with 39 s.f. of enclosed space. They were not proposing a 4,500 s.f. "McMansion," but a modest change to their home. The memorandum had suggested that the mudroom could be built on the other side but that would ignore the Victorian layout. He referred to the packet of exhibits he had provided that evening noting that with the 1895 floor plan, the only logical location for the mudroom was off the kitchen.

Attorney Loughlin stated that the relief they were seeking, as shown on one of the original plans, may have resulted in some confusion so they attempted to clarify that in the plan just submitted. Regarding the garage, most of the structure would be replaced by pervious stone patio. The garage was one and a half feet from the rear property line and what was being removed was shown on the plan in orange. With the patio replacement, that would be 149 s.f. removed. The proposed mudroom was shown in green at 39 s.f. so they were taking away 149 s.f. and putting in 39 s.f. of enclosed space, none of which was within the 9' setback. They would also be wrapping the open deck around. A tiny portion was within the setback and was shown in yellow on the plan.

Citing the Chester Rod & Gun Club case, Attorney Loughlin stated that granting the variance would not be contrary to the public interest as it would not violate the basic objectives of the ordinance. He referred to Exhibit 4 in the packet which was a comparison of the South Elevation, on which the mudroom addition was highlighted in yellow. This was what you would see from Buckminster Chapel across the street. That was the only requested change that you would see on the south side. Coming down the street, you would see a 2' bumpout. You wouldn't see the deck where right now there was a garage so he suggested there was no threat to the public health, safety or welfare. The second criteria was whether the spirit of the ordinance was observed. Attorney Loughlin stated that the ordinance talked about promoting health, safety, and welfare and regulating land use. This application met every requirement as to lot coverage and setbacks except to the rear. In terms of creating space and preserving the neighborhood, there would be no negative effect. The addition could not be placed on the north side without compromising architectural integrity. He stated that the essential character of the neighborhood would not be altered. That was usually talked about with a use and this use was permitted.

Attorney Loughlin stated that substantial justice would be done. As in the Malachy Glen case, the guiding rule was whether any loss to the individual would be outweighed by any gain to the general public. The departmental memorandum stated that there was more of a benefit to the applicant than to individuals that would be impacted by the scale of the proposed additions but, he maintained, this was not an accurate statement of the rule. The balancing test mentioned in case law was whether the benefit to the individual was offset by harm to the general public. There was no harm to the public here and granting this minimal relief would allow the owners to use the property in a reasonable manner. He stated that the value of surrounding properties would not be diminished. Referring again to Exhibit 4, he noted that the requested change was almost invisible and could barely be seen as one drove down the street or from other vantage points he listed. He added that removal of the garage would be a great improvement to everyone. The photographs in Exhibit 5 and the elevations showed that the project was well thought out. He also pointed out the letters of support from abutters. Attorney Loughlin noted that the departmental memorandum stated that this was a substantial investment which could improve home values except that the additions crowded the neighboring property and could be a detriment to its future sale. He thought the opposite was true and the neighborhood would only be improved because the property became more conforming by removing the garage.

Attorney Loughlin stated that the last legislature essentially codified the Simplex standard, which was more considerate of the right to enjoy property. Unnecessary hardship was also defined, which included whether there was a fair and substantial relationship between the general purposes of the ordinance and its application to the property. He maintained there was no such relationship in this instance as there was adequate light and air. He stated that there were special distinguishing conditions of the property. The first was the way the house, which predated zoning, was laid out in the rear corner of the lot as well as the need to preserve its Victorian integrity. Referring to the aerial photograph in the file, he noted that all of the homes tended to have a big side, front and back yard and were not located in the middle of the lot. They had also included a copy of the tax map so the Board could get a flavor for the neighborhood. He gave a brief history of the lot and noted that a previous developer had sold it with the proviso that the home could not be closer than 45' to Rockland Street which was why the house was so far back. A copy of the deed was enclosed with the submittal that evening.

Attorney Loughlin stated that the garage, built in the 1920's, was another special condition as it allowed for a good use of the rest of the lot and preserved open space. It allowed for a reasonable use of the property. He cited another property on Broad Street with a garage in back again to preserve open spaces. He stated that none of them would want other than what the applicant was requesting and he didn't think that any current or future neighbor would find this to be anything but a positive change for the neighborhood. The nub of the request was to be able to have that 39 s.f. which was very minimal and would put the mudroom further from the property line that what existed currently. It was also reasonable to have a deck there in a corner of the porch. Finally, he stated that the request was not something that had never happened before as the direct abutter diagonally behind got almost the same variance relief 6 years ago and he enclosed a copy of that statement which stated the reasons why the relief was granted. That was about three months after Boccia was decided and the hardship part was decided under that case. Attorney Loughlin stated that all the other tests applied currently for the same reasons. He was not arguing that it set a precedent, but to suggest that relief was appropriate. He believed all the requirements for a variance were met.

