

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

7:00 P.M.

March 18, 2025

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; David Rheame; Thomas Rossi; Paul Mannle; Jeffrey Mattson; and Thomas Nies

MEMBERS EXCUSED: Jody Record, Alternate

ALSO PRESENT: Jillian Harris, Planning Department

Chair Eldridge called the meeting to order at 7:00 p.m.

*Mr. Rossi moved to close the 6:30 non-public session, seconded by Mr. Nies. The motion **passed** unanimously, 7-0.*

*Mr. Rossi moved to seal the minutes, seconded by Mr. Nies. The motion **passed** unanimously, 7-0.*

*Vice-Chair Margeson moved to take New Business Item III.A, 92 Brewster Street, out of order for postponement, seconded by Mr. Mannle. The motion **passed** unanimously, 6-0, with Mr. Rheame recused.*

Chair Eldridge then read Item III.A into the record.

*Mr. Mannle moved to **postpone** Item III.A to the June meeting, seconded by Mr. Rossi, with the following **condition**:*

1) The application will be re-advertised at the expense of the applicant.

Mr. Mannle said the petition was postponed due to a personal matter that the applicant had and thought it was a reasonable request.

*The motion **passed** unanimously, 6-0, with Mr. Rheame recused.*

I. APPROVAL OF MINUTES

A. Approval of the February 19, 2025 site walk minutes.

*Mr. Mattson moved to **approve** the minutes as presented, seconded by Mr. Nies. The motion **passed** unanimously, 4-0, with Mr. Rheaume recused and Chair Eldridge and Mr. Rossi abstaining.*

B. Approval of the February 19, 2025 meeting minutes.

Mr. Mattson asked that the word “though” be changed to “thought” in a sentence on page 7 so that the sentence now reads: He said allowing the 10.5-ft ceiling on the first floor was more favorable than requiring a higher first floor, and he also thought that allowing a duplex or rowhouse was good. Mr. Nies asked that the word “and” be changed to “but” in a sentence on page 7 so that the sentence now reads: Mr. Nies said the history of the zoning in that area was troublesome but that it wasn’t the Board’s job to resolve zoning problems or changes in zoning that did not happen. Mr. Nies asked that a sentence on page 7 with the phrase “had had” be changed to “had seen” so that the sentence now reads: He said it had been a complicated process and that the Board had seen multiple versions of the project.

*Mr. Mattson moved to **approve** the minutes as amended, seconded by Mr. Nies. The motion **passed** unanimously, 5-0, with Chair Eldridge and Mr. Rossi abstaining.*

II. OLD BUSINESS

- A. Rehearing** for the request of **PNF Trust of 2013, (Owner)**, for property located at **84 Pleasant Street and 266, 270, 278 State Street** originally heard on November 19, 2024. The project requested relief to merge the lots and construct a four-story mixed-use building. **As voted on at the February 19, 2025 meeting, the request for Variance 2(b) will be the only relief considered in the rehearing:** for a fourth story addition at 50 feet in height to the Church Street elevation where 3 full stories and a short fourth are allowed with 45 feet maximum height permitted. Said property is located on Assessor Map Lot Map 107 Lot 77, Map 107 Lot 78, Map 107 Lot 79, Map 107 Lot 80 and lies within the Character District 4 (CD4), Historic and Downtown Overlay Districts. (LU-24-195 and LU-24-219)

SPEAKING TO THE PETITION

[Timestamp 8:50] Attorney Chris Mulligan was present on behalf of PNF Trust, along with project architect Michael Keane (via Zoom). Attorney Mulligan said the project was a proposal to combine the four lots and redevelop them into a mixed-use building with commercial and residential uses. He noted that the applicant received approvals for a similar project in 2020 and that before the 2017 fire, there were 17 residential units spread among the properties, with no parking. He said their proposal included the replacement of the 17 units and the addition of 17 off-street parking spaces. He said they proposed to recreate the height and scale of the former Times building, but because of the unique elements of that building, the proposed building was higher than would be permitted under zoning. He said the goal was to sync up the story heights in the adjoined and adjacent lot buildings. He said it was a result of several sessions with the Historic District Commission (HDC) to create a structure that evoked the Times building. He said they proposed a 3-story building with a full 4th story stepped back on the Church Street elevation. He said they would be entitled to a short

fourth story if they used a mansard roof design, but the HDC was strongly opposed to the mansard roof. He said the proposed height was 50 feet where they would otherwise be entitled to 45 feet and that it would be stepped back from the outer perimeter of that portion of the building. He noted that there were several other substantial structures near the building. He said the Board granted variances back in November for everything but the penthouse, and other than minimal design changes, the application was essentially the same. He said they removed the windows on one of the elevations that faced a property line, as requested by the abutter Working Stiff Properties. He reviewed the criteria and said they would be met.

