

**MINUTES of the
BOARD OF ADJUSTMENT
PORTSMOUTH, NEW HAMPSHIRE**

Remote Meeting via Zoom Conference Call

Per NH RSA 91-A:2, III (b) the Chair has declared the COVID-19 outbreak an emergency and has waived the requirement that a quorum be physically present at the meeting pursuant to the Governor's Executive Order 2020-04, Section 8, as extended by Executive Order 2021-01, and Emergency Order #12, Section 3. Members will be participating remotely and will identify their location and any person present with them at that location. All votes will be by roll call.

7:00 P.M.

APRIL 20, 2021

MEMBERS PRESENT: Chairman David Rheaume, Vice-Chairman Peter McDonell, Jim Lee, Christopher Mulligan, David MacDonald, Arthur Parrott, and Alternates Chase Hagaman and Phyllis Eldridge

MEMBERS EXCUSED: John Formella

ALSO PRESENT: Peter Stith, Planning Department

I. APPROVAL OF MINUTES

A) Approval of the minutes of the meetings of March 16 and 23, 2021.

*The March 16 and March 23 minutes were **approved** as presented by unanimous vote.*

II. OLD BUSINESS

A) 53 Austin Street Extension Request

Mr. Mulligan recused himself, and Alternate Ms. Eldridge took a voting seat.

Chairman Rheaume read the one-year extension request into the record.

*Mr. Hagaman moved to **grant** the extension, and Vice-Chair McDonell seconded.*

Mr. Hagaman said the ordinance allowed for a one-year, one-time extension and that the applicant's reasons for it, including scheduling and COVID-19 issues, made a lot of sense and were appropriate to grant the extension. Vice-Chair McDonell concurred.

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

Chairman Rheaume said Item B for 30 Spring Street and Item C for 180 Spaulding Turnpike were postponed and asked to take the two items out of order.

Mr. Parrott and Mr. Mulligan recused themselves from the vote, and Alternates Mr. Hagaman and Ms. Eldridge took voting seats.

*Vice-Chair McDonell moved to take the two items out of order, and Mr. Lee seconded. The motion **passed** by unanimous vote, 7-0.*

(See Items 2 and 3).

III. PUBLIC HEARINGS – NEW BUSINESS

A) Petition of the **Carol Elliott Revocable Trust of 2011, Owner**, for property located at **143 Gates Street** whereas relief was needed from the Zoning Ordinance to remove existing shed and replace with new 10' x 12' shed which requires the following: 1) Variances from Section 10.573.20 to allow a) a rear yard of 3 feet where 8.5 feet is required; b) a right side yard of 15.5 inches where 8.5 feet is required; and c) a left side yard of 15.5 inches where 8.5 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 103 Lot 99 and lies within the General Residence B (GRB) District.

Alternate Ms. Eldridge took a voting seat.

SPEAKING TO THE PETITION

The applicant Carol Elliott said the existing shed was nonconforming and that she needed a larger shed for more space. She referred to her previously-submitted written criteria.

Mr. MacDonald asked if the applicant had discussed her proposal with her neighbors. She said she hadn't, except for asking a neighbor several years ago if a new shed would be alright with her and the neighbor saying it was fine if it didn't block her view. Ms. Elliott said most of the neighbors wouldn't see the shed because of the fence that surrounded it. In response to Chairman Rheaume's questions, Ms. Elliott said the shed was a prefab one and that her installer said the shed would fit into the tight space and have sufficient room to do maintenance around it.

Chairman Rheaume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak to the petition, and Chairman Rheaume closed the public hearing.

DECISION OF THE BOARD

*Mr. Mulligan moved to **grant** the variances for the petition as requested, with the following stipulation:*

- *The maximum allowable building coverage shall be 35 percent.*

Vice-Chair McDonell seconded.