Ms. Rousseau stated that her question to him was that this seemed like a very simple application and they were basically increasing the conformance. Would he agree? Attorney Loughlin stated, "yes." Ms. Rousseau continued that they were going from a 1.6' setback to 8' which was a better situation all the way around. She asked if he would agree that was the heart of the situation. Attorney Loughlin responded that he would agree. Ms. Rousseau added, "Great. Thank you"

Mr. Jousse asked for clarification that there was a portion of the garage which would be removed and nothing would be done to that part except for a new façade. The framing and sheeting for the old walls were staying. Attorney Loughlin replied the framing would remain but not as high. That much of the nonconformity would be preserved but it wouldn't look like someone came along with a chain saw and cut it off. In response to further questions from Mr. Jousse, he stated that the footprint of the garage would be reduced by 75% to 80% and the encroachment would remain as it was currently for about 3' or 4' but most would be pulled back 9'. Attorney Loughlin apologized for his rant and referred to a comment he stated Mr. Jousse had made at a previous meeting. He had coined a phrase about a common sense variance and he felt that applied in this case. He commented that Member Rousseau went to the heart of it.

Mr. LeMay stated that Attorney Loughlin had raised the floor plan in justification for where the mudroom had to be and made a reference to restoration. Was he representing that this was the floor plan that was going to be restored. Attorney Loughlin stated that was the floor plan for the home that was there. Maybe he was not understanding the question. Mr. LeMay restated his question as whether the construction involved deviating from that floor plan and Attorney Loughlin replied that he didn't think so. The floor plan stayed the same except to add 2' to the existing mudroom. The inside stayed the same and the deck got added and the porch on the outside. On one of the exhibits, you could see that there was a porch on the 1895 plans.

Mr. Steve Roy stated that he had worked on buildings for over 35 years. In coming up with this plan they were concerned with the proximity of the existing mudroom to the garage. There was a difficult 22" opening if they wanted to access the back yard from Broad Street. With the mudroom as it existed there was not enough room to move around and they wanted to make it bigger and provide better access from the driveway to the back yard for emergencies, etc. To make it bigger would cut off access to the yard from Broad Street so they gave up some of the garage. If they

gave up some of the garage, there was an 8' drop from Broad Street to the back yard so they were going down this little narrow alleyway. Under the new plan, if you took off two thirds of the garage then you could go to the left onto the deck and then down the set of stairs to access the back yard. That was one of the purposes. The second purpose that the addition to the mudroom served was to mask what they were doing so that you wouldn't see the deck when going down the street and to further hide it, they put a fence across driveway. Where the existing garage was, they would put a gate. They would like to present the house as essentially untouched and he detailed how they were trying to match to existing features. There would be a porch on the other side but it would be put back the same as originally built. He continued that this was a unique neighborhood which was noncompliant in various ways and noted similarities with similar corner lots.

Ms. Kris Scherr stated that they were excited about the renovation and one of their main priorities, to have enough space for backpacks and boots, would be accomplished with this small addition. The other thing was that, looking out the kitchen window, the garage was right there. If that came down, they would see their neighbor's garage which could be covered by some plantings and they would have some additional air and space. When Chairman LeBlanc asked if the adjoining property was a little higher, she responded that it was slightly higher. There was a privacy fence but they couldn't see into their neighbors' house mainly because of their garage.

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. LeMay

Mr. Witham stated that, by removing 149 s.f. of garage space and adding 39 s.f. of mudroom, the property would be brought into greater conformity, which was encouraged by the Zoning Ordinance. It was always tough for properties on a corner because the rear setback line didn't blend well with the way the house was originally built. What would seem to be the side was actually the rear so they were requesting 8' where 20' was required. He thought it was a reasonable request and liked to see the effort to restore the property and keep it in character with the neighborhood.

Mr. Witham stated that granting the variances would not be contrary to the public interest and the spirit of the ordinance would be observed. The 8' was reasonable with the removal of the 149 s.f. structure which was 18" away from the property line. Light and air would actually be increased and the property would move to greater conformity. In the justice balance test, there would be no harm to the general public and the abutter most affected was in favor of the project. That area most impacted along the neighbors garage was well buffered. He felt that, rather than diminishing the value of surrounding properties, tearing down the garage would help raise them. The special conditions of the property resulting in a hardship were the way the house was placed on the property and the fact that it was a corner lot. The resulting 20' setback, he thought, was a hardship. He felt the request was reasonable and the applicants were not trying to overreach on what a mudroom should be.