[Timestamp 26:19] Mr. Rheume said there were some changes to the November application because the penthouse was missing and there wasn't as much detail in the current application. He said on the November application there was a significant addition over the Louie's building that housed a number of mechanical systems and seemed to be reduced in height. Mr. Keane said they dropped the mechanical platform down to what was originally shown on the plan 4-5 years ago. Mr. Rheume asked if the new fourth story changed the square footage from what was on the November application, and if its distance from the adjacent property line of the next-door neighbor was unchanged. Mr. Keane said that building's footprint did not change and there was no setback on the interior lot line, but they were able to keep the wall on the Church Street elevation at 45 feet to provide guard rails and the lower stair unit. He said they set it back four feet to where they then added the full second story at the rear portion of that elevation. Mr. Rheume said most of the applicant's narrative was focused on the Church Street building, and he asked if the relief was necessary to construct that portion of the building. Attorney Mulligan said they were only talking about the Church Street elevation but that the Staff Report suggested that the Board should consider that the height of the Times building was presented at the existing 53 feet and thought it would be wise to reaffirm that 53-ft height for the recreated Times building. Vice-Chair Margeson asked if everything had already been demolished. Attorney Mulligan said the cinderblock building was still there but that they would demolish it. Vice-Chair Margeson said the relief was therefore for the new building and that the applicant wanted four stories and 50 feet because the HDC did not want a mansard roof on that particular building. Attorney Mulligan agreed. Vice-Chair Margeson asked if the yellow portion was the townhouse. Mr. Keane said it was the stepped-back portion of the fourth story that they were seeking relief for. Vice-Chair Margeson asked how necessary that was to harmonize with the recreation of the Times building. Attorney Mulligan said they needed the additional story to have the 17 units because their goal was to recreate the number of units that previously existed. Vice-Chair Margeson confirmed that the structure was part of the new cinderblock and would have no relation to the Times building.

[Timestamp 33:55] Mr. Nies asked why the HDC was comfortable with a mansard roof on State Street but not on Church Street. Attorney Mulligan said it was because that portion of the roof faced South Church and the HDC did not want to see a mansard roof in that proximity to a historic structure like that. Mr. Keane said State and Pleasant Streets were wider streets and were able to handle the mass better than Church Street, so the goal was to keep the elevation of the building down along that street. Mr. Mannle asked if the configuration for the 17 units was the same as the previous 17 units, as to how many one-bedrooms, two-bedrooms and so on. Attorney Mulligan said he didn't know. Mr. Mattson asked if there was a pass-through where there was a fire wall where the set-back fourth story met the Times building. Mr. Keane referred to the floor plans that

indicated the connection to the back side of the yellow portion and said there was a door that connects the two of them. He said all the properties would share the same infrastructure in terms of stairs and elevator access, so the floors had to line up to provide an accessible route. Mr. Rossi referred to the November discussion and asked if the yellow step-back portion of the structure was the location where the penthouse was envisioned. Attorney Mulligan said it was not because it would have been over the mansard roof on the State Street Side. Mr. Rossi said that height relief request was greater at 57 feet, so the present request was less than what was denied in November. Attorney Mulligan agreed and said it would not be as tall as South Church.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OR IN OPPOSITION TO THE PETITION

[Timestamp 41:55] Doug Green representing South Church asked what the setback's dimensions were and how far the yellow portion was set back from the edge of the building on each side. Mr. Keane said that at its closest point, it was 10.6 feet back from the Church Street property line to the yellow portion. On the internal lot line, he said they were at 45 feet and were set in four feet before going up to the 50 feet on the back portion of the building, and they were set in nine feet in the middle section of the building. Mr. Green asked how far the yellow portion was in from the Court Street side. Mr. Keane said the red portion of the building showed that the height was 45 feet and right on the property line. He said the yellow portion where the four windows were was set back four feet from the interior property line, and the section where the two windows were was set back nine feet from the interior lot line.