Mr. Mulligan said the relief sought was for a portion of the property that was set off from the main property and tucked into the back corner, so it was a unique setup and it was replacing an existing shed that was already nonconforming. He said it increased the nonconformity but not unreasonably so, and it was a part of the property that wasn't really usable, so all the criteria were met. He said granting the variances would not be contrary to the public interest or the spirit of the ordinance because the essential character of the neighborhood wouldn't change by a slight increase of the nonconformity to accommodate a slightly bigger shed. He said it would do substantial justice because the loss to the applicant would far outweigh any gain to the public if the Board required strict conformance with the setback and lot coverage requirements. He said the applicant otherwise would have to put the shed in a usable location of the yard, which made no sense. He said granting the variances would not diminish the values of surrounding properties and that it would be a net positive in that historic part of town because it would replace a rubber-made structure with one that had to be approved by the Historic District Commission (HDC). He said literal enforcement of the ordinance would result in unnecessary hardship because the special condition was the property's unusual shape that distinguished it from others in the area, so there was no fair and substantial relationship between the purpose of the side yard setback and building coverage requirements in application to the property. He said it was a residential use in a residential zone, was reasonable, and should be approved.

Vice-Chair McDonell concurred. He asked if the stipulation could be made without advertising it. Mr. Stith said it wasn't a problem if the increase was minor enough.

Chairman Rheume said he would support the motion but had reservations about increasing the size of the shed, but because the shed installer verified that the larger shed could fit the space, he felt better about the fact that there were no nearby structures on the neighboring properties that would prevent future maintenance for the shed.

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

B) Petition of **John McMahon & Jessica Kaiser, Owners**, for property located at **30 Spring Street** whereas relief is needed from the Zoning Ordinance to remove existing front entry and construct new front porch which requires the following: 1) Variances from Section 10.521 to allow a) a 5 inch front yard where 15 feet is required; b) a 4 foot right side yard where 10 feet is required; and c) 29% building coverage where 25% is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 130 Lot 13 and lies within the General Residence A (GRA) District.

Mr. Mulligan was recused, and Ms. Eldridge took a voting seat.

Chairman Rheaume said the attorney couldn't be present on behalf of the applicant to review the petition, so the applicant requested that it be postponed to the May 18, 2021 meeting.

*Mr. Hagaman moved to **grant** the request for postponement, and Ms. Eldridge seconded.*

Mr. Hagaman said the petition should be postponed to the May 18, 2021 meeting because the applicant's representative was unavailable. Ms. Eldridge concurred and had nothing to add.

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

C) Petition of **Spaulding Group, LLC, Owner**, for property located at **180 Spaulding Turnpike** whereas relief is needed from the Zoning Ordinance to for the partial demolition of the existing showroom and construction of new showroom which requires the following: 1) A Variance from Section 10.531 to allow a 15 foot rear yard where 50 feet is required. 2) A Variance from Section 10.591 to allow a structure to be setback 15 feet from a parcel in a Residential district where 100 feet is required. 3) A Variance from Section 10.592.20 to allow the sale, rental, leasing, distribution and repair of vehicles be located adjacent to a Residential district where a minimum of 200 feet is required. 4) A Variance from Section 10.321 to allow a nonconforming building or structure to extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 236 Lot 39 and lies within the General Business (GB) District.

Mr. Parrott was recused and both Alternates took voting seats.

Chairman Rheaume said the petition required an additional variance, so the applicant asked to extend it to the May 18 meeting. Mr. Stith said it was a variance for the location of new parking.

*Mr. Mulligan moved to **grant** the request, and Vice-Chair McDonell seconded.*

Mr. Mulligan said it was determined that additional relief was required after the petition was submitted and that it made sense for the Board to put it off so that proper notice could get sent to all interested parties for all the relief necessary for the project. Vice-Chair McDonell concurred.

