

**MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

April 16, 2019

MEMBERS PRESENT: Chairman David Rheume, Vice-Chairman Jeremiah Johnson, Arthur Parrott, John Formella, Jim Lee, Peter McDonell, Alternate Chase Hagaman

MEMBERS EXCUSED: Chris Mulligan; Alternate Phyllis Eldridge

ALSO PRESENT: Peter Stith, Planning Department

Note: Mr. Parrott was absent for part of the meeting. The Alternate Mr. Hagaman assumed a voting seat for every petition.

I. APPROVAL OF MINUTES

A) March 19, 2019

*It was moved, seconded, and passed unanimously to **approve** the March 19, 2019 minutes as presented.*

B) March 26, 2019

*It was moved, seconded, and passed unanimously to **approve** the March 26, 2019 minutes as presented.*

Chairman Rheume stated that Petition 4-1, Public Hearings – New Business was requested by the applicant to be postponed, and he asked that it be taken out of order to vote on.

*It was moved, seconded, and **passed** unanimously to take the postponed petition out of order.*

Chairman Rheume read the petition into the record. He stated that the applicant had a work commitment and couldn't attend but wanted to re-schedule for the May 21 meeting.

Minutes Approved 5-21-19.

*Vice-Chair Johnson moved to **grant** the request to postpone, and Mr. Hagaman seconded.*

Vice-Chair Johnson noted that the request for postponement was the first one from the applicant and that a work commitment was a reasonable reason to postpone. Mr. Hagaman concurred.

*The motion **passed** by unanimous vote, 6-0.*

II. OLD BUSINESS

A) Request for Rehearing for property located at 11 Meeting House Hill Road.

Chairman Rheume explained that the applicant and the property owners were previously granted variances from the Board but had since withdrawn their petition, and that some of the property abutters filed a Request for Rehearing. He said the Planning Department had asked City Attorney Robert Sullivan to address the matter.

City Attorney Sullivan stated that no one wished the case to go forward, so the City needed to ‘untangle the tangled web’. He said the variances were granted to the property and not to the people, and that only the Board of Adjustment could grant or deny a variance. He said the Board could either grant or deny the Request for Rehearing that evening. If they granted it, then they could later decide to reverse their decision and deny the variance. If they denied the Request for Rehearing, the variances would still be in play and the opponents would have to appeal the decision in Superior Court.

The Board briefly discussed whether Fisher v. Dover would be in effect if the Request for Rehearing were granted and the variance was denied, or if a ‘de novo’ situation might result.

Chairman Rheume read the case into the record. He asked the Board whether they made an error in going through the application or if there was any information that made their decision come into question. Vice-Chair Johnson said he would not support a motion to rehear the case because he thought the Board got it right the first time, so he didn’t feel that the case merited a rehearing. He said that none of the points made by the opponents proved that an error was made. He said he reviewed the record and the five criteria in detail. He said the hearing was a lengthy one during which many abutters spoke, and he felt that the Board gave the hearing due diligence. He said he would not be interested in placing the property in the position of Fisher v. Dover and burden the property. Mr. Hagaman concurred, noting that the Board had not applied Fisher v. Dover because the zoning had changed since 1980 and the application for a variance materially differed from the one granted in the 1980s. He said the Board had agreed that the lot was a large, merged corner lot with an odd configuration and that applying the current zoning standards in that area would be an undue hardship on the property and make it impossible to build anything. He said the Board examined the criteria thoroughly and felt that the variance request was

reasonable. Mr. Formella said he would be uncomfortable overturning a decision just because the applicant didn't want to go forward. Mr. McDonell said he did not think the Board erred.

Chairman Rheume said he did not believe that the Board should rehear the petition. He explained the meaning of Fisher v. Dover and gave the history of the 1980 case. He said there were a lot of changes in the zoning ordinance and in the neighborhood and did not think that Fisher v. Dover applied decades later. He noted that even the petitioners agreed that there was a material change in the plans between the 1980 petition and the current one. He said that all the other arguments were vetted by the Board and there was a lot of discussion, and the Board had felt that the merging of the two properties was a hardship as well as a unique circumstance. He said the abutters felt that the applicant wanted to make more money with the property, which he pointed out was not a detriment and did not apply to the Board's criteria. He said the purity of the Board's decision was the most important aspect and that their decision had merit and that the Board should not reverse their decision based on a desire to create less concern for the courts. He noted that, maybe in the long term, the legislation could consider that type of situation and figure out a more convenient way for the Board and the courts to deal with it.

*Mr. Chase moved to **deny** the Request for Rehearing, and Mr. Formella seconded.*

Mr. Chase stated that, given the thoroughness of the prior hearing and discussion, the thoroughness that the Board applied to the five criteria, the unanimous granting of the variances, the thorough vetting and consideration of whether Fisher v. Dover should be applied, the hardship criteria, the change in time for the zoning ordinance, the fact that granting a rehearing would preserve the issue and create another potential Fisher v. Dover issue if the Board withdrew their granting of the variances, and all the comments and deliberation on the issues and the five criteria, he felt that the Request for Rehearing warranted a denial.

Mr. Formella concurred. He said if the Board had not determined whether there was something about the underlying decision that justified granting a rehearing, then he didn't think he had the authority under the Statute to grant a rehearing simply because the petitioner had withdrawn. He also referenced his previous comments and said rehearing the petition would not be appropriate.

*The motion to deny **passed** by unanimous vote, 6-0.*

At this point, Mr. Parrott arrived and assumed his voting seat

III. PUBLIC HEARINGS – OLD BUSINESS

A) Case 2-1

Petitioners: Frank AJ Veneroso and Roslyn Weems
Property: 53 Austin Street

Assessor Plan: Map 127, Lot 26
Zoning District: General Residence C
Description: Proposed Inn
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from the following:
a) from Section 10.440, Use #10.30 to allow an Inn in a district where the use is not permitted in the district.

It was moved, seconded, and passed by unanimous vote (7-0) to take the petition 'off the table'.

SPEAKING IN FAVOR OF THE PETITION

The applicant Roslyn Weems was present to speak to the petition. She addressed the Board's previous questions of how the project would meet the all the criteria. She emphasized the historic nature of the property and said that operating it as an inn would be more reasonable than having it house two people, and would also leave a legacy for future generations. She said she had received numerous requests from realtors who wanted to buy the property and convert it into condominiums, but that she wanted to preserve the home's aesthetics. She said she a previous Conditional Use Permit (CUP) for eight parking spaces. She said she consulted a broker who said the variances would have no adverse effect on surrounding properties. She explained how the inn would function. She said she would place an appropriate sign in a designated location.

Dr. Richard Candee stated that he was the past president of the Portsmouth Historical Society. He distributed a handout about the history of the house. He said the Federal home had huge rooms suitable for an inn. He cited the names of several historic inns that used to be in the area.

Peter Jimenez stated that the building had been officially designated as a historic building.

Mr. Hagaman stated that there were no current historic inns in the neighborhood and asked how having an inn would not be detrimental to the area and not change its character. Dr. Candee replied that having an inn in the area would be an asset. He pointed out that some of the finest architecture in Portsmouth was west of Market Square.

It was moved, seconded, and passed by unanimous vote (7-0) to re-open the public hearing.

Michael de la Cruz of 64 Austin Street said he lived directly across the applicant's home and had no objection to converting it into an inn if it helped preserve the building. He said he did not think it would be detrimental the neighborhood but was concerned about the parking because it was in the front yard and looked commercial. He said that, based on the presentation, he felt that the parking would not adversely affect the neighborhood as long as it didn't increase.

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

No one else rose to speak, and Chairman Rheame closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Formella said he was previously concerned about what distinguished the property from others in the area and its suitability to be an inn, but that he was persuaded based on the historic attributes of the property. He said it was a more appropriate use of the property and that the lot's size and shape made the property more suitable to be an inn than other multi-family properties. Chairman Rheume agreed and noted that the additional information was helpful. Mr. Lee agreed but noted that there was a Staff recommendation to limit the rooms to eight. The Board discussed whether they should stipulate that parking be shielded. Chairman Rheume said the issue would be addressed through site plan review and the CUP process. He said he had struggled with the hardship criteria of whether the large size of the property distinguished it from others in the area but felt that the historic building was large enough to be an inn.