[Timestamp 45:10] Attorney Scott Hogan said he represented the appellant Working Stiff Properties. He said there were two issues when the Board granted a motion for rehearing Item 2B. One issue was when the Board discussed several variances together and did not articulate how they met each of the five variance criteria separately. He said the other issue was that, in the Board's original approval, it was stated that the penthouse on the Church Street side was not objectional and would not diminish the values of the surrounding properties. He said the applicant had to meet that criteria, particularly the height issue. He said the Board stated a concern from one of the abutters but said it was the downtown area and the space taken up was slightly larger than what is called for, and none of the relief asked for were things that would affect the abutter. He said that was the point of disagreement because the air and space affected his client. He said the Board was asked whether the relief was necessary but the Board had said that the applicant wanted the 17 units and the business plan they had. He said the Board also talked about what the HDC wanted. He said none of those issues were a basis for variance relief. He said the issues of height and mass were essential to the way Portsmouth had been building out for the last few years and the applicant had said they could comply, but if they did, their plan was better than complying. Attorney Hogan said that didn't meet the legal requirements.

[Timestamp 50:28] Barbara Jenny said she was the co-owner of Working Stiff Properties. She said she and her husband submitted an application for the request for the rehearing for Item 2B, and even though they paid the \$400 fee, they were not on the agenda to present and neither were the images. She said the February 19 meeting in the archives link showed their application and images, which

accurately showed the photoshopped height of the wall and existing conditions with the dormers on the third floor of her building. She said the applicant neglected to include that in their drawings. She said she appreciated that a portion was pulled back but said the height issue still remained. She said their dormer would be right up against that wall. She said the applicant could make the floors any height to line up with the Times building. She said the yellow portion was a distinct unit and if it were not there, it would not need an emergency door.

[Timestamp 54:15] Matthew Beebe said he was a co-owner of Working Stiff Properties and that he and his wife Barbara were responsible for the complete historic renovation of the other half of the historic block, so they had a vested interest in ensuring that what went up next to them would not diminish the quality of that work. He said they did not do any renovations to the single-story piece in the back because they wanted to see what would happen with the proposal. He said they were not arguing with any aspects other than the height approved five feet above what the ordinance allowed. He said the existing wall was 32-1/2 feet and the proposal was for another 18 feet. He said the architect didn't bother to show the dormers on that side of the building and would not show the dormer on that roof due to its proximity to the wall and the additional height. Chair Eldridge asked if the approved height of 45 feet was a meaningful difference. Mr. Beebe agreed and said the applicant was using the additional five feet to get the yellow portion on top of that section. Mr. Rossi asked the height of the dormers that Mr. Beebe was concerned about. Mr. Beebe said it was seven feet and that he did not know the height of the dormers from the ground.

[Timestamp 1:01:15] Verity Boyer of the Portsmouth Advocates said the Times building was an important part of Portsmouth and that its proposed reconstruction by the applicant offered a way to honor and preserve the building's legacy while supporting growth in the city. She asked that the Board grant the relief for 50 feet and four stories.

SPEAKING TO, FOR, OR AGAINST THE PETITION

[Timestamp 1:02:14] Attorney Scott Hogan representing the appellant said the applicant had not proven the hardship. He said when Attorney Mulligan was asked about the special conditions of the property were, he said they wanted 17 units and that they needed to integrate the lots and the buildings. Attorney Hogan said that was not a special condition. He said the Board previously denied Variance 2A based on the lack of hardship because there were no special conditions that drove the need. He said 'too many mansards' was not a basis for a variance request and that the desire to have the floors line up did not meet the burden of the criteria. He said the Board needed to deliberate each criteria requirement for Item 2B.

No one else spoke, and Chair Eldridge closed the public hearing.

DISCUSSION OF THE BOARD

[Timestamp 1:06:06] Vice-Chair Margeson said she was glad that the Board voted to rehear because her original vote was mistakenly predicated on the assumption that the fourth story was needed to recreate the Times building and that the other buildings originally did not have mansard roofs. She said the new construction would have mansard roofs and the feeling that the Church