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

D) Petition of **Michael & Arna Lewis, Owners**, for property located at **41 Salter Street** whereas relief was needed from the Zoning Ordinance to construct a second story addition over existing first floor which requires the following: 1) Variances from Section 10.530 to allow a) a 23 foot front yard where 30 feet is required; b) a 2 foot left side yard where 30 feet is required; and c) a 13 foot right side yard where 30 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the Ordinance. Said property is shown on Assessor Map 102 Lot 30 and lies within the Waterfront Business (WB) District.

Alternate Mr. Hagaman took a voting seat.

SPEAKING TO THE PETITION

The applicants Michael and Arna Lewis were present. Mr. Lewis said they had been before the HDC and that they wanted to add a second-floor addition within the existing footprint of the property. He reviewed the criteria and said he had a letter of support from one of the neighbors.

Mr. MacDonald asked about the height of the finished structure, noting that the packet showed that the new piece of roof would be shorter than the existing front part of the house. Mr. Lewis said the proposed ridgeline for the new roof would match the existing ridge and that there would be no increase in height. Mr. Mulligan asked when the existing rear addition was added. Mr. Lewis said he didn't know but that the entire house was moved back 15 feet from the street in 2005. Chairman Rheume said no floorplans were submitted and asked for more information about the expansion. Mr. Lewis said the storeroom plus the expansion over the kitchen would include the 10'x12' bedroom. Chairman Rheume said the new roof would shed rainwater on both sides of the property and asked if gutters would be installed. Mr. Lewis said there was an existing gutter on the east side and that a gutter would be added on the west side.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

*Vice-Chair McDonell moved to **grant** the variances for the application as presented, and Mr. Lee seconded.*

Vice-Chair McDonell said he was concerned that the neighbor to the west might be affected but was glad to hear that the neighbor was in support. He said granting the variances would not be contrary to public interest and would observe the spirit of the ordinance, and it would not alter the essential character of the neighborhood nor injure the public's health, safety, or welfare. He said the addition was very tasteful and wouldn't look out of place in that area once it was finished. He said substantial justice would be done because it would be a benefit to the applicant to be able to expand his home and would pose no harm to the general public. He noted that it would pose no substantial harm to the neighbor to the west because the neighbor had agreed that their views or light and air would not be unreasonably infringed upon by the addition. He said granting the variances would not diminish the values of surrounding properties, adding that the only one it might affect was the neighbor to the west and possibly to the east, but the Board had heard nothing from either of them and he couldn't see that they would be affected. He said literal enforcement of the ordinance would result in unnecessary hardship because the property's special conditions were the size of the lot and the way the house was sited. He said relief was clearly needed from the setback requirements to add a modern addition. Due to those conditions, he said there was no fair and substantial relationship between the purposes of the ordinance and their application to the property. He said the proposed use was a reasonable one, a minor expansion to an existing home, and should be granted.

Mr. Lee concurred and said the addition was modest and would be an asset to the neighborhood.

The motion passed by unanimous vote, 7-0.

E) Petition of the **Prendergast Family Revocable Trust of 2012, Owner**, for property located at **70 Sheffield Road** whereas relief was needed from the Zoning Ordinance to Construct an 8' x 22' farmers porch which requires the following: 1) An after-the-fact Variance from Section 10.521 to allow a rear yard of 28 feet where 30 feet is required for an existing deck. 2) A Variance from Section 10.521 to allow a 20 foot front yard where 30 feet is required. 3) A Variance from Section 10.521 to allow 25% building coverage where 20% is the maximum allowed. 4) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 233 Lot 46 and lies within the Single Residence B (SRB) District.

Mr. Lee recused himself from the vote, and both Alternates took voting seats.

SPEAKING TO THE PETITION

Mr. Stith stated that the applicant didn't require Variance #1, the after-the-fact variance for the rear yard setback, because the 20-ft rear yard setback was under 18 inches and anything under 18 inches didn't have to comply with the setback ordinance.

The applicant Jeanne Prendergast reviewed the petition. She said the proposed porch would match several in the neighborhood. She reviewed the criteria and said they would be met.