Mr. LeMay stated that the proposal, with minimal impact on light and air, would not be contrary to the public interest. With regard to the spirit of the ordinance, this was a unique opportunity to enable the restoration of a historical property and improve conformance. In the justice test, this would facilitate functionality for the applicant with no detriment to the general public. Regarding surrounding property values, they had received letter testimony from abutters that they would be improved. He agreed with the hardship justification and felt this was a relatively small variance.

Ms. Rousseau stated that she agreed and thanked the applicant for being so passionate about restoration.

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

Mr. Parrott resumed his seat.



III. PUBLIC HEARINGS

- 1) Case # 9-1
 - Petitioners: Gerald W. Howe
 - Property: Behind 45 Miller Avenue Assessor Map 129, Lot 33
 - Zoning district: General Residence A
 - Description: To replace an existing garage on the same footprint
 - Requests: Variance from Section 10.521 to allow a left side yard of 4’8” where 10’ is required.
 - Variance from Section 10.521 to allow a right side yard of 6’2” where 10’ is required.
 - Variance from Section 10.321 to allow the expansion of a lawful nonconforming structure.
 - Variance from Section 10.331 to allow a lawful nonconforming use to be changed.

SPEAKING IN FAVOR OF THE PETITION

Mr. Jousse stated, to cover all bases, that he believed that Fisher v. Dover could be applied to this petition and he asked if the applicant would care to speak to that. Chairman LeBlanc added that the applicant needed to address that issue and tell the Board the material difference from the previous application and the one before them. If the Board determined there was no difference, they could not go on.

Mr. Gerald Howe stated that he had been there in July requesting a variance to rebuild his garage expanding it by a foot and a half in width and six feet in length. The request that evening was to replace the garage in the same footprint so he felt that went to Fisher v. Dover. In response to a question from Chairman LeBlanc, he stated that the height would be the same. Mr. Jousse stated

that he found that a replacement in kind was a substantial difference from the enlargement of the structure so he was satisfied that Fisher v. Dover did not apply.

Mr. Jousse made a motion to put Fisher v. Dover aside and go ahead with the application, which was seconded by Mr. Witham. Chairman LeBlanc asked if they felt there was a substantial difference from the July request so they could move forward and Mr. Jousse stated, “correct.” Mr. Witham stated that whenever someone came for an addition and it was denied and they came back to replace in kind, it was substantially different. Mr. Parrott stated that he agreed.

The motion to put Fisher v. Dover aside and go forward with the application was passed by a unanimous voice vote.

Mr. Howe stated that they were requesting to replace a garage which was over 60 years old. The sills were on the ground and getting punky, the studs on the top were poor, and the structural integrity was in question. They were asking for a variance for a pre-existing nonconforming use to replace the garage on the same footprint, 20’4” wide and the same in length. It sat on a 20’ pad and the 4” was trim. He added that his contractor was also there for any technical questions.

In response to questions from Chairman LeBlanc and Mr. Jousse, Mr. Howe confirmed that the garage was on a different lot from his residence and there was a separate tax bill. He believed it had been sub-divided from the adjoining property in the 40’s, which was why the setbacks were as they were. Access would be from an alleyway, which he confirmed was a deeded right of way.

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

Chairman LeBlanc asked Mr. Feldman why they had a variance to allow the expansion of a lawful nonconforming structure if it was to be replaced exactly as it was. Mr. Feldman clarified that it was the expansion or continuance of a lawful nonconforming use because the parcel as it stood alone could not allow an accessory use on the parcel, the garage, as a primary use.

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

Mr. Grasso stated that this was a request to replace a garage in disrepair and the applicant had been before the Board several months previously requesting a larger footprint. He felt that he could support replacing the garage in-kind with something more in line with today’s construction. With access from an alleyway, he didn’t see any public interest in the variance request. It would be in the spirit of the ordinance to allow the garage on a small lot to be replaced in kind and, in the justice test, there would be no harm to the general public. Regarding the value of surrounding properties, Mr. Grasso stated that it would help to support values to replace a deteriorating garage with something newer. The hardship was that the structure currently existed on a small lot. With this application, they were not seeking to expand, only replace with a structure of the same length and height. This was about the only place the garage could go on the lot.

Mr. Parrott stated that he agreed and had nothing to add except that this was an unusual case where, if it were a vacant lot, he might look at it differently, but it was simple fairness to allow an owner to replace a derelict garage with a new one of the same size.

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

2) Case # 9-2

Petitioner: Joshua M. Pierce and Lara A. Johnson

Property: 164 Bartlett Street Assessor Map 163, Lot 6

Zoning district: General Residence A

Description: To reconstruct front stairs in order to meet the required building code

Request: Variance from Section 10.521 to allow a front yard of 1'± where 15' is required.