Street elevation could not have a mansard roof was out of deference to the church. She said she didn't know if she agreed and wasn't sure that the fourth story was needed for the recreation of the Times building. She said she struggled with the real hardship. Mr. Mattson said if someone were walking down a narrower passageway and the top floor was set back, it would feel a lot less imposing than any roof that came up to the property line. He said the recreation of the Times building was a special condition of the property and that it was a unique building that set a lot of the heights, and there were also the elevator and stair access and egress to consider. He said the applicant did not need the fourth setback portion attached to the Times building but that he could see the logic of the fourth story being a way to keep the 17 units. He said the project would also complement the Working Stiff Properties building in terms of refilling out the block. He said the biggest potential issue was if the light would be blocked from the appellant's dormers on the one-story building but he thought any new construction would not do that. Mr. Mannle said he struggled with the application due to the 17 units. He said the Floros building and the fourth floor on the back of the Times building had changed. He said the applicant didn't know what was there before, and now there would be a bigger building, so the configuration for the new 17 units would not be the same and there would probably be more bedrooms because the units would be bigger. He said that wasn't a hardship. Mr. Mattson said 17 parking spots were added. Mr. Rheume said he was confused with the Board's obsession with the number of units because the applicant's proposal for the fourth story on the Church Street portion behind the Times building had not changed at all and was the exact size and location as presented before, which the Board had approved. He said the other concern was the appellant who said he didn't think the impacts to his property were properly reflected. Mr. Rheume said he thought the negative impacts to the abutter related to the three dormers on the back side of the existing State Street building and the loss of light and air. He said the applicant had the first 45 feet by right, and those were more impactful to any loss of light and air from the neighboring property than the fourth story the applicant would be allowed by right. He said he felt that the additional negative consequences to the abutter from the little section of a proposed addition were inconsequential, considering that it was a dormer and would not allow a lot of light anyway. He said all the previous arguments the Board had still applied, and what was unique about the Church Street section was partly the light and air for the neighboring properties, but he didn't see a negative impact. He referred to the view corridors being impacted and said one of the unique aspects of the Church Street side was the abutter's empty lot, but in that section, the sight lines were obscured by South Church and it was a very narrow street where one would not see the additional five feet in height while looking up the building. He said it would be perceived as a 3-story building. He said the State Street side was very set back from it and the mechanical unit platform had been lowered, so it would not give the impression of a very big building. He said what the applicant was asking for met all the criteria and should be granted.

[Timestamp 1:20:23] Mr. Nies said there were some special conditions to the property to consider. He said it was on a narrow street and was a very dense area. Outside of the lower building and the parking lot on Court Street, he said the entire lot was developed. He said the buildings came almost all the way up to the property line on the Church Street side, if not all the way to the property line. He said the fact that there was an interest in having a structure on State Street that tried to model a historic building and the applicant worked with the HDC to do it did create some things on the property. He said the applicant was trying to tie the buildings together, which made sense. He said

those were special conditions. He said there was also the question of whether those special conditions were enough to justify that strict adherence to the ordinance is unnecessary and met some benefit to the public, which was what he was wrestling with. He said it was hard to judge what the Pleasant Street elevation would look like from across the street. He noted that the drawing presented at the November meeting wasn't colored in and that it looked less obvious. He said he wanted to make sure that it wasn't just the color throwing him off and said it suddenly looked like it stood out from the Pleasant Street side. Vice-Chair Margeson said she was looking at it from the applicant's viewpoint and whether they demonstrated hardship for the fourth floor of the Church Street elevation on the new construction. She said she would defer to the HDC but did find the analysis a bit inconsistent in that the applicant decided to put a mansard roof where it wasn't before on the Pleasant Street and State Street elevations and not on Church Street. She said the fourth floor would be seen from the Treadwell House on Pleasant Street. Chair Eldridge said not having the mansard roof on that street made a lot of sense because it was such a narrow street and the style was different from the more industrial buildings.

DECISION OF THE BOARD

*Mr. Rheume moved to **grant** the variance request for Item 2B with the following **condition**:*

- 1. The presented height for both the Times Building and the addition on the Church St. elevation are affirmed as presented.*

Mr. Mattson seconded the motion.