There were no questions from the Board. Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak. Chairman Rheume noted that several letters of approval were received from the neighbors. He closed the public hearing.

DECISION OF THE BOARD

Mr. Stith confirmed that only Variances 2, 3, and 4 were requested and that there should be a stipulation to have a maximum allowable building coverage of 22 percent.

Mr. Mulligan moved to grant Variances 2, 3, and 4 for the petition, with the following stipulation:

- *The building coverage variance shall be 22 percent maximum coverage.*

Mr. Hagaman seconded.

Mr. Mulligan said there wasn't a lot of relief requested since it was front yard relief to put a modest farmer's porch, which would improve the functionality of the home. He said there would

only be a slight increase in building coverage and there was no opposition from the neighborhood. He said granting the variances would not be contrary to the public interest or the spirit of the ordinance and the essential character of the neighborhood would not be changed by the limited relief granted. He said substantial justice would be done because the loss to the applicant would outweigh any gain to the public if the Board required strict compliance with the ordinance. He noted that it was already out of compliance with the front yard setback, and the edge of the pavement was further from the front yard boundary, so there would be ample light, air, and so on. He said granting the variances would not diminish the values of surrounding properties because the project would be an improvement over the existing built condition, improve the functionality of the existing home, and drive property values upward. He said literal enforcement of the ordinance would result in unnecessary hardship because the special condition was that the property was half as big as what was required in the zone, so any addition would impact setbacks and building coverage and what was proposed was not out of scale with the neighborhood. He said there was no fair and substantial relationship between the purpose of the ordinance provisions and their application to the property. He said it was a reasonable use, a residential use in a residential zone, and should be approved.

Mr. Hagaman concurred and had nothing to add.

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

F) Petition of **John & Chelsea Chapin, Owners**, for property located at **1281 Islington Street** whereas relief was needed from the Zoning Ordinance for the keeping of chickens which requires the following: 1) A Special Exception from Section 10.440 Use #17.20 to allow the keeping of farm animals where the use is permitted by Special Exception. Said property is shown on Assessor Map 233 Lot 120 and lies within the Single Residence B (SRB) District.

SPEAKING TO THE PETITION

The applicant wasn't present.

It was moved, seconded, and passed unanimously (7-0) to take the remaining cases out of order and move the petition to the end of the meeting.

*Note: The applicant was still not present at the end of the meeting. Mr. Mulligan moved to **continue** the petition to the May 18 meeting, and Ms. Eldridge seconded. The motion passed by unanimous vote. See page 15.*

G) Petition of **262-264 South Street Condos, LLC, Owner**, for property located at **262-264 South Street** whereas relief was needed from the Zoning Ordinance to add 2 condenser units which requires the following: 1) Variances from Section 10.515.14 to allow a) a 4 foot left side setback and b) to allow a 3 foot side setback where 10 feet is required for each. Said property is shown on Assessor Map 111 Lot 05-02 and lies within the Single Residence B (SRB) District.

Alternate Mr. Hagaman took a voting seat.

SPEAKING TO THE PETITION

The applicant Denise Todd was present to review the petition. She said only one neighbor would be affected by the units and that she tried to contact them and hadn't heard anything. She said the units would be hidden from view by a small fence.

Vice-Chair McDonell asked if there was an alternative location in the back for either unit. Ms. Todd said the steps that came down from the lower condominium unit and a basement door didn't leave enough room to put a condenser unit between them. Chairman Rheume asked if they could be placed under the porch. Ms. Todd said her contractor said it was very tight due to the decks and that it would affect the air flow of the units. Mr. Hagaman asked if the applicant and her contractor discussed having smaller and quieter units instead of big, boxy traditional units. Ms. Todd said she needed a specific condenser unit to hook up to the heating system and duct work, and the units were the smallest they could find.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

*Vice-Chair McDonell moved to **grant** the variances for the application as presented and advertised, and Mr. Lee seconded.*

Vice-Chair McDonell said he had wondered if there was a reasonable alternate location for the units, but it didn't look like there was. He said the applicant presented a good case that the chosen location was the best one, and the request was a reasonable use. He said granting the variances would not be contrary to the public interest or the spirit of the ordinance because the installation of the units would not alter the essential character of the neighborhood. He said that type of unit was common in the applicant's neighborhood as well as other neighborhoods in the area, and there was no threat to the public's health, safety, or welfare or any injury to public rights. He said the units would have relatively low noise and would not be noisy as the existing four wall units. He said substantial justice would be done because the benefit to the applicant by being able to install central air conditioning would not be outweighed by any harm to the general public. He said the only real harm to individuals might possibly be to the immediate abutters but that it wouldn't be substantial harm, seeing that the units had a low amount of noise and would be a substantial improvement over what presently existed. He said granting the variances would not diminish the values of surrounding properties because the back condenser unit would be blocked from the neighbor by a fence, even though the front wasn't, and it was a tight area like others that often required encroachment in a setback due to a narrow lot and tight squeeze. He said literal enforcement of the ordinance would result in unnecessary hardship because the special conditions of the property were the very narrow lot and the fact that there was no other reasonable alternative location to place the units in. He said, due to those special conditions, there was no fair and substantial relationship between the purpose of the ordinance's provisions

and their application to the request and the property. He said the proposed use was a reasonable one and should be approved.

Mr. Lee concurred. He said he researched the sound level of the requested units and found that they were between 65 and 70 decibels and were pretty quiet.

The motion passed by unanimous vote, 7-0.

H) Petition of **Michael & Deborah McNeilly, Owners**, for property located at **205 Wibird Street** whereas relief was needed from the Zoning Ordinance to remove an existing 8' x 10' shed and replace with a new 10' x 12' shed which requires the following: 1) A Variance from Section 10.573.20 to allow a 4 foot side setback where 9 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 133 Lot 53 and lies within the General Residence A (GRA) District.

Alternate Ms. Eldridge took a voting seat.

SPEAKING TO THE PETITION

The applicant Michael McNeilly was present and said he needed a bigger shed for his children's bikes and other equipment. He said the location would be the same but that the shed would extend two feet further toward the house and two feet further toward the center of the yard. He said the shed would be tucked into a corner where there were other structures and would not adversely impact the neighbors. He referred to his previously-submitted written criteria.

There were no questions from the Board. Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

Mr. Lee moved to grant the variances for the petition as presented and advertised, and Mr. MacDonald seconded.

Mr. Lee said the proposed shed would be larger and would go toward the interior of the yard and toward the house and would remain in the same place as the existing shed. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the proposed use was a reasonable one and would not alter the essential character of the neighborhood or the public's health, safety, or welfare. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the general public or the neighbors. He said the applicant would get a bigger shed to store extra items as his children got bigger, and having a new shed that was two feet larger than the existing shed would not impact the values of surrounding properties. He said literal enforcement

of the ordinance would result in an unnecessary hardship to the applicant and there was no fair and substantial relationship between the general purposes of the ordinance and their application to the property. He said the proposed use was a reasonable one and should be approved.

Mr. MacDonald concurred with Mr. Lee. He said it was worth driving out to the property to see that it was spacious, looked nice and was well maintained, and that adding a slightly larger shed would not have an adverse impact.

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

D) Petition of **Tobias Lear House Historic Inn, LLC, Owner and Stephen Foster, Applicant**, for property located at **49 Hunking Street** whereas relief was needed from the Zoning Ordinance to install a fence greater than 4 feet in height within the front yard which requires the following: 1) A Variance from Section 10.515.13 to allow a fence taller than 4 feet in height to be located within the front yard where 4 feet is the maximum height allowed. Said property is shown on Assessor Map 103 Lot 39 and lies within the General Residence B (GRB) District.

Alternate Mr. Hagaman took a voting seat.