*Mr. Formella moved to **grant** the variances for the petition, with the following stipulation:*

- *That the inn be limited to eight rooms at a maximum per the Staff's recommendation.*

Mr. McDonell seconded.

Mr. Formella said that granting the variances would not be contrary to the public interest, would observe the spirit of the ordinance, and would not alter the essential characteristics of the neighborhood. He said the Board would be allowing a different use to the building, but even though there was a lot of residential in the neighborhood, the area had a commercial feel to it. He said the home would be more of a bed-and-breakfast than an inn or hotel and would be no threat to the surrounding properties because there would be ample parking on the site and no traffic concerns. He said that granting the variances would do substantial justice because the applicant would lose the ability to potentially preserve the historic nature of the property if denied and there would be no gain to the public. He said the value of surrounding properties would not be diminished, noting that the applicant had substantial experience in real estate. As for the hardship, he said the characteristics that distinguished the property from others in the area were the historic nature of the property and its assets and the size of the lot and building that made the property suitable to be an inn. He said that type of inn was beneficial to the city because visitors preferred to have a more historic experience by staying in a historic inn rather than a hotel. He said the proposed use was a reasonable one.

Mr. McDonell concurred and had nothing to add.

*The motion **passed** by unanimous vote, 7-0.*

2) Case 3-2.

Petitioners: Bethel Assembly of God, owner and Chase Drive, LLC, applicant
 Property: 200 Chase Drive
 Assessor Plan: Map 210, Lot 2
 Zoning District: Gateway Center District (G2)
 Description: Construct a mixed use building with office space and 21 residential units.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief

- from the Zoning Ordinance including the following variances:
- a) from Section 10.5B33.20 to allow a front lot line buildout of 15% where 75% is required;
 - b) ~~from Section 10.5B34.80 to allow a 56', 5-story building where the maximum building height allowed is 50 feet and 4 stories;~~
 - c) ~~from Section 10.5B34.80 to allow 22%± façade glazing where 50% minimum is required; and~~
 - d) ~~from Section 10.5B22.20 to allow a 56' tall building to be within the set back and step back area.~~

It was moved, seconded, and passed by unanimous vote to take the petition off the table.

Chairman Rheaume read the petition into the record.

SPEAKING TO THE PETITION

Attorney Jonathan Springer was present on behalf of the applicant to speak to the petition. He introduced Cory Belden of Altus Engineering and Pastor Chad Lynn. He noted that all the variances except for one were withdrawn, so the only variance requested was the front lot line buildout to allow them to build a smaller building. He reviewed the project's responses to the Board's previous questions, including the following:

- The easement arrangement;
- The number of units remaining at 21 units;
- The building would be all residential;
- Elevations comparing the building height to nearby structures were submitted; and
- The proposal was a permitted use and a permitted height.

Pastor Chad gave a brief history of the church and reviewed the reasons why the variance would be justified. He submitted a list of 150 signatures from parishioners who approved the project.

Mr. Hagaman noted that the applicant said they needed the whole parking lot for the units and asked whether the easement would be deeded for the land as long as the church existed. Attorney Springer said it would be contractual that the parking access would be permanent for as long as the church existed.

Mr. McDonell said if he were an opposed neighbor, he'd be concerned about the size of the building with 21 units that was allowed by having a 1.3-acre lot. He said if the lot were smaller, the applicant could not build as many units. He said he wouldn't be surprised to see an easement for reciprocal use in that situation, or a shared easement, but it looked like the parking lot served the new structure and a lot for the church and wasn't a shared situation. He said he understood that the parking lot was a part of the lot but thought the way it was structured was for the number of units it could fit. Attorney Springer said the parking easement had nothing to do with the variance request and that they were only discussing it because of the 25 abutters who spoke

against it. He said the easement was the best way to keep the church in its home, give it the necessary parking, and allow the developer to place the structure there.

Mr. McDonell said that part of what drove the price of the sale was what the buyer could do with it, noting that if a lot was sold regardless of the size and could have eight units on it, it wouldn't go for the same price as 21 units would. Attorney Springer said that granting the easement would give the church more money and would be a win-win situation for the developer and the church. Mr. McDonell said it looked like a way to get around the units-per-acre issue. Attorney Springer said it was a way to make the deal work while producing a smaller building, and if the proposal wasn't approved, something else that wasn't as suitable could happen to the lot.