SPEAKING IN FAVOR OF THE PETITION

Mr. Joshua Pierce stated that he, along with Lara Johnson, was the owner of the property on which they were looking to replace the existing nonconforming front stairs. This was a house on a compact lot similar to all their neighbors where the front was within 10' of the property line. Currently, when they went out the front door, the steps went straight down 6' to the sidewalk and there was no landing. The stairs were not structurally sound and they would like to replace this with something workable but there was nothing they could construct that would conform to the requirements. He referenced the submitted plans, photographs of the existing steps and the rendering of how the front would look if the stairs were replaced. They planned to create a landing, but wider to reorient the stairs so they went parallel to the street and didn't dump directly onto the roadway. Chairman LeBlanc asked if the sidewalk was the property line and he responded that it was, as far as he could tell.

The neighbor who owned the house next door stated that the property owners were trying to make Bartlett Street look better and he felt building the new stairs would be a great asset and help to create a nicer neighborhood. He also felt the new stairs would be better for safety purposes.

**SPEAKING IN FAVOR OF THE PETITION, OR
SPEAKING TO, FOR, OR AGAINST THE PETITION**

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

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

Ms. Rousseau stated that it was a very simple application, just putting on a set of stairs really. There was one variance criteria that they had to look at closely which was the hardship case and

indeed this person met it. As you looked at the photographs of the property there was no other alternative for them to put their front stairs so they definitely needed to allow a 1' front setback where 15' was required. She stated that she thought on all the other variance criteria, they didn't have to go through it. They certainly met it so it was a very simple request.

Mr. LeMay agreed adding that the packet had included his favorite illustration. These were basic front steps and the improvement would be in the public interest and the spirit of the ordinance. Substantial justice would be done by increasing safety and the surrounding property values would, if anything, probably improve. He felt that the hardship issue had been addressed.

Mr. Jousse stated that the stairs as they presently existed were a safety hazard and, if anything could be done to improve the situation, it should be done. He would hate to have to go up the existing stairs in the winter carrying a bag of groceries.

Chairman LeBlanc stated that the real hardship was that this was needed to bring the property into conformance with code and there was no room for negotiating for a different plan.

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

 3) Case # 9-3

Petitioner: Lee A. Gove

Property: 39 Morning Street Assessor Map 163, Lot 17

Zoning district: General Residence A

Description: To replace a flat roof on a nonconforming structure with a roof with a 6:12 pitch

Requests: Variance from: Section 10.321 to allow a lawful nonconforming building or structure to be enlarged.

Variance from Section 10.521 to allow a 2'± front yard where 15' is required.

Variance from Section 10.521 to allow an 8' side yard where 10' is required.

SPEAKING IN FAVOR OF THE PETITION

Mr. Lee Gove stated that he was the owner at 39 Morning Street. As shown in the submitted photographs, he currently had a flat roof. Neighbors had indicated that it was pitched at one time but a flat roof was a quick fix after a fire. They had been removing snow from the roof for the past few years and there was some seepage this past winter. His contractor had recommended a pitched roof. They would be removing the chimney and increasing the pitch 4" to 6". He noted that the only flat roof in the neighborhood was across the street on an empty office research building. None of the residences had flat roofs.

Mr. Jousse asked, and Mr. Grasso stated he had the same question, if he was changing the pitch of the roof at the rear portion of the structure, the shed roof, and Mr. Gove stated that was fine. It was built to today's standards and codes and drained well.

Mr. Gove stated that he didn't see any public interest in his application. Going from a 6 to a 12 pitch would not block any air or light. It would not be against the spirit of the ordinance and if they could move into conformity, they would. He felt it would be substantial justice to have a safer building and adequate ventilation where now there was none. He stated that surrounding property values would not be diminished and all the houses around him had pitched roofs. The hardship was, safety-wise, whether a roof could continue to hold up under these conditions. If the variance were granted, it would be brought up to code with regard to ventilation.

**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. Jousse.

Mr. Grasso stated that the applicant wished to repair a roof which had shown signs of leakage due to the current structure which did not bode well for winters in New England. They wanted to add a 6/12 pitch which this probably had at some time. He saw no public interest in the repair of this roof and granting the variance would be in the spirit of the ordinance because the house was not being added to or expanded. He stated that he would like to add a stipulation that no additional dwelling units would be allowed on the property. Mr. Jousse stated that was acceptable to him. Mr. Grasso continued that substantial justice would be done by granting the variance. The leaking roof could ruin the inside. In order to prevent that without moving the building, the applicant had to come before the Board as it was close to the property line,. He stated that the value of surrounding properties would not be diminished and the hardship was the location of the structure on the lot within the setbacks. Although there was no expansion of the footprint, the application had to come before them for going upward.

Mr. Jousse stated that a flat roof on a residential house in this neck of the woods was asking for trouble and a pitched roof would be the recommended way to go.

The motion to grant the petition as presented and advertised,with the stipulation that there will be no increase in the number of dwelling units on the property, was passed by a unanimous vote of 7 to 0.

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- 4) Case #9-4
 - Petitioners: Great McDonough Street, LLC, Owner, and James Prendergast, Applicant
 - Property: 135 McDonough Street Assessor Map 144, Lot 47
 - Zoning district: Mixed Residential Business
 - Description: To establish a Media Studio excluding any transmitting antenna tower.
 - Request: Special Exception under Use No. 5.51 Media Studio excluding any transmitting antenna.

SPEAKING IN FAVOR OF THE PETITION

Mr. James Prendergast stated that he had recently moved to New Hampshire after operating an establishment similar to the one requested for the last 20 years in Nashville. He would like to continue on a somewhat reduced scale and he hoped he had described what he had in mind in the packet but would be happy to answer any questions.

Mr. Jousse asked why the floor was filled with sand and Mr. Prendergast stated to create a completely soundproof section of the stage. Sound was transmitted through the walls and floor and sand prevented that transmission. When Chairman LeBlanc asked if there would be a secondary floor, he responded that the plan was a neoprene sheath placed on the floor with the space filled with the sand. Mr. Jousse commented it was a room within a room and he stated, “exactly.” He added that it would be a heavy load so they had to find out whether the weight could be supported and it was determined that would have to shore up the floor.

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

Mr. Jousse stated that this was an unusual case and they were granting really an occupation to exist in a building with no more demands on public services than were being provided at this time. There would be no hazard to adjacent properties and no detriment to property values in the vicinity. He doubted if anyone would know that this activity was going on. He stated that, from the information given, there would be no large amount of traffic, just a few clients during the week. There would be no increase in storm water runoff as everything would be within an existing building. He saw no reason why the Special Exception should not be granted.

Mr. Parrott stated that he agreed, noting that the building over the decades had many heavy industrial uses. He felt this was a very benign use which would go well with the area and the building.

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- 5) Case # 9-5
Petitioners: Gordon F. McAlpin and Betsy Rivers Patterson
Property: 293 Rockland Street Assessor Map 129, Lot 13
Zoning district: General Residence A
Description: To establish a second dwelling unit with less than the minimum required lot area per dwelling unit.
Request: Variance from Section 10.521 to allow a second unit on a parcel with 10,000 sq.ft. where 15,000 sq. ft. is required.

SPEAKING IN FAVOR OF THE PETITION

Mr. Gordon McAlpin stated that they had purchased the property in June. The previous owner had put in heating and a bath in the proposed area intending to turn it into an apartment for his daughter and they would like to continue that process. He stated that there was plenty of parking using the Portsmouth Apartments right-of-way.

Chairman LeBlanc asked if he had a special reason to want the second unit and Mr. McAlpin responded that they had a son who was moving back home and they wanted to make an apartment for him. When Chairman LeBlanc asked again if there was a special reason, Mr. McAlpin stated that his son had ADHD and they were hoping to help him save money so that he could get an apartment and live by himself and not with 3 or 4 other people. Ms. Rousseau asked if there were documentation for this as they needed to weigh the hardship and she didn't see any evidence of that. Chairman LeBlanc stated that there was a letter from a doctor in their packet. Mr. Witham asked what was to the right and Mr. McAlpin responded that it was the apartment complex.

Mr. Mike Hart stated that he was Vice President of Financial Services and Manager of the Portsmouth Apartments, which directly abutted the property. They had no objections to the proposal and there was the parking necessary to have another unit. Portsmouth Place had 48 units of housing for the elderly and people with disabilities.

Mr. Russell Buckholtzen stated that he was the contractor who had been doing work on the property. He stated that the unit was all but complete and had been for many years. There was a bedroom, bathroom, living area and a separate entrance and all it now needed was a kitchen. Mr. Parrott asked if, to his knowledge, it met all codes and he responded, "yes." When Mr. Parrott asked if any permits had been pulled and had they done anything yet, he responded that they only requested the permit for the kitchen. One of the inspectors had visited and didn't see any major obstacles. In response to further questions from Mr. Parrott, Mr. whoever stated that the space was 900 s.f. and would be over the garage, with the bedroom over a room in the main house. The way the garage was configured, the bedroom was open like a loft.

**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.

Chairman LeBlanc noted that the Planning Department had presented a possible stipulation if someone was interested in making a motion to grant.

Mr. Witham made a motion to grant the petition as presented and advertised, with the stipulation from the departmental memorandum. The motion was seconded by Mr. Parrott.

Mr. Witham stated that he would address the first four criteria and not the hardship as a letter regarding that issue had been provided by the applicant. He stated that granting the variance would not be contrary to the public interest. Regarding the spirit of the ordinance, two families

were allowed in this district but the lot was 5,000 s.f. short of the required size. As this was a temporary use, he felt they could move forward. He also felt that the fact that the abutter was a 48 unit complex worked in their favor. In the justice balance test, this would be a great help to the homeowner during the transition period while he saw no negative impact on neighbors or the public. The abutter most directly affected had spoken in support. Mr. Witham stated that he had no reason to believe that the value of surrounding properties would be diminished especially, again, with the 48 unit abutter. He felt that the character of the neighborhood would not be changed by adding one unit. He added that this was an unusual request which was the first he had seen invoking state statute.

Mr. Parrott stated that he agreed, noting that this was really a dimensional variance because the General Residence A district allowed a second unit, given a lot size of 15,000 s.f. and this was 10,000 s.f. As far as impact, there would be no outside change so he saw no effect on the neighborhood. The other salient point was the temporary nature of the request, unlike other variances.

Mr. Grasso stated that the statute referenced by Mr. Witham referred to reasonable accommodation for a recognized physical disability, such as when wheelchair access would be needed. He stated that ADHD was not a physical disability but a behavioral one and he didn't think it met the definition in the state statute. On that basis, he would not support the motion.

The motion to grant the petition as presented and advertised, with the stipulation that, in accordance with the relevant state statute, the variance would survive only so long as Keith Patterson had a continuing need to use the premises, was passed by a vote of 5 to 2. Messrs. Grasso and LeMay voted against the motion.

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- 6) Case # 9-6
 - Petitioners: Harbour Place Group, LLC
 - Property: One Harbour Place Assessor Map 105, Lot 2
 - Zoning district: Central Business A
 - Description: To place two oversized building marker signs on the building
 - Request: Variance from Section 10.1222.30 to allow two 50.3 sq. ft. marker signs to be affixed to the building where the ordinance allows only one building marker sign composed of unpainted letters carved into or embossed on a building wall with a sign area of no more than 12 sq. ft.

SPEAKING IN FAVOR OF THE PETITION

Mr. Paul Tripp identified himself as the sign contractor for the project. He stated that he wanted to give a little history behind why he was there that evening. It was important to note that the street address was One Harbour Place and the letters to be installed said “One Harbour Place.” He described an unidentified call he had made to the City asking if they needed to put a street address on the building and subsequent conversations. While initially, he was told a permit would not be needed as it was a street address, after further conversations with the Inspection Department and Mr. Feldman, it was determined that it was best to bring this before the Board for a variance. He

stated that it had been discussed that the sign ordinance didn't address anything about a street number on a building except as loosely addressed in Section 10.1222.10 where sign permits were not required for signs that were necessary for the public welfare or safety by state or federal agencies. He stated that the Fire Department typically required street numbers on buildings with a minimum, not a maximum, size restriction. Mr. Tripp indicated that he had brought a sample of the type of letters that would be used, noting that he was going to refer to this as a building marker sign because that was the section of the ordinance from which they were seeking a variance. While he felt to the letter of the law this was an address, they couldn't carve the address into the building.

Mr. Tripp stated that another point was that the building owners recognized that regular tenant wall signs up to 40 s.f. per tenant were allowed, but in the best interest of the City they decided to seek a variance for this rather than general wall signs because a variance ran with the building and they would be stuck with a larger sign. Keeping this under a building marker sign restrained current and future owners. He felt that another consideration was that sign ordinances in New Hampshire addressed the size of the building and linear frontage and increased proportionately with size. What typically was never addressed was how large a sign should be depending on the viewing distance although there were rules of thumb governing that. Relief, however, was needed from the letter of the law and he was there to argue that it should be granted.

Mr. Tripp stated that the proposed use would not be unsightly signage nor diminish the value of surrounding properties. The public interest would be benefited as having the address conformed to the intent of the City to have building marker signs. The building needed to be marked as the owner had told him that visitors didn't know where it was and it was important for people coming to the city to find the tenants at One Harbour Place. Mr. Tripp stated that denying the variance would create a hardship as it was important to also identify the building from across the bridge. The ordinance allowed one sign and they were requesting two so that it could be marked from two directions. While over four times the allowed size, the proposed signs appeared the appropriate size on one of the tallest buildings in the city given the viewing distance. He maintained that the purpose of the signs was not as a marketing tool but to allow identification of the location. He stated that the purpose of Article 12 was to enhance the character of the city's commercial district and protect from distracting. Their request met the spirit of the ordinance allowing identification and indication of the street address. Referring to the submitted drawing, Mr. Tripp noted that especially on the left the letters could hardly be seen. The rule of thumb was 25 linear feet per inch of sign height. This should be comfortably readable from 600 feet away. Badger Island was 1,000 feet so roughly halfway across the bridge it could be seen. He maintained that, as a gateway to the city, this type of signage was important. Again, the hardship was the readability and they needed the ability to mark the building appropriately.

Mr. Witham asked if the square footage as the zoning was written was 12 s.f. and Mr. Tripp confirmed it was. Mr. Witham stated that he was trying to wrap his arms around such a large building having the same signage as would be allowed to a hot dog stand next door. Mr. Tripp responded that this was a building marker sign but, again, he was reluctant to keep calling it that because it designated a mailing address not the name of the building.

Mr. Parrott asked if he understood Mr. Tripp to say that Harbour Place was an accepted city street and Mr. Tripp stated, "no." He had said the mailing address was One Harbour Place. Mr. Parrott stated that he believed Mr. Tripp's position was that Harbour Place was a street address and he asked where that street started and stopped. Mr. Tripp stated he couldn't answer as there was no

street called Harbour Street. Mr. Parrott stated that was his point, that it couldn't be called a street address. A brief additional discussion followed about street addresses, with Mr. Tripp stating the post office had given them their street address; Mr. Parrott stating that Public Works establishes streets; and Mr. Jousse noting that he had worked for the post office and concurring that Public Works, not the post office, established addresses and advised the property owners. The address was established for emergency vehicles and, if everybody wanted it to be that address, that was it whether there was a street or not.

Chairman LeBlanc pointed out that the application was for property at One Harbour Place. When Mr. Parrott stated that didn't exist, Ms. Rousseau stated if that was how it was legal in the deed, then it existed as a legal property, not just a street address. She stated she had a question and, when Chairman LeBlanc told her to go ahead, she stated this was a really tasteful application. It looked wonderful. It looked reasonable for this size building and time and time again she told entrepreneurs in the community right now the City of Portsmouth was looking at their signage ordinances and she highly recommended they put something in writing and contact the City Planners Office and tell them what they would propose for this particular area because... When Chairman LeBlanc banged his gavel and stated, "excuse me," she stated that she was getting to her question. She asked, "So, according to the hardship requirements here, can you see any alternative other than what you've proposed for this variance request of 50 s.f. to reasonably direct people to this property?" Mr. Tripp responded that he could not.

Mr. James Horn stated that he was the agent for the owner and, in managing the building for 5 or 6 years, there had been a constant problem because people couldn't find it. Coming from any direction, it was difficult to know where it was. His understanding was that Harbour Place was the plaza it was situated on and he believed that was what it said in the deed but he would have to get a copy. He noted that, on any legal document, the property was referred to as One Harbour Place. He added that the building was becoming a destination and reiterated that it was important that people be able to see where it was. When Chairman LeBlanc asked if the sign would be lighted, he stated, "no."

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

Ms. Rousseau made a motion to grant the petition as advertised, which was seconded by Mr. Witham.

Mr. Feldman asked if that would include the stipulation that it go to the Historic District Commission where it was in the historic district and Ms. Rousseau stated, "No. They can deal with that on their own."

Ms. Rousseau stated that the variance was not contrary to the public interest. She saw no issue regarding the public interest in this situation. In this variance request, there were no issues regarding public health, safety or welfare. It would not injure the public rights of anybody. The spirit of the ordinance was observed. "We want to make sure the building is well marked, that the

address on the building, or the identification of the building is reasonable for the size building that it is and that's why you're here – because the particular property is unique in the City of Portsmouth.” She stated that it was a very large building as compared to others in the community and she thought the zoning “reg” for this signage in this zoning district did not address building size, “as you pointed out very well and I highly recommend that you bring that up to the City. Substantial justice is done. The benefit to the applicant does not outweigh any harm or to the general public or other individuals, so you would be able to advertise your sign and it would be a win-win for the community to see where that building is.” Ms. Rousseau stated that she absolutely agreed with the applicant that people visiting their community did not know where One Harbour Place is. There was a very important museum there that the public should visit and they should know where that building was and she thought the request was very reasonable. She stated that, so, substantial justice would be done for all concerned including the general public looking for that property.

Ms. Rousseau stated that the value of surrounding properties would not be diminished. She did not see any testimony nor did she see any evidence that a marker on a building to identify it as One Harbour Place would do any damage to surrounding property values. If anything, it made the building look approachable and nice. And the fifth criteria was the hardship criteria and “she needed to look at, the property cannot be reasonably used in strict conformance with the ordinance.” She agreed that this particular property could not conform to this particular ordinance that they were looking at because of the size of the building. It was unique and it bordered the water area and she thought the applicant's point that people coming to this city from Kittery or by boat needed to identify this building with an address, and the way they presented it was important. Also, people on the ground, tourists looking for the building for various reasons. There was public parking, she knew, in the building. There was a museum and she thought that the size lettering that they had proposed, or numbering, looked very reasonable for this size building. It was very tasteful and she thought the community would have it very well received and she thanked the applicant for bringing this forward.

Mr. Witham stated they all realized that signs were a sensitive topic for the Board. His support was based on the fact that it was difficult to write a sign ordinance that was fair and effective for the City and obviously the City was revisiting it right then and working on it. His concern was this idea that 12 s.f. was allowed as a marker sign. He thought that was based on the downtown area and properties in Market Square and Daniel Street and whatnot, 20' wide and 3 or 4 stories high. He didn't think the intent was to limit larger buildings such as this. He felt the proposal was appropriate and tastefully done and would help people identify the property. While it was out of the standard format for the city, he thought it met the spirit of the ordinance because, again, the ordinance did not take into consideration buildings such as this. While it was hard to argue hardship, he thought it existed in this case. When Mr. Parrott commented that the memorandum from the Planning Department pointed out that the proposal was for 100.6 s.f. where 12 s.f. was allowed and the applicant was asking for 8 times what the new ordinance allowed, Mr. Witham responded that his point was that this was 8 times the size of the average brick structure in the downtown.

Mr. Parrott stated that this was a well established building and, based on testimony that evening, a very successful building. It had parking across the street. It had a plaza. It was attractive. For lack of signage, it was doing extremely well. To take this new sign ordinance and say that two signs for a total of 8 times the allowed amount were necessary to call attention to a building which

was apparently functioning well seemed unreasonable. Would they be well suited to have a sign on the outside of the building in addition to some of what was there for individual companies, yes, certainly, but not these two very large signs which would dwarf anything else in the area. They could achieve their purpose while staying much closer to what the ordinance called for. He concluded that, just by looking at the renditions, the signage seemed huge and inappropriate and he would not support the motion.

Mr. Jousse stated that he was a strong advocate of putting on a street address and they had a street address in front of them. He thought the applicant ought to be commended for asking for a street address versus a whole bunch of different signs that were going to change from month to month as tenants come. To have one central sign that said who you were or where you were was really the thing that he believed the City should be striving for, but this was big. He didn't want to paint himself or the Board into a corner but, if it were half that size, he would have no problems going along with it. Visitors needed to see where they're going and the street address on the building was the thing to have. He just didn't think it should be quite that big.

Ms. Rousseau stated, to answer Mr. Parrott's comments, that they needed to take into consideration when they made decisions that they were not made necessarily for people who had lived there forever. She noted the visitors coming for the Blue Angels and Market Square Day and that businesses in this property had clients and customers from out-of-town. She maintained that it was not about her and the Board members knowing where Harbour Place was but everyone else coming to this wonderful City of Portsmouth trying to find their destination. It was about their visitors and their guests and helping them navigate the city.

Mr. LeMay stated he could see both sides of this but he was concerned, as Mr. Jousse had expressed it. He commented that the Blue Angels could read this sign from 25,000 feet so it was awfully large, scary big. He stated that he liked the idea of having it labeled on both sides of the building and there was justification for a sign larger than 12 s.f. but 100 s.f. was way too big.

To address the "scary big," Mr. Witham referred to a bench across the chambers and stated that the part covered in fabric was that size although it might be a bit longer and it would be 70' in the air so if that was scary big it was scary big. He just wanted to point out the size they were talking about.

The motion to grant the petition as presented failed to pass by a vote of 2 to 5, with Messrs. Grasso, Jousse, LeBlanc, LeMay, and Parrott voting against the motion.

IV. OTHER BUSINESS

Mr. Feldman listed the items he had placed in front of the Board which included the following: 1) a Superior Court decision regarding Portwalk and the parapet sign at the hotel on which Harborside Associates had made an appeal. The ruling said that the Board of Adjustment had erred in their decision and required Portwalk to take down the signs; 2) a 3-4 page pamphlet containing information on cases of municipal significance in which he had highlighted that the appeal period from the Planning Board to the ZBA began to run at the conditional approval. He also drew their attention to a case on page two; 3) a copy of a bill that was passed by the State

legislature this last session and enacted in September. The bill allowed the Board of Adjustment to do what the Planning Board has been able to do for quite some time. This was to ask for a third party review in some cases if the Board didn't feel comfortable having the City do it and charge the applicant for the costs of the third party consultant.

Mr. Feldman also pointed out several upcoming conferences of interest to the members including the annual Fall Planning Conference in Whitefield and the Northern N. E. Chapter of the American Planning Association Conference which was being held in Portsmouth and where Portsmouth was the featured community with tours and lectures

Chairman LeBlanc asked how the Superior Court decision affected the Board's decision on Portwalk and Mr. Feldman stated that the marquee sign was affirmed, however the definition of a parapet sign was denied.

IV. ADJOURNMENT

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

Respectfully submitted,

Mary E. Koepenick
Administrative Clerk