[Timestamp 1:25:50] Mr. Rheume said it came down to what the Board was trying to accomplish with the fourth story and the additional height and creating uniformity and structures that did not have a negative appearance from a passerby standpoint. He said what was proposed complied with that. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the abutter said they owned a historic building on the block, but there were many blocks throughout downtown that has grown over the last 200 years, with historic structures abutting 19th, 20th, and 21st century buildings. He said the Board was looking at a request for a height variance of a specific portion of what was being developed. He said they recognized that the replica Times building was trying to recreate something from the late 1800s and early 1900s timeframe and that some of that could create some disparity between the older structures and the new ones. He said what was proposed for the Church Street structure was an allowed height, with the setback for the fourth story that was consistent with the Times building and overall consistent with new construction that would be expected in the area as allowed by the zoning ordinance and in character. He said it would not feel like a taller building to someone walking down Church Street. He said it would also allow the applicant to take advantage of some of that roof space for additional living area. He said substantial justice would be done due to the sight lines aspect of it and the unique replica Times building. He said it would be taller but would replace something that had been there for decades. Relating to the abutter's concern of light and air and the darkness on their dormers, he said the vast majority of what the applicant was allowed to do by right would create the most negative impact for the abutter, so the balancing test went to the applicant and their request for the additional height. He said granting the variance would not diminish the values of surrounding

properties because even though the set-back fourth story was somewhat higher than what was allowed, he did not think there was anything of such character that was different. He said there was a mixture of construction types and sizes of structures, and recreating the Times building was the right thing to do for the city. He said the hardship was the narrowness of Church Street and the distance away from State Street, which made the request a reasonable one within that context and allowed the applicant to take advantage of the extra height.

Mr. Mattson concurred and said the hardship, spirit of the ordinance, and essential characteristics were driving factors of the recreation of the Times building, which dictated a lot of the heights. He said a good portion of the yellow portion on Church Street attached to the Times building would be allowed by right and that the Board was just allowing the applicant to complete that story. He noted that the applicant was also trying to incorporate 17 parking spots that would greatly benefit the public by freeing up on-street parking spaces. Vice-Chair Margeson said one of the purposes and intents of the ordinance was to preserve and enhance the visual environment. She said new buildings were part of that and that, in terms of the Board's analysis, she would look at it from the Pleasant Street location as well. She said she would not support the motion because she did not see the hardship for the fourth floor, especially since the applicant could recreate the Times building without it.

*The motion **passed** by a vote of 4-3, with Mr. Nies, Mr. Mannle, and Vice-Chair Margeson voting in opposition.*

III. NEW BUSINESS

- A. The request of **Harborside Property Management LLC (Owner)**, for property located at **92 Brewster Street** whereas relief is needed to demolish the existing structure and construct a single-family home with Accessory Dwelling Unit which requires the following: 1) Variance from Section 10.521 to allow a) 2,884 s.f. of lot area where 3,500 s.f. are required, b) 2,884 s.f. of lot area per dwelling unit where 3,500 s.f. are required, c) 52.33 feet of continuous street frontage where 70 feet are required, d) 9.5 foot right side yard where 10 feet are required, and e) 10 foot rear yard where 20 feet are required. Said property is located on Assessor Map 138 Lot 54 and lies within the General Residence C GRC District. (LU-25-25)

DECISION OF THE BOARD

The petition was **postponed** to the June meeting.

- B. The request of **Rosa Z. Delisle and Paul R. Delisle Revocable Trust (Owners)**, for property located at **408 The Hill, #6-17, (Units 1-3)** whereas after the fact relief is needed for the expansion of the existing business into the remaining first floor units which requires the following: 1) Variance from Section 10.440, Use #7.20 to allow a personal services business to expand where it is not allowed; and 2) Variance from Section 10.331 to allow a nonconforming use to be extended, enlarged or changed where not in conformity of the

Ordinance. Said property is located on Assessor Map 118 Lot 26 and lies within the Character District 4-L1 CD4-L1), Historic and Downtown Overlay Districts. (LU-25-24)

SPEAKING TO THE PETITION

[Timestamp 1:43:48] Ashley Stearns, owner of Blush Skin & Soul Spa, was present and said her company had grown into a thriving business since 2017 and now employed ten professionals. She said it operated from 8 a.m. to 8:30 p.m. seven days a week by appointment only, which ensured a controlled flow of clients. She said the two other tenants on the first floor vacated their spaces during COVID, so she expanded her business to include those spaces but did not realize that additional permits were required until the NH Board of Esthetics did a routine inspection. She said there were no changes made to the space and no future changes were planned, and that there was sufficient parking for clients. She reviewed the criteria and said they would be met.

[Timestamp 1:50:25] Mr. Rheume asked how long the prior esthetic studio was in operation. Mr. Stearns said she thought it was a few years but wasn't sure. She said she did a tenant fit-up for that unit in 2017 that was approved. Mr. Rheume asked what other services in addition to her aesthetic services were offered. Ms. Stearns said she offered facials, bridal makeup, pedicures, and other personal care and beauty services. Mr. Rheume asked if Unit 2 was the original portion of the business, and Ms. Stearns agreed. Mr. Rheume confirmed that Units 1 and 3 were added and doubled the business, and he asked if the ten employees worked simultaneously in the three rooms. Ms. Stearns said only four people could serve four clients at a time, so certain employees had certain days off. Vice-Chair Margeson asked Ms. Harris how the company was allowed to be established in the first place. Ms. Harris said it was permitted as a change of ownership for an existing nonconforming use in Unit 2 in 2017. Mr. Rheume asked what happened to make Ms. Stearns realize there was relief needed for the expansion. Ms. Stearns said the NH State Esthetics stopped by unannounced and had seen her other space because there was a shared hallway with the two tenants upstairs, so they wanted her to apply for a second and third shop license. She said she then realized that she had to come before the Board for relief. Mr. Rheume asked Ms. Stearns if she would agree to a condition that everything had to be by appointment only, and Ms. Stearns said she would, noting that walk-ins were not allowed anyway.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Mr. Nies moved to **grant** the variance as presented and advertised, with the following **condition**:*

- 1. The business model will continue to be by appointment only.*

Mr. Rheume seconded the motion.

[Timestamp 1:55:50] Mr. Nies said granting the variance would not be contrary to the public interest because there would be no changes to the health, safety, and welfare in the neighborhood, traffic had been handled, and parking was available and would not increase. He said there would be no effect on light and air and no changes to the essential character of the neighborhood. He noted that most of the buildings in The Hill area had some sort of business on the first floor and apparently upstairs apartments. He said the spirit of the ordinance would be observed, noting that in the CD4L1 area, the zoning purpose was to promote walkable mixed-use development. He said it was a use that was not allowed by right but was not contrary to the objective of the zoning. He said other similar uses in the area with the same amount of traffic were a Pilates instructor, counselor services, and so on. He said granting the variance would do substantial justice because it would allow the operation to continue. He said it would be a loss to both the tenant and landlord that would exceed any possible benefit to the public if the ordinance were enforced. He said it would not diminish the values of surrounding properties, noting that no evidence was present that it would. He said it had existed in some form for some time and no one had complained. He said the special conditions was that the shop was located in a unique enclave near downtown Portsmouth in an area of relocated historic buildings and mixed uses as designated by zoning. He said that particular building had a number of small unit sizes that he was sure would limit the desirability for any commercial uses. He said owing to those conditions, there was no fair and substantial relationship to prohibit the use as required by the ordinance and to apply that to the property.

Mr. Rheume concurred. He said it was an after-the-fact variance, which was always concerning, but thought it was an honest mistake. He said the fact that the applicant was adding two more rooms to her business expansion had no malice to it and that the applicant was trying to make a good faith effort to rectify it. He thought a stipulation was important for the appointments. He said the ordinance's definition of personal services included accessory retail sales of products related to services offered and also to beauty shops, barber shops, nail and tanning salons, clothing rental, and so on, so it was a broad category of uses. He said it was only allowed in CD4L1 and by special exception in CD4L2 and most of the surrounding area of The Hill. He said The Hill was unique and had more of a neighborhood feel to it than the CD4L4 and L5. He said most of the businesses were by appointment and that the applicant's appointment model was consistent with the other uses allowed. He said the stipulation would ensure that it would be in keeping with the spirit of the ordinance and general characteristics of the neighborhood. He noted that there were broad personal services in CD4L2 that could include a lot of walk-up services, so the fact that the applicant had distinct services from that made him feel better.

*The motion **passed** by a vote of 5-2, with Vice-Chair Margeson and Mr. Rossi voting in opposition.*

III. OTHER BUSINESS

A. Zoning Board of Adjustment Rules and Regulations

[Timestamp 2:02:26] Deputy City Attorney Trevor McCourt was present. Ms. Harris said the changes came out of the September work session's notes and that she wanted to hear the Board's

comments on the changes as updated and to know if the Board wanted to make further changes before moving on to a public meeting in the future.

Mr. Nies referred to Item 6, Minimum Requirements for an Adequate Plan, and the indication that the drawings did not need to be made to scale, as requested by the code official. He asked if a code official determined that drawings be made to scale. Ms. Harris said it depended on the application's details. She said simple residential applications could have hand-drawn plans but something close to a property line would need scaled drawings. It was further discussed and suggested that the default wording say that the drawing should be "to scale" unless the code official determines otherwise. Attorney McCourt said he would discuss it with the Planning Department staff.

Mr. Nies said not everyone was comfortable electronically combining PDF files into one file and he thought that City Staff combined them. Ms. Harris said that the city asks the applicants to combine them into one file before submitting and assemble it in the order that they want it to be presented.

Mr. Nies referred to Item 7, the tie vote issue. He said if there was a motion to deny that failed on a tie vote and then a motion to approve that failed on a tie vote, the Board had not really made a decision. He said they were two votes that failed and asked how it could be concluded that the Board has denied the motion. It was further discussed. Attorney McCourt said the rules had to be looked at together – the new Rule 7, new Rule 8, and Rule 5 – and that they said four affirmative votes were needed for the motion to pass. He said there needed to be a procedure to figure out the reason why the motion did not pass. It was further discussed. Attorney McCourt said the new Rule 6 would say that if a motion to grant a variance, special exception, or appeal results in a tie vote, then the result is a denial, and an analysis of why the motion was denied should be provided. Mr. Rossi suggested a sentence that said "in the event of a failure to achieve approval, the Board will tell the applicant the reasons for the denial". Attorney McCourt said the phrase "to deny" could be struck and a new rule inserted that said the motion maker has to provide a rationale, and if there is an unsuccessful vote that leads to a denial or tie that leads to a denial, then the Chair has an obligation to solicit reasons the reasons why.

Mr. Nies referred to Miscellaneous Item No. 4. He said the Board only wanted one active application in front of them at the time. He said there was recently an instance where an application came back to the Board several times because the Board had requested that the applicant provide additional information to support it, but the applicant changed the application a second and third time. He said the Board had not allowed applicants to change their applications while in front of the Board, but he asked if the Board should allow the applicant to change it if the hearing is extended and all the Board wants is additional information. It was further discussed.

Mr. Nies asked if Item 5D was eliminated because the Chair never makes press release. Ms. Harris said it was old language that wasn't applicable anymore. Mr. Nies asked what the Board members should do if they were contacted by the press about a Board decision. Attorney McCourt said the City Staff should take care of it but that a person's ability to talk to the press could not be restricted. Vice-Chair Margeson said it was stated that "all press and radio releases are to made as recorded

within the minutes of the meeting and shall originate with the Chair”. Mr. Rheume said that was before there were videos of all the meetings.

Mr. Nies said there wasn’t a rule that said when or how the Board could submit suggestions to the Planning Department or City Council, so the Board did not do it. He said there should be a way to track comments and meet once a year to discuss whether the Board wants to relay anything to the Planning Department. He said the Miscellaneous Section would be a good spot to put that in. Ms. Harris said it could be part of the annual meeting when policy and procedures were discussed.

Mr. Rossi referred to Item 9, the applicant submitting a request to postpone. He asked if there was a way that the Board could get that information out to the public when it came so that the public didn’t have to show up and then leave the meeting. Ms. Harris said they post an updated agenda with a request to postpone. Mr. Rossi said he noticed that the 48 hours was bracketed and asked if it meant that the applicant was required to submit the request within 48 hours’ notice. Ms. Harris said the Planning Department could request 48 hours when Staff could approve a postponement. It was further discussed and decided that a notice submitted two business days before the meeting was a good way to phrase it. The terms “may” be postponed and “shall” be postponed were discussed. The Board decided to use the term “may”.

Vice-Chair Margeson asked Attorney McCourt if he was comfortable with the wording on Item 7 so that the Board did not have to solicit comment to decide whether they had jurisdiction. Attorney McCourt said the Board was not obligated to do so, and in a *Fisher v. Dover* issue, the review upon approval was *de novo*, so the applicant would have the right to make an argument before Superior Court. He said the Board could make it mandatory if they wanted to.

Mr. Nies said the City Council passed out a Volunteer Training Standards manual at the January meeting, and he asked when it would be implemented. Ms. Harris said she would find out. Mr. Rossi asked if the Board had new requirements for training. Attorney McCourt said it would be underway. Mr. Nies said it included an overview of ethics requirements, which was further discussed. Ms. Harris said the City Council passed a third reading on the changes to Articles 5 and 8. She distributed the changes and said she would provide the Board with updated links.

IV. ADJOURNMENT

The meeting adjourned at 9:46 p.m.

Submitted,

Joann Breault
BOA Recording Secretary