SPEAKING TO THE PETITION

The applicant Stephen Foster was present and said the proposed fence was broken up into two styles, decorative and privacy, and would cover the front 85 feet of the lot. He reviewed how the fencing was chosen and said the HDC approved it. He said the decorative fence was 4.3 inches above grade and the privacy fence was close to 5'6", and that a lot of time was spent deciding the appropriate size and height. He said the neighbors approved the fencing and location. He reviewed the criteria and said they would be met.

Mr. MacDonald asked if any City regulatory personnel had explained why a 4-ft limitation on fence height was necessary. Mr. Foster said they had not and that his proposal related to aesthetics and historical and architectural considerations. Mr. MacDonald said the intent of the ordinance had more to do with public safety. Mr. Stith said the intent was to keep front yard open and visual and to prevent people from walling off their property with a 6-ft fence, as well as for public safety. Mr. Foster said his proposed fence was modestly above the height limitation due to the grand house in a tight setting and that conforming to the limit would detract from the house. In response to Mr. Mulligan's questions, Mr. Foster said the front yard was ten feet and the placement of the fence was three feet from the curb to allow room for snow plowing and because it seemed to be the right distance. He said there was enough separation that the fences would not block views looking at the house and from the house because there were seven feet between the fence and the house and the top rail would be just over four feet no average and a bit higher down the street.

Vice-Chair McDonnell asked how long the 4-ft stockade fence that ran parallel to the house on both sides of it had been there. Mr. Foster said it was there when he bought the house and was removed when construction was started. He said he didn't know exactly when the fence was

installed but that it was a more recent one. Vice-Chair McDonell asked if the 4-ft short piece of fence on the western boundary was enough to give the neighbor the view they needed to back out of the driveway. Mr. Foster said that it was and that he had discussed it with the neighbors. Mr. McDonell asked what was preventing the proposed fence from being a bit lower overall. Mr. Foster said it was a question of aesthetics and judgement. He said starting the fence at four feet and keeping it level would wind up at five feet. He asked if the posts counted. Mr. Stith said the tallest part of the fence would be its height, and it was further discussed. Mr. Foster said he had the right to make the judgment because it was an involved and historically important project and he wanted to get it right. Mr. Lee said a lot of the picket fence portion in front of the house was around 4 to 4-1/2 feet high. Mr. Foster said it was closer to five feet. He said the top of the post at the end of the decorative was 5'6" and the cap on the privacy fence would drop between 6 and 9 inches but would continue at a straight level to the end.

Mr. Parrott asked how high the stone wall was and whether it was uniform as it went back. Mr. Foster said it disappeared 40 feet down the way into the hill and was 18 or 20 inches at the front. Mr. Parrott asked if it was in compliance with the required 6-ft height. Mr. Foster said he didn't know but that the wall was part of the approved site plan. Mr. Parrott said it was worth noting that there was a requirement for the sides and rear as well.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

Mr. Lee said he would support the petition. He said he had been by the house and spoken to the carpenter. He applauded the applicant's efforts to maintain the historical character of the house and thought the fence would add to it quite a bit. He said the fence in the front would be a picket fence and higher where the posts were, but it would still allow good views of the house and from the house and noted that the views weren't panoramic but just other houses. He said it was a good project and that the applicant was doing an excellent job.

*Mr. Mulligan moved to **grant** the variance for the petition as presented and advertised, and Mr. Lee seconded.*

Mr. Mulligan said he concurred with Mr. Lee and thought the property was a substantial historic one that the applicant was investing a significant amount of resources into. He said he was very comfortable with the Board deferring to the applicant's judgement as to what was appropriate, noting that the applicant had received approval from the HDC and that the Board wouldn't see something that looked like it dropped in from northern New Jersey. He said he agreed with Mr. Lee's description of the project and his characterization of the unlikely effect of a slightly taller picket fence in front of the house being negative. He said granting the variance would not be contrary to the public interest or the spirit of the ordinance, would not alter the essential character of the neighborhood, and would not threaten the public's health, safety, or welfare. He

said the neighborhood's character would not be changed by a fence that was a few feet higher. He said the proposed fence was tastefully designed and had enough fenestration and modulation so that it was appropriate for the historic structure. He said substantial justice would be done because the loss to the applicant if the Board required him to maintain a straight, level 4-ft fence in front of the building would be much less pleasing than the proposed fence and would not outweigh any gain to the public. He said granting the variance would not impact the values of surrounding properties but would improve them. He said literal enforcement of the ordinance would result in unnecessary hardship due to the special condition of the dwelling being a substantial and historic dwelling set very close to the right-of-way, so there was no fair and substantial relationship between the purpose of the ordinance and its application to the property. He said it was a reasonable use, a residential use in a residential zone, and met all the criteria.

Mr. Lee concurred with Mr. Mulligan and said he was confident that the project would be tastefully done.

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

*It was moved, seconded, and passed unanimously (7-0) to **suspend** the ten o'clock rule for ending the meeting.*

J) Petition of **David & Jennifer Chapnick, Owners**, for property located at **97 Meredith Way** whereas relief was needed from the Zoning Ordinance to allow the keeping of chickens which requires the following: 1) A Variance from Section 10.440 Use #17.20 to allow the keeping of farm animals where the use is not permitted. Said property is shown on Assessor Map 162 Lot 15 and lies within the General Residence A (GRA) District.

Alternate Ms. Eldridge took a voting seat.

SPEAKING TO THE PETITION

The applicant David Chapnick was present to review the petition. He said he wanted six chickens so that his children, who were allergic to regular pets like cats and dogs, could have the chickens as pets. He said the lot was a good-sized one and that he had letters from his direct abutters who were in support. He said the property wouldn't change in any way.

Mr. Hagaman asked why the applicant wanted six chickens instead of two or three if the objective was to have the chickens as pets as opposed to generating eggs for the family or the farmer's market. Mr. Chapnick said there would be one chicken for each member of the family, plus an additional chicken in case anything happened to one of the other chickens.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak. Mr. Stith stated that two additional letters were received, one in favor of the project and one in opposition. Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

*Mr. Lee moved to **grant** the variance for the application, with the following stipulation:*

- *A maximum of 6 hens and no roosters.*

Mr. Parrott seconded.

Mr. Lee said there were lots of variations that could be done with the chickens, besides the fact that they were fun, quiet, and wouldn't disturb anyone. He said granting the variance would not be contrary to the public interest or to the spirit of the ordinance and would not alter the essential character of the neighborhood. He said the street was a dead-end one and that there were only two houses on it, so the values of surrounding properties would not be diminished by a backyard chicken coop that the neighbors wouldn't even see due to the large size of the lot. He said literal enforcement of the ordinance would result in an unnecessary hardship because the children would be deprived of the experience of having pets and learning where food came from, so there was no fair and substantial relationship between the general public purposes of the ordinance and their specific application to that provision. He said the proposed use was reasonable.

Mr. Parrott concurred with Mr. Lee and said it would be easy to approve.

Chairman Rheume said he would support the motion. He said he didn't take lightly the case when a variance was needed for a chicken coop application pending the ordinance being changed by the Planning Board and the City Council to better reflect citizens' desires to keep chickens. He said the hardship was related to the property itself and that the property was very large and over 15,000 square feet in a zone that only required 7,500 square feet, so the property was twice as large as the requirement for the lot size in that zone. He noted that if it were in the SRB District that had a lot area requirement of 15,000 square feet, it would be allowed by special exception, which wasn't quite as high a barrier as the variance. He noted that the surrounding lots were larger and the buildings were far removed from each other, so the request made sense.

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

K) Petition of **Griffin Family Corp., Owner, and Hannaford Supermarket, Applicant**, for property located at **800 Islington Street** whereas relief was needed from the Zoning Ordinance to replace existing wall sign with new sign and add additional wall sign which requires the following: 1) A Variance from Section 10.1251.20 to allow an 86.21 square foot wall sign where 40 square feet is the maximum allowed in Sign District 3. 2) A Variance from Section 10.1271.10 to allow a wall sign on a side of a building that does not face a street or have a public entrance. Said property is shown on Assessor Map 154 Lot 1 and lies within the Commercial District 4-W (CD4-W) District.

Alternate Mr. Hagaman took a voting seat. Mr. Stith stated that Variance #2 would not be required. He said the original submission had the sign in a different location and that City Staff let the project know that it would require a variance. He said the sign had been moved and faced Islington Street, so it now met the requirement for a wall sign facing a public street.

SPEAKING TO THE PETITION

Attorney Justin Pasay was present on behalf of the applicant, along with project team member Neil Hanson and Hannaford Brothers representative Jay Lord. Attorney Pasay reviewed the petition, noting that a grocery delivery service would be added and required additional parking as well as the update of the primary Hannaford sign.

Mr. Hagaman asked why the word ‘supermarket’ was added to the sign. Attorney Pasay said it was a result of updating the branding and was a logo that was consistent with the new Hannaford brand name. Mr. Lord said the subscript ‘supermarket’ was added to all the Hannaford stores that were being remodeled. Mr. Hagaman asked if there was any space to put ‘Hannaford To-Go’ phrase on the sign. Mr. Lord said the to-go service would be in the back of that particular Hannaford’s, so there was no need to put it on the front sign. Attorney Pasay added that the freestanding sign on Islington Street already included the words ‘supermarket’ and ‘Hannaford-To-Go’, so it would be well represented. In response to Mr. Lee’s question, Mr. Lord said the current sign was illuminated and that the new sign would go from bulbs to LED backlighting.

Attorney Pasay then reviewed the criteria in detail and said they would be met. There were no further questions from the Board. Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

*Vice-Chair McDonell moved to **grant** Variance #1, and Mr. Hagaman seconded.*

Mr. McDonell said the reasons that the applicant’s representative articulation for the larger sign were reasonable and that granting the variance would not be contrary to the public interest or the spirit of the ordinance. He said it was an unusual situation, given the special conditions of the property, and would pose no conflict with the purposes of the ordinance nor alter the essential character of the neighborhood. He said most people wouldn’t even notice the difference between the existing sign and the proposed sign, and there would be no threat to the public’s health, safety, or welfare or any injury to public rights. He said the new sign would serve the public more than it would hinder them. He said substantial justice would be done because there was no harm to the general public articulated, and he couldn’t imagine any. He said the benefit to the applicant in keeping its branding consistent and its signage visible to the public was very clear. He said granting the variance would not diminish the values of surrounding properties because most people wouldn’t notice an additional nine feet of signage area, and he hadn’t heard anything that would suggest a diminution of property values. He said literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions that included a very large lot, a very large building, and the fact that the orientation of the building that the sign was going on didn’t face the main public access point or the parking lot. He noted that Hannaford’s was also the anchor tenant in the building, which was another special condition that pushed forth the conclusion that there were special conditions that distinguished it from others in the area and

that there was no real relationship between the purposes of the ordinance and their application. He said the proposed use was reasonable, a continued use and reasonably-sized signage for a building of that nature. He said for those reasons, the variance should be approved.

Mr. Hagaman concurred and had nothing to add.

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

The applicant for Petition #F, 1281 Islington Street that was postponed to the end of the meeting still wasn't present.

Alternate Ms. Eldridge took a voting seat.

*Mr. Mulligan moved to **continue** the petition to the May 18 meeting, and Ms. Eldridge seconded.*

Mr. Mulligan said applicants sometimes were confused and didn't know whether or not they were supposed to show up at the meeting, so he thought the applicant should be given the benefit of the doubt and another opportunity. Ms. Eldridge concurred.

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

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

The meeting was adjourned at 10:38 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary