

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

**MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**EILEEN DONDERO FOLEY COUNCIL CHAMBERS**

**7:00 p.m.**

**February 15, 2011**

**MEMBERS PRESENT:** Chairman David Witham, Derek Durbin, Carol Eaton, Thomas Grasso, Alain Jousse, Arthur Parrott

**EXCUSED:** Charles LeMay, Alternate: Robin Rousseau

**ALSO PRESENT:** Principal Planner, Lee Jay Feldman

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**I. APPROVAL OF MINUTES**

A) July 20, 2010

It was moved, seconded and passed by unanimous voice vote to approve the Minutes as presented.  
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B) July 27, 2010

Mr. Parrott noted that the Minutes indicated he had recused himself for Petition #10, but he had not. It was moved, seconded and passed by unanimous voice vote to approve the Minutes as amended.  
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C) August 17, 2010

It was moved, seconded and passed by unanimous voice vote to approve the Minutes as presented.  
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D) December 20, 2010

It was moved, seconded and passed by unanimous voice vote to approve the Minutes as presented.  
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**II. PLANNING DEPARTMENT REPORTS**

A) Zoning Ordinance Updates

Mr. Feldman pointed out the following items which had been distributed to the Board: the new 2011 New Hampshire Planning and Land Use Regulation book, an informational transmittal from the Economic Development Council about their 2011 Action Plan, an e-mail from an abutter to the 27 Thaxter Street property which would be in front of the Board that evening, and a number of Zoning Ordinance updates approved by the Planning Board and City Council to be inserted into their Ordinance books.

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### III. OLD BUSINESS

3) Case # 1-3

Petitioner: High Liner Foods Inc, Owner

Property: 1 High Liner Avenue

Assessor Map 259, Lot 14

Zoning district: Industrial

Description: To expand the existing maintenance building by 4493 s.f. and expand the office space by 3200 s.f.

Request: Special Exception under Section 10.440, Use #14.32 to allow the expansion of a seafood processing facility in the Industrial district

Chairman Witham noted that this petition had been postponed from the January 25, 2011 meeting.

#### SPEAKING IN FAVOR OF THE PETITION

Mr. Art Christianson identified himself as the VP of Manufacturing for High Liner Foods USA Inc. He was there with Mr. Bickerton who represented the potential contractor should the plans be approved. He pointed out on the site plan the area that they were looking at relative to the expansion as well as their orientation with respect to I95. He indicated an area that was blocked in and was currently utilized for some incoming trucks. They were proposing to enclose that for basically dry storage type office space. On the other end of the building, there was a mainly unused parking lot or pavement. They were proposing to enclose that for additional maintenance and equipment storage.

Mr. Derek Bickerton stated that he was with the Stellar Group, the design contractor for this project. He pointed out on the site plans the proposed expansion to the office area. They would match the existing façade with double-T, pre-cast panels. The structure itself would be metal frame. From the outside, it would look exactly the same as the existing structure. He described the construction in the new maintenance area, which would again match the front exterior. The side and rear would be the same metal construction as existed now. He indicated another drawing on display which showed additional details. Another plan showed the details for the office/dry storage area which, as had already been indicated, would look the same from the highway.

Mr. Christianson stated that the reason for the additions was that they had improved their productivity. They had been before the Board two years ago when they had installed an additional line in the plant and the number of products they made had increased, which required more and different materials. For this reason, they now needed some additional storage and office space. From a maintenance standpoint, with the upgrade of their processes, there were additional pieces

of equipment which were not everyday, stand-alone but were moved back and forth. The additional space would allow them to properly store the equipment, per regulatory guidelines and improve the traffic pattern from a safety standpoint. While allowing for these improvements, there would be no planned changes to the production lines associated with these requests.

Mr. Jousse asked if they had stated that the proposed office location was now a loading dock and Mr. Christianson confirmed it was. Mr. Jousse asked if that would be relocated and Mr. Christianson indicated they would utilize the dock doors which were on the front of the building. He indicated on the plan the doors which would be eliminated. Mr. Jousse asked if they still were meeting the required number of loading docks and Mr. Christianson stated, “yes.” He noted that the drawing falsely showed some parking spots in there but they had more than enough parking spaces relevant to space and number of employees.

Ms. Eaton stated that reference had been made in the departmental memorandum to a new test kitchen being installed and Mr. Christianson stated that was not correct. They had previously approved a kitchen in their other office area.

### **SPEAKING IN OPPOSITION TO THE PETITION**

Mr. Christianson added that he had discussed this with Michael Kane of the Kane Company, who was immediately next to them and with the Northeast Credit Union, both of whom had no issues or problems.

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

With no one rising, the public hearing was closed.

### **DECISION OF THE BOARD**

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

Ms. Eaton stated that the criteria for a special exception were different from those for a variance and simpler to meet. She noted that both additions were on an already impervious surface and it was a pretty simple expansion of a facility. The expansions were basically on the highway side of the facility and wouldn't really be a visual change. She stated that the standards for this particular use permitted by special exception were met. There would be no hazard to the public or adjacent property on account of potential fire explosion or release of toxic materials. With an annex for office space and maintenance area, she saw no evidence for either of these having an impact on the concerns of the second criteria.

The next criteria was that there be no detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial district on account on account of the location or scale of buildings and other structures, parking area, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration or unsightly outdoor storage of equipment, vehicles or others materials. This was already in an industrial zone. The additions proposed were on existing pavement adjacent to the I95 corridor.

With the uses being maintenance and office space, there was no expectation of problems with any of these issues. She noted that they were also not changing their outdoor storage equipment areas. Ms. Eaton stated that there would be no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity or excessive demand on municipal services. As they were not increasing the impervious area, there would be no increase in storm water runoff as described in the final criteria.

Mr. Grasso agreed adding that, although they were losing a few parking spaces, they still exceeded the required amount for this lot so the motion could be supported.

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

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#### **IV. PUBLIC HEARINGS**

- 1) Case # 2-1  
Petitioners: Kyle T. & Bridget H. Richter  
Property: 563 Broad Street Assessor Map 221, Lot 49  
Zoning district: General Residence A  
Description: To construct an addition on the left side and rear of the structure with more than the allowed building coverage.  
Request: Variance from Section 10.521 to permit a building coverage of 27.1% where 25% is allowed and 19.2% exists.

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

Ms. Anne Whitney stated that the owners had talked to several abutters and she passed around a list of the neighbors who had taken a look at the plans and were fine with them. She had included in the submittal a little tax map showing the location of those abutters. She outlined the existing and proposed plans and photographs that had been provided in the packet. There was a 4' section on the existing garage, a little a-frame shed which was in poor shape and appeared to be over the property line. They were proposing to remove that 49 s.f. part of the garage which would make the garage more conforming. She referred to a photograph showing a little one story screened porch. They were proposing to take that roof line and wrap it around to the back elevation until it bumped into the two story addition. In doing so, they would be removing square footage from that porch and adding it to the existing residence. The remainder of that addition would be for a mudroom, a small bathroom and a new entryway off the rear side of the lot, as part of what they were trying to do was get better access at the rear of the property where the garage was located. They would be creating two parking spaces in front of the garage, which would be used primarily for storage. Currently, the owners parked on Broad Street using the front door. Ms. Whitney stated that the two story addition, lining up with the right side of the existing structure, would add some living space and storage and would have a full basement. She went through the floor plans and elevations in a little more detail, showing how the additions would integrate with the existing structure and noting that they were working within the existing roof lines and pitches.

Addressing the criteria, Ms. Whitney stated that granting the petition would not be contrary to the public interest. All the setbacks were maintained with these additions, which would provide some needed living space for a very small house without negatively impacting the neighbors. The spirit of the Ordinance would be observed as this property along with most of the properties on Broad Street and Sagamore was undersized. The required lot size was 7,500 s.f. and this was about 16% less than required. They were asking for a 2% increase in relief over current. She noted that across Broad Street, the lots and structures were larger. She stated that of the 134 s.f. they would be adding that would be over the 25%, 32 s.f. was the back porch with the step, 8 s.f. was the part of the bulkhead above 18". Basically they would be adding 94 s.f. of living space above what was allowed. Ms. Whitney stated that substantial justice would be done by providing needed living space and allowing the owners to vastly improve access to the house. She stated that the supportive response of the neighbors to the proposal testified to the fact that the values of surrounding properties would not be diminished. Addressing the unnecessary hardship, Ms. Whitney stated that again it went back to the lot size and they were not asking for an excessively large addition. One thing she had considered in the design was that they had a garage which they had reduced in size to 207 s.f.. If they eliminated it or made it even smaller, then they would not have had to come for a variance. She had, however, come before the Board several times in the past for a small coverage increase in order to put in a garage. They felt that if it were cut down in size so that relief were not required, the garage really wouldn't function that well as a structure. She noted that most of the properties had small garages which did not meet setbacks so she felt it was a reasonable request after reducing the nonconforming part which was overlapping the property line.

Mr. Jousse commented that, when he had visited the property, he looked for the sign produced by the Planning Department to advise that a hearing was pending. Ms. Richter stated that Ms. Whitney had dropped it off but they couldn't put it in the front yard because of the snow. The sign had been posted in their window and neighbors had commented on it. It had fallen down the previous day but she had restored it. Mr. Jousse commented that one of its purposes was to additionally advise neighbors but it was obvious from the paper that had been signed that they did know what was going on.

### **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 Mr. Durbin

Mr. Parrott stated that, between reducing the garage and part of the side porch, the net result would be that the total property would be just over the 25% allowed. In one place it said 126 s.f. and in another 134 s.f. In any case, it was a very small amount of space net over the allowance. It also came down to the fact that, based on how the house was situated and the position of the additions relative to the neighbors, he felt that none of them would be adversely affected.

Addressing the criteria, Mr. Parrott stated that he thought that, in this case, the public interest was probably represented by the neighbors. They were in favor and he could see nothing that would be deleterious. In fact, the left side addition didn't affect the property line as it abutted an alley. The back addition was heading toward the middle of the lot and would not affect either the side or back neighbors. He stated that it would be in the spirit of the Ordinance to allow folks to improve and make their house more suitable for their particular needs. In this case, there was no negative to the public interest in the substantial justice balance test. He felt the question clearly tipped to the applicant. Making the property more useful and attractive could do nothing but help the value of surrounding properties, if there were any change at all. Regarding the hardship, Mr. Parrott stated that the property did have special conditions which were, in a sense, the fairly narrow lot and the position of the existing garage back on the property line. They were trying to improve that situation by taking part of it off. The other condition was that, with the way the existing house was positioned on the lot there wasn't any other feasible way to get the additional space that they'd like to have, and they could do this without negatively affecting the neighbors.

Mr. Durbin stated that he agreed with Mr. Parrott's comments. He added that it was no minor thing to bring something from conforming to nonconforming under the zoning Ordinance but here they were dealing with an extremely small lot, at least in comparison with other lots that particular zone was designed to address. That, in itself, created an inherent hardship in the lot and the structure that was on it.

Mr. Grasso stated that he wouldn't be supporting the motion. The lots were approximately the same width and depth. They were going over the allowed coverage by about 134 s.f. He thought this could be designed a little smaller to stay within the existing zoning.

Mr. Witham stated that, while he shared some of Mr. Grasso's thoughts, he would support the motion. One of the criteria for granting the variance was that it would not change the essential character of the neighborhood. He felt the design was tastefully done and the scale of the house was still appropriate to the neighborhood and the essential character wouldn't be changed. The way the design was laid out, he didn't see a situation where the applicants would keep coming back for more so he was comfortable with the roughly 126 s.f. in additional coverage.

The motion to grant the petition as presented and advertised was passed by a vote of 5-1 with Mr. Grasso voting against the motion.

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- 2) Case # 2-2  
Petitioner: RKW Investment Properties, LLC  
Property: 115 Heritage Avenue Assessor Map 285, Lot 5-1  
Zoning district: Industrial  
Description: To establish a food processing facility.  
Request: Variance from Section 10.592 to permit a food processing facility within 500'  
of a Residential district.

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

Mr. Bob Wynn stated that he was the owner of the property, which was located approximately 1400 feet from the intersection of Heritage Avenue and Lafayette Road. There was a mixture of commercial properties along Lafayette Road and industrial properties contained in the Portsmouth Industrial Park including a number of mixed use tenants, which he then listed. The commercial property at the corner of Lafayette Road and Heritage Avenue which also abutted the residential district had a variety of tenants including restaurants. Mr. Wynn stated that they had been working with a new business in Portsmouth toward establishing a long-term lease. The business was primarily engaged in the private label mixing and packaging of food products such as flour, sugar, spices and other similar ingredients. The nature of the business consisted mainly of mixing dry goods to meet the specifications of their customers, inserting the finished product into packaging, boxing it on pallets, and shipping it to major retailers. Mr. Wynn stated that their space was currently being used for research and development marketing and, in order to complete the development phase from R&D into production, they needed to seek a variance in order to comply with the setback requirements of 500' between the industrial zone and the residential zone.

Mr. Wynn stated that they were asking to be allowed to build an approximate 1400 s.f. clean room to handle the ingredients he had listed. This would be fully contained within the confines of their 25,400 s.f. facility which included 3,000 s.f. of office space with the balance warehouse space. They would build a structure, roughly 20' by 70' and contained within that structure would be a couple of mixers and a filling machine for the packaging process. He stated that there would be no outside equipment or exhaust fans, no outside ventilation, no noise, no offensive odors, no traffic increase, no lighting change, no outside storage of any kind.

Mr. Wynn demonstrated how easy the process would be, similar to what residents might be doing in their homes to make brownies for example. The finished product would go into a box which he held up. This company would be doing business with the Targets and Krogers who were expanding their private label products. They tested the products during the R&D process to come up with something they felt was going to be marketable to the general public. No baking or cooking was done inside the facility other than using a regular kitchen oven to test the products themselves to make sure the ingredients were working properly. There would be no sale to the public whatsoever. He outlined how the City had determined that taking more than one ingredient and putting it together with another constituted food processing rather than packaging, which was why they were there. He noted that, prior to the adoption of the latest Ordinance in January of 2010, this use would have been allowed within 500 feet of a residential zone by special exception. They now required a variance and were there to ask the Board to consider their request based upon the merits of the business and the minimal impact if any to the community, as well as to discuss the benefits to the community which they felt far outweighed any negatives.

Mr. Wynn stated that everything would be done within the walls of the existing building and there would be no change to the exterior of the building. There would be no impact on traffic or effect from any of the items he had mentioned earlier. Addressing the criteria, he stated that they did not believe the variance would be contrary to the public interest. If the variance were granted, their tenant would be able to immediately begin filling orders, adding an estimated 18 to 22 jobs to the community by the end of this year and an additional 15 to 25 jobs anticipated by the end of next year. Many of these jobs were in high paying sales, administrative, warehousing and distribution positions in a very clean, environmentally friendly business environment. A minority owned

business, with a history of providing excellent customer service, this was precisely the type of business that Portsmouth was looking to attract, retain, and help grow.

Mr. Wynn stated that the obvious intent of the distance separating the food processing operations from a residential zone was to not adversely impact the residents with odors, noise, or any of the other offensive activities detectable beyond the building. As previously mentioned, the variance would allow the construction of an enclosed clean room with no visible change to the exterior of the building, thereby observing the spirit of the Ordinance. He stated that denial of this request would result in a catastrophic circumstance for the business so that justice would be served by granting the variance. Not realizing that a variance would be needed, the prospective tenant had spent a tremendous amount of time and money obtaining orders from retailers provided that they could meet the fulfillment timeframes by the end of this year. If they did not receive the variance or if there were any delay in being able to proceed with the construction of the clean room, their hands would really be tied and more than likely they would not be able to get the orders filled.

Regarding the value of surrounding properties, Mr. Wynn stated that by establishing a clean and environmentally friendly business in the facility, not only would the surrounding properties not be diminished in value but would potentially be enhanced by major retailers seeking to cluster their suppliers of complimentary products and services in common geographical areas. He stated that there was a lot of collateral positive activity associated with the granting of the variance. Employees would use the food establishments in the surrounding area and vendors coming in to do business would be staying in hotels.

Mr. Wynn stated that they had to look at what the literal interpretation of the ordinance would do in this particular case in terms of providing an unnecessary hardship. They also had to look at the intent of the Ordinance, which he did not believe was to prevent somebody from conducting a business in no way offensive to the surrounding properties. He felt the intent would be to prevent processors of meat, fish or other such products which might have smoke stacks, outside ventilation, odors that might permeate. He stated that, if they looked at and applied the literal interpretation of the Ordinance, it would provide such an unreasonable hardship that it would not be a fair application. He felt that this was the type of case for which the provisions to allow for a variance were in place and asked for their favorable consideration.

Mr. Jousse asked what the current square footage of the building was and Mr. Wynn stated it was 25,400 s.f., of which 22,400 was warehouse. Mr. Jousse asked if the 20' x 70' clean room would be large enough to accommodate the growth of the business. Mr. Wynn stated that, at some level of sales volume, the building might no longer be compatible. The 1,400 s.f. would allow them sufficient production lines right now to accommodate the orders that they have pending and be able to perhaps add maybe two or three other product lines without having to expand the actual production side of the facility. Mr. Jousse asked if they would need another variance if they had to expand the space. Mr. Feldman responded that he did not believe so as the variance would cover the building and the size of the clean room within the building would be their choice.

Mr. Dana Levenson stated that he lived at 6 Currier Cove and was also general partner of Artisan Realty Associates which owned property at 175 Heritage Ave, a neighbor to the property in question. He felt that even good zoning sometimes had unintended consequences and the possible loss to Portsmouth of a new and growing enterprise would be one of those. He felt that



this operation was the type of business Portsmouth was looking to promote and it would be a shame to see them move to another community or location. The 500' setback existed to protect residential neighbors but he didn't think you could find a more innocuous food processing use than what was being proposed. He felt that if neighbors had any concerns, Mr. Wynn will be more than happy to work to address them to their satisfaction. He hoped that the Board would find it fair and reasonable to all concerned to grant the variance as presented.

Mr. Ned Thomson stated that he lived at the end of Salter Street and was there to support the petition. This was an environmentally sensitive business which would bring in visitors and buyers to the City of Portsmouth. He stated that he had visited the facility and it was dry line, not a process requiring water or heat which would have to be vented and could introduce odors. As a side note, he stated that he had to leave, but he wanted to go on record in support of the Ankers' petition on 34 Salter Street which would be heard later that evening.

### **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 approve the petition as presented and advertised with the following stipulations: 1) That the applicant not store any materials outdoors; 2) That the applicant not operate the machinery while the rear doors are open; and 3) That the operation would be limited to dry food mixing and packaging with no other processing allowed. The motion with stipulations was seconded by Mr. Jousse.

Mr. Grasso stated that the applicant wanted to put in a dry food mixing operation in one of the buildings on Heritage Ave and was in front of them due to the distance between a residential property and this property at Heritage Avenue. He didn't believe that granting the variance would be contrary to the public interest as these buildings were designed to be pretty much one business buildings in a type of industrial park. The spirit of the Ordinance would be observed. While it didn't quite meet the 500' requirement in the new zoning, there was some buffer between the residential area in the back and this building. He stated that substantial justice would be done as this was an allowed use in the district and the value of surrounding properties would not be diminished. On the hardship issue, both the residential structure and this building were existing and you couldn't move either of the buildings in order to comply.

Mr. Jousse stated that he agreed. This was a very benign operation within a large building and he didn't foresee any problem whatsoever down the road.

Mr. Witham stated that he would also be supporting the motion. The fact that they were dealing with benign dry goods as opposed to some chemical operation that could take place there without a variance was enough evidence for him to support this and he thought it was well presented.

The motion to grant the petition with the stated stipulations was passed by a unanimous vote of 6 – 0.

Mr. Wynn asked if the Board could explain to him the one condition regarding the open doors. Mr. Feldman responded that it was the intent that the loading dock doors not be open at the rear when any processing was going on so that the noise from the augers, if there were any, would not emanate toward the residential neighbors. Mr. Wynn stated that his only question was how they would mitigate that when deliveries were being made during a production run. He asked if they could qualify that by making sure that any of the doors within the production facility were shut at all times when any doors might be open in receiving or shipping. Mr. Feldman stated that the intent was that there not be any constant noise. If it were intermittent or if there were doors inside of the loading dock area that should suffice. Mr. Wynn stated that, if there were ever a problem, they just had to contact him and it would be taken care of.

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3) Case # 2-3

Petitioners: NIP Lot 2, LLC NIP Lot 5/6, LLC & Maplewood & Vaughan Holding Co., LLC

Property: 111 Maplewood Avenue

Assessor Map 124, Lot 8

Zoning district: Central Business A

Description: To allow 2 drive-through lanes as an accessory use for a retail bank in the Downtown Overlay District.

Requests: Variance from Section 10.440, Use 19.40 to permit a drive-through facility as an accessory use to a permitted use.

Variance from Section 10.836.22 to permit a drive-through facility with 2 Lanes serving a principal use with 3,000 sf of gross floor area, where no more than one drive-through lane is permitted for each 5,000 sf of gross floor area of the principal use that it serves.

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

Attorney Rob Ciandella, of Donahue, Tucker & Ciandella, stated that he was there that evening on behalf of the applicant, Maplewood & Vaughn Holding. This was an application for two variances to allow a drive-through facility at the former Portsmouth Herald site at 111 Maplewood. The project would take what was now a parking lot on the Route One Bypass side of the redeveloped Portsmouth Herald building and make it the area for the siting of the Kennebuck Savings Bank. He introduced the other presenters as Patrick Crimmins, the site engineer from Appledore Engineering, Lisa DeStefano of DeStefano Architects, Brad Page, the President and CEO of Kennebunk Savings, and Steve Pernaw, the traffic engineer who had prepared the traffic analysis listed as Exhibit 5. He submitted two additional items for the record, an aerial photograph and a letter of support from an abutter, GSM Realty Trust.

Attorney Ciandella stated that he wanted to briefly discuss three themes which framed their application and offer one condition which would attach to any variance they would vote. One, the application was to allow the drive-through. The primary use of a retail bank, the approximate 3,000 s.f. size of the bank, the lot coverage and open space, and the floor area ratio were all permitted by city zoning. He stated that city zoning did not prescribe in any way any of those factors nor offer incentives to build bigger and more dense. Referring to the discussion of the value of commercial property, low density single use, and lower floor area ratio, which were

prominent in the city staff memo, he stated that they didn't believe those were relevant factors to this application.

Attorney Ciandella stated that his second point was that, because they sought a variance from the drive-through provisions of the zoning ordinance, the purpose behind those provisions was the public purpose which they believed counted for the Board. The master plan on page 86 said that the implementation recommended to restrict or prohibit drive-throughs in the Central Business District was to improve pedestrian safety and maintain quality of streetscapes. The master plan strategy which was part of the Zoning Ordinance audit also picked up on this theme. The zoning audit also talked about areas where drive-throughs were permitted by special exception, in particular in connection with Islington Street, noting that traffic management, queuing, and safety were factors. He outlined the presentations, reports and visuals that would follow to demonstrate that there would be no impact on pedestrian safety and that the quality of the streetscape would not be impaired.

Attorney Ciandella stated that his third framework driving the logic of the application was that the site was at the very edge of the Central Business downtown overlay zone, about as far from the center of downtown as you could get and still be in that zone. It was over the railroad track in an area not well set up for pedestrian traffic and, in fact, had very little. North of the site, the road tapered to go over the bridge. There was a cemetery across the street and on the other side of the tracks, now a parking lot, would be a development imposing a formidable mass for any pedestrian looking to walk in that direction. He noted that there were five other banks in the downtown with drive-throughs and all except one were at the heart of downtown, the opposite of their site. The downtown was clearly designed for pedestrian traffic and had a tremendous amount of it. He maintained that a City restriction which made perfect sense for the heart of the downtown didn't make any sense at their location. Attorney Ciandella stated that the condition they would offer was to ensure that any drive-through permitted by variance stayed in function, scope and impact as presented that evening. They would request that a stipulation or condition be imposed to run with the land that provided that the drive-through could only be used accessory to a financial institution, which was a defined term in the City's Zoning Ordinance.

Mr. Patrick Crimmins stated that he was with Appledore Engineering. He stated that the lot at 111 Maplewood Avenue currently housed a retrofitted multi-tenant office building and also contained two parking areas on either side of the building with very little landscaping. For the proposed site improvements, he directed their attention to Exhibit 1 in the packet and on display. He noted that the plans would also require site plan review from the Planning Board as well as approval from NHDES because they were within the 250' shoreland setback. He pointed out on the exhibit the former Portsmouth Herald building and the several parking areas listing the improvements which had been made to the site and which would be extended to the side of the proposed bank. An existing curb cut would be relocated to this area and an access drive through the site constructed between the multi-tenant office building and the bank. This access drive would serve as a point where cars could get in and off the site from both Vaughan Street and Maplewood Avenue, going to the different parking areas including a shared overflow parking area in the rear.

Mr. Crimmins stated that they had laid this out in a manner which provided two drive-throughs, and a bypass lane designed to meet both the setbacks and the criteria for a special exception, although they were not seeking it that evening. The site was going to require sub-division

approval as it would be divided into two parcels. He indicated Proposed Lot 1 on the exhibit, which was the multi-tenant office building and its supporting parking. Proposed Lot 2 was the proposed bank lot. As a function to support both structures, there would be a shared access drive on Lot 2 to also support Lot 1. He detailed the various components on the landscape plan including rain gardens to ensure there would be no increase in runoff, also a special exception criteria. The final exhibit Mr. Crimmins addressed was the drive-through layout. He referred to Exhibit 9 in the packet, the memo from Mr. Pernaw, which stated that there needed to be room to queue six cars to support the drive-through. By laying out the site as they had, the bypass lane and two drive-through lanes conformed to conventional requirements and, not only would they achieve the six car stacking, but there would be room for an additional three cars to stack. That would prevent cars backing into the access drive and keep a good flow throughout the site.

Ms. Lisa DeStefano, of DeStefano Architects, listed several recent projects she had worked on in the Northern Tier where this parcel was located. From the design team's point of view, they were looking at this project in a different way. Referring back to Mr. Ciandella's comments about the site's location, she stated that they saw this parcel as an island in the City because they had this area with very little pedestrian activity, or reason for it. She further described the area noting that there were no pedestrian crossings in the immediate vicinity. She pointed out an image showing the approach up Maplewood Avenue with the various surrounding features. With this use as a destination and the request for the drive-throughs, they saw the need for vehicular accessibility to be most important. Ms. DeStefano noted a number of approaches by financial institutions over the past years looking for opportunities to put in a drive-through and described the challenges to get the necessary stacking without causing traffic issues. She felt that this was a unique opportunity where they could safely get cars off the street and not cause any issues with circulation on the site itself. Mr. Bob Harbeson from her office had produced the exhibit and memo which were in the package having to do with the walking distances from different banks to the heart of the City and was there to answer any questions in that area.

Mr. Brad Page stated that he was the President and CEO at Kennebunk Savings Bank. He described the nature, history, current composition and asset size of the bank. They were very excited about the opportunities at this location, which would carry a staff of approximately ten employees. He described their commitment to both the consumer and business interests in the community, a part of which was their Community Promise Program which annually gave 10% of their earnings back to their communities through donations to non-profits. He noted that they already supported some organizations in Portsmouth.

Addressing the criteria, Attorney Ciandella stated that the variance would not be contrary to the public interest. He cited the Chester Rod & Gun and the Malachy Glen cases in which the Supreme Court established a standard and provided two alternative analytical tools. The first was that granting the variance would not alter the essential character of the locality. This was a permitted use and they sought a variance to allow an accessory use in its true sense which was customarily associated with retail bank use. The condition they had offered would cut off the use of the drive-through for any purpose other than the definition, essentially, of a bank in the City's Zoning Ordinance. He stated that what they were proposing would fit within the environment Ms. DeStefano had described. He read a passage from the Northern Tier 1999 study which described wide streets and narrow sidewalks creating an inhospitable environment for pedestrians given the high speed of vehicles. He felt this supported his contention that the character of this area was

fundamentally different from the character of what they were calling the heart of the downtown. Attorney Ciandella stated that, from the presented visuals, the Board could see that nothing had really changed since that 1999 description which demonstrated their point that they don't believe the proposed variance would alter the essential character of the locality. Attorney Ciandella stated that the other test set up by the court was whether the variance would threaten the public health, safety and welfare. As Mr. Crimmins had described, even though they were not seeking a special exception, they thought the special exception and supplemental use standards were really the best evidence of what would protect the public health, safety and welfare. As contained in Mr. Pernaw's report they designed the drive-throughs to meet those standards.

Attorney Ciandella stated that the Supreme Court had related the test for determining the spirit of the Ordinance back to the public interest so he would incorporate what he had just said in connection with the public health, safety and welfare into their meeting the public interest standard. He again referenced the City's audit report which talked about regulating drive-throughs and addressed traffic management, queuing, safety and pedestrian access and noted that Mr. Pernaw's report addressed all those issues. They believed that pedestrian access would be unimpeded because of the size and location of the lot across the railroad tracks and the size and self containment of the drive-throughs. He reiterated the qualitative difference between this area and the area going into the downtown core. They felt the Board could make an inference from the fact that drive-throughs had existed at retail banks in the downtown core without pedestrian incident or public safety issues. In sum, he stated, there would be no impact on pedestrian safety, no adverse impact on the quality of the streetscape, no public health safety impact.

Attorney Ciandella stated that a third element in the criteria was substantial justice and he again cited Malachy which in turn had cited Attorney Loughlin's book stating that the guiding rule on this factor was that any loss to the individual that was not outweighed by a gain to the general public was an injustice. The court went on to note that it would look to whether the proposed development was consistent with the area's present use. For all the reasons earlier put before the Board, they believed the proposal was absolutely consistent with the area's present use. He stated that the effort to have the first New Hampshire location for the Kennebunk Savings Bank would be lost without counterbalancing gain to the public. The fourth element was that granting the variance would not diminish the value of surrounding properties. The primary use was permitted and this was an accessory use in every sense. He referenced the letters of support received from Messrs. Atkins, Anderson, and Craighton.

The fifth, or hardship, test was set up as literal enforcement of the Ordinance resulting in unnecessary hardship owing to special conditions of the property that distinguished it from other properties in the area and no fair and substantial relationship existed between the general purposes of the Ordinance and the specific application of that provision to the property. Also, that the proposed use was reasonable. As a special condition of the property, Attorney Ciandella stated that the lot was distinctively large. The minimum lot area was 1500 s.f. and the current lot was 2.3 acres. After subdivision, they would have a little less than an acre for the bank site while they calculated the average size of abutting lots to be a little bit less than a half acre. They thought the City staff report was skewed by including a 13 acre parcel that ran along the railroad tracks. He had looked at the zoning map that day and felt that much of that property was actually OR zone where, in fact, the drive-through would be permitted by special exception.

Attorney Ciandella stated that the fundamental issue on the hardship test and what really drove the logic of the application was the location at the very periphery of the downtown. He reiterated his previous points relative to the pedestrian landscape around this property compared to the downtown area and the reasons for the island reference applied to the site by previous presenters. All those factors meant that the logic and zoning restriction regarding drive-throughs made sense for the core downtown but not applied to their site. Attorney Ciandella stated that, finally, the proposed use was reasonable. He reiterated its accessory use to an allowed use in the district. The lot was large enough to accommodate these lanes. Most importantly, because they had made an effort to comply in all respects with the standards for a special exception, the drive-through use was reasonable in its execution. Meeting those standards meant that the City's interest in traffic management, queuing and safety which would drive the special exception would be met.

Mr. Jousse asked what the average time was that a vehicle stood at a drive-up. Attorney Ciandella stated that Mr. Pernaw had indicated to him that the average time was 2 minutes. Mr. Jousse stated that he was trying to understand the reasoning for having two drive-up windows. At an average two minute wait, thirty customers an hour could be accommodated. Mr. Stephen Pernaw identified himself as the President of Pernaw & Company, which specialized in traffic and transportation studies. The whole idea was to serve the public efficiently and, to him, one lane would not be enough because of the queuing that would develop and the delays. Attorney Ciandella added that Exhibit 6, listed twelve banks ranging in size from 1100 s.f. to 4600 s.f., most around the size of this proposed bank. They could see that the number of drive-through lanes ranged from two to five, with nothing less than two. Mr. Page, the president of the bank, had indicated that by their rough calculations, historically 25% to 30% of the bank's customers were serviced at the drive-through.

### **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 Witham stated that he believed that the previous month, they had a project requesting a variance which essentially felt like a fifth floor and the feedback from the Planning Department, also the feeling of the Board, was that they were asking for too much. The feedback they were getting here, a stone's throw away, was that it was not enough structure and that zoning was trying to get larger buildings here to create a certain streetscape and density. He stated that it wasn't the norm for the Board to have petitioners wanting a 3,000 s.f. building where they probably could have one with 100,000 s.f. He also wanted to comment that the petitioners had spoken to the spirit and intent of the Ordinance and the fact that the need for a variance for the drive-throughs was in response to pedestrian safety, which they had addressed at length. While they hadn't stressed the streetscape, he remembered the influx of the banks in the 80's where a bank would buy one block for the building and one block for parking or a drive-through. The City had the foresight to put the brakes on that and to try to preserve the streetscape in the core of the downtown, which he believed was probably the large intent of the Zoning Ordinance in this case. Chairman Witham noted that the property was on the fringe and wondered if the spirit and intent they needed to uphold here was different.

Ms. Eaton commented for discussion that she thought it was a very difficult variance to grant when it was not a permitted use under any circumstances in the zone they were discussing. Chairman Witham stated that he agreed but the one area he was trying to wrap his arms around was that the bank was a permitted use. Was the City going to try to draw a line in the sand between banks with drive-throughs and banks without? Was the intent to limit banks with drive-throughs or was it pedestrian safety. He felt streetscape was also a part. Mr. Durbin stated that he was often in that area and didn't really see any public safety issues with the typical drive-through. He also saw that the goals of the Zoning Ordinance, at least concerning the streetscape and trying to promote a more vibrant pedestrian situation in that area, was probably where this might be running into some conflict. While it was on the periphery, once you take away from the periphery, then you're left with, he guessed, a new periphery. That was one of the things the Board had to consider. It was kind of like extending the highway in a little bit and then you're probably looking a little bit further into the forest. Mr. Parrott stated he was not ready for a motion but wanted to comment on two things. They normally didn't deal with appearances or design but it was raised that this new building was proposed to be within the context of the area. He was looking at a submitted photograph showing the old yellow colonial and the white house next to it on the mill pond. Those were the attractive context in the area and they were certainly antique looking and attractive and typical of Portsmouth. The modern one-story bank building proposed across the street was handsome but not what he would consider in the context of that street. His second comment was that they hadn't had any real discussion as to why, when the Ordinance prohibited it with only 3,000 s.f., two lines were absolutely essential. Additionally, if he correctly understood the thrust of the department's memorandum, it was not talking about what was there now but what the master plan envisioned. The master plan was saying that part of the city when it was developed was supposed to look more like the rest of the Central Business District. While it might be on the edge of a zone it was in that zone as the City Council had decreed. He didn't agree with the argument that it was so far out that it would never look like the downtown core and couldn't be developed that way. All communities started small and grew and he felt that this area was going to look a whole lot different than it did now.

Mr. Jousse stated that he personally did not like drive-throughs but preferred to see a person at the counter. He indicated that the building was not large enough to meet the square footage for one drive-through and this was asking for twice the number. He hadn't heard a good argument as to why they should grant this and where the hardship was to justify approving one or two drive-throughs on this property with this size building.

Chairman Witham asked if anyone was ready to make a motion. Mr. Grasso made a motion to deny the petition which was seconded by Mr. Parrott.

Mr. Grasso stated that a bank was an allowed use and the accessory use was what was actually in front of the Board. As Mr. Jousse had alluded to, he hadn't heard anything as to why a bank in this part of town, the Central Business A District, could not function without two drive-through lanes. He thought the bank could be built there and could even be bigger as the Chairman had alluded to earlier. But in a zone where they were not allowed, he hadn't really heard a hardship as to why there had to be a drive-through and if it had to be there, why there had to be two.

Mr. Parrott stated that he agreed with Mr. Grasso. As everyone knew, they had to find that the five criteria were met. The hardship could not be in the desires of the owner or the best practices that the business would like to see, although all were very understandable. The Board was obligated to find hardship inherent in the land and, as had been pointed out, the lot in fact was larger than most in the area. He couldn't get around that last aspect of the criteria particularly where it was not a question of one drive-through but two where the Ordinance said you could not have any.

Mr. Durbin stated that they needed to be forward looking with this as well and, for that reason, he didn't feel the application met the second criteria that it be within the spirit of the Ordinance. They were looking at this area for what it was going to become, when there would be quite a lot of pedestrian traffic through there. That was fairly clearly stated as what was intended through the master plan and the Zoning Ordinance. For the reasons Mr. Parrott had cited, he also did not feel that the request met the hardship criteria so he would be supporting the motion.

Chairman Witham stated that he wouldn't be supporting the motion. Maybe he interpreted it a different way but he had to look at the spirit and intent of the Zoning Ordinance in this situation and he felt that the intent here was public safety and streetscape. He felt there was no harm done there. In terms of public vibrancy and pedestrian safety, he thought they were trying to connect the dots from this location to downtown and asking the petitioners to do a lot more to make it viable. He felt the drive-through was tucked around in the back and was not visible from the street. There was plenty of queue area so that he didn't see that the intent of the Ordinance was violated. Regarding the scale of the building, Chairman Witham stated that there had been some debate about it being one story while those across the street were two, but he thought it was a sensitive area with those historical buildings in the area. He felt it was the kind of area where the scale of downtown was going to break down to get into the residential neighborhood on the opposite side of the street and this project worked in terms of that. He understood the way the zoning was written where you were allowed 100% lot coverage and a four-story building but was that what zoning really wanted and what was appropriate for this site.

The motion to deny the petition as presented and advertised was passed by a vote of 5 to 1, with Chairman Witham voting against the motion.

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- 4) Case # 2-4  
 Petitioners: Kieth & Maureen Tong  
 Property: 27 Thaxter Road Assessor Map 166, Lot 39  
 Zoning district: Single Residence B  
 Description: To construct an addition on the rear and right side of the structure.  
 Requests: Variance from Section 10.321 to allow the expansion of a nonconforming structure.  
 Variance from Section 10.521 to allow a left side yard of 9' where 10' is required.  
 Variance from Section 10.521 to allow a rear yard of 26' where 30' is required.

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



Mr. Kieth Tong stated that Jeff Stacy was there with him to answer any questions that might be beyond his scope. They were asking for what in their eyes were minor variances. They were looking for about 6” on the left side of the home. They did an engineering survey and found that the existing structure was actually 6” over where it should be. What they were hoping to do was maintain the integrity of the architecture. They had a 1920’s bungalow and they were really just trying to extend that line back. As far as the variance in the back, he stated they were asking for just under 4’, 3’6”. They were looking to have a rear entry because of its proximity to the garage. Mr. Tong noted that he had submitted with the application some supplemental documents which included the site plan and the interior design work. He had also included letters of support from his abutting neighbors who would be the individuals most affected to the right, left, rear and across the street. He had one other letter of support which he could show the Board from the abutter who was diagonal to them on the right hand side.

Addressing the criteria, Mr. Tong stated that the variance would not be contrary to the public interest as they were asking for short distances. They had tried to maintain the spirit of the Ordinance by staying within the parameters of a 30’ setback and the 10’ setback on the side. He felt that substantial justice would be done as he understood it. One of the main reasons they were attempting to build this addition was that their family was growing and his wife had been challenged with juvenile rheumatoid arthritis since she was a teenager and they needed to build a master bedroom on the first floor. Mr. Tong stated that they wanted to maintain the integrity of the neighborhood and not build anything large or extravagant. He felt it did bring value to the surrounding properties as it would potentially result in higher values. Regarding the hardship criteria, he stated that this tied in with everything he had discussed. It was an unnecessary hardship that they did have an older home and to maintain that style of architecture and stay within the shape of the home, they needed that 6”. He felt that they were not asking much at the rear entry. They did need some additional living space. Because they were trying to meet the spirit of the Ordinance, they had actually incorporated a bumpout into their driveway which could be seen on the site plan. Any more of a bumpout would render their garage useless. What could not be seen on the plan was a big silver maple right across from the actual bumpout. To build in any other direction other than what they proposed would be very difficult and a challenge from both a design and resource standpoint. Chairman Witham stated that the Planning Department had received a letter in support from the owners of 38 Thaxter Road which he read into the record.

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

Ms. Eaton stated that the applicants were asking for two very minor variances that were in keeping with the house and the lot. It was the house and not the lot that was the issue. It was set on the very far side of the lot with the garage and access on one side of it that really prevented any expansion of the house there. The applicants were really asking for a minor variance of only 6”

over the setback line to make the house addition consistent with the side of the house and a small side or back encroachment that was just to allow a small entryway into the house. She felt it was a minimal request and reasonable considering the layout on that property.

Addressing the criteria, Ms. Eaton stated that there had been no evidence presented that this would be contrary to the public interest. She didn't see an issue with these minor requests and all the immediate abutters had presented their support of the project. She felt that granting the variances would be in the spirit of the Ordinance because there were special conditions on the property in the way that the house was built and the access that was already there with the garage limiting what they could and could not do to expand the house. She stated that no evidence had been presented, nor was there reason to believe, that there was going to be any diminishing in the value of surrounding properties. She felt that the hardship condition was that there was a distinguishing feature of the property in the way that the house was set in kind of an inconvenient location. Without moving the house they couldn't really improve the potential for expanding the building envelope for this site.

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

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

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- 5) Case # 2-5  
 Petitioners: Belcher Market Realty, LLC, , owner, & Donna Kelly, applicant  
 Property: 23 Ceres Street Assessor Map 106, Lot 41  
 Zoning district: Central Business A  
 Description: To construct a sign projecting over the sidewalk 39" where 27" is allowed.  
 Request: Variance from Section 10.1253.50 to allow a projecting sign to project more than one-third the width of the sidewalk.

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

Ms. Donna Kelly stated that she was the owner of a new business, Tera Afina, on Ceres Street. When she rented the property, she was told she had the use of the existing sign bracket shown in their packet. She was told by her landlord that she could go for a projecting sign which was more expensive and took more time or go for a mounted sign on the building. When they looked at the building and walked up the street to Bow Street where most pedestrians were walking by and looking down, they noted a projecting stairway in front of their door as the Board could see in the photograph in the packet. They had decided to go for the projecting sign because it could be better seen from the street and they wanted to be able to attract as many people as they could. She ordered the sign which she had brought with her so that the Board could see the size. On the bracket, the mounts were 29" apart with the sign extending 2" on each side.

When they came to get the application, they were told that it didn't meet the criteria of being a third of the sidewalk. Ms. Kelly stated that to meet the criteria and have 6" from the wall, her sign would have to be 21" and it was 33" x 13". She had looked around Portsmouth and the other signs

were as wide as the sidewalk. It would be a burden if she had to make a new sign. She would have to mount a new bracket on an existing historical building which she didn't want to do. If her sign complied, it would be smaller than most of the signs in the city which, for a new business, was hard. Ms. Kelly noted that she had superimposed the sign on the picture she had provided to show the Board what it would look like. There was a scaffolding around the Black Trumpet and a lot going on down there. She maintained that she would not be obstructing anyone else.

### **SPEAKING IN OPPOSITION TO THE PETITION**

Mr. Scott Segee and he and his wife owned Fa La Lo on Ceres Street. They understood the motivation for a larger sign. He read from a letter distributed to the Board that evening, in which he described the Ceres Street setting and the difficulties in doing business on that street. They were concerned about the proposed large sign which, he maintained, would make it difficult for people to see other storefronts on the street. If the applicant needed a large sign to rectify the hardship of being seen, it would be an even greater hardship for them to be seen due to this sign and they would be coming to ask for a similar size. Mr. Segee felt there were alternative solutions and noted that there was a sign in front of 2 Ceres Street which was for all the merchants. He felt the City, instead of granting a large sign to one, should work with all the merchants to make a more welcoming collective sign. In response to a question from Mr. Jousse, Mr. Segee stated that their business was at the lower end between Annabel's Ice Cream and the Oar House. Mr. Jousse stated that he was trying to make out on the picture they had whose sign was the red sign around the Oar House. Mr. Witham noted it was the red sign to the right of the staging area. Ms. Kelly stated it was Mr. Segee's sign. Mr. Segee stated that the issue was that, if customers couldn't see their sign, they assume there wasn't a business there. It was the same blockage idea as the existing scaffolding. Mr. Jousse stated that, if someone were next to the buildings it appeared to him that there were two sets of stairways that would be in direct line to any hanging signs. He felt the stairs were more of a hindrance than somebody else's sign. Mr. Segee stated, "possibly," but maintained that, if you were at the corner of the Dolphin Stryker looking straight down Ceres Street, the proposed sign would be an issue. Ms. Eaton asked when they had installed their sign and if it had required a variance. Mr. Segee responded that it was some time in the 2000's and it had not required a variance as they stayed within the guidelines. Mr. Jousse asked how large his sign was and he visually demonstrated its size.

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

With no one rising, the public hearing was closed.

### **DECISION OF THE BOARD**

Chairman Witham noted that the requested variance was not for the size of the sign as the dimensions of the sign were in compliance. The sign obtained by the gentleman who spoke in opposition was in compliance under the Ordinance then in effect, but there were a new set of guidelines that had to be met under the revised Ordinance.

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

Mr. Jousse stated that this was an area where signs were really appropriate because there was primarily foot traffic. The property was in the Waterfront District in an area catering to tourists. When he went someplace as a tourist his line of sight was usually the 30' to 40' in front of him and he was paying attention to what was near him. He wasn't looking down the other end of the street to see what was there but paid attention when he got to that end.

Mr. Jousse stated that he did not believe that granting this variance would be contrary to the public interest and it would observe the spirit of the Ordinance as it would attract the passerby's attention as to what business was being advertised. The sign would stir up their curiosity as to what the business was because from the name, you couldn't tell what was being sold on the premises. He stated that granting the variance would be substantial justice and nothing had been presented as to the value of surrounding properties. The special condition that existed in the area was that it was an area for foot traffic. While he was a strong proponent of putting street addresses on businesses that were in an area where the primary mode of transportation was the automobile, in this area, the primary means of movement was foot traffic and signs were appropriate.

Mr. Grasso stated that he agreed, adding that this was, as the applicant had mentioned, a new business. She planned on using the existing bracket and he supposed that any change to that bracket would require other commissions and boards to get involved. He also believed her location between those two staircases presented a hardship in itself without having some type of sign there. He didn't feel this sign was overly intrusive or would block anyone's view. The sidewalk was fairly wide. As Mr. Jousse mentioned, it was a heavily pedestrian and minimal vehicle area and he could support the motion.

Chairman Witham stated that one of the hardest criteria to prove in granting a variance was that there were special conditions resulting in unnecessary hardship. This sign was sandwiched between two metal fire egress stairs coming down on a public sidewalk, two of the only stairs he knew of in the whole City that did so. If that was not a special condition, he was not sure what would be. He stated that the bracket looked historic in nature and place and fit proportionately well on the structure. Again, it was not the size of the size that required a variance, only the projecting distance so he was comfortable with granting a variance.

The motion to grant the petition as presented and advertised was passed by a vote of 5 to 1, with Mr. Parrott voting against the motion.

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- 6) Case # 2-6  
 Petitioners: Arthur & Mary Anker  
 Property: 34 Salter Street Assessor Map 102, Lot 34A  
 Zoning district: General Residence B  
 Description: To construct an addition off the rear of the structure with less than the required rear yard.  
 Requests: Variance from Section 10.521 to permit a rear yard of 15' where 20' is required.

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

There was a brief discussion about the discrepancy between the 34 Salter Street indicated on the application and the #35 shown in the middle of the site plan, with the determination made that the correct address was 34 Salter Street, as indicated on the application and as advertised. Ms. Graf stated that the request was advertised as a 15' setback where 20' was required. She stated it was actually 18'. Chairman Witham stated they could grant less so the petition could go forward.

Ms. Aileen Graf, of Graf Architects, stated that she was there with Mary Anker, the owner of the property. What they would like to do was add a modest entry at the rear for protection from the weather. The house was saltbox in form so currently the rain, snow and ice was coming down the roof in the back. She stated that they felt by putting this in the center of the back, it was the least obtrusive of any other location. To the left was a driveway and to the right was not where you would enter as far as foot traffic. In the front, it would impact the aesthetics of an historic house. Ms. Graf noted that they had met earlier that month with the Historic District Commission and received approval for the design. Again, they felt it was a modest size, which only impeded by 2'. She stated that Ms. Anker had brought some letters of support from neighbors, as well as some photographs of neighboring properties with shed additions similar to what they were proposing. These were distributed to the Board. Ms. Mary Anker introduced herself and indicated that the photographs were all the back yards which abutted their property and the letters corresponded to those same properties. Ms. Graf added that they didn't feel that this modest addition diminished the value of any of the neighboring properties.

### **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 Witham stated that they had a request which had been advertised as a 15' setback but was presented as 18' where 20' was required for a structure that was 8' wide so they were dealing with about a 16 s.f. encroachment

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

Mr. Parrott stated that this was a very simple straightforward request. This was a small house on a small lot and, if there was a hardship, it was the size of the lot. The house was well positioned on the lot but the lot was only 65' at the back, 60' at the front and about 72' to 81' on the side. The proposed rear entry addition was commensurate with the size of the house and lot. It was only 5' x 8' so he felt the request was reasonable and in keeping with the scale of the house. He stated that in this location and with the location of the house and adjacent houses, there was not going to be any deleterious effect to anyone in the neighborhood. He noted that you had to be careful when you designed things in such a tight neighborhood that they were commensurate with the scale of the house and were appropriate. He felt this addition met those requirements.

Addressing the criteria, Mr. Parrott stated that he felt the public interest in this case was defined by the immediate neighbors, particularly the one in the back and he didn't think it would be contrary

to their interest to grant the variance. They were not present to say that it was. He felt that the spirit of the Ordinance was to allow folks to make their homes a little more livable, which having a closed entry would do. Regarding the justice balance test, Mr. Parrott stated that there was no overriding public concern that would argue against the variance. The addition appeared to be small and tastefully done and there should be no negative effect on the value of surrounding properties. He had already spoken to the hardship test, namely that this was a small lot and the requested addition was within reason as to location and size. He felt that all the tests were met.

Mr. Grasso stated that he agreed with Mr. Parrott. This 5' x 8' entry on the back side of the house was a modest request and he felt they could support granting the variance.

Ms. Eaton asked if they were going to do something about the 15'. Mr. Feldman stated that the reason it was advertised as 15' was the first two stairs were less than 18" high and didn't count as a structure. If they measured from the top of the platform to the rear property line, it was 15' versus the 18' to the face of the building addition itself. Ms. Eaton stated so that the 15' was correct and Mr. Feldman responded that it was. Chairman Witham stated that it was then 18' to the bumpout and 15' to the platform, which Mr. Feldman confirmed.

The motion to grant the petition as presented and advertised, with the setback at 15' as advertised, was passed by a unanimous vote of 6 to 0.

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## **V. OTHER BUSINESS**

There was no business presented.

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## **VI. ADJOURNMENT**

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 9:55 p.m.

Respectfully submitted,

Mary E. Koepenick  
Administrative Clerk