Chairman Rheame said he respectfully disagreed that the easement had nothing to do with the application, pointing out that the Gateway District allowed 16 units per acre and had a frontage requirement. He said the applicant was proposing to shove the building to one corner and elevate it vertically, which would be a concern for the Board. He said it was also driven by the desire to keep a portion of the lot for church parking, otherwise the parking could be moved and the building could be flattened out to create a longer building and meet the 50 percent requirement. It was further discussed. Chairman Rheame said the Gateway District was thoughtfully put together, and one of the drivers of the buildout requirement was to avoid what the applicant was proposing. Attorney Springer said they met the buildout requirement on Michael Soucy Drive, and if the Board said they didn't, that would leave the other streets and a new developer could put in a much bigger building. Chairman Rheame said it would still be restricted in the total number of units unless the developer were to build palatial units.

Mr. Hagan said he agreed that the easement played a huge role because, by purchasing the lot, the applicant was eliminating all the parking for the church unless there was an easement. He asked whether the parking lot proposed for the church and the easement would satisfy all the requirements for the church and parking. Attorney Springer said it would. Pastor Chad agreed, noting that they had a total of 280 seats in the sanctuary, meaning four seats for every parking space of 77 spots. It was further discussed. Vice-Chair Johnson said the property could be subdivided without an easement and the applicant could have the same building. He said it felt like a loophole that was legally binding and that he was uncomfortable with the fact that the applicant was able to find that loophole and still meet the spirit of the ordinance. Mr. Parrott asked whether there was enough parking for large congregations in addition to the parking for the new building. Pastor Chad agreed and said parking would not spill out into the neighborhood.

*Vice-Chair Johnson moved to **open** the public hearing, and Mr. Lee seconded. The motion passed by unanimous vote.*

SPEAKING IN FAVOR OF THE PETITION

William Peirce said he was an abutter and was grateful to the church for the use of the parking lot. He said the development would not deteriorate the neighborhood.

Aaron Grass of 200 Chase Drive said the project would fit the Gateway District.

Barbara Grass of 200 Chase Drive discussed how the church was good for everyone.

Patty Lynn of 200 Chase Drive said the church could be updated if the project were built.

Steven Earnhart said the project would help the church afford activities like Outreach and others.

SPEAKING IN OPPOSITION TO THE PETITION

Edward Richards of 435 Cutts Avenue stated that the applicant made a big deal out of having frontage on Michael Soucy Drive but that the applicant couldn't have frontage because the property had to be included in the point of intersection of two streets. He said the neighbors had asked the City Council to review the zoning because the area was a Single Residence B (SRB) zoning area three years before, with the church as a special exception. He asked if the Board should proceed if they didn't know whether the zone would be reverted back to an SRB one. He said he also had concerns about the 70% frontage deviation and the orientation of the building.

Roger Gauthier of 36 Brigham Lane said there was no hardship for the church because the hardship had to be on the land and not the church.

Sandy O'Brien of 20 Brigham Lane said the building was not in keeping with the Gateway District due to its large size and flat roof. She also felt that the applicant's attorney was threatening by indicating that another applicant could build something larger.

Kevin O'Brien of 20 Brigham Lane said he sent a letter to the Planning Department addressing the financial data because he felt that it was an unnatural connection. He asked how their property values would rise by a building that was awkwardly angled in an improper location.

Jason Curling of 29 Brigham Lane asked whether the easement would expire if the church no longer existed. He noted that floor plans and real elevation plans were not provided and that the structure would block views and affect property values.

Kyle Langelier of 304 Leslie Drive said she was concerned that lighting for the clock tower would shine into her windows and was concerned about noise from the mechanical units.

Gale Peacock of 355 Chase Drive said the church was a good neighbor but thought that neighboring property values would drop and that the parking might not be enough.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Edward Richards said the total elevation would be 77 feet, including the parapet. He cited addresses of several homes that would be blocked by the building or clock tower. He said the current parking would be reduced by 50 percent. He suggested reducing the units to 16 so that just one acre would be required, and turning the building 90 degrees and moving it up so that it didn't block views. He said the project would set a terrible precedent in a new zone if it was built

as proposed. He said he consulted with a property appraiser, who told him that the project would negatively affect surrounding properties if it was overdeveloped or if there were tenants.

