

**MEETING OF THE  
HISTORIC DISTRICT COMMISSION  
ONE JUNKINS AVENUE, PORTSMOUTH, NEW HAMPSHIRE**

**EILEEN DONDERO FOLEY COUNCIL CHAMBERS**

**6:30 p.m.**

**November 6, 2013  
to be reconvened on November 13, 2013**

**MEMBERS PRESENT:** Chairman Joseph Almeida; Vice Chairman Tracy Kozak; Members Richard Katz, John Wyckoff, George Melchior; City Council Representative Esther Kennedy; Planning Board Representative William Gladhill; Alternates Dan Rawling, Reagan Ruedig

**MEMBERS EXCUSED:**

**ALSO PRESENT:** Nick Cracknell, Principal Planner

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**I. APPROVAL OF MINUTES**

Approval of minutes - December 5, 2012

*Mr. Wyckoff moved to **approve** the December 5, 2012 minutes as presented. Mr. Katz seconded. The motion **passed** unanimously with all in favor, 7-0.*

Approval of minutes - February 6, 2013

*Mr. Melchior moved to **approve** the December 5, 2012 minutes as presented. Vice-Chair Katz seconded. The motion **passed** unanimously with all in favor, 7-0.*

**II. OLD BUSINESS (MISC.)**

- A. Request for re-hearing of HDC Certificate of Approval granted to 173-175 Market Street on August 7, 2013. (*This item was continued at the October 2, 2013 meeting to the November 6, 2013 meeting.*)

Vice-Chair Kozak recused herself from the vote due to a conflict of interest. Chairman Almeida told Mr. Rawling that he would be voting in Ms. Kozak's place. Chairman Almeida went over the rules of procedure and read the three reasons for granting a re-hearing as the Commissioners followed along on their copies. He confirmed that every Commissioner had read all the material presented and was aware of the items brought before them. He asked if there was a motion for a re-hearing.

*Councilor Kennedy moved to **rehear** the HDC Certificate of Approval granted to 173-175 Market Street on August 7, 2013. Mr. Melchior seconded.*

## DISCUSSION OF THE COMMISSION

Mr. Melchior referenced the comments that he had previously made and said he still felt the same way. In the past, the Commissioners did not have a memo put in front of them when they came for a re-hearing, nor did they discuss the rules. They simply took the arguments and allowed re-hearings. He felt that both petitions for 111 Maplewood Avenue and 173-175 Market Street had some merit and there was inconsistency in their decision-making that would warrant them to come back to the table to make sure they got it right. The Ordinance changed midway through the 9-month review process, and he did not see the harm in re-opening the petitions and ensuring that they clarified their point so that their decision stood. He didn't know if Attorney Loughlin's response was correct, but in the past, the Commission's decision stood and the onus was on the petitioner. Councilor Kennedy agreed that it had been a precedent that the Commission reheard petitions and gave final due process, giving petitioners the right to ask for a re-hearing, and she wanted a re-hearing.

Mr. Wyckoff said he had read the information from lawyers but hesitated on picking anything apart because he was afraid he would not be educated enough to discuss everything put out there. He did not believe an unlawful error had been technically made and did not feel that new information had been presented concerning the bricks or the basement flooding, items not in the Commission's purview. After reviewing a project for six months, the Commission had made an accurate decision and he did not think a re-hearing was necessary.

Chairman Almeida said that, so far, they had not heard anyone say there was a technical error or that the decision was based on evidence submitted and presented to the HDC during the public review process. No one was talking about new evidence that was not available at the time of the decision that would change the outcome. He did hear the makers of the motion say it was an opportunity to get it right, but that was not the purpose for a re-hearing. He did not believe that due process had anything to do with it. The Commission had the three reasons that he had just read that they needed to discuss in order to do a re-hearing. Mr. Melchior agreed that it was what Chairman Almeida had put in front of them and it was what the Ordinance had said. However, in the past, the Commission had not applied those three criteria when making a decision for a re-hearing.

Mr. Katz pointed out an error in the process and quoted a statement referring to the Maplewood Avenue application. He found no fault or omission in the process that granted the approval and therefore saw no reason for a re-hearing. Mr. Gladhill said he read through the documents and concluded that the Ordinance did not state that there had to be public comment at a work session. The Portsmouth Advocates had verbally given their opinion during a work session, and it had not been documented. Due to midnight meetings, the Commission tried to do more letter formats, and the discussions among the applicant, Commissioner and the public gave them the opportunity to speak. Even though the Ordinance did not state that they had to have public comment, it wasn't right that the public did not have the right to speak during the work session. He asked if the applicant got copies of the letters that the public wrote, and he was told yes.

Councilor Kennedy said they took a straw poll and even a vote at one point without public opinion involved. They had discussions back and forth with the public but did not give them enough time to speak. She believed that the Commission had to go through due process because they didn't give the public their due process until the end of the project, at which time they had a lot of public input. Mr. Gladhill referred to a section of the Ordinance that talked about a tension that often existed between the public's interest in preserving and enhancing the City's historic fabric and sense of place and other interests that might damage that goal. The Commission's role included assisting applicants to understand and respect the Historic District and its relationship to the heritage and economic well-being of the City. He said the public had tension about the project, and by not letting them speak at the time, the Commission did not assist the applicant in understanding what the public thought about the Historic District.

Mr. Katz said that most of the conflict came from different interpretations of the terms they based their discussion on. Councilor Kennedy called it a straw vote, but he called it a reaction and feedback to what had been presented to an applicant. If the HDC were not allowed to do that, they would have a half-dozen work sessions during which the public would say how they felt about the application and then the HDC could simply say they didn't like the application from the beginning. The straw vote was an expression of the HDC's opinions and reactions to what was presented to them.

Mr. Rawling felt that they went through an extensive and interactive work session process with the applicants. He did not know how they would have a work session where they did not acknowledge how many people at the table were talking about one thing and then another thing. A straw poll shortened the process instead of going around the table reiterating opinions. The Commission either said the application was fine or it needed work, and they had to go through passages to advance a design. They were not taking away the property owner's rights by listening to citizens who did not feel the owner had the right to do what he wanted to his own property, simply because the citizens liked the property without a building on it. When someone owned property, there were certain rights attached to it.

Chairman Almeida told the Commission to be precise and read the rule book, and he referred to Section # 10.635.24, the Work Session, where it said 'at a work session, requesting parties shall present the project and then seek the Commission's comments and suggestions which will be made by those members who are in attendance. No vote, decision or action shall be made at a work session. These are advisory only.' Chairman Almeida said he took exception to the language that a vote was taken in a work session. They all had motions one way or another on the project, but his job was to stick to the rules of procedure, and he was not convinced of a technical error. A decision was reasonable based on the evidence submitted, and there was no new evidence that was not available at the time that would have changed the outcome of his decision.

Mr. Melchior said Councilor Kennedy and Mr. Gladhill were trying to point out that they could easily make the argument for technical error in the work session process but were appealing to people's common sense to think about the work session process. The Commission had 9-12 months of work sessions but then had changes and rules midway. They made methodical

decisions throughout the work sessions, and then they went on to the next issue without public input.

Chairman Almeida said he had to insist on correctness. The Commission had received at least 50 letters from the public during the process, and it was false to say that the Commission did not have public input. Mr. Melchior said it was not false because the Commissioners had not read any letters during the work session but simply handed the letters to the applicant with discussion. Chairman Almeida said the letters were sent to each Commissioner to apply to the work session. Mr. Melchior said the public had an opportunity to report as well, and just sending a letter was not public input. Public input was the back-and-forth discussion. Chairman Almeida said the document stated that public input was not required and asked how it was a technical error. Mr. Melchior told him that, before those two applications, getting a re-hearing was nothing for the Commission to do. Suddenly now, two applications required the letter of the law.

Mr. Wyckoff asked what the next step was if the Commission didn't have the re-hearing and whether it would go to the BOA or they would go to court. Mr. Cracknell said it would go to the BOA. Mr. Wyckoff said they seemed to have gotten into a legal conflict and it might be better to have someone else look at the decision. Mr. Gladhill said they were a design review board and quasi-judicial, and they generally looked at designs and plans for the Historic District. Now they were looking at the Ordinance and trying to interpret the language. He said that was the BOA's expertise. Mr. Katz said if it was based on the failure of allowing public comment during work sessions, which had been a practice when time allowed and they didn't have an onslaught of applications, there was nowhere in the Ordinance where it said that failure to have public comment in work sessions constituted a nonfeasance on their part.

