

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

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

6:30 p.m.

**March 5, 2014
to be reconvened on March 12, 2014**

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

MEMBERS EXCUSED: Richard Katz

ALSO PRESENT: Nick Cracknell, Principal Planner

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I. APPROVAL OF MINUTES

- A. July 10, 2013
- B. July 17, 2013
- C. August 14, 2013

It was moved, seconded, and passed unanimously to approve all of the above referenced minutes as presented.

II. ADMINISTRATIVE APPROVALS

III. PUBLIC HEARINGS (CONSENT AGENDA ITEMS)

*The Board's action in these matters has been deemed to be quasi-judicial in nature.
If any person believes any member of the Board has a conflict of interest,
that issue should be raised at this point or it will be deemed waived.*

1. Petition of **Christopher Brodeur and Kristen B. Ward, owners**, for property located at **51 Manning 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 103 as Lot 58 and lies within General Residence B and Historic Districts.
2. Petition of **Alan and Pamela Gordon, owners**, for property located at **215 Washington Street**, wherein permission was requested to allow exterior renovations to an existing structure (remove existing storm windows, replace with new storm windows) as per plans on file in the

Planning Department. Said property is shown on Assessor Plan 103 as Lot 80 and lies within General Residence B and Historic Districts.

SPEAKING TO THE PETITIONS

There were no issues or questions from the Board.

SPEAKING TO, FOR, OR AGAINST THE PETITIONS

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

DECISION OF THE COMMISSION

*Councilor Kennedy moved to **grant** the Certificates of Approval for the applications as presented. Mr. Wyckoff seconded.*

Councilor Kennedy stated that both of the items were replacements with no new construction. The fence was in the same area and was wooden and in keeping, and so were the windows, and there were no extreme changes in circumstance.

Mr. Gladhill noted that the applicant would be doing period window restoration of interior windows and that it was nice to see an applicant take the time to research and restore period windows rather than replace them with brand new windows.

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

IV. PUBLIC HEARINGS (OLD BUSINESS)

The Board's action in these matters has been deemed to be quasi-judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.

A. Petition of **Brian M. Regan and Susan M. Regan, owners**, for property located at **28-30 Dearborn Street**, wherein permission was requested to allow demolition of an existing structure (demolish existing concrete wall) and allow a new structure (construct new wood wall) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 140 as Lot 1 and lies within General Residence A and Historic District. *(This item was postponed at the February 12, 2014 meeting to the March 5, 2014 meeting.)*

DECISION OF THE COMMISSION

*Councilor Kennedy moved to **postpone** the application to the April 2, 2014 meeting. Ms. Ruedig seconded.*

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

V. PUBLIC HEARINGS (NEW BUSINESS)

The Board's action in these matters has been deemed to be quasi-judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.

3. Petition of **7 Islington Street, LLC, owner**, for property located at **40 Bridge Street**, wherein permission was requested to allow a second extension of the Certificate of Approval granted on March 7, 2012, as per plans on file in the Planning Department. Said property is shown on Assessor Plan 126 as Lot 52 and lies within the Central Business B, Historic, and Downtown Overlay Districts.

SPEAKING TO THE PETITION

Attorney Stephen Roberts of Hoefle Phoenix Gormley and Roberts and architect Mr. Steve McHenry of McHenry Architects were present.

Attorney Roberts told the Board that they were requesting an extension of the Certificate of Approval. He stated that the plan was originally submitted in 2012 and then extended in February 2013 and would expire in a few days. Shortly after the 2013 extension was granted, litigation began that related to the property and involved not only the abutters but also the two partners of the company who had created the entity and were involved in the development. The litigation was ongoing. For the past ten months, it had been a rigorously-contested matter involving the abutters and the two partners. There had been several court orders issued, and the litigation had created a delay. Therefore, they were requesting a short extension of six months for the Certificate of Approval so that they could finalize their plans, get the building permit and move forward. In addition, the counsel for the abutters had indicated that he wanted to rescind the site plan approval, but Attorney Sullivan had decided that the abutters did not have the right to do so.

As a result, there was currently an empty lot with an abandoned house, and they believed that by extending the approval and allowing the building to be built, they would achieve the goals of the Commission and would also enhance the area as well as property values. Attorney Roberts said that it was important to note that there had been no changes to the plan the Commission had approved two years before or to the extension that was granted the year before.

Attorney Roberts told the Board that the plans they had been provided for the extension request specifically identified that there had been no changes, and they believed there would not be any prejudice to any party. Abutters could take umbrage with that statement, but their opportunity to challenge the HDC's approval of the project had been back in 2012, and they chose not to do so back then. Instead, they were now litigating the matter in Superior Court and the issues would be addressed at that level. The staff report that Mr. Cracknell prepared indicated that, in the event the final court order required the applicant to come back to the HDC and to the Planning Board, then the HDC would have another change with review and approval. Attorney Roberts

stated that they wholeheartedly agreed with that provision, but they wanted to build a building that the HDC had approved a few years before, and if the court denied their request, they would go back to the HDC and the Planning Board as required. All they were asking for was a little more time to finalize the drawings so that they could submit them to the City for approval.

Chairman Almeida requested that Attorney Sullivan approach the podium and clarify what the Commission would be considering. He understood that they had a design in front of them that had been approved, but their consideration was primarily for the delay, and he wanted it clarified.

Attorney Sullivan stated that the issue before the Commission was whether or not they had heard what they considered to be a good reason to grant the extension, and it was not whether or not they had changed their mind about the previously-approved design.

Councilor Kennedy stated that, given the fact that the criteria had changed and the Commission would be approving a design that did not meet that criteria, she had difficulty with it because it signified that she could not approve what was presented. The applicant was asking for an extension, and the rationale for that extension was given, but there was also the rationale for a major criteria change and what the design meant.

Attorney Sullivan agreed. The question that had been presented to the Commission was whether the applicant could have an extension and whether the Commission had heard a good reason to grant the extension. If they had, they should grant it, and if they hadn't, they should not. It was a very momentous decision for the developer in particular, because if the extension was not granted and the building permit was not secured, then the project would have to start from the beginning, which meant that changes in the Ordinance or any new criteria would apply.

Chairman Almeida asked Councilor Kennedy whether the changes she had referred to were zoning ordinance changes. Councilor Kennedy stated that she thought she could not approve the building itself simply because of how it looked, but it was a zoning change. It was a 60' building for a 45' approval. Mr. Wyckoff stated that the height of the building was 40'4" at its highest dimension. Councilor Kennedy stated that she saw it as a 60' building height and 95% coverage.

Mr. Cracknell stated that it was the CBB Zoning Ordinance that was in place at the time and it was still currently a 60' zoning district with 95% coverage. It just required a Conditional Use Permit, unlike when it was first approved. He stated that the last 15' would require a Conditional Use Permit, not due to the height because it might average under 45', but due to the 4th story.

Councilor Kennedy stated that she was having a difficult time with the extension. She had heard that people were questioning the building and had been told that it was only the parking. She was curious as to whether the court case had stated that the applicant could not build. Attorney Roberts stated that it was the opposite. The court authorized his client, who was one of the two partners, to take sole control of the company and move forward. There had been an injunction started to prevent construction, but the court had told them to go ahead and build.

Councilor Kennedy stated that the building had not been started when the City had stated that it needed to be started. She would have a different opinion if the court order had stated that the applicant could not build, but she had learned that the applicant could have started to build and didn't, and she wanted to know why.

Attorney Roberts stated that it was because of the battle between the two partners, which had been a significant legal battle relating to who would control the company and make the major decisions and who the attorneys would be. Ultimately, there was a court order that his client Mr. DiLorenzo, one of the owners, would be the sole manager and have sole control and could therefore move forward. The order had been issued in October 2013, so between May and October of 2013, that six-month period saw a great deal of uncertainty. Financing would have been an issue because no one knew who would sign on behalf of the LLC, and the banks would have been reluctant to provide significant financing under those circumstances. However, it had been clarified, and Mr. DiLorenzo wanted to go forward and clean up the lot and restore the area to an attractive building.

Councilor Kennedy stated that she was even more concerned because the applicant had claimed that the citizens had been the reason that they weren't building, and now she discovered that the true source was the two partners who could not get along, forcing the court to decide. Attorney Roberts responded that her remark was not quite accurate. There had been two lawsuits because the abutters sought to enjoin foreclosure and brought a claim against 7 Islington Street LLC to seek parking that they believed had been promised to them. The client contested those allegations, the judge made preliminary rulings, and a trial was set for the future. However, the litigation involving the abutters was very much a part of the problem that triggered the litigation involving the other partner as well. Consequently, all the infighting and battle with the abutters combined to create a great deal of uncertainty that the applicant finally resolved.

Councilor Kennedy reminded Attorney Roberts that he had said the judge had told him to go ahead and build the building, despite the court case. Attorney Roberts said it had happened in October but had taken a long time to get to that point.

Mr. Rawling asked Attorney Roberts if they had ever applied for a building permit. Attorney Roberts stated that they had a CMMP meeting and finalized the site plan review agreement, and they had been ready to apply for the building permit but it was currently in code compliance review.

Mr. Gladhill asked Attorney Roberts if he would begin the project if he got approval that day. Attorney Roberts said he hoped they could resolve their issues with the Inspection Department regarding their drawings within two to four weeks. Once they got the foundation permit, or the initial building permit, ground would be broken. They were ready to go and wanted to start building. Their petition for the second extension was their last obstacle.

Councilor Kennedy stated that the applicant had two obstacles, the one with the Commission and one with the Planning Board. Attorney Roberts told her that they already had approval from the Planning Board on the site plan that would expire on April 19. Their hope was to get a foundation permit prior to April 19 so as not to trigger new issues.

Chairman Almeida stated there would be no further questions from the Board until after the public discussion.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. William Brassil, President of the 7 Islington Street Condo Association, told the Commission that each of the residents who bought units at 7 Islington Street, which was the Buckminster House built in 1720, were promised parking. They had the documents from the realtor as well as e-mails from one of the partners, and even one from two years before when the partner had called on his other partner to get the document in writing. The occupants still didn't have it in writing. Mr. Brassil also had a document stating that the applicant would have to provide parking spaces for them at either 40 Bridge Street or 29 Tanner Street. They simply wanted parking and would have never bought condos in downtown Portsmouth without it. He felt that the delay was caused by the developer and not the court. He was not against developing the lot, but he was against the fact that they would be required to go through a 5' gap, or tunnel, that would have snow and ice issues, but that wasn't as important as getting the parking spaces they were promised.

Mr. Ed Carrier of 7 Islington Street stated that the house he lived in was built in 1720. George Washington was born in 1732, 12 years later. The nearest colonial neighbor to his home was the John Paul Jones House built in 1758. Others could quote facts and figures, but his house had stood on that corner for 300 years, and now the proposal was to put that building next to it. He asked if that was the way the HDC treated a treasure in Portsmouth or said thank you to the people who nourished the home for 300 years. He rhetorically asked the Board if they would approve the proposed structure if it were going to be built within 5' of the John Paul Jones House, which was built 38 years after his house.

Mr. Rick Becksted of 1395 Islington Street told the Board that they usually didn't get a second chance, and it was their second chance to right a mistake that was done two years before and vote for something proper next to the Buckminster House. His mother lived in the Buckminster House 20 years before and rented an apartment that had come with a parking space.

Ms. Emily Heffner of 7 Islington Street reiterated that they purchased condos with parking, and the valuation of those condos was with parking. Mr. DiLorenzo had stated that they did not have a provision for deeded parking, but when she purchased her condo, her attorney had insisted that she draw up a parking agreement, and it had been signed by one of the co-managers of 7 Islington Street and was on file at the Registry of Deeds. The reason they did not have parking at 7 Islington Street was because Mr. DiLorenzo had gotten a lot line adjustment in 2007 to remove 60' behind the home, which went towards 40 Bridge Street which, with 29 Tanner Street and 7 Islington Street, all made up 7 Islington Street LLC, and he probably had thought the parking issue would just slide through. Mr. DiLorenzo also signed a letter stating that he would provide cross parking easement for the residents of the Buckminster House. When she bought the condo in 2010, she was told that she'd be given deed parking. The plans did not provide enough parking for the residents in the new building, which normally required 1-1/2 spaces for each

resident, so the applicant would have to get 15 more spaces plus three spaces for the Buckminster House residents.

Attorney Paul Pudloski, attorney for the three residential unit owners in the Buckminster House Condo Association, told the Commission that they had a request for further extension of an approval given two years before, and they had heard Attorney Sullivan say that the developer had obtained HDC approval for a 4-story building with no on-site parking on 40 Bridge Street back in 2012. He said that the building, if built, would have four commercial units and ten residential units and take up 95% of the lot. The approval was good for one year. In February 2013, the HDC granted another one-year extension. The developer was asking for a further extension to build a building that would not be permitted under current regulations. In essence, the applicant was trying to extend their grandfather status so they could build a building that the HDC and the Planning Board would not currently allow. Attorney Sullivan made it sound like the Commission was operating from a clean slate with regards to the criteria for the further extension. Attorney Pudloski passed out copies of the Expiration of Approval section of the Ordinance that stated the certificate of approval would lapse one year from the date of the Commission's action unless the applicant requested an extension of no more than one year prior to the expiration. It also stated that no more than one extension shall be granted unless authorized following a public hearing convened to consider such a request. The reasoning behind it was because zoning regulations changed and development would be required to comply with current requirements. Therefore, ten residential units had to have 15 on-site parking spaces, and they had none. Another issue was the building's height. It was a 4-story building that currently would not be permitted by the HDC, yet was obtained two years before due to the Conditional Use Permit ordinance that was in effect at the time. Now they would need a variance and demonstrate hardship to build a 4-story building.

Chairman Almeida said that he wanted to make it clear that in reading it verbatim, it stated 'no more than one extension shall be granted unless authorized, following a public hearing convened to consider such a request', and he said that was what they were doing there. More than one extension could be granted if the Commission deemed it.

Attorney Pudloski agreed that it carved out an exception, but he didn't believe that Attorney Sullivan's reference as 'simply finding good cause' was sufficient. If granting a further extension, the Commission had to look at consequences. His clients wanted to see the site developed according to the present-day requirements. They had gone to court to enforce their parking privileges because they were sold their units with the promise of parking. It was in the leasing agreement and on the P&S agreement that they would have one deeded parking space, and Ms. Heffner had a recorded document of a parking agreement signed by the developer! The reason for the delay was because of a fight in their house. He was there to question whether a further extension was warranted.

The court had ordered that any final development by the applicant must provide three parking spaces if his clients prevailed on the merits of their claim. At no time had they asked the court to stop development. They simply established their parking rights. The parking would not be at 40 Bridge Street if they were given the extension because the 2012 approval had no parking provision for his clients, not even for the ten residential units. The applicant wanted to extend

the grandfathered status of the building so they could build something they wouldn't otherwise be allowed to build. There was not enough space at 29 Tanner to accommodate parking either. In 2006, the developer had gone to the HDC for permission to tear down the building at 29 Tanner Street for parking space and had been turned down twice. His clients had parked behind the Buckminster House but there was no backyard left due to the lot line adjustment. The 5' pedestrian tunnel resulting from the building construction would bring a 40' wall within 5' of the back to the Buckminster House that would currently not be allowed. Attorney Roberts had cited the parking lawsuit as a reason that the construction hadn't commenced, but it was not true. At no time did they ask the court to stop the development.

Chairman Almeida asked Attorney Sullivan if he wanted to clarify any statements. Attorney Sullivan stated that what Attorney Pudloski had just said was exactly what he had told the Commission.

Chairman Almeida reminded the Commission that they were not considering the design or the parking situation, or whether or not it would be approved under current zoning. It was simply whether or not the extension was warranted.

Councilor Kennedy asked Attorney Roberts what the name of the entity was when he first filed the permit. Attorney Roberts stated that it was 7 Islington Street LLC from the beginning and had not changed. All three lots were owned by the same entity. The Buckminster House was developed and sold, and the remaining two properties were still owned by 7 Islington Street LLC. Since it was not the Planning Board, Attorney Roberts felt that referencing the 2007 lot line adjustment was inappropriate because they were not dealing with zoning issues. They were there for a minor extension of a unanimous approval they received a few years before, and if the abutters had been concerned with it back then, they had the chance to address it at that time. The lawyer for the abutters was litigating the case. If the court issued a final order to provide parking for those tenants, they would.

Mr. Rawling noted that there were several pages of drawings, yet the elevations presented a different design, so he didn't know what design they were approving by the drawings. There were items like the top edge of the building before reaching the setbacks, the entrance, projecting cornices, freeze banding, varying roof heights, missing detail, and different elevation views. Therefore, he wanted them to note that there were significant differences in what was portrayed in the perspectives versus the elevations.

Chairman Almeida noted that he had not closed the public hearing.

Mr. Duncan McCallum of 536 State Street stated that he was against the extension. His sense of justice was affronted by what was being put on Attorney Pudloski because he didn't think a property owner should hire an attorney to force developers to provide parking that was part of the deal. The developers should keep their promises to the buyers, the City, and the HDC, otherwise, some would question whether they would keep their promises to other Boards.

The public had heard no meritorious reason for the delay of development. Since the two years that the plot line relocation was granted, things had changed drastically in Portsmouth. The

Commission could not bypass the parking issue if they considered the public interest. If Mr. Pudloski's clients were denied their parking spaces in spite of the fact that it was in their contractual documents with the developer, they would have to find other places to park, which would create pressure on the downtown parking situation which was already in crisis. He had not heard anything to suggest a good reason for the delay except for internal bickering. He felt that the developers should be required to proceed under current rules and he asked the Commission to deny the request for the extension.

Mr. Jerry Zelin of 70 Kensington Road told the Board that there was one more zoning change that had occurred since the plan was approved by them that touched on the public interest, and that was the amendments that the City Council adopted a few months before, mainly the HDC Ordinance describing the materials they needed receive before judging a building's mass and how it appeared in context, which he read: 'An electronic or physical scale massing model shall be required for new construction of any building or addition of over 10,000 s.f., and the model shall include the proposed building and all existing and approved buildings within 250' of the proposed building on every street which the proposed building abuts. Such models shall accurately reflect the scale and relationship of the project and surrounding buildings.' If the plans did not include that level of information, it was another good reason not to grant the extension. The amendments of the Zoning Ordinance reflected the City Council's concern and the public's concern that the HDC needed to look more closely at the mass of buildings and how they related to their context than the HDC was perceived to have done in the past. There was a strong public interest that, if the HDC approved the building again, they only did so when put through the gauntlet that the zoning amendments required, which was showing the dimensions clearly stated in relation to the building's surroundings via physical and electronic models.

Ms. Martha Fuller Clark of 152 Middle Street told the Commission to ask themselves why there was language in the current Ordinance that required that if a permit was given for a limited amount of time, and the applicant didn't complete the project in that time, they must come back and ask for an extension. The reason that was put in place was to take into consideration changes that had been going on that might cause the project to be out of sync. Why else would there be a limit on the amount of time? That was what the Commission had to look at, namely the purpose of the extension. Otherwise, a project could be built for the next five years.

Mr. Joe Caldarola of 170 Dennett Street stated that when he heard about the court-ordered injunction preventing Mr. DiLorenzo from foreclosing LLC, he learned that the real reason for the delay was because the two co-owners were fighting, and that's what the Commission would be accepting as a good reason to extend beyond the second extension. The two owners' management agreement allowed each to sign on behalf of the LLC, so each could bind the LLC without the other's permission. Mr. DiLorenzo loaned his own LLC two million dollars and he knew that the money was not available to repay the debt, but he did it to foreclose on his own LLC, thereby eliminating his partner and renegeing on the agreement with the three parking spaces. That was essentially the court case and what had held up the project. He asked if any member of the Commission wanted to be a party to such machinations.

Mr. Arthur Clough of 425 Pleasant Street stated that the Commission did not owe anyone an extension. It was an exception. Extensions were granted for just reasons, and there were so many compelling reasons not to grant that particular extension. Several citizens who owned adjoining properties faced an injustice, especially the one who owned the 1720s house. They needed to preserve Portsmouth properties and their visibility. The Board was the citizen's last hope of keeping the community beautiful and historic and something other than a commodity, something unique. He asked the Commission that they not vote to extend the building permit because there was no just cause to do so.

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

DECISION OF THE COMISSION

*Councilor Kennedy moved to **deny** the Certificate of Approval for the application as presented for the following reasons:*

- 1) Timely construction of the building has not commenced;*
- 2) A change in ownership or project management does not justify the delay;*
- 3) The applicant did not give just cause for the delay or why a building permit was not requested in a timely fashion;*
- 4) Many zoning changes that would effect this project have occurred since the original approval;*
- 5) Many changes to the membership of the Historic District Commission have occurred since the original approval.*

Mr. Melchior seconded.

Chairman Almeida warned the Commission to make sure their motion stuck to what was in front of them for consideration. They were not making a decision based on parking spaces or zoning changes or changes to submitted requirements. They had to determine very simply whether or not the extension was warranted and if what happened truly delayed the building permit.

Councilor Kennedy stated that she had considered all of that and would still ask the Board not to grant the exception, for the reasons stated in the motion to deny.

Mr. Melchior stated that he took with a heavy heart the many changes the Commission had seen in the last 24 months in their zoning, and that was the reason for his support in denying the application. They'd had a lot of turnover on the Board aside from the zoning changes, almost a 40% changeover in leadership and in the voting. Some of them were alternates when the project first came forward. The brunt of it took place in 2011 and 2010, and at that time they discussed parking and abutters over and over to ensure that the developer understood his responsibility and his onus to bring all that together. He had not challenged the Board, but the zoning changed, and the times changed, and they had an annual renewal and discussion because the City and streetscape were not frozen in time, nor were their decisions if they were ignored. There was no reason not to start construction, and lots of zoning changes had taken place since then, so the applicant would have to bring it back before a new Commission.

Vice-Chair Kozak stated that she had to abstain from voting because the attorney for the applicant was one of her firm's clients.

Chairman Almeida stated that he would support the motion for one reason, that he wasn't convinced that there was a reason for delay. It had nothing to do with the building design. When the Commission approved a design, they approved it for a year. The passing of two years should not affect the approval of any design. The applicants themselves had admitted it. The building permit was not applied for, and it could have been. If they had applied for that permit and moved forward, it would have come with a lot of risk and would have also concerned the abutters. He did not see a just cause for the delay.

Mr. Wyckoff said that, upon reading the Expiration of Approvals section that stated no more than one extension would be granted unless authorized following a public hearing convened to consider such a request, it was the public hearing that drove his decision. There had been a lot of aggrieved people, and no one spoke in support of the project besides the applicant's attorney. He totally agreed that the Commission approved the project for its design. Originally, it had parking on the first floor, and it was never considered why the parking was taken out and made all retail, but it wasn't in their purview to discuss it, the same as it was not in their purview to listen to what they had listened to for the last half hour. The fact that there had not been someone speaking in support made him support Councilor Kennedy's motion.

*The motion to **deny** passed unanimously with all in favor, 6-0.*

4. Petition of **Martingale Wharf Limited Partnership, owner**, for property located at **99 Bow Street**, wherein permission was requested to allow new construction to an existing structure (construct trash enclosure) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 106 as Lot 54 and lies within Central Business A, Historic, and Downtown Overlay Districts.

SPEAKING TO THE PETITION

Mr. Steve McHenry of McHenry Architecture and Mr. Mark McNabb of Martingale Wharf were present to speak to the application. Mr. McHenry stated that the intent of the application was to enclose the existing plastic portable trash cans placed in public view. The design created a practical, aesthetically pleasing and lockable metal screen enclosure. He referred to the plan views and elevations as well as photos of current conditions on the sidewalk. The owner's intent was to create something aesthetically pleasing from a partial screen and enclosure that enhanced the streetscape. He then referred to the plans and images for the sliding gate panels on the inside face of the fixed metal panels. The images included one of the proposed rolling door hardware as well as a similar application in Washington, D.C. that was a park fence with a metal frame and overlaying layers of custom fixed panels, with a description of the hardware, the railing, panels and the sliding gates. He said that he hoped that the Commission would see it as a great improvement over the existing condition.

Vice-Chair Kozak asked what the height difference was in grade from the sidewalk to the bricks where the dumpsters sat. Mr. McHenry told her it was two feet. She asked how tall the trash bin

was because she thought that the enclosure seemed a lot taller than what it was trying to hide. Mr. McNabb approached and replied that it was hiding the height of the totes, which were the same height as the small dumpsters. They had no reason to build it any higher than screening totes and spillover. When the restaurants brought trash out, it piled up, so they would put a tote up because they did not the trash to be seen by the public. The trash was at the height of the tote, but the tote was up a bit higher in case of spillover or delayed pickups. Martingale Wharf had pickup seven days a week for seven products which included recycling, dirty linen, trash, compost, and oyster shells. Mr. McNabb said he wanted the tote to be bigger than on with a closed top by did not want to make it any higher than it needed to be.

Mr. Gladhill stated that it seemed awkward that the Planning Board would approve trash cans and totes right on the sidewalk and asked if it was in the site plan. Mr. McNabb stated that approval was not required for transfer and explained that there were eight design and engineering trash rooms in the building and a very large walk-in refrigerator for trash on every floor. At one time, there could be 40 totes of trash in the building, especially in the summer during tourist season. Transfer was the issue. Totes were not considered dumpsters by the City and were everywhere. Their problem was with the transfer ability due to the volume. They did not have simply 2-3 totes to put out on a day of trash, they had 20. On snow days, they could be outside the building for half a day. They hired Waste Management to do six pickups a week, plus a private hauler on Sunday. It was quite an operation to get everything from inside the building placed outside to be picked up by haulers.

Mr. Wyckoff noted that the totes were the green things that looked like dumpsters and the small ones looked like garbage cans. Mr. McNabb said that the dumpsters would not be in the enclosure. The area would be a transfer area used only for totes. The dumpsters fit in the building.

Mr. Wyckoff wanted to clarify that the Commission did not approve the location for dumpsters. He also wondered about the colors and commented that it was a nice design. The Washington, D.C. photo showed flat painted metal, yet Mr. McHenry's totes were multi-colored with sailboats. Therefore, he wanted to know how the colors were chosen and why because he considered them a little too playful. Mr. McHenry said that the colors were meant to be subtle, blue-gray like the sea, and not meant to be ornamental. Mr. Wyckoff reminded him that it was Bow Street. Mr. McHenry said that they wanted to show the contrast between the different forms and give it some 3-dimensional depth and didn't feel that doing it all in black like the example would be appropriate.

Councilor Kennedy stated that she was concerned about the dumpsters. She realized that the trash got picked up every morning, but it was a sidewalk and it was meant to be just a transfer station, and she was concerned about the general premise of putting something up to hide trash on Bow Street. Normally, dumpster canisters were out on the street on Mondays but were gone by midday, but her concern was having something that allowed the two dumpsters to be on the street and was worried that a new owner might now follow the rules. She had a concern with putting something up to hide something. The two big green containers were dumpsters and she was concerned about the odors. She asked Mr. Cracknell if the potential for structures was in the

HDC's jurisdiction or the Planning Board's jurisdiction because she thought it was a Planning Board decision.

Mr. Cracknell stated that he had discussed with the Planning Department Director, Mr. Taintor, whether it was in fact a dumpster and also the argument that it was a transfer area. Per the Zoning Ordinance, the dumpster location was internal to the building for the condition and design that had gone through site plan review. It was a site plan issue with the Planning Board and would have to go to Mr. Taintor as an amendment to the approved site plan if it was approved by the HDC. He encouraged a condition on the approval because it would be a change to the site plan.

Chairman Almeida stated that the issue was an example of the HDC overcomplicating something once again. If the applicant were to decide the next day to get rid of the larger containers and put in a bunch of smaller ones, he asked what difference it would make. He mentioned Vice-Chair Kozak's comment about it being a little too high and stated that it was shrouding waste, and he thought it was a positive thing to cover up the waste, regardless of the size and shape of the containers.

Mr. Cracknell said that his comments had nothing to do with the design of the screen wall. He had just stated that the applicant would have to amend the site plan through the Planning Board, and he had suggested that the HDC either approve or amend it as an approval by placing a condition on the approval. The Planning Board would need to amend their approved site plan if a screen wall of any sort was approved by the HDC. Chairman Almeida verified that it had to do with the use behind the screen and wouldn't apply if it were a fence, so it was more complicated.

Mr. Gladhill stated that he had brought up the trash issue because he was the Planning Board Representative, and if they were putting up a structure to contain trash, it had to be on the site plan because it was no longer considered a transfer. Once it was put in a box, it became a storage area, not a transfer area.

Mr. McNabb explained that the City did not pick up private trash for restaurants, and that was the reason they had private pickup. The trash was stored in the building and they were in complete compliance with the Planning Board for storing and recycling of trash in the building. It had to be transferred to an enormous garbage truck. It was a private sidewalk at a dead end where they put out their garbage in totes every day for transfer. Mr. Taintor had been clear that the Planning Board did not consider totes dumpsters. He felt that their process was a good example for others to follow, and he cited examples of 10-yard dumpsters behind downtown buildings with no screen or enclosure. He compared his situation to the Rosa restaurant that had enclosures for true dumpsters as opposed to totes. They were proactive because they cared. The trash was transferred daily from the building to haulers, and the enclosure was just an opportunity to make it look better.

Ms. Ruedig commended them for the design, which she thought was interesting and fun. She thought that the sailboats were appropriate for Bow Street, and she appreciated that he was putting a contemporary design for people to look at instead of just a fence.

Mr. Rawling commented about the view corridor between the new building and the existing building, saying that it was one of the few view corridors of the water left on the site. If they built the fence as proposed, that last remnant of the view would be gone. However, he also commended Mr. McHenry for the artistic solution and thought it was a wonderful example of two functions, the practical and the aesthetic, to create interest and character in the area.

Mr. Rawling commented about the scale of the open spaces in the fences and the fact that there were gaps up to a foot or more at eye level, making the screen unlike a screen. Mr. McNabb told him that they had a black wire mesh on the inside, which was tiny and an effective way of creating a shadow line without the hazard of a big gap. Mr. Rawling said that he had missed it.

Mr. McNabb pointed out the photo that showed where the top was in relation to the transom lights on the building and slightly higher than the black metal powder-coated railing that blocked the view corridor. The existing black railing had the same black wire mesh on the inside, and one could not stick a hand through the open balusters on the metal fence, so it was only slightly higher. Councilor Kennedy asked how much higher it was. Mr. McNabb said that he wasn't sure but said that they could lower the height. Councilor Kennedy said that in looking at the photo, she could see where the green dumpsters were. Mr. McNabb said the dumpsters were not allowed to be there. Councilor Kennedy said that was the issue she had and asked where they would be.

Mr. McNabb reiterated that the dumpsters had been in the building, but due to snow and moving issues, had been outside for 30 days. They had 40 green totes that they moved trash with, which were not considered dumpsters, according to the Planning Board and the Ordinance, because otherwise they would need a variance. Totes were allowed and that was how they moved trash. The enclosure was not for those totes.

Chairman Almeida asked about the dimensions of the top of the enclosure and said that the Commission was concerned about the historic red house next door, which was something special on Bow Street. He wondered if lowering the partition or enclosure down and just covering the totes would be sufficient. Lowering the wall would give a glimpse of the water view and allow the viewing of the red house coming up Bow Street. He wanted to decide on a height. Mr. McNabb thought it was an appropriate request, and he stated that the top of the existing black metal railing did not need to be higher, and if the line was carried over to the double hung window and lowered to that height, it could work. He talked about fixed points and other issues.

Mr. Gladhill said he did not think that the screening in the front façade of the building was appropriate because the HDC spent a lot of time and effort detailing building facades, and putting a screen in front of the façade seemed detrimental to their efforts. He could understand if the screen was around the totes coming and going, but the screening would be permanent and they would lose sight of the details of the red house on the side.

Chairman Almeida brought up an earlier example of totes on Porter Street and said that it was a terrible experience to walk by a row of totes being transferred, so he was baffled as to why they had spent an hour talking about a decorative enclosure around garbage being transferred. He asked the Commission to wrap it up and to either propose a height or deny it. They were

discussing the issue of shrouding garbage. The applicant had heard that they wanted to preserve the sliver of water view, so the top of the screen would be around 4', and as long as one could see over it and out to the water, it was as simple as that.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Ms. Clare Kittredge of 27 Franklin Street stated that she just wanted to preserve the sliver of water view and have the applicant move the enclosure a bit.

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

DECISION OF THE COMMISSION

*Mr. Wyckoff moved to **grant** the Certificate of Approval for the application as presented with the following stipulation:*

- 1) That the height of the screening does not exceed the height of the existing fence located directly behind it.*

Vice-Chair Kozak seconded the motion.

Councilor Kennedy thought the stipulation would be going to the Planning Board. Mr. Wyckoff asked why it would be stipulated. Mr. Gladhill stated that the HDC did not need Planning Board approval to put up the screening. Mr. Wyckoff said that they had lowered the height down to the existing fence and had agreed on the basic design, so it would be an improvement to the District.

Councilor Kennedy said she was concerned about the green dumpster in the photo that was just sitting out there, and as part of the condition for her to vote, there should be no dumpsters out there, just totes. If the HDC did not have a rationale to say as much, then it should go to the Planning Board.

Vice-Chair Kozak pointed out that colors were not in their purview, nor were site furnishings like trash cans. Height and materials were in their purview. She was glad that it was being lowered and that it would not diminish the view. One of the distinguishing things about downtown Portsmouth was the slots that framed views between buildings. She also appreciated the custom artwork on the screen, because other distinguishing features seen in Portsmouth was the custom artisan work in stonework and metalwork, and she thought the screen was artfully done and fit the theme of the location.

Councilor Kennedy stated that the screen was to cover trash and was not a fence. The photo that had been given to the Commission showed something that was not currently allowed, and they were approving something that they had been told only the Planning Board could approve for a purpose. The Commission couldn't do anything about the purpose, but she wanted to mention it.

*The motion **passed** with 5 in favor and 2 opposed. (Councilor Kennedy and Mr. Gladhill)*

5. Petition of **Portwalk HI, LLC, owner**, for property located at **195 Hanover Street**, wherein permission was requested to allow amendments to a previously approved design (changes to all facades) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 125 as Lot 1-2 and lies within Central Business B, Historic, and Downtown Overlay Districts.

SPEAKING TO THE PETITION

Mr. Jeff Johnston, representing Portwalk, Mr. Tim Levine, Construction Manager, and Mr. Chris Lizotte, Sr. Project Architect from Pro Con were present.

Mr. Johnston stated that he would discuss the circumstances regarding the petition. There had been suggestions that they deliberately ignored the established city rules and tried to sneak changes under the tarp so that they would not be noticed, but that was not the case. A good faith effort had been made by them, and as the owner he took full responsibility. They should have been in front of the Commission before and he apologized for any issues they caused the Commission and the other City Boards. He had been going before the Commission for ten years and had always demonstrated a respect for the process, and he had no reason to abandon that philosophy during the last phase of their project. In December, they became aware that certain elements of the construction plan did not match the set of plans approved by the Commission. They brought the differences to the City's attention and discussed the best process of dealing with them. The conclusion was to bundle the changes and present them as a package. The most significant change was the window configurations. Windows were shifted and added during the design process to align with bedrooms and living rooms, and when that design change was made, he as Team Leader should have noticed that they did not match the specification drawings, but he didn't. Mr. Johnston stated that the window configuration that was in the building frame when it went up was changed to the windows that were now installed around the building. He had met with City staff members and had agreed to abide by the Commission's recommendation. He asked that the Commission review the modifications to see if they were appropriate in keeping with the design of the building.

Mr. Lizotte told the Board that he would go through the submittal package that had been submitted a few weeks before and highlight the clarifications and modifications. He stated that the project team had always felt that the changes were appropriate to maintain the design attempt that had always been presented. There had been no changes to building height, massing, or size. He began with Façade One, the tan building, and reviewed the storefront changes. Their original proposal had a certain wide storefront, but due to a structural grid coming up from the parking garage, they had a few columns that shored up and were impractical, and he addressed some of those issues.

Mr. Lizotte then spoke about the doorway in the storefront that had been added to activate the street entrance. Chairman Almeida noted that the facades were enumerated on Sheet 1 and asked if they were numbered according to how they differed. When told yes, he told Mr. Lizotte to reference the numbers. Mr. Lizotte stated that Façade #1 represented the changes to the storefront and the addition of the pier and added doorway.

Facade #2 represented the canopy. Chairman Almeida asked if it was simply a change to the door. Mr. Lizotte told him that it was actually a change to the canopy above the door. The proposed glass roof on it and the steel frame would be exposed and painted to lighten up the entrance to the apartment building. He referenced the crop view of the previously-approved canopy that showed how it would look like with the glass and stated that there would not be much difference and it would remain the same size and height. The top was just a change in materials, namely frosted glass, and the steel frame would be exposed and painted. Mr. Lizotte said that the top view of the same façade, Facade #5, showed a column of windows that had been added, due to interior refinement of the apartments. The added windows were the same size, type, and window pattern as those previously approved.

A few other items that had come up during the meetings were the storefront changes on Façade #1, the tan building. On the initial drawings, all the aluminum storefront entrances had only a large piece of glass with a midrail and were mostly 9' oversized entrance doors. They had discovered that they couldn't make them that way because of structural reasons without adding the horizontal, so rather than having one big piece of glass, they had two pieces of glass with the midrail, which was very commonly seen.

Façade #2 was the diamond building, and Mr. Lizotte stated that Facades #3 and #5 were related. Facade #5 had eight added windows for the refinement of the apartment designs that helped to lighten up the elevations. The result of that was at the storefront level, where previously doors above were centered on a storefront entrance to maintain the design intent and character and language of that part of the building, but they moved the storefront entrance to stay in alignment with the door above. To balance out the bottom, they added a bay of storefronts, so they had four bays instead of three, which was a more asymmetrical arrangement.

Chairman Almeida said that it would be helpful to go back to Page 1 so that people could see the previous conditions. Mr. Lizotte did so and said that the building was centered before but the added windows made it more symmetrical, and he clarified that the window pattern and color were the same as before on that elevation.

Mr. Lizotte said to note that, on Façade #3, the midrail was the same sort of situation. On Façade #5, the top windows became taller because as the structural design was finalized, the roof structures were a lot shallower than necessary, so to fill in the spacing, the windows became taller, which they thought was in character with that particular façade.

Mr. Lizotte then discussed Façade # 4 and noted that in the original submissions, when they talked about façade, they usually had the same type of brick and windows, so there were a few cases where the building elements wrapped a few streets. He pointed out that Façade #4 would wrap a few streets, and as the structure system was refined and finalized, they brought the steel grid up from the parking garage down below to balance where the steel was. Because they didn't want the steel in front of windows or storefronts, things got tightened a bit and they found that space needed to be filled, so they used brick pilasters and an additional pier and storefront section, which helped ease the transition from one façade to the other, or else terminated the elevation when changing direction. He showed a detail from the approved set of drawings of the double brick pier with narrow pieces of storefront that helped transition from one side of the

building to another and said that the particular detail was identical to the one he had just mentioned on Façade #4 but on the opposite side. The horizontal band had been called out as a precast on the original set of drawings. The structural grid ended at the second floor and was changed to fiberglass due to the impracticality of bringing the steep up. He stressed that it was the same material as the rest of the bands on the building.

Mr. Lizotte stated that three windows were added in the hotel section on Deer Street as the rooms were finalized. He mentioned that the numbering systems bounced around on Page 2 and said that #5 represented three upper windows that were previously-discussed items. Change #1 involved the added door that went into a corner to help activate the tenant space along the street where previously there was no doorway at all. When the windows were added, the storefront was modified to keep the alignment on previously-submitted drawings.

The final issue was on the Deer Street façade and the location of the gas regulator. Because it could be unsightly, they had wanted to obscure it and had come up with a solution that was not part of the original submission. They had decided to have a fence on three sides with a gate in the front for access. There were planters and trees that were shown on the approved site plan, and because that part of the building jutted out, they hadn't wanted it to conflict with the planters in the winter during plowing, so they got it away from the sidewalk and screened it so that it would not be obvious.

Mr. Wyckoff asked what the height and width of the fence would be. Mr. Lizotte said it would be 3-4' after the gas regulator was installed. Councilor Kennedy asked what the fence construction would be, and Mr. Lizotte said that the gate and screen had not been built yet.

Councilor Kennedy asked him to explain where the gas regulator was located. Mr. Lizotte said that it was at the face of the building and had a couple of things coming out of it. They were usually at the back of buildings and completely exposed. Mr. Wyckoff said that there was no back of the building and everything on the building was exposed on all the streets. Mr. Gladhill asked why it was on the Deer Street side and not on the Maplewood Avenue side where the wall was and it would have blended it better. Mr. Lizotte said they had been told by the gas company that the gas would come in on Deer Street for one part of the building and come in on Hanover Street for the apartment side, so they had no say in it. Mr. Gladhill asked what the gas company would have done if the applicant had told them that the HDC would not approve it. Mr. Lizotte replied that the utilities generally had their way of doing things, and that's what they did. One of the issues on Maplewood Avenue was the multiple electrical and communication ducts from the project site to the sidewalk, and that was the primary reason that the gas could not be brought in at that location.

Mr. Lizotte showed a drawing of the sidewalk where all the electrical duct work was buried underneath and stated that Façade #4 wrapped around that side of the building, which they called Façade #6, the green wall. When they originally talked to PSNH about having the transformers in the center of the block at the first level parking, PSNH told them it was mandatory that transformers be accessed from the street. Seeing that the brick screen wall had the same approved design, they used the same fence that was along the rest of the wall and planned to have vines climb up the fence. On the backside, they would use a perforated aluminum screen,

which had been in the original set for a different location. He showed a photo of it with very small holes of about 1/8" that would help screen the transformers that would be locked so that the power company could only go in. PSNH had explained that it had to be on a public street so that if the crew had a call in the middle of the night, they could pull up and not have to go to the middle of a parking deck to get to the utilities. Mr. Lizotte said that during the mock-up brick precast review, they changed the brick type to match the façade as well as the joint detail in the brick, which represented minor changes from the original approved submittal. Mr. Lizotte then spoke about Façade #7 and noted that the brick and joint would match the other brick. He mentioned that the paint color had been changed.

Mr. Lizotte also mentioned that minor changes had been done in the parking garage for alignment purposes because steel had to be in certain locations in order to get the vehicles in and out. Councilor Kennedy asked him to explain the minor changes. He showed her the area where storefronts were narrower and then got wider to maintain the balance and character of the façade. The area had all upper windows with no changes.

Mr. Lizotte next showed the overview of Hanover Street and said that Façade #1 represented changes to the storefront and related to the change that he had mentioned on the corner of the tan building, so the corner of the building was the same on both sides. In the original approvals, the corners were also the same, and they wanted to keep that character the same.

In another area, Mr. Lizotte pointed out the apartment trash room and said that the original approvals had a metal grill screen, where they took the detail from the transformer gate and used it for that location. They had also discussed spandrel glass as being acceptable because there would not be tenant space behind it.

Mr. Rawling asked if he could go over the spandrel glass in the bay area. Mr. Lizotte said that it looked just like glass and could not be seen through. Mr. Rawling concluded that the three bays on the street level to the right of the garage entry were all spandrel glass. Mr. Lizotte agreed and said that it was part of the change because behind it, there was no tenant space, just parking, and they did not want to see parking. Another change was that they used to have a set of double doors, but the team wanted to expand the corner tenant space and thought it would be better if there were doors at the end of that tenant space rather than in the middle. It also brought the structural system up from the garage and added a pier and so on. Mr. Wyckoff noted that spandrel glass was seen again on another page and asked how many panels were made of spandrel glass. Mr. Lizotte showed him a photo of the spandrel glass from a certain pier that continued on to the garage entrance. Mr. Wyckoff asked if there had been a bit of storefront previously. Mr. Lizotte stated that it previously had clear glass, but in order not to see the parking behind it, they wanted to do spandrel, and in the future if the tenant space was expanded, they would put clear glass in its place.

Mr. Rawling stated that one of the plans showed three different sections of areas in the same space under the corner storefront, Façade #1, and so on. Mr. Lizotte said that the corner retail and other items broke up the façade, and he showed the trash room area and the spandrel glass area. Mr. Rawling questioned what was in the space, and Mr. Lizotte said that currently the first-

floor level parking in the middle of the building went into some of that space and came close to the outside wall but not tight up to it. Parked cars were about 16-18' away.

Councilor Kennedy mentioned a previous application where she had seen several sections of proposed glass and had been amazed at the different colors and amount of reflection when the sun hit it, so she asked about the spandrel glass. Mr. Lizotte told her that he had a sample. The clear glass was 1" thick and the spandrel glass was also 1" thick, but the back layer of glass had a coating that couldn't be seen through and was normally used on a high-rise building to see the individual floors. The glass was still the same depth but just had a coating in the back. Councilor Kennedy asked if a reflection would still be seen. Mr. Lizotte agreed that it would have the same reflectivity but would not be seen through. Chairman Almeida said that he wanted to come back to the spandrel glass later on because he thought it could be a mistake to take out the originally-approved glass due to its custom railings.

Mr. Lizotte then spoke about the ventilation grills that they previously had along the street because they thought they would need ventilation for the garage. They had been black metal grill inserts but had been changed to a black polished granite insert of the same 2" x 4" size. They maintained the accent piece in the granite base, which wrapped the corner onto Maplewood Avenue on that part of the elevation.

Façade #5, the upper windows, were moved around to refine the apartment layouts, and Mr. Lizotte went back to the overview with showed the elevation where there were two columns of triple doors. He stated that they still had them but were moved over to have a set of double doors in that location, and they had lost a column of windows. The amount of glass was still the same, but they just had double doors instead of a column of windows. He also showed where a column of windows was added to another part of the facade and said that they had been conscious of keeping the same design and language as before and that it was aligned properly with the storefronts. Mr. Lizotte showed another location where they had to modify a storefront because PSNH had electrical over the property line. They had not been able to bring the building skin down where they thought they could, so they had to widen the area about 18" to allow for the transformer. The difference was subtle, but the proportions had changed.

Mr. Wyckoff asked if the columns had been all finished off, and Mr. Lizotte told him yes. Mr. Wyckoff asked what the large box was on the drawing of the corner of Maplewood Avenue and Hanover Street and said that it looked like a transformer. Mr. Lizotte said it was the intersection of the streetlight signal control cabinet that was still necessary. They had relocated one on Maplewood Avenue to make it tight with the building, but it still had to be there. Mr. Wyckoff thought they should be wireless with all the new technology.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. Arthur Clough of 425 Pleasant Street stated that what he saw of the presentation in front of a quasi-judicial Board seemed like a contempt of court explanation as to why a project was mismanaged, and the excuse was ignorance, which didn't sit well with him. It seemed like they were doing design changes first that needed to be approved by the Commission, then apologizing for them later. Mr. Clough stated that he had worked as a project manager for 17 years and had

been trained by the Project Management Institute on how to do projects, and he could not believe that a Board should be asked to consider the magnitude of the changes. If people put in the wrong metal for flashing or a skylight without approval, they had to pull it out or fix their roof, or if they wanted to put in a window, they were questioned at length about filler and proper measurements. The applicant had absolutely ignored the plans that had been put in front of the Commission and other Boards. He did not see the architect whose stamp was on the drawings explaining how the project got so out of control. If he found out that anyone who managed the project was certified with the Project Management Institute, he would ask them how they could certify that level of incompetence. It was unfair to any citizen or business that had come before the Board and put forth their case to grant ex post facto changes to the applicant's plan. It was obscene to even ask at that point for the changes they were asking for. He felt that they needed to re-staff the project and put it back the way it was previously approved.

Mr. Rick Becksted of 1395 Islington Street stated he was a building contractor, and if he moved a window or changed things out, the Commission would be on him. He felt that the Board could not grandfather what the applicant had done and just approve it because it didn't speak to what the Board normally approved by material and by location. It was not the design that the Commission had approved and they needed to make it right. He had seen the Board tell a homeowner that they had to put a chimney back on and had watched them raise a stink for a year over a fence. He told the Commission to stick to their guns and do what they needed to do.

Mr. Lawrence Cataldo of 133 Islington Street stated that he was appalled at the extent of the changes made on Portwalk 3, and he often wondered to himself, 'They forgot??' He had worked for large companies as a mid-level manager and was also an executive in a maintenance and construction company, and he had seen executives in those companies who were very arrogant and thought they were above the law. These people were so motivated to achieve success at any cost, and he asked if the Portwalk 3 developers were arrogant, and if they knew what was required of them to notify the HDC and if they thought they were above the residents who must notify the HDC for every change. He wondered if they were trying to deceive the HDC or just save time for completion, which cost money, or both. He asked if they were trying to make fools of the HDC and Portsmouth. If they had not been caught, would they have filed their notifications at all? They came here in a humble manner because they had a lot to lose, hundreds of thousands of dollars. He told the Commission that they must decide wisely and force the developer to go back to the original plan that had already been decided and not to just slap the developer on the wrist.

Mr. Bob Shouse of 555 Dennett Street stated that he had spoken to the City Council concerning the issue and had used the word 'outrage', and in the spirit of that word, he would go on. They were discussing the wanton and obvious callous abuse of Portwalk's HDC-approved plans for the building. There had been no need to go over the approved plans because they had been discussed at various Board meetings. Portwalk's principal excuse when asked why the work was done without prior approval was because they 'forgot', which was an unbelievably stupid statement from professional and well-educated builders. They didn't forget to ask for variances they needed to build. Two wrongs did not make a right, and if the HDC allowed the gross deviations of approved plans, then they would be just as culpable as Portwalk. The HDC had the power to rectify an egregious wrong and not allow a builder to walk all over them, and to prove

to the public that their heart and minds were in the right place. If Portwalk left the meeting unscathed with no remedial action to be taken or fines levied, then the HDC's credibility would be diminished. They would encourage future vendors to tell the HDC what they wanted them to hear and do what they want with impunity. He encouraged them to show who was in charge of the process and not let the City be walked on by powerful interests who could give a hoot about how they should behave as responsible builders. Or, if no remedial action was taken or fine levied, perhaps Portwalk could contribute something to the City, like a large donation for the school system.

Mr. Jerry Zelin of 70 Kensington Road stated that he was against the petition because it had been a controversial building from the outset and many citizens were appalled as they watched the building go up. Now the developer was asking for a do-over which didn't remove any of the controversial features of the building, such as the building's mass that exploited a loophole in the Ordinance or the building's height that had not been clearly stated from the beginning and now violated the current Ordinance. The developer was also relying on grandfathering and on laws enacted in the past that were no longer in effect. If one relied on the old laws, then one would have to rely on the old plans.

Mr. Dick Bagley of 213 Pleasant Street was against the petition and wanted to focus on the process. The City Attorney had explained the ground rules that under the Zoning Ordinance, the Commission had no power of enforcement. In the past year they had talked about whether they could check up on someone to see if they did what they were supposed to do, and the mayor had told them that it wasn't their job. Section 10.2.12.2, Violations, stated that when it was determined that a violation of the Ordinance existed in any building, structure, or property premises, the code official may issue to the owner an order to Cease and Desist. The key word was 'may', and that was the only issue that night. The applicant said that they didn't know they made mistakes. How could they not know of all the window changes and not know they made the changes. After all the changes were made, the City Attorney said that he advised them to come before the HDC, which was their right. What they were lacking was the City Attorney's definition of what it was the HDC was supposed to decide. The Ordinance section on Penalties said that they could impose a financial penalty, but it wasn't their authority, so they were rehearing a permit that they issued. There were substantial changes to that permit, like adding a wall of windows, two columns, changing the symmetry of the whole building, putting midrails and adding doors. It was not trivial stuff. The HDC was the city's first line of defense, and if they approved the application, the Planning Board would think that the HDC didn't have a problem with it. He wondered if the HDC would review it and perhaps wish the applicant hadn't done it, but say it was okay and just fine them. The building was well advanced, and the public was confused as to why the matter was referred to the HDC when in fact it was an enforcement issue. The Building Inspector or Planning Board Director didn't do their jobs, so the HDC was being asked to make a very important and costly decision for the application and the citizens.

Chairman Almeida said to note that they had not heard from Attorney Sullivan because he wanted to take all public comments first.

Ms. Barbara DeStefano of 99 Hanover Street was for the petition, saying she had been the longest tenant at Portwalk since October 2011 and a constant supporter of the entire project. To

clarify a few misconceptions, it seemed that Portwalk had brought up the changes to the City themselves months ago. Also, the building had not been entirely covered in plastic to hide anything because the majority of it had been fully open. In the current anti-development climate, just the hint of doing something wrong was the worst thing the developers could have done since their building was the poster child for the anti-development faction of Portsmouth. There was no way they would have done it on purpose, especially since Mr. Johnston had attended the Charette for the new Form Based Zoning and had seen many people disapprove Portwalk. She agreed that there was no good excuse for not seeking the HDC's approval for their changes, but she felt it was an honest error on their part because they knew better. Mr. Johnston had been developing buildings for ten years and knew the rules. Also, the street level would change depending on the store that went in. She felt they were being good neighbors by providing parking for the City on site until the building was ready to break ground. It was also not the time to reargue the height and mass of the building because it had been approved and complied with the Ordinance at the time. She suggested that the HDC allow the windows and doors to stay as installed because there was hardly a difference between the old and the new and maybe consider fining them \$100,000 to extend the Form Based Zoning to the Northern Tier.

Ms. Stefanie Shaheen of 77 South Street told the HDC to take their time. There was an erosion of trust in the process that was a challenge for the HDC. She had been before them eight times for minor changes on a small residential project, and she knew that Portwalk was a very complex and sizable project, but she struggled with why the changes and implications were not brought before the HDC before construction. She felt that it was a turning point and that the HDC should take their time to review and understand the ramifications because of the public's lack of confidence in the process. They needed assurance that the process would work, especially with such a high-profile project.

Mr. Peter Weeks of New Castle said that he had lived in Portsmouth for fifty years and was one of the early members of the HDC in the 1970s and had also been on the City Council, so he knew the difficult decision that the HDC faced. He complimented them for their approval of Portwalk and the time and effort put into their work sessions. He had watched Mr. Johnston for the last nine years and had done some projects with him. It was easy for people who were anti-development since the approval had already been made, but not easy for the HDC. They had heard that evening that Portwalk maneuvered the Zoning Ordinances to their benefit, but there was a zoning ordinance in effect when the building was built, and for those anti-development people to come in and say 'we gotcha' and ask that Portwalk be made to conform to the current zoning was not what the HDC should look at. None of the new changes affected the height or massing of what the HDC has approved. The additional windows made buildings friendlier and changed the fenestration by making more openings that were pleasing. He hoped that the developer would not be penalized because the developer admitted the error and asked for the compliance. He asked what it would prove to take out all the windows and the façade. They would still have a building of the approved height and people would be put out of work. He asked that the Commission not let the anti-development people come out to change something that they had not wanted all along but had not come out for previously.

Ms. Patricia Bagley of 213 Pleasant Street said she was against the petition and was emotionally charged by the lack of disrespect for the process. The Commission left homeowners quaking in

their boots and they had to live with it because they respected the process and the government and had to be civilized and accept what was handed down. The main issue with Portwalk was not the windows or whether they were a good neighbor or the size of the building, it was the disregard for the process that everyone else had to follow. She was personally offended and felt the Commission should be as well because they put in lots of time on large projects and deserved respect and were not getting it.

Ms. Mary McElwain of 259 South Street stated that it looked like gall and greed, and she could not accept that the developer forgot to go back to the HDC. Ms. Lisa DeStefano's name was on the design and she was local and had done a lot of buildings downtown, so she knew the rules, and Ms. McKilwain questioned the validity of that excuse and hoped that the HDC's decision was not a fast one. It was not about a simple skylight but was a major change, and the developer knew it.

Chairman Almeida stated he did not want the public to think that Ms. DeStefano was responsible for the situation, and he asked Mr. Johnston to speak to it. Mr. Johnston stated that Ms. DeStefano was involved in the initial HDC approvals but not involved in any changes in any way.

Attorney Peter Loughlin of Thaxter Road stated that Mr. Johnston had explained what happened. He had been before the Board many times, and Attorney Loughlin didn't know if it had been clarified as to how it happened and what Mr. Johnston had taken responsibility for. The Commission granted approval for the building consistent with the Ordinance. Second, they had 300 pages of drawings for the interior, and that was when the windows were relocated. Mr. Johnston's mistake was when his architect from Pro Con made those changes and lined up the bedrooms and living rooms in the hotel and apartments. Mr. Johnston did not pick up on the changes until he found changes on the mullions and consequently went through the plans looking for other changes. He was before the Board that night to admit his error. The Board has always worked with landowners for an appropriate process and its purpose was not to be vengeful but to be collaborative. He suggested that they review it as a blank slate, otherwise what good would it do. They found the mistake and brought it to the HDC's attention months before. He suggested that the HDC approve it, especially since the windows were appropriate and consistent with the architecture.

Ms. Amanda Troop of 342 Islington Street was for the petition. She lived downtown and worked in the hospitality industry, which she thought fed the City. She did not think the project's changes were done out of malice or hidden. She had worked with the company and knew that it was so high profile that the changes would never have been hidden. She felt that it was a humble mistake and had been found and brought to the HDC's attention. The building was there and coming along great.

Mr. Jonathan Silva of 548 Broad Street was also in favor of the petition. He had been working in one of the Portwalk buildings for two years and knew the owners well and felt like they were family. He strongly believed that none of it had been done with disrespect. Mistakes were made and penalties could be paid. He was very grateful for his job and the consequent advancement of his career, and had the developer to thank for it.

Mr. Duncan McCallum of 536 State Street was against the petition and wanted to restate an earlier decision about the 7 Islington Street project, which was that developers should keep their promises. The developer was not claiming that it was someone else's fault, and they should be held accountable. No project in Portsmouth had been more controversial than Portwalk 3 or generated such protest and outrage. It was not the Commission's finest hour when it approved the project in the first place. He assumed that the developer went through the usual work session process and every detail was ironed out and that terms and conditions were agreed upon. The developer made a contract with the HDC and now was seeking to rewrite it. If the HDC granted the petition approving the amendments, they would send out a message to other developers who would pull the same stunt. Experience had taught him that developers were prolific in dreaming up excuses, and unlike other developers, the applicant could afford to make the corrections. He didn't expect them to tear down the building and start from scratch, but was just asking that they make the developer go back and make the corrections and rebuild according to the original approved plans and get the message out that the HDC would make developers keep their promises.

Mr. Joe Caldarola of 170 Dennett Street stated that he was speaking from the point of view of running for City Council and what he had heard. The very fact that Portwalk got approved amazed the majority of the City's residents. He believed in respecting authority and was dismayed to see the extent of outrage and suspicion by the fact that the building was approved. They now had a situation where they were starting from the base of distrust and the plans that were approved were not followed. The level of distrust in the City would skyrocket because the 'big boys' could get away with anything and were too big to fail. People would think that the rules were not the same for everyone. The real issue was not the added windows but the public trust. One detail that bothered him was changing the midband to Styrofoam and acrylic that made the building look fake. The developer had said that the steel structure was not designed for the original pre-cast concrete. He questioned how the Commission could entertain the possibility that it could approve something that could cost a million dollars to remediate the steel structure. All the as-builts like the gas meter screen were minor in nature, but the midband change from heavy to light material and changing the windows around were major changes that, if approved, would cause the public trust to plummet.

Ms. Clare Kittredge of 27 Franklin Street told the Commission that they were the chief guardians of Portsmouth and the process that protected it, and they should deny the retroactive approval request for changes made to Portwalk in violation of City ordinances so that the City could re-examine the project as well as questions raised about the project approval process. She felt that it was not about being fair or anti-development or vengeful, but rather was about making everyone play by the rules and not letting some people buy their way when others were forced to obey. She thought the HSD should make sure that the City verified inspections to make the public feel confident that what was going up matched the plans. She thought it wasn't fair that large developers could get retroactive approvals for illegal changes when homeowners were made to comply with the HDC Ordinance. She thought that granting retroactive approval would make a mockery of the HDC and be a double standard that would make put the City at legal risk. She suggested that they get more City Inspectors and also that they leave approved plans on line until projects were completely finished.

Ms. Margaret O'Rourke of 56 Sheffield Road was against the petition. She was one of those citizens who got involved in the process and had been more active because of her disillusion. She agreed that citizens were deeply disillusioned and hoped that the HDC thought long and hard before making a decision because there were huge issues about trust and the public was following the situation closely.

Mr. Chris Garner of 319 Barnes Street said that he had heard a lot of maligning of the developers. He was not an employee of Portwalk, but he had worked with Mr. Johnston and his team and thought they were very reasonable people. People were questioning the motivations of the developers, and he could help but question the motivations of people in the community who had spoken out against the project. It seemed disingenuous because they were not at the prior approval process. He was, and he had wondered where the community was. A year and a half later, they were speaking out against the modifications of the original plan. He thought the project was important for the City. He realized that the Commission had a very complicated decision in front of them but he looked forward to seeing the changes approved and the third phase of Portwalk completed because it would add a richer fabric to their downtown.

A gentleman (name not given) commented on the activities at 428 Pleasant Street. He said that the developer had told the Board they would rebuild the chimney if they had to tear it down. They had already put floors over where the chimney was, and he had seen them throw out the brick during demolition. This was a defining moment where the HDC would decide not to let developers or homeowners make arbitrary changes and then ask for permission after the fact.

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

DECISION OF THE COMMISSION

Councilor Kennedy addressed Mr. Johnston. She thought the reason people were coming forward from the community was because they felt like they had lost the trust that they had in the community and the Boards. She had looked at the history of Portwalk by reading the Herald and noticed a loophole when Mr. Johnston came to the Board about lights. At one point, Portwalk had offered parking spots to the City and then had taken them away. There had been environmental questions in January 2008 and the developer had said they would go green, but she didn't know if he had. She was feeling as if she didn't have a lot of faith in the system. If Mr. Johnston had a real love for building, he would not have gone up to 75' when he knew it was 60'. If he really loved Portsmouth, he wouldn't have covered up the fact that the North Church couldn't be seen on the way into the City. She asked him what he felt his punishment should be for letting down the City and the Commission.

Mr. Johnston stated that they had bought the mall twelve years before, and relative to the parking, they were the first developer to do a public private partnership. They had duplicated it on a private property elsewhere, so they had allowed the public to park on two lots that they owned. Councilor Kennedy said that, according to the articles published in 2007, they were going to offer the City 325 spots.

Chairman Almeida stated that they were veering off topic. Councilor Kennedy said that the point of the discussion was that she wanted to show that the HDC had questions, and she felt uncomfortable because they had to decide whether the developer had erred and come for forgiveness or whether he had sincerely made a mistake.

Vice-Chair Kozak suggested that they look it like any other application in terms of applying the criteria. She knew there were well-founded emotions on each side, but their job was to use the criteria in the Ordinance as it applied to the materials in front of them. Even though there were other things intrinsic to the project that related to the City and were important, they were not part of the chapter in the Ordinance that talked about architecture.

Councilor Kennedy disagreed and said that they had to decide. A lot of people in her neighborhood had been asked to redo things and had to come before the Commission, so they had to get through how they would go forward and then decide on the architectural design of the project.

Mr. Wyckoff stated that the HDC was a design review board and were not supposed to be looking at details of the project. They were not judge, nor jury, and they should not even be contemplating what they could fine the applicant. Most of the talk that night had been very vindictive and negatively based, and he felt that Councilor Kennedy was falling right in and was not sure that she was the leader. He was really upset with her attitude and felt that, on that particular project at that point and based on the arguments she had made, that she should recuse herself from the decision because she had indicated her negativity and was against it.

Chairman Almeida said that they had to get back to what they were supposed to be doing. He did not have an interest in publicly humiliating anyone and did not appreciate an analogy of calling someone to a disciplinary hearing. They had a lot of public input and he wanted to focus on that but didn't want to pick out one or two things about trust and try to re-establish trust in two hours. It was late and they had a lot to do and wouldn't solve it that night. They needed to quantify the façade violations. He found it strange that a lot of people were saying to put it back the way it was, but those same people hadn't liked what it was, so they were asking to put it back to what they didn't like. The HDC should go through each violation one at a time and mitigate them. He didn't think it would make sense to put back something that could cost \$100,000 when they could embellish other parts of the building. He bet that the public and the developer would prefer that. He wanted efforts toward that rather than penalties or humiliation or punishment.

Mr. Rawling said there were design changes that they should review and give comments and suggestions. A lot of the changes did not have a huge aesthetic impact on the building. Violation of procedure was extremely significant. However, it bordered on legal issues. He asked which would be better, to spend a lot of time and money and trouble to put the building back to its exact original design, or to take the money and use it to pay for such things as Form Based Zoning and 3D modeling and transportation improvements.

Chairman Almeida said he would vote to make a better building. Mr. Gladhill said that they had just gone through a petition for a house that had significant changes made to it without first going to the HDC for approval. The applicant had known they had to get approval. They took it

to a work session and handled each change individually and decided if they were improvements or not. He felt that was what they should do.

Vice-Chair Kozak said she had seen several instances where the HDC had approved things had been done by accident or intentionally, but they had looked at each one step by step and had treated it like any other application. They made so many people take unapproved changes down. She felt that the Commission was very flexible and worked with homeowners and builders to help them achieve what they wanted to do. They had to treat the application as a general one and look at each issue.

Councilor Kennedy asked if Attorney Sullivan could speak to it. Chairman Almeida agreed and asked Attorney Sullivan to approach. He also wanted to say that the Commission knew about the trust issues coming from the community, and during the past year and a half, the public talked about the HDC but very few talked to them. He told Attorney Sullivan that there was a call for clarification from the public on the process and how the Commission was supposed to tackle what was before them that night and whether Attorney Sullivan could explain it from a legal point of view.

Attorney Sullivan said that he had first heard of the issue the week before from Mr. Taintor, the Planning Department Director, and then in more detail from Mr. Cracknell. He knew immediately that a serious breach of process had occurred and he had the same emotions that many of the public speakers had. The City had required the developer, meaning the property owner represented by Mr. Johnston and the contractor Pro Con represented by Mark Stebbins, to come into City Hall to discuss the matter. He had a frank discussion with Messrs. Levine, Stebbins, Johnston, Cracknell, Taintor, Allen, and Hopley about the situation, using a lot of the characterizations heard that night from people opposed. After considering all the options available to the City to deal with the situation and after significant debate among officials on the City side, they determined that they would allow Portwalk to keep their meeting that night rather than take rash action immediately. However, Portwalk would have to agree to comply with the Commission's decision without further appeal. They were also required to post a bond to secure that promise in the amount of \$500,000.

Attorney Sullivan said that he did not think it had been a mischaracterization as to the reason why the approvals had not been secured ahead of time, as Attorney Loughlin had indicated. Attorney Sullivan was at the meeting when the developer had stated that they forgot. There was a lot of emotion generated by what happened, and it was an administrative responsibility to ensure the enforcement of the HDC's decisions, and when they were disregarded, it affected the City. However, he believed that the cause of good government was that they strove to perform, and that cause was seldom advanced by acting out of emotion and far more likely to advance by acting out of calm deliberation. He concluded that there was no law that he was aware of that would support an action by the Commission that would punish the developer because they put additional windows in. Conversely, there was no law that would support the Commission giving the developer a benefit by taking into account the cost incurred by having to remove the windows and make the changes. Thus, after eliminating that the situation should be used to help or hurt the developer, that left the Commission to review the application using their normal criteria as if the matter were coming before them for the first time without the history. The end

result that all of them were doing was replacing buildings for the City that looked as good as they could make them look, and that was achieved by what he had just said and not by attempting to benefit the developer or punish the developer. He told the Commission to look at the application on its merits and make their decision, and the City would enforce whatever decision they made.

Mr. Johnston said that if the Board decided to push the application to the following month, he would invite the Board to take a hardhat tour of the site to see some of the changes that occurred and tell them the reasoning behind it.

Councilor Kennedy asked Attorney Sullivan what the City enforcement had been in the past when someone had not followed through on a design. Attorney Sullivan said that it depended on the severity on the violation, and it varied from case to case as to whether they believed it was intentional or a mistake. They had stopped projects or allowed property owners to come back before taking any action, and they had issued Cease and Desist orders.

Councilor Kennedy asked who usually took care of the disciplinary part of the project. Attorney Sullivan said that he frequently did but there was always consultation among relevant City officials, typically the Building Inspector, Planning officials, or Legal Department personnel. Councilor Kennedy asked if he would traditionally take care of the discrepancies. Attorney Sullivan replied that the HDC was not its own enforcement agency and the Municipal staff did the enforcement actions. They always wanted to hear from the HDC collectively or any individual member if they perceived a violation, but once it came to City Hall, it was an administrative function to deal with.

Councilor Kennedy asked if the HDC or City Management would be responsible for setting a financial penalty and following through on it. Attorney Sullivan said that on a staff or administrative level, they would never make the decision for what was appropriate in a design change. However, on an enforcement level of whether a Cease and Desist order should occur or whether they should seek a monetary penalty or enter into an agreement, that would be an administrative decision, and he would decide on the penalty.

Mr. Rawling asked if they could make design approvals contingent on paying the penalty. Attorney Sullivan stated that he was not aware of a legal pathway where they could get from where they were to the extraction of a significant amount of money from the developer unless the developer offered to do so. Mr. Rawling replied that he didn't see how they could move further without work session.

Chairman Almeida suggested that they continue the petition to April. Mr. Johnston asked if they could go to a work session in April and also have a public hearing if there were changes that could be acted upon. Chairman Almeida stated that he could not guarantee that it would go to a public hearing, but it would expedite things for the Commission.

*It was moved to **postpone** the petition to a work session/public hearing at the April 2, 2014 meeting. Mr. Melchior seconded. The motion **passed** unanimously with all in favor, 7-0.*

Due to the lateness of the hour, the applicants for the 124 State Street petition, Bradley Boisvert and Karen Bannon Boisvert requested to postpone to the following week's meeting on March 12.

6. Petition of **Zoe Copenhaver Daboul and Michael Edward Daboul, owners**, for property located at **53 Humphreys Court**, wherein permission was requested to allow demolition of an existing structure (demolish garage) and allow new construction to an existing structure (construct addition and garage) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 101 as Lot 39 and lies within General Residence B and Historic Districts.

SPEAKING TO THE PETITION

Mr. Chris Redmond, architectural designer for the project, told the Commission that they had made some front elevation changes since the previous work session. They would demolish a two-car garage and add a one-car garage with an attached family/mud room. The original proposal had two windows close together on the front elevation, but they would separate them in keeping with the rest of the house, as a Commissioner had suggested at the meeting. They also would separate the two double-hung windows. The mudroom door to the right of those windows looked strange because it was much lower, so they would add a transom window above it with a thicker trim around the door and another transom window to tie them together and closely match the front bump out. They also would install a new mudroom door to address the Commission's suggestion that the original door on the proposal did not match the front door.

Mr. Rawling asked if the door had a full glass panel. Mr. Redmond told him that it had a small rectangular panel at the top and a slightly larger rectangular panel at the bottom with a glass panel in the middle.

Chairman Almeida confirmed that it was the S30 in the specifications and would be in the front of the house. Mr. Redmond stated that he believed it was the front of the mudroom. Someone else had asked the width of the casing on the new windows because the photos had shown the existing casing on the house as wider, so they measured it and found that it was only a 3½" casing around the existing windows. The new windows made it look wider, so they would match what was on the existing windows.

Mr. Rawling said that it appeared to be a 1" x 5" casement per casing on the existing windows. The replacement windows had a wide frame around them with a lip overlaid on the casement, so there was about a 3½" exposure, but there was a 2 or 2½" frame around the replacement, so he thought it would be more appropriate to use the 5 stock rather than the 1/5 because of the heavy framing around the window. Mr. Redmond replied that he would be happy to do that because he wanted to match existing as much as possible. Mr. Rawling requested a stipulation regarding the 1" x 5" casing on the new windows.

Chairman Almeida noted that the garage door specification sheet showed two different doors and he asked Mr. Redmond to clarify whether he would use the Madison door. Mr. Redmond agreed that he would.

Chairman Almeida stated that he saw great improvement from the work session. Mr. Rawling thought it was a very compatible addition, but had a comment on the trim element. He liked the wider trim on the new side entry door, but he thought that matching the styles on each side by picking up the wider style on the right to match it on the left would have a more compatible look to it rather than having two different-sized trims on the doorway. Mr. Redmond said it was a reasonable request. Mr. Rawling said it would bring it into scale with the front entry as well.

Chairman Almeida noted that the elevations were not showing corner boards and asked Mr. Redmond if they could rely on his note stating that corner boards existed. Mr. Redmond agreed.

Ms. Daboul asked if she could do a storm door on the new front door and stated that she had forgotten to mention it at the work session but it was in the application. She said that the door had an aluminum frame with a full glass that could be taken out for a full screen. Chairman Almeida asked her if she had considered a wooden storm door, and Ms. Daboul said that she had. Vice-Chair Kozak said the Commission preferred a wooden door for the front of a historic house. Chairman Almeida added that it could be the same design, only in wood. Ms. Daboul agreed.

Mr. Wyckoff pointed out a photograph in which he noticed a column that sat by itself on the right of the house under a projecting roof. There was a detail on the crown molding around the roof that matched the bay on the front of the house and he thought the same crown molding would be over the front door as well. On the drawings, everything appeared flat, but it showed the roof of the connector lined up with that detail. He said it should also be a crown molding unless there was a gutter there, and he asked Ms. Daboul if there was a gutter over the door and two windows. Ms. Daboul told him there was not.

Mr. Wyckoff said he was also uncomfortable with the garage roof pitch because it was flatter and looked like a 6 pitch and didn't match the house, making it the same height as the connector. He said that traditionally, it might be taller, and putting it all at the same height gave it almost a suburban quality. Chairman Almeida said that it was a subtle thing that would improve the look of it by matching the pitch of the house.

Mr. Redmond replied that they were keeping it as low as possible and agreed that it didn't match the main roof of the house and was about 12" higher than the connector. The goal was to be unassuming and not block the neighbor. He had a discussion with the neighbor about the size of it and the existing garage not being further toward the street or any taller. Even though they had shrunk the size of it, if they matched the pitch, the ridge height would be closer to the neighbor. Mr. Wyckoff stated that he understood Mr. Redmond's rationale and agreed.

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 with the following stipulations:*

- 1) That the proposed screen door shall be wood.*
- 2) That 1" x 5" casings will be used on the new windows.*
- 3) That 1" x 8" (or less) trim will be added on the left side of the front door.*

Mr. Melchior seconded. The motion passed unanimously with all in favor, 7-0.

7. Petition of **36 Market Street Condominium Association, owner,** and **Rob Sevigny, applicant,** for property located at **36 Market Street,** wherein permission was requested to allow exterior renovations to an existing structure (replace existing Ladd Street door with recessed door) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 117 as Lot 29 and lies within Central Business B, Historic, and Downtown Overlay Districts.

SPEAKING TO THE PETITION

Mr. Rob Harbeson of DeStefano Architects on behalf of the owner was present. He told the Commission that the condominium was on the first floor and basement level on the corner of Market Street and Ladd Street, and he would address the entry door on Ladd Street. He stated that the reason the change came about was because they originally intended to re-use the existing doors and hoped that they qualified for existing condition. After discussions with the Inspection Department, they realized that they needed a true 3' door and the landing at the exterior of that door to meet code, due to a portion of the space used for assembly use that would be viewed as a main entry.

Mr. Harbeson showed the Commission elevation drawings so that they could see the recess for the door, landing and alcove. The center panel had a view of a 2-panel unit with an exterior wood door and recessed panels on either side to match the panels of the door in height and style. He mentioned that the side panels of the alcove would also be painted wood.

Mr. Gladhill asked him to explain the height because he understood that he needed a full 3' door, but the two doors together measured 4'5". Mr. Harbeson stated that a single panel had to be 3'. They could do a 3' door and a 1' side panel, but the clear opening when the door was open had to be a minimum of 32" as a single panel.

Councilor Kennedy asked if the step would be granite. Mr. Harbeson stated that steps were existing and part of the previous approval. The landing at one time was a granite landing and was removed by the City, but they had a license to replace it in kind, so it would be granite. The step was a masonry step that existed and would not change.

Mr. Gladhill asked what the change of use was because the door had been there a long time. Mr. Harbeson told him that a portion of the condominium would be an assembly use, so it required it to be a main entry. Mr. Gladhill asked what an assembly use was. Mr. Harbeson gave him examples of a restaurant, church, lecture hall, or meeting room. Mr. Gladhill verified that the shop would not be involved. Mr. Harbeson agreed and said there was a new egress door coming up from the lower level.

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. Mr. Melchior seconded.*

Mr. Rawling stated that he was sad to see it go, but conforming to codes was an issue and it was a sympathetic response to it. The deep recess would be indistinguishable as a change in the building itself and as such, it would meet the criteria.

Chairman Almeida believed that the new doors were appropriate. Mr. Gladhill stated that he voted against it because they were losing the double doors that were a unique and distinct feature of historic buildings, and he used the Rosa Restaurant as an example.

*The motion **passed** with 6 in favor and 1 opposed.(Mr. Gladhill)*

8. Petition of **St. John's Church, owner**, for property located at **100 Chapel Street**, wherein permission was requested to allow exterior renovations to an existing structure (replace windows) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 106 as Lot 2 and lies within Central Business B, Historic, and Downtown Overlay Districts.

Vice-Chair Kozak recused herself from the meeting.

SPEAKING TO THE PETITION

Ms. Laura Ludes, Mr. Randy Harry, and the technical representative Mr. Greg Dow were present.

Ms. Ludes stated to the Commission that the petition was to replace windows in the parsonage, which was directly across from the church. She realized that the Board preferred to restore windows, and they had investigated it and obtained pricing, but they preferred to change them out to a clad 2/1 window, which was more consistent with a lot of the windows in New Englanders in the District that had been recently replaced. The majority of the current windows were 6/1, originally 6/6, but the muntins were cut out and the glass had been replaced in the bottom half, according to photos that she had.

Mr. Wyckoff stated that the building was a bit older than a New Englander and was a borderline 1850s Greek Revival and should have 6/6 windows in it. Ms. Ludes replied that they could not find any photos of the house that dated back that far. She wasn't sure how long the church had owned the house, but there was a similar if not identical house nearby that was circa 1905-1915 that showed a 2/1 configuration of both windows.

Ms. Ruedig stated that the picture with the 2/1 windows didn't sit right with her, even though the Commission saw them once in a while. She said that she tried to figure out if it was 2/1 or 2/2 and thought it was 2/2, but she didn't think it would make a huge difference. Chairman Almeida said that it looked like 2/2, especially on the first floor. Ms. Ludes told the Commission that the house was comparable in style to those in the photos, and she wasn't sure if a certain building in the photo even existed anymore.

Mr. Rawling commented on the 1862 Middle Street residence that had 2/2 windows on the front and 6/6 windows on the back. He said that generally, the large panes of glass were very expensive at the time, and 6/6 windows were less expensive. He thought that 6/6 windows were probably on the parsonage at one time and that 2/2 could be borderline, but he didn't think that 2/1 was the appropriate style. Mr. Gladhill said that the old photo of the Samuel Chamberlain House circa 1930 showed 6/1 windows that currently existed. They were wooden single, two-divided light windows.

Chairman Almeida was happy to finally see an application that showed the existing condition of the proposed window and exactly how it was cased out within the existing wall.

Mr. Gladhill noted that Ms. Ludes had said she researched the restoration and asked her what the price difference was between restoring windows and buying new ones. Ms. Ludes said they were quite comparable, but the drawback was the energy efficiency and the warranties, which were better for the new windows. They had tried to do something user-friendly for a church and architecturally appealing, but the house had aluminum siding, so it didn't have a lot of integrity to it. They hoped that the choice of windows would make it look better because they wanted to be proud of the parsonage, and it was also very visible.

Chairman Almeida asked if there was a full screen in the proposed windows. Mr. Wyckoff spoke up and stated that the full screen had always been his bane. His problem with full screens was that it obliterated all of what was put back into the house, like exterior muntins. A half screen was a more successful look because it could slide up and down in its track if the top sashes were opened, it was weather stripped, and it didn't let insects in.

Mr. Dow told the Commission that a lot of modern-day screens used a mesh that was smaller and gave the illusion of an invisible screen. It was seen on double-hung windows from the outside. There was no question that the fiberglass mesh darkened up the exterior, but the newer mesh lightened up the appearance a bit. Mr. Wyckoff asked if half-screens were available in Jeld-Wen and was told that they were.

Chairman Almeida asked if interior screens were available in Jeld-Wen. Mr. Dow said the answer was yes and no. They did a project in Dover at the Woodbury Mill where they put the screens on the inside, which limited the rise of the bottom sash. The problem was, in order to open and close the sash, the screen had to be removed. Double-hung windows were not designed to have an interior screen system, so his company had designed that screen system at the request of the owners, but it gave them a lot of limitations.

Mr. Wyckoff asked about a roll screen. Mr. Dow said that they could do a roll screen, but they would have to begin with a brand new window with a 6' and 9' wall because the roll top of the screen took over 2". In a brand new product and an energy-friendly state where they didn't have to have 2" x 6" construction, a roll screen could be used. In Florida, it couldn't, but in New Hampshire, it could. However, it would need a new window, not a replacement window, so they would have to remove the entire frame of the window, not just the sash, and use a 2" x 6" jamb and build up the inside to get the extra depth for the roll screen installation.

Mr. Wyckoff said that it had been his experience on that style of house to have 4" rough-sewn 2/2s with a 1" sheathing because the heavier materials made a thicker wall, and the wall was 6" thick regardless. However, he said he would be happy with a half screen. Ms. Ruedig thought that a historic window that was truly old had denser wood, and if it was properly kept up and restored, it would still last a lot longer than replacement windows and would preserve the historic look. Ms. Ludes said that there was a fair amount of rot in the sills, and the bottom of the sash where the muntins had been cut up had rotted. It seemed to her that it would like building half of a new window instead of restoring an entire window.

Councilor Kennedy reminded everyone that the Commission had asked the Baptist Church to fix their windows. She asked Mr. Gladhill how old the book was that had the old photos of the houses to see if they were looking at a 20-year difference between the photos and the actual building of the house. She asked Ms. Ludes if she'd be willing to go with 6/6 windows if the Commission allowed her to replace the windows. Ms. Ludes said she would if she had to, but for cleaning purposes, 2/1 or 2/2 windows were more appealing, and she wanted to keep costs reasonable.

Mr. Rawling told Ms. Ludes that she had 150-year-old windows and the replacement windows would be 15-year windows, so she would have to replace them again. The Commission typically advocated for the windows to be restored and if not, to go with restoration on the front elevation and replacement on the side elevations. He thought she might be able to use the sash from the side elevations in the front elevations and complete a front elevation restoration. Ms. Ludes said the house was only 80 years old. The date from the photograph implied 1860, but it was just a comparison and not the house in question.

Chairman Almeida said that, in the event that the approval was for new windows, he wanted to remind the Commission that they had some glass area loss. The existing detail looked like the old window frame would remain and the opening would reduce in size. He asked if it was possible to take the entire old frame out and put the replacement window in so that the glass area was not reduced.

Mr. Dow mentioned an issue with the aluminum siding and the interior trim alteration. Chairman Almeida said that the detail showed a casing around the window and it would not affect the siding. He said that the Commission focused on trying to get to a point where they allowed window replacement, but in the District, it wouldn't necessarily be off the shelf because it had to fit. The tradeoff was that the windows had insulated glass and fit properly in the historic opening, though there could be warranty and durability issues.

Mr. Dow understood that the requirement would be on the front of the house, and he asked if they would be allowed to insert windows on the two sides and the backs. Chairman Almeida said they had discussed several options and would have to reach a consensus.

Mr. Rawling said they had to consider the parsonage an important historic location, particularly across from the church and having significant adjacent structures. He said he would strongly lean toward minimal restoration on the front windows.

Mr. Dow said that the point was made that it would depend on what salesperson was involved, and windows could be restored, even though it would be costly. One of the weak areas of the original window would be around the frame of the window, the pocket where the weight would go up and down, and if that area was not filled with foam or fiberglass, the window may as well stay open because of the amount of cold air going through the pockets. If the pockets were filled, the weight would not go up and down, so the window would become inoperable. In a seasonal property, restoration was a wonderful thing, but a year-round property with energy efficient goals needed other options when it came to window restorations.

Mr. Rawling recommended a company called Poland that made a metal tape that fit into the same cutouts that the metal pulleys went into the storm windows, and they were fitted and could be raised and lowered and so on. There were products to increase the efficiency of the windows through adaptation. Mr. Gladhill added that the problem with new construction windows was the muntin width. The historic window had tiny pieces of wood, and the new window was usually thicker and bigger.

Mr. Dow showed an example of the window that he believed was historically correct and had an aluminum exterior and wood interior piece. Mr. Gladhill said it was just wood because it looked too perfect. The imperfections over time gave it character. He said that earlier they had an application that chose to do restoration and would use storm windows just for the winter.

Mr. Dow mentioned a picket unit that was all wood and went into a 3-1/4" pocket, which they warranted for a lifetime. It had a 2/2 configuration, and he said he could make it come out with the 5/8 bar and other options.

Ms. Ludes asked the Commission if they were heading in the direction of banning clad windows. Mr. Gladhill said they looked at each petition case by case and what existed. Ms. Ludes said she wanted to match the aluminum siding with the clad. Councilor Kennedy said she was uncomfortable with it because they had asked the Baptist Church to fix their windows, and even though the parsonage was not a New Englander, it was in a historical spot and she wanted to see the 6/6 but would prefer restoration. Ms. Ludes said that the Baptist Church was more residential, and Councilor Kennedy told her that the parsonage was also across from a historic house.

Mr. Dow said that it would not be possible to restore all the windows because some of the sashes had rot in them and the muntins had been cut out. He thought that the bottom sash on fifteen of the front windows could not be re-used. They could dig out where the muntin was but would get

beyond what would be reasonable in trying to fix the 15 windows, which made up half of the house, so a good portion of those windows would not be reusable.

Mr. Gladhill asked if there would be enough windows to use the ones from the front and put them on the side of the house. Mr. Dow told him that there were 4-6 different sizes of windows in the house and said it could be difficult.

Ms. Ruedig pointed out that the reason the Commission asked for such a high quality of restoration from the Baptist Church was because it was such a high museum-quality building, and the parsonage was not. If the parsonage was attached to the church, it would be different, but it was a house that they could treat like many of the residential houses in the District. If they went with replacement windows, she preferred them to be 6/6 because they had evidence that the window had been 6/6 early on.

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 **grant** the Certificate of Approval as presented with the stipulation that the windows be 6/6 with a half screen clad. Mr. Melchior seconded.*

Mr. Wyckoff stated that the windows were entirely appropriate to the style and age of the house and met their criteria, so he felt it was a good tradeoff.

Ms. Ludes said it seemed like restoration was the preference and it would be another month out. Mr. Wyckoff told her that restoration would not need the Commission's approval. Ms. Ludes asked what would be different in a work session. Mr. Wyckoff told her to find someone to fix the windows. Chairman Almeida agreed with Ms. Ludes that everything had been discussed and nothing would be different in a work session. Mr. Rawling suggested restoration on the front and replacement on the sides.

Chairman Almeida said that if the petition was continued, the applicant would not have to re-advertise. Mr. Wyckoff asked how many windows were on the advertisement and was told that all of them were. Chairman Almeida did not want to make the applicant re-advertise and start over.

Ms. Ludes said they had listened to everything and were close to resolution, and they would be amenable to restoring the front and replacing the sides. She asked if it was all right that the cellar windows had wooden sashes. Mr. Gladhill said the front of the house was what people generally saw. Councilor Kennedy said they should continue the work session.

*The motion **failed to pass** with 5 opposed and 2 in favor for the following reasons:*

- 1) The windows were deemed to be original and the majority of the Commission*

- felt they were worthy of restoration.*
- 2) *The applicant was encouraged to re-submit a new application that included a restoration component.*

(Messrs. Rawling, Melchior, and Gladhill, Councilor Kennedy and Chairman Almeida opposed).

*Mr. Melchior moved to **continue** the petition to a work session on April 4, 2014. Mr. Gladhill seconded it.*

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

VI. WORK SESSIONS

A. Work Session requested by **Bradley Boisvert and Karen Bannon Boisvert, owners**, for property located at **124 State Street**, wherein permission was requested to allow new construction to an existing structure (add elevator at rear of building, construct stair access, construct walkout decks and add doors at 2nd and 4th levels, construct dormer, add skylights, and replace windows) as per plans on file in the Planning Department. Said property is shown on Assessor Plan 107 as Lot 55 and lies within Central Business B and Historic Districts.

This item was postponed to the March 12, 2014 meeting.

VII. ADJOURNMENT

At 12:00 a.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 May 14, 2014.