Attorney Springer said the project met all the requirements except for the front lot line building requirement. He said the ordinance was silent about a lot with three streets siding it and that they were asking to use the street that allowed them the smallest building.

Edward Richards said the project had a through lot and not a 3-street frontage lot because part of it was a drainage swale.

Pastor Chad said the pine trees were the height and width of the building and already inhibited the views, but no one had complained about them.

Attorney Springer said the lot fronted Michael Soucy Drive because it wasn't a through lot.

No one else rose to speak, and Chairman Rheume closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Stith said there was no relief needed for Michael Soucy Drive, and it was discussed. Mr. Hagaman asked whether the church could function without a parking easement. Mr. Stith said they would have to provide parking to meet the ordinance or move elsewhere.

Mr. Lee said he would not support the application because it would have a huge impact on property values. Vice-Chair Johnson said he didn't believe that the views would be as impacted as people feared because there were many other existing site features that impacted property values, such as Route 95, the train tracks, and the gypsum plant. Chairman Rheume noted that views were not necessarily protected and that, by right, the property owner could develop the property. Mr. Lee said that views were a big deal in house appraisals. It was further discussed. Mr. McDonnell agreed with the loophole theory. Mr. Parrott said he wasn't convinced that the proposal would not have a negative influence on the nearby single-family houses. Mr. Formella said he struggled with the fact that the hardship was the unique character of the lot and that it was subdivided to get a certain number of units and were more beneficial financially. He what was really going on was that the neighborhood was unhappy that the property was rezoned and was trying to get it converted back to a residential zone, which he felt was significant. Mr. Hagaman said he was less concerned about the type of building given the zoning requirements but thought the project was exploiting a loophole. He said the lot size was driving the number of units, and if the lot were smaller, there might be a fewer number of units.

Chairman Rheume noted that the neighbors brought up the idea of waiting to see if the zoning was contested, but he said the zoning was what it was. He said the Gateway District was unique and had lots of requirements and options. He said the applicant made the building stick out at one end of the lot, leaving a bare area in the middle and having the church at the other end, which was the opposite of what the Gateway District was trying to accomplish. He said he thought the applicant was asking for a lot. He noted that they were making a smaller footprint, not a smaller building, and thought there was room for redevelopment.

DECISION OF THE BOARD

*Mr. Lee moved to **deny** the variance for the petition, and Mr. Parrott seconded.*

Mr. Lee stated that the proposal failed to meet three of the criteria: it was contrary to public interest, it did not observe the spirit of the ordinance, and the value of surrounding properties would be diminished. Mr. Parrott concurred and said he had a problem with the fact that the proposal would alter the essential characteristics of the neighborhood, which was one of the measures of performance that guided the first and second criteria. He said he was also concerned that the proposal would have a negative effect on nearby single-family homes on the hill and did not think that the proposal met the hardship criteria, so he supported the motion to deny.

Mr. McDonell said Chairman Rheaume was correct about the fact that the loophole idea did not sit right. He explained why he didn't think the special conditions of the lot did not lead to the proposed use and said he would support the motion. Mr. Hagaman said he still thought there was an opportunity for the project to be developed differently to meet the criteria but that the present proposal fell short. Chairman Rheaume agreed.

*The motion to deny **passed** by a vote of 6-1, with Vice-Chair Johnson voting in opposition.*

*It was moved, seconded, and **passed** by unanimous vote to go past ten o'clock and hear the last two cases.*

3) Case 3-8.