Councilor Kennedy said the Commission had public comment until those projects came forward. In reviewing everything, she believed that Chairman Almeida asked everyone what they were feeling and then asked for a straw vote, which they did, but it was not giving feedback. They should have continued to give feedback to the project and not taken a straw vote. She also believed they took a vote on a particular item of the project. Mr. Melchior said it was a vote on dormers and setbacks off Market Street and the mass of the building. Mr. Katz asked Chairman Almeida if he had intended it as a formal vote, and Chairman Almeida said he did not. Councilor Kennedy said they were not giving the feedback that the Ordinance intended them to give when they took that vote. Applicants were obligated to show the project to the Commission and have a conversation and feedback. She believed the Commission took a vote without the public comment, and their previous practice was to have public comment. Mr. Melchior said that, as part of the straw poll for the dormers, there were no letters from people that mentioned the dormer. The Commission resolved the issues without public comment. He said they were talking about a re-hearing, which was an hour of their lives to just go back to the project one more time after twelve months. Mr. Katz said that they weren't leaving the applicant out in the cold. If they denied the petition, the applicant could go to the BOA.

Chairman Almeida called for the vote on the motion to grant the re-hearing. Three members were in favor and four were opposed.

*The Commission voted to **deny** the request for a re-hearing, with 4 opposed and 3 in favor, for the following reasons:*

- 1) No evidence was presented to show that a technical error was made that would materially affect the decision;*
- 2) No evidence was presented to show that the decision was unreasonable based on the evidence submitted to the HDC;*
- 3) No new evidence was presented by the petitioners that was not available at the time of the decision that would have materially changed the outcome of the decision.*

*The motion **failed** by a vote of 4-3 with Councilor Kennedy, Mr. Gladhill, and Mr. Melchior voting in favor.*

- B. Request for re-hearing of HDC Certificate of Approval granted to 111 Maplewood Avenue on August 7, 2013. *(This item was continued at the October 2, 2013 meeting to the November 6, 2013 meeting.)*

Chairman Almeida said the same rules of procedure applied. The re-hearing consisted of ten points to consider. He asked for a motion.

*Councilor Kennedy moved to **grant** a rehearing of the HDC Certificate of Approval granted to 111 Maplewood Avenue on August 7, 2013. Mr. Melchior seconded.*

## **DISCUSSION OF THE COMMISSION**

Councilor Kennedy did not know why the Northern Tier questions were in the packet and asked if the Northern Tier information ever got voted on in the City. Chairman Almeida said he wasn't aware of anything other than the information in front of the Commissioners. Mr. Wyckoff wondered why a copy of the Northern Tier had been distributed to them, since it had been given to them back in 2009. Chairman Almeida said it was for informational and reference purposes. Mr. Gladhill said that he was handed the Northern Tier study as information when he was on the Economic Development Committee, so the City did hand it out to various boards for use. Mr. Wyckoff said that the City used the Federal Guidelines to state that the Commission followed those guidelines for historic rehabilitation, but it was not part of the Commission's criteria. The City could also say that the Commission used the Northern Tier, which was also not part of their criteria. One negated the other. The thing that bothered him was the City saying that the Commission did not use all of the criteria in their review.

Chairman Almeida said the language Mr. Wyckoff meant was the review criteria, Section 10.635.70, that stated: 'The Commission shall review an application for a Certificate of Approval and determine whether the application is consistent with and furthers the purpose and objectives set forth in 10.631 in making this determination. The Commission shall make findings of fact by referring to the following criteria.' Therefore, referring to it did not mean that the Commission had to repeat it verbatim. Mr. Wyckoff said the fourth criteria, 'to encourage the innovative use of technologies, materials and practices compatible within the character of the surrounding properties', was not even mentioned for a lot of historic properties.

Mr. Katz said he had two items to discuss about the motion. One referenced the following: 'The HDC's decision of approving the project failed to include essential findings of facts'. The objection was procedural. They said the Commission did not follow the letter of the law in enunciating every step of the procedure, but they adequately conveyed their opinions and attitudes in reaching their decision. The other item was about how the members of the HDC made up their minds before the public hearing and whether asking for an opinion was a straw vote. Mr. Katz said it was an opinion if someone thought that the size of the building was relative to the size of the lot, or that the proposal was smaller than it might have been and did not alter the fact that the building was too large for the neighborhood. Their decisions were made based on their honest appraisal of what was the appropriate size. The maker of the motion had a different opinion and based his opinion against theirs. The Commission had to determine the parameters of appropriateness. If a statement was made that the applicant could have made a smaller building, the claimant should present his specific objection to determine economic feasibility in exchange for what the applicant put forth. Terms like 'too large' and 'inappropriate' went on and on. The mover of the motion applied certain criteria, and the Commission applied their own interpretation of that criteria.

Chairman Almeida asked if there were any technical errors. Mr. Katz said no, in the first objection they did not go through the motion of saying something satisfied a particular section of the Ordinance, but it didn't mean they hadn't met the criteria. Councilor Kennedy asked who had designed the Northern Tier Study. Mr. Cracknell said Sasaki did the report, and the City was a participant with the Economic Development Committee. Councilor Kennedy asked who sanctioned it. Mr. Cracknell didn't know, but he wondered whether the report's relevancy was a controlling factor of the decision. He did not see anything in the minutes that said it was adopted by the City, so it would be a gross generalization based on the minutes.

Chairman Almeida noted that Vice-Chair Kozak had returned and the motion had been made, so Mr. Rawling could not make further comment as an alternate.

Vice-Chair Kozak said she was concerned about the allegation of the incorrect statement of building coverage that was misunderstood on lot coverage. The Commission did not typically review lot coverage but only looked at the size of the building as it related to its surroundings. Lots were big or small, and they looked at space between buildings and the size of the building itself. The percentage of lot coverage and open space was more of a Planning Board term than a historic term. Regardless, it was perhaps a misleading statement and could deserve some consideration, but she wasn't sure if it had any relevance. Councilor Kennedy said that when someone brought something forward that was a misrepresentation, the person had the right to a re-hearing. The Commission did straw polls and votes, but they were still votes, and people had a right to a re-hearing. Chairman Almeida said he had made the comment about lot coverage. The site plan had been done by a licensed surveyor, who had calculated the lot coverage at 38.4%. Chairman Almeida felt that the project showed a great amount of restraint when it came to size and lot coverage. In that particular zone, 95% lot coverage was permitted, and they were at 38% coverage. If it were 50%, it would be over half of what was allowed by the Zoning Ordinance, and it supported what he had said about the lot having a large amount that could have been covered but had not.

Chairman Almeida called for the vote.

*The Commission voted to **deny** the request for a re-hearing, with 4 opposed and 3 in favor, for the following reasons:*

- 1) No evidence was presented to show that a technical error was made that would materially affect the decision;*
- 2) No evidence was present to show that the decision was unreasonable based on the evidence submitted to the HDC;*
- 3) No new evidence was presented by the petitioners that was not available at the time of the decision that would have materially changed the outcome of the decision.*

*The motion **failed** to pass by a vote of 4-3 with Council Kennedy, Mr. Gladhill, and Mr. Melchior voting in favor.*

- C. Request for re-hearing of HDC Notice of Disapproval granted to 18 Manning Street on October 2, 2013.

Chairman Almeida told the Commission that they all had the request for the re-hearing and the facts were in the submission. Mr. Gladhill said they had postponed both re-hearings the last time because they had not approved the minutes in the 30-day period, and he asked if they should postpone this particular re-hearing as well. Chairman Almeida said they could consider it, but the re-hearing was for a single-family residence and the potential for public objection was slim.

Mr. Cracknell said that, as a result of the 111 Maplewood Avenue and 175 Market Street projects from October, they had talked about the new Letter of Decision Form that directly referenced every approval and denial from the findings of fact to the review criteria. The Letter of Decision Form went into the Letter of Decision and the Action Sheet and was produced within the required 5-day decision timeframe so that the applicant and the public would know that they were factored into the decision, and it was a substitute for the minutes. They had used the form since October 2, and they did not have to wait for the minutes if someone wanted to submit a request for a re-hearing.

Mr. Katz asked if they were in receipt of the minutes, and Mr. Cracknell said the Commission did not need the minutes. He felt it would be helpful to review the minutes because he had no knowledge of what occurred at the meeting, and he would not be able to vote or deny an application without the minutes. Chairman Almeida said he had to make sure that they didn't grant a re-hearing request for any reason other than one of the three reasons. Mr. Katz asked if they could postpone the decision so he could acquaint himself with the circumstances.

Councilor Kennedy said she had a difficult time with not having the meeting minutes. She understood the Letter of Decision Form, but she needed the minutes to verify what really happened at the meeting. Mr. Wyckoff realized that the Commission had long and involved meetings and had gotten behind. They were asking the City Council for \$50,000 for a 3D model of the City, so why could they not hire someone to do the minutes on a contractual basis. He had every set of minutes going back to 2005. He felt that they should postpone the re-hearing until they had the minutes, even if they technically didn't need them.

*Councilor Kennedy moved to **approve** the request for a re-hearing. Mr. Melchior seconded.*

#### **DISCUSSION OF THE COMMISSION:**

Mr. Katz said the prudent thing was to postpone the application until some of the Commissioners had all the information they needed. Chairman Almeida wondered if there was a technical error with the procedure. Mr. Cracknell pointed out that the Legal Department reviewed their Action Sheets, and the HDC's obligation was to act on the application within 30 days and approve, deny or suspend it. The last time they suspended it was for a good reason. The Action Sheet did not contain any reference to the review criteria, and the Legal Department and the City felt it was inadequate for the Commission, outside of having the approved minutes, to proceed with the two re-hearing requests. They recommended that the HDC modify their Letter of Decision Form to reference the findings of fact and the review criteria in order to avoid the necessity of having the minutes. Therefore, it was not a legal obligation to make the decision. The applicant could have filed a new application for tonight's meeting with new evidence and gotten a decision right away instead of submitting a re-hearing request. Consequently, the Commission would either go forward with a re-hearing without meeting the three criteria because the minutes were not one of the three thresholds anymore, or they would postpone it because they were waiting for minutes that were not a requirement. Mr. Cracknell said they should vote to rehear the case based on the information that had been submitted.

Chairman Almeida said that postponing the re-hearing wasn't fair to the applicant. He didn't understand why a new application could not come before the Commission the next month, and he asked where the technical error was made. Vice-Chair Kozak said the new evidence was included in the packet, and it was relevant and different from what they had discussed in the previous items. There was no opposition to that particular hearing. It was a single-family home wanting to replace windows, and she didn't anticipate any public reaction. However, they hadn't received anything from the public, so she wasn't sure that postponing it for a 30-day appeal to receive further information made sense.

*The Commission voted to **approve** the request for a re-hearing. It **passed** unanimously with all in favor, 7-0.*

#### D. Update on HDC expansion request

Mr. Cracknell said the request came before the Commission in June because residents on Richards Avenue and Austin Street had proposed expanding the Historic District. The HDC did a survey and a map and recommended the proposal to the City Council. The Planning Board hearing was held on October 17 and they did not recommend the expansion due to significant opposition from some property owners. He didn't know if the HDC had been asked to report back to the City Council, but he thought they should, given that it was an expansion of their jurisdiction. Seeing that the survey had not been completed for the existing 170 structures that were added to the District since 1982, and that they still didn't have the updated design guidelines, he suggested that they adopt the zoning amendments before taking on more caseloads. He asked the Commission to report back to the City Council in a few weeks.



Councilor Kennedy asked Mr. Gladhill if he could give the Commission an overview of the kinds of negative and positive opinions that had come out of the Planning Board meeting. Mr. Gladhill said there were more negative than positive comments. Some of the homeowners had moved into the District but did not want the outside of their building to be reviewed by the HDC. Someone else asked how soon they could get the permit to change their windows before going to the HDC. There were indications that the Planning Board might be more receptive to expanding the District when the Master Plan was complete. They needed a better survey of the area between Islington Street and Middle Road because there were a lot of historic homes and it was difficult knowing where to stop the line. Working on the design guidelines would also help people know what to expect.

Chairman Almeida said they had discussed expanding the District many times, and he had never been supportive of expanding it because they didn't have the tools for the District that they had now. They did not have the support to expand the District, especially if the majority of the homeowners didn't want them in their neighborhood. Mr. Wyckoff said the Character-Based Zoning would come in handy if they did expand the District. Chairman Almeida asked if it was appropriate to make a motion to tell the City Council that they concurred with the findings of the Planning Board. Mr. Cracknell said that the Commission could say they concurred with the findings of the Planning Board in reference to the Master Plan, and since the neighborhood was concerned about the expansion, the Commission should supplement the list with issues like the lack of detailed design guidelines and the inherent challenges they had in dealing with the existing District.

Councilor Kennedy said she was uncomfortable voting because she only heard what Mr. Gladhill told them, and the Commission had not asked for public input. She also had not reviewed the video. They needed to have a public comment session before voting on it. Chairman Almeida reminded the Commission that the suggestion was that the District not be expanded until the survey had been updated, the Zoning Ordinance amended, and the HDC had adopted the guidelines. Ms. Ruedig was not comfortable expanding the District until they had a mission statement stating why the District existed and what would be in the District.

Mr. Katz read Section 10.631.10 to the Commissioners and said it was an appropriate mission statement. Ms. Ruedig felt that it was too broad for a mission statement, and she didn't understand why they did not have a purpose for the particular streets. She said she was not ready to vote that evening. Mr. Gladhill said there was a reason why they didn't expand the District, but they had a lot of work to do. If they expanded it, it would be a full-time job to monitor it. Perhaps there could be more administrative approvals rather than HDC approvals.

#### E. Update on zoning amendments

Mr. Cracknell said he attended the City Council notification meeting a week before regarding the four zoning amendments. The review process had started and would be discussed at the Planning Board meeting on November 21. He said the Planning Board would send a recommendation back to the City Council, who would look at it again on December 2 and 16. If it wasn't voted on in December, it would start over in January.

Mr. Cracknell had the following updates on the design review tool kit items:

- The 3D modeling requirement: software developments of the City generated a 3D model of 250 buildings in the core areas of the business districts.
- Design Guideline: guidelines were written for the entire Historic District, not just downtown. When completed in 6-12 months, they would replace the interim design guidelines that structured the Form-Based Zoning.
- Funds to update the survey that was done in 1982: about 170 properties did not have current survey information, so the City Council posted a public hearing for the appropriation on November 18.

He encouraged the Commission to attend the meeting. Councilor Kennedy said she would not be available on the 18<sup>th</sup> but would try to call in.

### III. NEW BUSINESS

#### 1. Form-Based Code Update

Mr. Cracknell said the Form-Based Zoning and Character-Based Zoning Districts they had been working on had gone to the Planning Board, who held the hearing on October 24 and continued it to the 31<sup>st</sup>. The Planning Board had incorporated a lot of input from City Council members, and member of the Planning Board, the HDC, and the public had given them feedback, especially on the interim design guidelines. The three main sections were the graphics, the text with the zoning amendments, and the appendix that had the design guidelines. It would be ready for the November 18<sup>th</sup> meeting. The City Council expected the HDC to report on the entire Form-Based Code, not just the design guidelines. He asked the Commission to review it and give written feedback to either Rick Taintor or himself.

Mr. Rawling said he was familiar with Form-Based Zoning and design guidelines and the attempts to build new communities. He mentioned one called Seaside and said it was criticized at first because it looked Victorian but over time, the design guidelines provided cohesiveness to the community. He told the Commission that the guidelines they were going to review may appear to be traditional but would have a lot of design potential.

#### 2. Request for one year extension of the Certificate of Approval for 28 South Street granted on December 5, 2012.

*Councilor Kennedy moved to **grant** the extension of the Certificate of Approval granted on December 5, 2012. Mr. Gladhill seconded.*

Vice-Chair Kozak said that none of the surrounding conditions had changed except for the ordinance height restriction.

*The motion **passed** unanimously with all in favor, 7-0.*

3. Request for one year extension of the Certificate of Approval for 99 Marcy Street granted on November 14, 2012.

*Mr. Wyckoff moved to **grant** the extension of the Certificate of Approval granted on November 14, 2012. Mr. Katz seconded.*

*The motion **passed** unanimously with all in favor, 7-0.*

#### **IV. PUBLIC HEARINGS (OLD BUSINESS)**

A. (Work Session/Public Hearing) Petition of **Middle Union Condominium Association, owner, and Paula A. Chalfin, applicant**, for property located at **496 Middle Street**, wherein permission was requested to allow new construction to an existing structure (construct a two story addition and a one story addition on rear of structure) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 135 as Lot 21-1 and lies within Mixed Residential Office and Historic Districts. *(This item was postponed at the October 2, 2013 meeting to the November 6, 2013 meeting.)*

#### **WORK SESSION**

Vice-Chair Kozak recused herself from the vote.

Bob Cook, architect for the project handed out some revised elevations and wanted to discuss the changes that affected the integrity of the building's interior and exterior. He had a number of requirements that he was grappling with. In the Federal period, an ell-shaped house was a common approach, but the feedback from the Commission had been contrary. He said the owner had spent a lot of time and money treating the interior respectfully. The existing stairway was delicate and would not take a mechanical device put on it, so the owner had selected a co-compliant stairway that could have an assisted device added in the future. The kitchen on the 1<sup>st</sup> floor was expanded with a new entrance, and a shed was added. The bathroom on the 2<sup>nd</sup> floor was renovated to suit the owner's needs and also included a laundry room.

Mr. Wyckoff asked why the 2-story addition on the south elevation had blank windows. Mr. Cook said that, looking back to the 1850s photo, there was a 1-1/2 story addition that the property line would go right through. At some point, the corner lot was made smaller to accommodate a tiny counting house. The blank wall faced that structure, so the dotted lines on the south elevation were put behind the wall as a reference, and there would be two windows that would be seen to provide light into the stairwell. Mr. Wyckoff was confused because the two windows would be seen.

Chairman Almeida said Mr. Cook chose a very different style of window from the rest of the house. Mr. Cook said they were smaller, and he had located a house in the area that had the same type of windows and had been approved in 2012 with a similar stairwell condition. Chairman Almeida said the Commission had issues with very small windows on historic buildings. Mr. Cook said the location of the windows was not prominent and was a driveway elevation. Mr. Rawling said the window would stick out in an awning style from the side of the house and be

noticeable, and he recommended double hung windows, preferably Window #2. Chairman Almeida agreed that it was not the back of the house and cautioned about the #2 pane size. Mr. Wyckoff was more concerned with the Window #1 on the front and clarified that there were Indian shutters. Mr. Cook said the Marvin windows would fit and would allow the shutters to remain. Chairman Almeida wanted to make sure that the replacement window jamb thickness would match the wall thickness and would not project in or out.

Mr. Wyckoff said the replacement windows were 3-1/4" wide and asked if the existing windows were fairly new. Mr. Cook said they were 1970 Brosco New Englanders with a cheap aluminum track that did not line up and hadn't aged well. Mr. Rawling did not think the Commission had enough information on the Marvin windows to approve them and would need the window cuts. Mr. Cook said he gave them window cuts and had a sample with him. Mr. Rawling asked Mr. Cook if he would use a two-tone color scheme because he had an issue with replacement windows if a sash with a dark color was repeated. He suggested that Mr. Cook use an accent color and match the trim color. Mr. Cook said he was considering a light gray with a darker gray. Mr. Wyckoff said the bevel portion of the window was authentic-looking but the muntins were too wide. Mr. Cook said the window would have a small muntin. The wall was 4 1/2" thick and the window unit was 3 1/4", so it stuck out 1/8" less than the current storms.

Councilor Kennedy asked how close the addition was to the property line. Mr. Cook said it was 3-1/2' and he got BOA approval for the variance. The size of the addition was under the 40% lot coverage. He gave the Commission letters from abutters who had no issues with his changes. Mr. Rawling said he was familiar with the house and was satisfied with the addition. Vice-Chair Kozak said it was modest and appropriate.

Mr. Wyckoff asked Mr. Cook why he was using an AZEK crown molding with a flash cap and if it was pre-fabricated. Mr. Cook said it was assembled on sight and he chose AZEK for low maintenance. Chairman Almeida asked about the new windows on the back of the house and said he needed confirmation of Mr. Cook's plans for screens, spacer bars, and grills. Mr. Cook said the windows would have half screens, spacer bars and simulated divided light and it was listed in the specs. Mr. Rawling said the proposed windows were awning and rectangular, so Mr. Cook would need to continue in that vein with something more satisfying to the Commission. Mr. Cook said that he could remove some windows from Unit #1 and do 4/4 double hung windows. There were no screens on the bottom windows but there were half screens on the top windows and everywhere else.

Chairman Almeida asked if he was re-siding the house, and Mr. Cook said no. Chairman Almeida said it was awkward to have a corner board coming down and separating the two and asked if there was a return. Mr. Cook said no and admitted that the plans didn't show it well. Mr. Rawling asked if there was a difference in the roof as it flowed and Mr. Cook said there was a little. The pitch would have a bump but would be on the same plane. The pitch and hip would match but the ridges did not meet. Mr. Cook said the rear door on the back porch was a standard Simpson with a Larson storm. The door going into the house would have a screen door and the other one going into the shed/bulkhead would be painted. Mr. Rawling said the window sills looked confusing on the plan. Mr. Cook said the new ones were more modern and the other ones were picture-framed with a top added. Chairman Almeida said the drawing showed the sill

beneath the casing. Mr. Cook said it was an error. Mr. Rawling said the door trim was typically the same as the windows and that Mr. Cook should consider a simpler door and trim. Chairman Almeida suggested that the window mantle match the existing. Mr. Cook said he found two different crown pieces of molding. Chairman Almeida said there were two different roof conditions on the back shed, and one was better because it matched the soffets. Councilor Kennedy was uncomfortable with all of the changes and thought there were too many issues, so it would be better to postpone it to the following week. Mr. Gladhill asked if both chimneys were remaining and Mr. Cook said yes.

Chairman Almeida asked the Commission if they felt they did not have enough information to go into the public hearing. Mr. Katz asked what had changed since the last session. Mr. Cook said he upgraded the trim on the front elevation where the windows sat, but the addition massing would stay the same except for a few little changes. Councilor Kennedy did not see a problem with postponing for a week so that the information could be advertised and choices made. Mr. Cook believed that the public had a good idea of the massing on the 2-story ell-shaped addition. Mr. Gladhill suggested that Mr. Cook update the plans to reflect the elevations.

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

There was no one to speak to the petition, so Chairman Almeida closed the public hearing.

### **DECISION OF THE COMMISSION**

*Mr. Wyckoff moved to **postpone** the Certificate of Approval to the November 13, 2013 meeting so that additional information could be submitted and reviewed. Mr. Gladhill seconded.*

*The motion **passed** unanimously with all in favor, 7-0.*

## **V. PUBLIC HEARINGS (NEW BUSINESS)**

1. Petition of **Theodore M. Stiles and Joan Boyd, owners**, for property located at **28 South Street**, wherein permission was requested to allow amendments to a previously approved design (remove two windows required by building code, change from clapboard to composite material) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 102 as Lot 43 and lies within General Residence B and Historic Districts.

Councilor Kennedy recused herself from the vote.

### **SPEAKING TO THE PETITION**

The owner, Theodore Stiles told the Commission that he wanted to remove the windows on the right elevation facing the neighbors within 1.5' of the property line. It was in violation of one of the residential codes that didn't allow openings in walls where the fire separation was less than 3 feet. They discovered the fact after the prior approval and thought the solution would be to just eliminate the windows. The other change was a request to use Hardiplank instead of cedar.

Mr. Gladhill asked the reason for the change in clapboard. Mr. Stiles said someone had mentioned that Hardiplank had been allowed before in the South End, but there was no technical or code reason. Mr. Wyckoff's objection to the siding was that it was very visible to a pedestrian on the 1<sup>st</sup> floor level and it butted up to the neighbor's property. Mr. Gladhill asked if it would be painted. Mr. Stiles said it would. Chairman Almeida said he was not a fan of Hardiplank on a historic building, but he would support it because Mr. Stile's building was a new secondary building set back from the street. He wanted to emphasize that he was not setting a precedent for Hardiplank on a true historic home on South Street. Mr. Rawling said it was behind a 5' privacy fence and no one could touch it.

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

There was no one to speak to the petition, so Chairman Almeida closed the public hearing.

### **DECISION OF THE COMMISSION**

*Mr. Katz moved to **grant** the Certificate of Approval for the application as presented. Vice-Chair Kozak seconded.*

Mr. Katz said the visibility was difficult for pedestrians to see because it was behind a fence. The Hardiplank was an improvement and would be difficult to differentiate from regular siding. Vice-Chair Kozak said it was off the sidewalk and behind the primary structure, so she did not think the revisions were out of character. Chairman Almeida said it met the purpose of intent and the review criteria.

*The motion **passed** unanimously with all in favor, 7-0.*

2. Petition of **Salvatore C. Sciretto III and Meegan A. Sciretto, owners**, for property located at **419 Marcy Street**, wherein permission was requested to allow new construction to an existing structure (install skylight on rear elevation) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 102 as Lot 35 and lies within the General Residence B and Historic Districts.

### **SPEAKING TO THE PETITION**

The owner, Sal Sciretto told the Commission that he wanted to install a 30"x30" skylight. He lived on the Corner of Marcy and Salter Streets, and the rooftop was on the backyard. He had specifications and a cut sheet showing that the skylight would be on top of the bathroom to allow light through. Chairman Almeida said the specifications had a few options listed for materials that included aluminum and copper. Mr. Sciretto said the circled one was the one they were using.

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

There was no one to speak to the petition, so Chairman Almeida closed the public hearing.

## DECISION OF THE COMMISSION

*Vice-Chair Kozak moved to **grant** the Certificate of Approval for the application as presented. Mr. Wyckoff seconded.*

Vice-Chair Kozak said it was a discreet location and hard to see from Marcy Street. The skylight was small in size and would not be visible from the public way. It would not have any impact on the District and was in keeping with similar units the Commission had approved in other discreet locations.

*The motion **passed** unanimously with all in favor, 7-0.*

3. Petition of **Edward N. and Margaret Weissman, owners, and James and Roxanne O'Donoghue, applicants**, for property located at **110 Chapel Street**, wherein permission was requested to allow exterior renovations to an existing structure (reconfigure and replace two basement windows, replace right rear door, remove left rear door and replace with window, rebuild rear deck, railing, steps, and HVAC screening) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 106 as Lot 3 and lies within the Central Business B, Historic, and Downtown Overlay Districts.

## SPEAKING TO THE PETITION

Anne Whitney, architect for the project told the Commission that she was doing minor renovations to the existing rear and left side elevations of the house. The existing apartment in the basement had never had egress windows, so she was changing two of the windows, one in the rear and one on the side elevation. A planter that wrapped around the left-hand side would be taken up. She would cut down some masonry to use in-swing casements with muttons that would look like a double hung window. The existing windows in the basement were Marvin vinyl 1/1 windows and would look like double hung windows but would have an inner opening due to egress issues. The rear elevation had a cottage-style existing door on the right side that was in rough shape and had to be replaced. Another existing door original to the building had to be replaced. She would keep the same trim but would remove the door and replace it with a Therma-Tru door.

The deck was angled and accessed both doors. She would replace the deck with a simple 5'x11' rectangular deck with an AZEK decking and railing system. The other window on the elevation was a 4/4 window shorter than the existing windows. There was a window like it on the left elevation between the two double hung windows that was a precedent for a 4/4, and she would match the pane size. She originally thought of replacing it with the 4/4 and maintaining the transom window and existing doorway trim, but replacing it with a square awning and a panel system below would have the feel of an exterior door. The door surround would remain, but a window would be inserted above it.

Councilor Kennedy asked where the doors were shown in the photos. Ms. Whitney said the first photo showed two doorways. The one in the middle of the building was original with a transom above it, and she wanted to remove it because they did not need two doors on that side of the

building and it was hanging over the entrance of the apartment below. An alternative to doing the 4/4 double hung would be to leave the existing frame and trim of the door and install a window and a trimmed lower base to give the illusion of a door. Mr. Gladhill thought the door opening was original. Ms. Whitney said she thought so because when the apartment was graded, it was dropped down a level, so the door going into the kitchen didn't relate to any other openings and had been added 50 years before. The other door was used as laundry room door and they wanted to eliminate the opening. Otherwise, they could replace the door and cover it up from behind.

Chairman Almeida asked if the small deck piece would be removed because it looked awkward to keep the door and framing, and it gave a floating appearance. Ms. Whitney said she would keep the original proposal of making it a window and converting it to a 4/4 double hung, which was the precedent on the other side of the building. Councilor Kennedy said there would then be three windows on the back side. Ms. Whitney agreed and said she would shift it to the left side so the deck would not interfere with the window trim. Councilor Kennedy asked if she would replace the door to the right. Mr. Whitney said she would replace both doors. The door on the left going up the deck stairs was the primary entrance to the back and had a storm door that was inappropriate, so it would be replaced. Councilor Kennedy said she needed more reasons why an original door to the structure was being replaced. Ms. Whitney said the center door for the laundry room had not been used and was the original opening to the building and was inappropriate. Mr. Wyckoff asked if the small piece of deck over the basement door was being removed because it created the problem with the original door and looked like it was just hanging there. Ms. Whitney said she was removing it because the deck was in poor condition and did not meet code, and there was no need for a doorway in that location. She would rebuild the whole thing.

Mr. Wyckoff had a problem with removing an original door. There were two doors, one of which was original and its fenestration matched the window head, but Ms. Whitney wanted to remove it and keep the one that didn't match anything. Ms. Whitney said the door's interior configuration made it a hardship to have it be the only primary door. Mr. Wyckoff said if the door were closed up as suggested, it would essentially be like a window. Ms. Whitney said the door was in rough shape and at the back of the building. Mr. Wyckoff asked why there had to be an angle. Chairman Almeida said it was the back of the house and he had not seen the elevation in 25 years and didn't even know it existed. He preferred Page 2 of 2 that gave the remaining door some formality and was not a confusing situation where one door was taller than the other. There was no negative impact to the District. Mr. Gladhill said the door was not original but the doorway could be, and he liked the idea of the design that maintained the original doorway. Ms. Whitney's third option was to put in another door, and if she transformed it to a full window, it would keep the existing window style. Ms. Whitney said the precedent was on the left elevation on Chapel Street where they used 4/4 windows, and she matched that size. If she kept the window the same size, she would have to bring the deck around.

Councilor Kennedy told everyone that a window was removed to make the little door, and it was the original door. She wanted to keep an original door and the applicant would have to work around it. Ms. Whitney said they still had two doors and could not eliminate a door. They needed to maintain the door to the right because it was important to the interior plan of the building due to the narrow walkway. Chairman Almeida said he hated to see the loss of the formal door and



asked Ms. Whitney if she could bring the door detail on Sheet 2 over to the other door. Ms. Whitney said it could be costly because she would have to reopen the interior. Councilor Kennedy said the Commission would need the extra plans and information from the suggestions and she thought it should be postponed for a week. Ms. Whitney said she had already shown the suggestions. The third suggestion was to leave it as a door and make the deck go around. Chairman Almeida said they spent a lot of time on the application and asked if there was a consensus on an option. Councilor Kennedy asked which option Ms. Whitney was going to bring forward. Ms. Whitney said she liked the original option, and if the HDC had to have the original door, she would do Option B, which was to keep the door and deck as drawn. Chairman Almeida said the base proposal was as presented on Sheet 2 and the changes would be potential stipulations.

Ms. Whitney also mentioned an enclosure of a plywood garbage container that she was still developing the HVAC design for. She wanted to do a split system with smaller condensers. The system would come out 3.6' on the left elevation and the fenced enclosure would shield the HVAC condensers from the street.

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

There was no one to speak to the petition, so Chairman Almeida closed the public hearing.

### **DECISION OF THE COMMISSION**

Vice-Chair Kozak said she would move to grant a certificate of approval as presented using the changes on Sheet 2. Mr. Melchior agreed. Vice-Chair Kozak thought any of the options would be fine because it was the back of the building and not facing a public way. The options were all to scale and sensitive to the details around it.

Councilor Kennedy said she could not give up an old door that was original to the building. The Commission had other people redo original windows, so they should keep an original door with other options. Mr. Gladhill said he wanted the option of weather-sealing the current door or replacing it with an in-kind door if it was beyond repair. Keeping the visual appearance of the original back doorway was important because Chapel Street was a public way viewed by the public. Mr. Melchior said he would vote against it because he was against replacing original doors and windows. He said the replacement of a historic door did not maintain the special character of the District nor did it complement and enhance the architectural historic character of the District. Mr. Wyckoff agreed with Mr. Gladhill, Mr. Melchior, and Councilor Kennedy.

Vice-Chair Kozak said she would amend the motion to include the stipulation to proceed with Option 3 and retain the existing door in place and rebuild the angle deck the way it is. Mr. Melchior seconded.

*Vice-Chair Kozak moved to **grant** the Certificate of Approval as presented with the following stipulation:*

- 1) That the existing left doorway will remain as is and the deck will be extended to include the doorway.*

*The motion passed unanimously with all in favor, 7-0.*

4. Petition of **Nina Shore, owner**, for property located at **18 Mt. Vernon Street**, wherein permission was requested to allow demolition of an existing structure (remove existing fencing) and allow a new free standing structure (install new fencing) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 111 as Lot 27 and lies within General Residence B and Historic Districts.

### **SPEAKING TO THE PETITION**

The owner Nina Shore and the co-resident Mr. Michael Kulso were present to speak to the application.

Ms. Shore told the Commission that the fence was already in place but she was willing to do whatever they thought was appropriate. She originally thought she did not have to address the HDC because it was a repair and not a new fence, but the construction included minor changes that were more than she anticipated.

Mr. Gladhill asked how high the fence was on the panel closest to the road. Mr. Kulso said the fence was two different sizes. Ms. Shore said the fence by the driveway was elevated because the last fence was buried 6" into the dirt and she asked the fence company to replicate the fence as it originally was. The only change was that it had a diagonal pattern and she thought the square pattern would match the neighborhood better. She said she would be happy to lower the fence to match the one next to it. Mr. Kulso showed the Commission photos of the fence heights.

Mr. Gladhill said he wanted consistency on the street. Ms. Shore said the original fence was buried so deep that the new fence was placed higher so it wouldn't rot. She could lower that section. The fence was the same height everywhere except on the side. The solid panels were 2" shorter. The section by the tree was a little higher due the tree's growth. Mr. Gladhill confirmed that Ms. Shore would like the two panels closest to her road to be the same height as the third panel.

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

Ian Moody of 14 Mt. Vernon Street said he was a direct abutter. The lattice fence next to his house has been replaced with an 8' solid stockade fence, which was all he could see when he looked out his windows. He felt there was no need for the fence to be higher than 7', and he requested that the fence be put back to its original height and material. Chairman Almeida asked him if he was talking about Photo #10. Mr. Moody said it was the 50' long solid stockade fence abutting his house. The condition for the original fence had been removed and the house had been rebuilt completely.

Mr. Kulso said the windows Mr. Moody was looking out of were windows that were 6" from the property line and should not have been installed. The reason the fence was put up was because they could see into his house and he wouldn't lower the curtains. Ms. Shore said the fence had

been there since 1990 at that height. When she moved in nine years before, she could see through Mr. Moody's windows, so she made the fence solid in 1996. They could see lattice from the other side, but it was all blocked off. For her, it was no change from 1996. It may have been a spite fence before then. She had two different surveys that showed her property line being 6" from Mr. Moody's house on one side and 9" on the other side.

Chairman Almeida said the existing fence replicated the previous fence without the lattice on the backside of the solid board. Ms. Shore agreed and said it seemed taller because Mr. Moody piled 6" of gravel on his walkway, so Ms. Shore elevated the fence so it wouldn't sink in the ground. Councilor Kennedy asked her if she had applied for a fence change nine years before, but Vice-Chair Kozak said that fences were not within the HDC purview back then.

Mr. Moody said the fence was taller, period. It was an eyesore, and he would like the fence to go back the way it was with lattice. He did not want to get into a lot line dispute. Mr. Wyckoff noted that Ms. Shore had said the fence was elevated off the gravel and then the fence company placed it higher to be above the gravel. He asked if the whole fence was elevated and was concerned with the overall height. Ms. Shore said the fence was 2" shorter and it was not her fault that the gravel was piled up 6" higher. Mr. Wyckoff clarified that the fence was further away from the property line and the gravel was up against the fence and was on her property, and she said yes. Vice-Chair Kozak said the Commission's focus was on the historic purview and they should focus on the historic nature of the fence.

Chairman Almeida said Photo #10 showed the fence with the open lattice above and a transition to a solid panel. If the solid panel were to be cut down by 6" to match the lattice panel to the right, it might lower the fence by 4-6" and get it back to the original 6' it used to be. Councilor Kennedy needed clarification about what the fence was before the present fence was put in. Ms. Shore said that Photo #3 was what the fence used to look like nine years before. Photos #8 and #14 showed what the fence looked like presently. Chairman Almeida said they had photos from both parties that seemed similar in design and it was difficult to tell the heights, but they appeared to be within 4-5" of one another. Councilor Kennedy said the problem was the solid top part versus the lattice.

Mr. Wyckoff said they should look at it as a historic fence and being appropriate for the neighborhood, but it was not up them to decide the height. Chairman Almeida said the Commission always decided the height. Councilor Kennedy said the height was part of the application so it mattered. Mr. Moody asked where they were measuring the height of the fence from and if it was still an 8' fence if it was 4' off the ground. It was 6" taller than before because of the gravel. Ms. Shore said the fence company made it the same height as it was before, but the panel itself was 2' shorter. Ms. Ruedig asked Ms. Shore if she had replaced the lattice with solid fence. Ms. Shore said she had put solid panel over the lattice. Ms. Ruedig said it was originally lattice and the new fence was solid. Vice-Chair Kozak said a solid fence was common in the Historic District, but not an 8' one. Mr. Gladhill said they could replace what was there and it would still have the appearance of an 8' fence, 6' of board and 2' of lattice.

Mr. Rawling said Mr. Moody looked out at a lattice panel on the top of the fence that was blocked on the other side. The addition of lattice on the abutter side would have the same

appearance as the previous fence. Chairman Almeida asked him if he meant adding lattice to the top of the fence that was there now. Mr. Rawling said it was essentially what was there before, the lattice top with opaque panels on the homeowner's side. Chairman Almeida said that was one option and asked if the design on the right section of the fence at that height with the open lattice continuing all the way across would be a solution that would make everyone happy. Mr. Kulso said the lattice sections on Photo #10 were shorter than the original lattice panels by about 6", and he said the measurements were verified by the Legal Department.

There was no else to speak to the petition, so Chairman Almeida closed the public hearing.

## DECISION OF THE COMMISSION

Mr. Wyckoff motioned to approve the application as presented with the stipulation that the two panels on the end closest to the street be lowered to the height of the other panel. Mr. Gladhill seconded.

Mr. Wyckoff said the design was roughly compatible with the District and would not be a detriment. Councilor Kennedy was confused and asked if the whole fence would look like Photo #10. Mr. Wyckoff said he made the stipulation that it be lowered only at the driveway side. Councilor Kennedy said she could not vote for that but was willing to go back to where the fence was originally. She agreed with Vice-Chair Kozak that they didn't see 8' fences in the District and it was out of character. She could not question a replacement in kind, but changing the whole fence was not maintaining the special character of the District. Vice-Chair Kozak concurred with Councilor Kennedy. Chairman Almeida said that there was a subtle solution of removing 4" of the fence to make all the parties happy but it wasn't up to the Commission to offer a 4<sup>th</sup> or 5<sup>th</sup> option. He could not support the motion as it was. Mr. Wyckoff said he could withdraw the motion, but Chairman Almeida said the motion failed and the applicant could re-file. (4-3 opposed).

*The Commission voted to **deny** the Certificate of Approval as presented for the following reason:*

- 1) The majority of the Commission felt the fence portion between the applicant and the neighbor at 14 Mt. Vernon Street were inappropriate in height and style and not in keeping with the character of the Historic District.*

*The motion **failed** to pass, with 4 opposed and 3 in favor.*

5. Petition of **Hobbs Building LLC, owner**, for property located at **161-165 Court Street**, wherein permission was requested to allow exterior renovations to an existing structure (replace windows, repair awning, add two HVAC units to roof) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 116 as Lot 27 and lies within Mixed Residential Office and Historic District.

## SPEAKING TO THE PETITION

Brendan McNamara on behalf of Todd Eidelman, the new owner of the Hobbs Building, told the Commission that he was doing a restorative approach to the building. The aluminum awning

would be restored because it had been hit by a truck. There was minor damage to the storefront window assembly. The aluminum alloy had surface corrosion but it was not significant. He wanted to replace the wood windows because they were rotted out in the lower section. He was not sure if they were original to the 1956 building and knew that the glass panes were not. Someone had pulled the single panes out and put double panes in from the outside, and the windows were in bad shape. The small windows were louvered and would be replaced with a section frame window like Green Mountain with full integrated casings. They would flange them into the brick opening as originally done. There was no change to masonry except for minor repairs. They were also replacing the two condensing units on the roof with smaller ones that would not be seen from the street.

Mr. Wyckoff asked if the 1/1 windows were exact duplicates, and Mr. McNamara said they were.

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

There was no one to speak to the petition, so Chairman Almeida closed the public hearing.

### **DECISION OF THE COMMISSION**

*Mr. Gladhill moved to **grant** the Certificate of Approval for the application as presented. Vice-Chair Kozak seconded.*

Mr. Gladhill said the application was straightforward and the change consistent with the special and defining character of surrounding properties. The building wasn't changing much and the windows were enhanced.

*The motion **passed** unanimously with all in favor, 7-0.*

6. Petition of **Dennett Investment Group, LLC, owner**, for property located at **44 & 46 Dennett Street**, wherein permission was requested to allow exterior renovations to an existing structure (misc. renovations) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 140 as Lot 12 and lies within General Residence A and Historic Districts.

### **SPEAKING TO THE PETITION**

The owners Bob and Eileen Mackin were present. Mr. Mackin told the Commission that he and his wife had done a great deal of work on the property. They were both historically-minded and always owned older homes in New Hampshire. They unfortunately had not realized that the repair work they did was under the jurisdiction of the HDC. Mr. Mackin apologized and said they had done minor improvements to the exterior of the property and had two more improvements that they needed approval for, one of which was a new entry.

Councilor Kennedy asked about the door. Mr. Mackin explained that he wanted to add a side entrance that could no longer be an entry due to the driveway but wanted to keep the door to

maintain the property's integrity. It served a functional purpose by allowing egress that their insurance company had said they needed to maintain. It had a 2' drop to the driveway, however, so they wanted to put in a 2" picket fence across the doorway. A second improvement was to add a privacy lattice fence to hide the garbage in the back of the property but allow entry and egress. Councilor Kennedy asked if there would be steps. Mr. Mackin said it would just be a fence. Mr. Gladhill asked what material the picket fence was. Mr. Mackin said it was wooden.

Mr. Wyckoff wanted to clarify that the two major changes they did on their own were the porch and railings, which was a great improvement, and they also created the panels under the windows. He asked if there were repairs to the existing panels on the front bays. Mr. Mackin said the molding on the panels was broken in different places and had squirrels living in them, so they hired someone to make them identical. Chairman Almeida said he saw that as a repair on the bays. Mr. Wyckoff said the fence and porch were the major changes that they did on their own. Mr. Mackin said the fence leading up to the porch faced their driveway, and the fence would be part of the next petition. Chairman Almeida told the Commission that if they considered the bays to be a repair, then they were only discussing the porches in the back being rebuilt and the request for the guard at the door that would almost make it a Juliet balcony. Councilor Kennedy said that the removal of the siding would have been a change and the second page was part of the approval. Chairman Almeida said it was what the HDC would have asked Mr. Mackin to do.

Mr. Gladhill asked if it had been expensive to remove the lead paint that was on the original clapboards. Ms. Mackin said it was. They hired someone to do it according to code, and the City sent out inspectors and said it was one of the best abatement setups that had seen. Mr. Wyckoff said the replacement or restoration of wood siding, including the removal of non-wood materials, was an exemption. Mr. Mackin said there weren't clear on what was exempted and tried to cover all the bases.

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

There was no one to speak to the petition, so Chairman Almeida closed the public hearing.

### **DECISION OF THE COMMISSION**

*Councilor Kennedy moved to **grant** the Certificate of Approval for the application as presented. Another Commissioner seconded.*

Councilor Kennedy said the changes had historical integrity and conservation. They promoted and enhanced the architectural and historical character and were historically significant.

*The motion **passed** unanimously with all in favor, 7-0.*

Mr. Rawling left at this point in the meeting.

7. Petition of **Robert A. and Eileen C. Mackin Revocable Trust, owners**, for property located at **56 Dennett Street**, wherein permission was requested to allow demolition of an existing structure (removed existing fencing) and allow a new free standing structure (install new

fencing) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 140 as Lot 13 and lies within General Residence A and Historic Districts.

### **SPEAKING TO THE PETITION**

Mr. Mackin told the Commission that when he and his wife purchased their second property, they wanted to get rid of the rotting fence and thought it was within their own purview to simply replace it, but discovered later on that it wasn't. One change they had made was putting a picket fence on the front and side instead of a solid fence like the batten one on Gates Street. The rest of it was slightly different from the part falling down. The fence was 6' tall and 8' long with posts in the ground, and they left it natural wood so that it would weather on its own.

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

There was no one to speak to the petition, so Chairman Almeida closed the public hearing.

### **DECISION OF THE COMMISSION**

*Councilor Kennedy moved to **grant** the Certificate of Approval for the application as presented. Vice-Chair Kozak seconded.*

Councilor Kennedy said it preserved the integrity of the District, maintained the special character and replaced in kind for the most part.

*The motion **passed** unanimously with all in favor, 7-0.*

8. *(Work Session/Public Hearing)* Petition of **Donna P. Pantelakos Revocable Trust, owners, G.T. and D.P. Pantelakos, trustees and Chris Crump, applicant**, for property located at **138 Maplewood Avenue**, wherein permission was requested to allow new construction to an existing structure (infill area in rear, construct second floor roof deck, reface existing chimneys) and allow exterior renovations to an existing structure (reconfigure misc. windows, replace windows, replace siding, trim, and shutters with composite materials) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 124 as Lot 6 and lies within the Central Business A and Historic Districts.

### **SPEAKING TO THE PETITION**

Mr. Chris Crump, contractor, Ms. Donna Pantelakos, owner, and George Pantelakos, trustee were present.

Mr. Crump told the Commission that he took all their recommendations and tried to implement them and gave them the old and new plans to differentiate between the two. The original chimneys were non-functional, so they took the structure down and wanted to replace them with ornamental chimneys made of clay brick veneer. Step flashing would make them look like the original ones, and they would have the same dimensions and would be painted white with a black cap with real clap joints.

Vice-Chair Kozak asked him why he was not replacing in kind. Mr. Crump said the existing structure underneath was compromised, especially in the basement, and was expensive to restore. The fireplace would not be used because it hadn't worked in many years. He said he also added another window on the upper right hand corner on the side of the house and aligned the windows symmetrically to make a front entryway. Mr. Gladhill asked if the window openings would be changed. Mr. Crump said they would. Ms. Ruedig asked why they needed to be larger. Mr. Crump said the windows on the top rooms were bedroom windows that needed egress. Mr. Wyckoff said it was not necessary in Portsmouth. As long as both sashes were removable, it was considered an egress window and did not have to be 20"x 24" openings.

Mr. Gladhill said that the HDC recommended that the windows not be resized or changed. Mr. Crump said the windows on the front of the house were not the exact size as the original windows but were smaller, thinner, and 4-6' wider. Chairman Almeida confirmed that they were on the side and not on the front. Councilor Kennedy asked how much longer the windows were. Mr. Crump said they were 6 inches. The windows on the front side were close to the existing width of the house, but they just increased the length. Councilor Kennedy wanted to know the actual dimensions for the new window. Mr. Gladhill asked if the window openings originally were larger and then made smaller over time, and Mr. Crump said yes.

Vice-Chair Kozak asked if anyone had done a site walk. Councilor Kennedy said she had. Mr. Gladhill asked Mr. Crump if he had looked at historic photos of the house and Mr. Crump said he hadn't found any. Mr. Gladhill said he was uncomfortable with the different sizes on the front and sides of the house. Mr. Crump told him that the windows on the house adjacent to the right were about the original size of the house. Chairman Almeida scaled the window openings on the Maplewood Avenue side and said they were 27" wide and 54" high with standard sash openings, so the proportions were good. However, the windows should be 9/6 rather than 6/6, and the panes appeared to be tall. He felt it was appropriate, though, based on the 27" and 54" dimensions. Mr. Crump said he tried to match the window widths and carry the height to the side so that everything lined up.

Ms. Ruedig thought the front of the house was fine, but she preferred to see the same window openings and configuration continue around the side. Councilor Kennedy clarified that the upper windows were staying the original heights and was told that they were. Chairman Almeida said that it wasn't on the drawing and it looked like the upper window heights had increased. Mr. Crump said the height had been lowered. Chairman Almeida concluded that the windows on the upper level were barely 48" high, which wasn't appropriate. Vice-Chair Kozak said a lot of older homes had shorter windows. Chairman Almeida verified that the existing windows were smaller in height but the tops were at the same location. Vice-Chair Kozak said she had been referring to the window's unit height, not the installation height, and she didn't see the justification of changing the nature of the original façade by making the windows taller.

Mr. Wyckoff said he agreed, and he realized that Mr. Crump was stripping the house down and putting new construction windows in. Mr. Crump said yes, the windows were Andersen 400 Series, pre-hung and fully cased, which insured that the glass would be in the proper plane.



Mr. Wyckoff said he was concerned because they only had press-on fiberglass that looked like trim, and Mr. Crump would be putting composite clapboard siding on near the sidewalk. Mr. Crump said the existing siding had holes in it from the vinyl siding and they had to replace it. Mr. Gladhill said he would prefer wood siding. Mr. Crump said he would have cost and maintenance issues.

Ms. Pantelakos said the Commission was talking about opinions and preferences, but she needed to know what was allowed and what wasn't. Mr. Wyckoff said the house on Bow Street was right on the sidewalk and the back of the house, which was 4-5 stories tall, was on the river. The Commission had allowed the sides and back of the house to be a clapboard composite but had required wood clapboard on the front. If the applicant got CVG cedar claps and painted them, he wouldn't have a problem with longevity. Vice-Chair Katz said there was always a question about synthetic materials vs. traditional materials, and the HDC had allowed them in certain cases, but the degree of strict adherence was waived according to the history and location of the house, and she gave Ms. Pantelakos examples of properties in historic districts and how they evaluated them.

Ms. Pantelakos said her house was not historic, just old, and they were surrounded by businesses, so they were not in a district where all the houses were neatly packaged historic homes. They were at a disadvantage because many of the surrounding buildings were given different criteria. Mr. Gladhill said there had been a decision in the 1960s not to demolish the home and keep it in its historic contents, so that added to the scrutiny. Ms. Pantelako said she understood, but it also allowed people to give opinions instead of the rules. She referred to the cement clapboards and said if anyone did a site walk, they would know the clapboards were a 150% improvement.

Mr. Melchior said he would not support anything but a natural material, especially on the front of the house. The 2<sup>nd</sup> story windows should remain the original window openings, and he did not support artificial chimneys. Mr. Crump concluded that he had already made his vote and would not listen to additional comments. Mr. Melchior said he would not argue for the merits of synthetic over natural material, and said the Commission had just told them about precedents in which the same standards were applied.

Mr. Crump said the back of the house had some extra construction that was only slightly visible, and they were putting a roof deck on the back side. They had realigned all the panels on the window and put columns in to give it a historical porch aspect. Mr. Crump said they were also removing the existing stairway on the side of the house to reduce the traffic, and he showed where they were adding another 7' of a 2<sup>nd</sup> story.

Chairman Almeida stated that he thought the argument over the Hardiplank could be resolved. He assumed it would be painted and they had allowed it in some locations. The window openings on the front could be refined by a few inches. He thought the back of the house was appropriate. The bulk of the discussion was the window configuration on the side and whether some of the windows could be reduced in width. He didn't have a problem with faux chimneys constructed out of real brick if they were flashed and capped. Councilor Kennedy said she wanted to keep the front historical and questioned the door, but she found it odd that there were no measurements in the plan. She had questions about the door spaces and screen door and was

confused about window height. She thought the tops of the windows should be smaller. There were no deck calculations. Mr. Crump thought he hadn't had to add them because they weren't brought up at the previous meeting, so he assumed things were fine. Wyckoff asked if the side door would stay the same and he was told it would.

Mr. Pantelakos asked the Commission if they preferred to have the chimneys the original brick color instead of painted. Councilor Kennedy said they had no control over paint. Chairman Almeida said they would at least want to see a brick sample and suggested they leave it natural instead of painting it. Vice-Chair Kozak clarified that the chimneys would be rebuilt the same size and height. Mr. Crump said they would be in kind. Mr. Wyckoff asked why the original chimneys were being removed and Mr. Crump said they were compromised and expensive to restore. Mr. Wyckoff asked if the bricks were failing. Mr. Crump said they were and would not meet the code.

Councilor Kennedy noted that they were removing a window on the side. Mr. Crump said they were and the Commission had said it would be fine. Mr. Katz said the window specifications were missing from the packet. Councilor Kennedy asked if they were replacing the window openings in kind, and Mr. Crump said no, but they were the same pattern and aligned. Mr. Gladhill noted that the more prominent windows were on the side and not the front and suggested that the windows stay the same size as the front and side to keep the house in character. Ms. Ruedig said it was a prominent location and was critical to retain the historic character of the District.

Mr. Crump asked how they would get it approved. Ms. Ruedig said it would only be a few inches of difference. The Commission had to retain the historic character of the District, and it was usually done through doorways and windows. The 6/6 windows were a huge improvement but it was important to retain the size of the opening. Another mandate was that changes enhance the character of the District, and that was why the HDC preferred appropriate material on main facades.

Chairman Almeida did not think they were ready for the public hearing and would have to postpone it to the next month. Mr. Crump wanted to ensure that he knew exactly what information the Commission needed for the next time. Mr. Katz said that the applicant had to convince four of the Commissioners. Ms. Pantelakos wanted the Commission to do a site walk and look at the building's condition, and Chairman Almeida agreed. Mr. Crump and Ms. Pantelakos verified that the main issues were the window sizes and location, the material for the front façade, and the chimneys. Vice-Chair Katz included the size of the casings and trims and told them to check the Ordinance list for sizes and dimensions. The Commission wanted a single stud pocket for the mulled windows instead of two, and specifications for the back door. She asked about storm doors. Mr. Crump said they would replace in kind and showed her samples of the shutters. Chairman Almeida said there were certain exemptions for shutters and to make sure the size would completely cover the window. Vice-Chair Kozak asked them to specify the gutters and downspout locations as well as the size, shape, and material.

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

There was no one to speak to the petition, so Chairman Almeida closed the public hearing.

## **DECISION OF THE COMMISSION**

*Councilor Kennedy moved to **postpone** the Certificate of Approval as presented to the December 4, 2013 meeting so that additional information can be submitted and reviewed and a site walk can be scheduled. Vice-Chair Katz seconded.*

*The motion **passed** unanimously with all in favor, 7-0.*

9. Petition of **National Society of Colonial Dames, owner**, for property located at **Market Street**, wherein permission was requested to allow a new free standing structure (construct dumpster enclosure) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 118 as Lot 5 and lies within the Central Business A, Waterfront Industrial, Historic, and Downtown Overlay Districts.

Chairman Almeida recused himself and Vice-Chair Kozak replaced him.

## **SPEAKING TO THE PETITION**

Bill Bartel and Carla Goodknight of CJ Architects were present. Mr. Bartel told the Commission that the property was connected to the Moffatt Ladd House and garden. There were dumpsters on the Ceres Street level that they wanted to shield with an enclosure fence with three access gates. He showed the four elevations of the enclosure fence and said the fence would be wood with pine moldings and oak panels.

Mr. Gladhill asked if he had chosen the hardware for the gates, and Mr. Bartel told him no. Vice-Chair Kozak asked if he knew the material or finish. Ms. Goodknight said they had not coordinated the gate operation detail with Waste Management but anticipated that it would be an exposed dark metal hinge.

Councilor Kennedy asked what the dumpster dimensions were and Mr. Bartel said he didn't know but the drawing was to scale. She asked if there would be 29' in front of the dumpsters and Mr. Bartel said yes because they needed the clearance for access. Councilor Kennedy thought it would be 15' with a 29' enclosure. Mr. Bartel said he had coordinated the size of the openings with Waste Management and had negotiated to reduce the size of the access to the dumpsters as much as possible. Councilor Kennedy said she saw 15' of dumpster and asked if Mr. Bartel was going to the left or right of the dumpsters. Mr. Bartel said there was a walkway that went to the right base of the garden, so they kept it far to the right so the walkway could remain. Mr. Gladhill thought it looked like they would lose part of the garden. Vice-Chair asked if the reason they needed the intermediate interior partitions was for stability, and Mr. Bartel said yes. She wondered if he could anchor it into the ground instead to eliminate the open frames in the middle and reduce the clearance in between. Mr. Bartel said the space in between was not the issue, it was more the clearance of the gate. Councilor Kennedy asked what would happen if they put in two big gates with divisions. Mr. Bartel said it would become a large gate.

Mr. Wyckoff said the Commissioners had all agreed that it was the best-looking dumpster enclosure in Portsmouth, and he didn't care if it was 29' or 27', it was a good design and a major improvement. They were losing some of the garden but not seeing the dumpsters. Councilor Kennedy said that anyone coming down the steps would see the dumpster and would rather see the garden instead of the dumpsters. Mr. Bartel said the vegetation of the garden had a retaining wall that stepped up, so from the Market Street level, the vegetation would hide the top of the dumpsters, even with an open top enclosure.

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

There was no one to speak to the petition, so Vice-Chair Kozak closed the public hearing.

### **DECISION OF THE COMMISSION**

*Mr. Katz moved to **grant** the Certificate of Approval for the application as presented. Mr. Wyckoff seconded.*

Mr. Katz said it was the best dumpster enclosure he had seen. Mr. Wyckoff said it preserved the integrity of the District and maintained its character. It complemented and enhanced its architectural character. The HDC did not have the purview over landscaping, so he was in full support of it. Councilor Kennedy said she thought it took up too much space and obstructed the view and that perhaps they could do a smaller space instead of a 30' space. Vice-Chair Kozak asked that the exposed gate hardware be a dark metal finish and agreed that it was a great-looking enclosure. It looked like a historic fence and the improvement to Bow Street would far outweigh the loss of a few bushes next to it.

*The motion **passed** with 6 in favor and 1 opposed. Councilor Kennedy voted opposed.*

### **VI. ADJOURNMENT**

At 11:35 p.m., it was moved, seconded, and passed unanimously to adjourn the meeting.

Respectfully submitted,

Joann Breault  
Acting HDC Recording Secretary

These minutes were approved at the Historic District Commission meeting on April 9, 2014.