- Petitioners: Weeks Realty Trust, Kaley E. Weeks, Trustee and Chad Carter, owners and Tuck Realty Corporation, applicant, for property located at
- Property: 3110 Lafayette Road, Lafayette Road, and 65 Ocean Road
- Assessor Plan Map 292, Lots 151-1, 151-2 and 153
- District: Single Residence B District
- Description: Merge lots and construct four story mixed use building containing 30 apartments and professional/medical offices.
- Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
- a) from Section 10.440 to allow professional, business and medical office uses where the uses are not allowed in the district;
 - b) from Section 10.533 to allow a front yard setback 27' from the side line and 70' from the centerline of Lafayette Road where 30' from the sideline or 80' from the centerline is the minimum required;
 - c) from Section 10.521 to allow a building height of 51'± where 35' for a sloped roof is the maximum allowed; and
 - d) from Section 10.521 to allow a lot area per dwelling unit of 2,722± s.f. where 15,000 s.f. per dwelling unit is required.

SPEAKING IN FAVOR OF THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant to speak to the petition. He introduced realtor Mike Garrity, project engineer Joe Coronati, and project architect Michael Keane. He reviewed the petition and described how the area was a mixed bag of uses. He said they wanted the building to be more in keeping with the Gateway District and believed that, over time, the residential lots on Lafayette Road would not continue. He explained how the project would fit into the area. He reviewed the criteria and said they would be met.

Mr. Hagaman asked whether there was a plan to have trees as a barrier between the building and residential properties. Mr. Garrity said there would be a fence along the northern boundary and a tree line on the south border. He said they would also go before the Planning Board.

Mr. McDonell asked what variances would be required if the created lots were in the Gateway District. Attorney Phoenix said the building would have 30 units and would require a variance unless they got a CUP for 36 units which required workforce housing or a park. Mr. McDonell said the applicant would still need two variances and would be 25 percent over, and Attorney Phoenix agreed. Chairman Rheaume said the maximum for a mixed-use building was 24 units. He asked whether the applicant had considered workforce housing or pathways. Attorney Phoenix said they met the 16 dwellings per acre and that it came out to 30 units. Mr. Garrity said they would consider doing community service-type features.

Attorney Phoenix said the proposal could be approved with 24 units but could be subject to increase if the applicant complied with workforce housing. Chairman Rheaume said they could require a CUP. He said the proposed building was up against a residential neighborhood. He noted that the development up the road was on an edge lot and naturally shielded. He asked if the applicant had thought of other options, like a pocket neighborhood development, a general residential development, or a lower mixed-use development. Mr. Garrity said they met with City staff and came up with the design of bringing the building all the way to the front and creating a buffer with the neighborhood.

Christine Carter of 65 Ocean Road said she had objected to a previous proposal in that area but thought the new project would be farther away from her neighborhood and that her property would further shield the neighborhood. She said she was in favor of the project.

SPEAKING IN OPPOSITION TO THE PETITION

Rick Becksted of 1395 Islington Street asked whether abutter notices had gone out, noting that the large building was out of character and that traffic would be increased.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Phoenix said the project was different from the previously proposed drug store and would only change how traffic got to a particular light, not the amount of vehicle traffic.

No one else rose to speak, and Chairman Rheaume closed the public hearing.

DISCUSSION OF THE BOARD

Vice-Chair Johnson noted that the abutter's notification would have gone out twice because the petition was postponed at a previous meeting. Chairman Rheume agreed and said no neighbors were present the first time as well. Mr. McDonnell said the property should be treated more like it was in the Gateway District because of its location. However, he said that even if it was in the Gateway District, it would require additional approval that he didn't think was warranted, and the fact was that it was located in the SRB zone. He said it wasn't unreasonable in theory but unreasonable in how far the proposal went in requesting variances. Mr. Hagaman said the Gateway District was established in 2018 and felt that the project would stick out like a sore thumb and would still require variances and a CUP if it were in the Gateway District. He said it would be rezoning an area the City Council decided not to rezone.

Chairman Rheume said he had concerns about allowing something that would have more units than would be allowed even if it were in the Gateway District. He said the City wanted to limit the number of units, and if the applicant went beyond that number, the City would want something given back to them. He said he especially had concerns approving 30 units when the maximum was 24 units in the Gateway District. He said that, even though the applicant moved the project forward from the immediate neighborhood, it was still an imposing structure in the middle of the residential neighborhood. He said there were other options that were Gateway-type projects that could have a better feel and less relief requested. Mr. Hagaman said he would want to see physical things around the project to shield it from the residential areas.

Attorney Phoenix said the applicant wanted to withdraw the petition so that the Board's comments could be considered. The Board agreed that it would be acceptable.

There was no vote.

IV. PUBLIC HEARINGS – NEW BUSINESS

1) Case 4-1

Petitioners: Donna L. Acox Revocable Trust, Donna L. Acox, Trustee
 Property: 14 Mt. Vernon Street
 Assessor Plan: Map 111, Lot 76
 District: General Residence 1
 Description: 6' x 12' Shed
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
 a) from Section 10.573.10 to allow a 1.5' right side yard where 5' is required;
 b) from Section 10.521 to allow 38% building coverage where 30% is the maximum allowed; and
 c) from Section 10.521 to allow 22% open space where 25% is the minimum

required.

*It was moved, seconded, and passed by unanimous vote (6-0) to **postpone** the petition to the May 21, 2019 meeting.*

2) Case 4-2

Petitioners: Vaughan Street Hotel LLC
 Property: 299 Vaughan Street
 Assessor Plan: Map 124, Lot 10
 District: Character District 5
 Description: Signage and lighting for a proposed hotel
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:

- a) Signs #1 and #2, from Section 10.1251.20 to allow two wall signs (124± s.f. + 70± s.f.) where 40 s.f. is the maximum allowed for an individual wall sign;
- b) Sign #5, from Sections 10.1271.10 and 10.1271.20 to allow a sign on an exterior wall that does not face a street and is on the side of the building without a public entrance;
- c) Sign #2, from Section 10.1261.30 to allow internal illumination where only external illumination is allowed for signs in the Historic District;
- d) Accent Light #1, from Section 10.1144.63 to allow lights above the height of 25' on the building surface; and
- e) Light L20, from Section 10.1144.60 to allow a luminaire to be attached at 32'9" ± above grade where the maximum height allowed is 20' above grade.

SPEAKING IN FAVOR OF THE PETITION

Attorney Peter Loughlin was present on behalf of the applicant to speak to the petition. He introduced project manager Eben Tormey of AC Hotels and stated that the hotel met all of the zoning's height and size requirements and was also previously granted a change in parking.

Mr. Tormey said the hotel was visible to people entering Portsmouth on Maplewood Avenue and Market Street and that it required signage. He showed the Board two proposed signs: Sign #1 was 124 square feet would be internally illuminated and placed near the top of the building, and Sign #2 was 70 square feet and halo-lit would be placed near the entrance.

Attorney Loughlin said the lights would be in keeping with the ordinance and would not light up the whole neighborhood. He said the signage was modest and in keeping with the size of the building. He noted that the larger sign would be visible from Maplewood Avenue. He reviewed the criteria and said they would be met.

Mr. Hagaman said the hotel from the Market Street approach looked like an island in a dark area. He noted that the lamination lighting went up the height of the building and that other buildings used canned lighting. He asked whether canned lighting was considered. Mr. Tormey said they

did consider canned lighting. He agreed that there were up-and-down lights on the other buildings. He said the rendering showed three of those lights further down on Vaughan Street that didn't require a variance. He said the lighting was concealed and similar to the lighting on other buildings in that it was a soft whitewash of the building and would only light a very narrow strip and provide accent to the undulation of the building.

Vice-Chair Johnson asked if the rendering was part of the final Historic District Commission's approvals. Mr. Tormey said the HDC found it appropriate and approved it.

SPEAKING IN OPPOSITION TO THE PETITION

Bruce Ocko of 233 Vaughan Street said that nine nearby residential units would be impacted because the building would be too lit up and would diminish surrounding property values. He said cramming the project into the area didn't create a hardship. He said the lighting would change the night sky as well.

Bob Leyman of 233 Vaughan Street said he saw no hardship and thought the developer just wanted to market their property after the fact and go against the ordinance.

Tammy O'Neill of 233 Vaughan Street said the restriction for lighting to go no higher than 25 feet was there for a purpose. She agreed that the lighting would negatively impact the neighbors.

Mike O'Neill of 233 Vaughan Street said that three sides of the building faced commercial properties and that the other side's lighting faced his street. He said the Board didn't have to give the applicant the right to shine their lights in the neighbors' windows.

Rick Becksted of 1395 Islington Street said that illumination signs had always been deterred in Portsmouth because Portsmouth had its own character. He suggested using GPS to find the building. He said signs were pollution. He noted that the new Harborcorp project would also have multiple condominiums on that parcel of land that people would speak against.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Loughlin said he was mistaken about the 250-ft distance from residential and had not considered the Vaughan Street residences. He said the applicant was asking for an increase in the size of the signage and to have a sign on Maplewood Avenue because it was a hotel and needed signage to attract and direct customers.

Mr. Tormey said the luminaire would be concealed and within a pocket that faced the building. He said there was a mistake in the letter regarding the entire surface of the building being washed with light, and that it was intended to state that the entire height of the building along the reveal would be illuminated. He said it would be a narrow strip of light accenting the bumpouts, similar to and even narrower than the other hotels that had point lights illuminating the building. He said the lighting for the two larger signs was allowed and that they just wanted an increased size for those signs. He said they wanted internal illumination for the other sign but that it was small and located at the entry to meet the brand standards.

Chairman Rheume asked whether the eyebrow shape at the top of the building would be illuminated. Mr. Tormey said the luminaire would be concealed and that the source of illumination would not be seen.

Mr. Parrott asked why the second sign was fluorescent. Mr. Tormey said it was not fluorescent and that they would use LED illumination. Mr. Parrott said it would still be in violation of the ordinance and asked why that technology had to be used. Mr. Tormey said they would externally illuminate the sign but that it would cause more glare. Mr. Parrott suggested lighting that would shine upward, and Mr. Tormey said that would be worse.

Bruce Ocko said the project would diminish the value of surrounding properties. He said the eyebrow light was not subtle and would degrade the night sky.

Pat Leyman of 233 Vaughan Street said she felt that the building's visibility would be at the detriment of the nearby homes.

Attorney Loughlin said the lights would not wash the building. Mr. Tormey said they were limited to the amount of area that could be illuminated.

No one else rose to speak, and Chairman Rheume closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Lee said he wouldn't support the project and suggested that the applicant compromise. Mr. Hagaman said he was mostly concerned about the maximum 65-ft eyebrow light and thought the signage would be noticed without the lighting. Vice-Chair Johnson said he was torn and would like to know what the HDC had thought of the lighting design. He noted that the neighborhood would also be dealing with a lot of light from the new Harborcorp project. He said the Board was being placed in the position of making decisions like the HDC. Mr. McDonnell said it would be less offensive to the neighbors if the applicant replicated the canned lighting, but what was driving the lighting was different because the HDC supported accenting the bumpouts. He said he wasn't sure that the vertical lighting of something like the Cambridge hotel could be replicated in the applicant's case because the point was to accent the bumpouts. He said it was hard to tell without actually seeing it. Chairman Rheume said he saw 'hotel-sign creep' and further discussed it. He said the concept was creeping into the downtown area and was surprised that the HDC was on board with the proposal. He said he was okay with Signs #1 and #2 and felt that Sign #3 was the most useful, but that Sign #5 wouldn't help someone find the building and wasn't necessary except for general advertising. He said he would be comfortable with allowing the accent lighting on the Vaughan Street side but couldn't see why it had to be above 25 feet on the east elevation facing the future residential development.

Attorney Loughlin asked whether the accent lighting could be tabled. Chairman Rheume said it was unusual and would be too confusing and that he preferred to table the whole petition.

DECISION OF THE BOARD

Minutes Approved 5-21-19.

*Vice-Chair Johnson moved to **table** the petition to the May 21, 2019 meeting so that the applicant could address and concerns of the Board and the abutters. Mr. Lee seconded.*

Mr. McDonell said he could approve everything but the height-restricted request, which he felt should have more information provided to the Board. Mr. Hagaman said he wanted to see how the proposed lighting would compare with canned lighting and whether it had to go up the height of the building all the way around or whether it could be isolated in certain parts of the building.

*The motion **passed** by unanimous vote, 7-0.*

V. OTHER BUSINESS

There was no other business.

VI. ADJOURMENT

*It was moved, seconded, and passed by unanimous vote to **adjourn** the meeting at 12:10 A.M.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary