

## ZONING BOARD OF ADJUSTMENT

May 15, 2018

### DRAFT MINUTES

#### 1. Call to order

The session was called to order at 7:00 p.m. by Ms. Laura Davies - Chair.

#### 1. Introductions

Members present Laura Davies – Chair, Robert Prior – Vice-Chair, Rick Thielbar – Clerk, Martha Pennell - Alternate, Joanne Petito – Alternate, Chris Merrill – Alternate. Staff present: Doug Eastman – Building Inspector. The Board welcomed Mr. Chris Merrill who joins the Board as an Alternate.

Members of the Public were also present.

#### 2. New Business – The Board has the option to not open any new cases after 10pm

**Case # 18-03 Seacoast Mental Health Center Resources Group Inc.** requested a continuance to the June 19th, 2018 meeting.

**Case # 18-02 Excel Construction Management on behalf of Friedman Realty, Inc. (173-179)**

Mr. Michael Todd approached the Board tonight requesting a re-hearing of the requested variance that was denied at the last meeting. He states there appears to have been some miscommunication at the last meeting. He states they are not here tonight for a re-hearing. He feels they may not have been clear enough on the last presentation as to what the 10 ft section is in the back of the building. The 10 ft section is so far away and at an eye level it has very little impact to the eye and feels it is not a practical point in this argument.

Ms. Davies – Chair pointed out that the Board will not go over the actual merit of the actual decision. According to the application it appears the applicant thought it was not necessary to actually request relief for the set back. And the argument was that it is not required under the zoning laws.

The Board entered deliberation.

Mr. Thielbar says that relief is required under the ordinance. The space the applicant is talking about was never allowed by the original provision of the zone it was there by grandfathered but anything outside closer than 25 ft to the property no matter how high was never allowed by the zone. The fact that the bottom is grandfathered is irrelevant. The point that the applicant made in not needing to apply was wrong.

Ms. Davies – Chair says she disagrees with the applicant. The building itself is none conforming because it does not conform to the current zoning and any expansion would require relief.

Mr. Prior – Vice Chair says he agrees and there has never been an issue with any expansion.

Mr. Thielbar pointed out that nothing passed prior to the final vote so the outcome was not changed by the confusion of the first vote.

Ms. Petito does not think what is written in the application accurately reflects what happened at the meeting. She feels the abutter's attorney accurately represented what happened to the change of Vote. However if there is any change that the Board made an error in voting she feels that it would be wise to reopen deliberations or a rehearing. She does not think we made a mistake.

Mr. Prior – Vice Chair states that his concern which is based largely on the Draft Minutes and he would need to go back and watch the video. But his recollection is that the final vote was quiet clear on the basis that the Board made their decision. And he does not think there was any confusion and there certainly was no coercion. It was just simple self awareness.

Ms. Davies – Chair says that the Board adequately corrected themselves and very clearly concluded the business.

Ms. Petito states it was pretty clear on record as to what had happened.

Ms. Pennell states that the Board has not approved any Minutes yet. She also noticed in the letter that it states that member Pennell wanted to vote to deny the application because it did not meet the public's interest prong. She states she does not remember that. However she is not saying she did or did not and there is nothing in the minutes that shows that. She feels in fairness of every bodies concern and because the minutes were not approved. She feels that the Board should give the applicant the benefit of the doubt and let them have a rehearing.

Ms. Petito states as far as the Minutes were approved they are not always approved but one can still look at the video which is available right away. However the Minutes were not accurate and that is still an issue.

Ms. Davies- Chair states that the first Draft Minutes were inadequate.

Ms. Pennell states that they have revised Minutes in their packets tonight, which they have not gone through yet.

Ms. Davies- Chair is asking Mr. Doug Eastman the Building Inspector if there is any requirement or are we on any certain footing if we make a decision prior to having minutes.

Mr. Eastman said we were fine.

Mr. Prior states his concern to grant the applicant a rehearing is the underlying facts of the case have not changed. And he does not see the basis for changing the decision that was reached at our previous meeting. Nothing in this application other than A, which we feel would be easily dealt with by the fact, that in fact the setback relief is required because it is an expansion of a none conforming use. That would indicate an error if in fact was true and we did not have to vote on the setback. We believe that it is and we know that it is to our ability. Everything else is processed not about the underlying case and in all fairness to the applicant he is not sure that simply extending the time is fair to the applicant, because none of the underlying facts have changed. He is not really in favor of simply granting a request for rehearing simply because there was potentially some confusion. That confusion did not have to do with the underlying facts of the case.

Ms. Davies – Chair says there was confusion and the Board recognized and corrected it and made a decision in clarity.

Mr. Prior – Vice Chair says he presumes that the facts would be represented in the same matter. We would call for the applicant to go thru another application and process, the abutters, neighbors and others to come out again. It does not seem fair to grant a rehearing without having some basis of thinking " you know there was something we did wrong and we could potentially redo " but he does not think that is the case.

Ms. Davies – Chair says that she thinks the two reasons for granting the rehearing is that there is new information which will have a bearing on the decision or that the Board feels they had errors, based on the applicants concerns. She believes those are the two things that should be considered. And she believes we do not have any new information so that is not a concern and we discussed the Board error issue.

Mr. Thielbar motioned to reject the request for a rehearing.

Mr. Prior - Vice Chair seconded the motion.

**Motion passes 5-1**

**New Business continued:**

**The Application of Ronald and Beatrice Eldon for a special exception per Article, Section , Schedule I: Permitted Uses and Article 5, Section 5.2 to permit an existing “In-Law” Apartment to be converted to an accessory dwelling unit. The subject Property is located at 141 Brentwood Road, in the R-1, Low Density Residential zoning district. Tax Map Parcel #60-22. Case #18-06**

Mr. Eldon approached the Board tonight stating that he meets all the requirements to convert his current “In Law” Apartment into an accessory dwelling and is asking the Board to grant the conversion. The house was built in 2005 and the “In Law” Apartment has been in existence since 2005.

Mr. Thielbar is asking the applicant if there will be any structural changes. And is it a paper work request only.

Mr. Eldon says there will be no structural change made and yes it is a paperwork request only.

Ms. Petito is asking if this is an attached Unit.

Mr. Eldon states that it is an attached Unit.

Ms. Pennell states she thought she read that the applicant had the approval of the Building Inspector at the time. And she is not sure why it has to be approved again if it was already approved in the past.

Mr. Eldon says it was permitted and they did get a certificate of occupancy from the Building Inspector, for both Units.

Mr. Prior – Vice Chair states it was previously approved as a part of the home. But now the applicant is asking for approval of legally renting the Unit and as such the applicant has to go thru the process for it to be approved.

Ms. Pennell is asking where it is written in the zoning.

Ms. Davies – Chair states that an accessory Unit means that there is a primary family Unit and then another Unit that can be either occupied by a family member or it can be rented out. The only stipulation is that one of the Units has to be owner occupied.

Mr. Prior – Vice Chair sites in order for it to be a legal accessory Unit it has to be approved.

Mr. Eastman states that the State has basically said that accessory dwelling Units are something that are accepted with some conditions and they meet the requirements.

Ms. Pennell is asking if it has to be recorded on the deed.

Mr. Eastman says yes it has to be recorded as a Deed addendum.

**There were no Public comments.**

Mr. Thielman motioned to accept the application to convert from an “In Law “Apartment to an Accessory Dwelling Unit.

Mr. Prior – Vice Chair seconded the motion.

Ms. Pennell says that she does not like the word In Law. She also feels that the regulations to the addendum of the Deed need to be followed and that needs to be in the motion.

Mr. Prior – Vice Chair seconded the motion.

Ms. Pennell is making an amendment to the motion to remove the words In Law.

Mr. Prior seconded the motion.

Mr. Thielbar wanted to know how the motion would sound without the words In Law.

Mr. Prior – Vice Chair suggested that we deny both motions and start all over with a new motion that is very clear.

4- 1 The motion to amend the original motion has passed.

Mr. Prior – Vice Chair motioned to approve the permit to change an existing apartment to be converted to an accessory dwelling unit.

Ms. Petito seconded the motion.

**The motion passed unanimously.**

**New Business continued:**

**The Application of Carl Stevens for an Appeal from an Administrative Decision made by the Historic District Commission (at their April 19<sup>th</sup> 2018 Meeting) regarding the proposed replacement of a handrail on the existing residence. The subject Property is located at 61 High Street in the R-2, Single Family residential zoning district Tax Map Parcel #71-107. Case # 18-07.**

Ms. Petito addressed the Board to let everyone know that she personally knows Mr. Stevens. However she feels that she does not feel it would affect her impartiality and does not think she needs to recuse herself. She also says she knows one of the abutters the Harrisons and she does not feel either one of those will affect her impartiality.

Mr. Stevens approached the Board tonight stating that he feels he should be able to use the handrail of his choosing. He states that the wrought Iron railing that he would like to replace the original one with is blending in with the siding of the house and feels it is the right railing for a Victorian House. He says it will look just like the previous railing only slightly bigger and will not be noticeable from a distance. He says it basically looks the same as it was years ago. He says he is not looking for it to be a Museum and will do his best to keep the Character of the house.

Mr. Prior – Vice Chair is asking the applicant if the removal of the Soffit and the change of the Columns did that require approval.

Mr. Stevens stated no, that happened in 2003 before it was a historic district.

Mr. Thielbar asked when the handrail was removed.

Mr. Stevens says he “guttered” the porch because he had structural rot. He said he did the shroud around the base in stone, which previously was done with shingles, and added a proper foundation to that.

Mr. Thielbar asked if there were any hand rails in 2003 before it became a historic district.

Mr. Stevens says no, there were no handrails at that time.

Ms. Davies – Chair opened the session to the Public.

Ms. Amy a Neighbor at 60 High Street right across the street from the Applicant approached the Board tonight and stated that she thinks there is no good reason not to allow the proposed railing. She has watched with great interest all the work being done on her Neighbors house and he seems to be doing a great job.

**The Board enters Deliberations:**

Ms. Davies says that she is not an expert on this issue, but on one hand the applicant makes sense. However on the other hand the Historic District Commission is experts on this issue.

Ms. Petito says that as far as the substance it seems to make perfect sense to put in a lighter handrail, besides from it being practical and esthetically with the thinner rail it looks and fits in nicer.

Mr. Prior – Vice Chair states this is unusual; it is the second time in 10 or 11 years that we've had this. It is fairly unusual. He would have to look at it from a practical stand point and it seems unfair to burden the applicant. The Financial part is not that dramatic. He says from his perspective it is more important to replace the railing than it is to do without it.

Ms. Davies also agrees that it is more important to have a railing. And the fact that it could go without it for 10 years and to impose a will on somebody is a bit unfair. She says she read the minutes from the HDC and she recognizes the expertise of the HDC, she does not feel there was a lot of concrete reasons for their decisions about this. It seemed to be more of an esthetic preference.

Ms. Pennell says she listened to the streamlined Meeting of the HDC and she felt the Commission was very conflicted over this proposal and they were no definite reasons. However, she believes the applicant had already partially bought the railing and already designed and it is out in the back yard.

Mr. Stevens says he had decided that the item that was voted on in March that allowed minor changes in the historic district. It sounded like it was perfect and the kind of thing he can do. He knew a welder and got him started on the project. He said he spoke to Mr. Eastman afterwards and was told no that is not what was voted on, but by then he had already started. He states he had already started before the Historic district was formed and just continued on. He stopped and has not done anything else since the Historic District was formed and he is ready to finish his project. He says he did come to the Historic District Commission with his plan, but the only mistake he made was deciding that the vote was going to handle minor Historic District questions and that was not the case.

Ms. Pennell says she is concerned that we do not support our Board and wondering if he could just go back and talk to them again.

Ms. Petito says it does not appear to be productive to do so.

Ms. Davies – Chair says that the applicant would have to put a new proposal together to go back and ask for another decision. She also feels uncomfortable to not support the HDC but she also does not see anything in the minutes that shows they are adhering to any regulations.

Ms. Petito states she did not see anything in the minutes referring to any regulations either and was wondering what this was based on. The only thing she saw was that one or two members thought that the railing should be thicker and seems to have a preference to have it look the way it originally was. However there is no railing now and it was removed before the Historic Commission was formed.

Ms. Davies – Chair says there are pictures in front of her with Historic Homes and several of them have metal handrails. Although no expert in this issue she has a hard time understanding what the basis of their decision was.

Mr. Prior motioned to grant the appeal from an Administrative decision of the HDC and allow the home owner at 61 High Street to proceed with the plan as proposed to the HDC for replacement of the railings.

Mr. Thielbar seconded the motion.

**Motion passes 4-1**

**New Business Continued:**

**The Application of Exeter Station Properties, LLC for a variance from Article 5, Section 5.1.2 for the expansion of a non-conforming use to permit the proposed construction of a 22 unit multi-family condominium development on the property located at 1 Rockingham Street with less than the required minimum front and side yard setbacks. The subject property is located at the C-1, Central Area Commercial zoning district, Tax Map Parcel #73-175. Case # 18-09.**

Ms. Sharon Somers with Donahue, Tucker and Ciandella, PLLC representing Exeter Station Properties, LLC approached the Board stating the relief they are seeking tonight is to expand an existing non conformity. Essentially what they are looking to do is to extend in an upwards direction the existing non conformities of a setback as between two of the buildings on the property and then the third building on the property in the adjacent property line. Essentially



the use is allowed in the C-1 district and the entire dimension requirements are going to be met.

Mr. Henry Boyd with Millennium Engineering approached the Board tonight to visually show the Board drawing plans of the proposed project. The plans are showing an existing structure which the applicant intends to add a second floor too. The plans include an overview from above and vertically. Each one of the buildings has been there for a long time and is very close to the property lines. One of the property lines is very odd the property is at the corner of Winter and Rockingham Street and if you turn onto Rockingham Street off Winter Street Just beyond the Cote's Auto Body Building that line runs right between those buildings. Each of the buildings existing now violates the set back but when they were built there was no setback to adhere too. It is a non conforming grandfathered situation. There is a slight overhang that extends onto the Cote's Property, but that will be addressed. He is also asking to keep the same setbacks that are encroaching now.

Mr. Mark Rogers with Winter Holben Architecture approached the Board tonight and pointed out a primary entrance from along Winter Street on a map in front of him. The Map shows the Gatehouse that is the first request they have, basically taking a one story building and putting a second story on top of it with a gable roof which will bring it in line with the residential structures on Winter Street itself. The new Roadhouse buildings along the Westside are all conforming. The Map shows several buildings to be expanded upward to a second floor.

Mr. Prior – Vice Chair is asking if the entire thing is going up two stories or will there be a well in the middle of it. So, the outside of it will all be two stories.

Mr. Rogers says yes the outside of it will be two stories. And he went in front of the Board members to show them on the Map what it would look like.

Ms. Somers showed the Board more of the Buildings on the Map and what it would look like. She says it looks like that Building number two is a two story property behind the Cote's property. She says the importance here is the proximity of building two to the existing Cote's Building is not going to be so pronounced that it's going to impact the operations of the Cote's commercial operations and the same thing would be true with building number three over on the Prescott side property as well. She says she wants to briefly go over the variance criteria's submitted with the application materials. The variance is not going to violate the public purpose of the ordinance and what we are talking about here is the setback ordinance and the setback ordinance is to avoid overcrowding. The property historically has been used as warehousing and Industrial purposes adjacent to the rail line and there are also a number of adjacent resident properties. The Prescott property is also being used for warehouse purposes. The buildings that were discussed prior which will require an expansion of a non conforming use for setback purposes are buildings number two (2) and building number three (3) on the plan. Those buildings do not abut residential properties. The residential properties in the neighborhood also have a second story. The net result of this is that nothing that we are

proposing in a way of expanding in a non conformity in an upwards expansion is going to alter the essential character of the neighborhood and there is nothing that constitutes a Health, Safety and Welfare issue. The 2nd Criteria are the same as the public purpose and we have already addressed that. The 3rd Criteria are a diminution of property valued for nearby properties the proposed use which is multi residential use is allowed by right. The proposed density meets the ordinance criteria and we are below that. The proposal that we have of the expansion of non conforming use does not impact the residential properties. With regards to the commercial property, the Cote property currently does not have 2nd Floor. We are going up and therefore believe there is nothing in our proposal that would impact their commercial operation and similar with the Prescott Property. The 4<sup>th</sup> Criteria which is substantial justice, we believe if the variance is granted it will allow for a building of this design, buildings two (2) and three (3) which were previously discussed and will create the number of units allowed by right. It will also enable the space inside for parking which in a way is going to facilitate the use of those units making the overall flow and appearance of the property more attractive. We do not believe that there will be any individual member of the public harmed nor is the public at large. Lastly with regard to hard ship, the fact that the property is unique and situated in an interesting part of town next to the Railroad Station and the existing buildings on site have historically been used for warehouse purposes. It has a nice open interior space which will be incorporated into the overall design. Building three (3) which is also referred to as the Gate house has a basement which is something we would like to retain if we can. This particular part of Town has been a subject of interest in the Master Plan, in that Master plan the Town identifies a need to review zoning ordinances to identify ways of diverse housing, which we believe if our project is approved it would assist with it. To support the Lincoln Street improvement project, the proposed property is adjacent to the Lincoln Street project and would certainly help toward the improvement. Also inventory underutilized and underdeveloped properties and this is good example how it could be done. Additionally the hardship criteria calls for determination that there is no fair and substantial relationship between the general public purpose of the ordinance and the application to this property since the purpose is to prevent overcrowding there is no substantial relationship between the purpose and the property at hand because of the limited impact of the effects of the 2<sup>nd</sup> floor onto the abutting properties of the Cote Auto Body and also the adjacent commercial property. We believe that the proposed is reasonable because adding the 2<sup>nd</sup> floor is really critical to the overall design and is critical to our ability to be able to produce a residential condominium complex with the number of units that we are allowed to do by right and which is strongly encouraged within the Master Plan.

Mr. Prior – Vice Chair is asking about the one application submitted for 2 different buildings and are they considered separate.

Ms. Somers states they are not separate, they are considered one property.

Ms. Davies – Chair opened the session to the public.

Ms. Lee McCain at 8 Rockingham St. approached the board tonight states she has a few serious concern. She says she disagrees with it alleviating traffic congestion. Rockingham Street currently has 4 houses adding 22 more houses is an increase of 550% household going from 22 compared to 4. Her concern is with congestion in general and the proposed traffic pattern. She says she would not argue the fact that these buildings would be more aesthetically pleasing from what is currently there but they sacrificed that for what they currently have, a children and pet friendly environment. She is also concerned about the trash removal and wonders are there going to be 22 barrels of trash lined up down Rockingham Street. But mainly it is just about putting that many houses into an already in town small congested neighborhood and the traffic impact which will affect the quality of life for anyone.

Mr. Barry Azzela with Cote's Auto Body approached the Board tonight and asked what the space on the Map is. He says the reason behind that question is if it serves no purpose, these buildings could be slit down and that would avoid the encroachment on the Cote Building. He also would like to have the Board discuss a second issue which is the encroachment of the property line of the Cote Building which exists and the new building will continue the encroachment which should not exist. This should not be approved if it does. He says their building or their roof line cannot encroach on someone else's property line.

Ms. Davies – Chair says she believes they said they are going to correct that.

Mr. Azzela says he looked at the drawing (A2.5) and says the roof is overhanging over the property line and building 2 possibly as well.

The Board is reviewing the drawing.

Ms. Somers says that she would like to address a couple of the things. She says they will be going to the Planning Board and she will be pleased to have further discussions and address all of the important issues that were raised. However in general the proposal we have is a mixed use residential and is allowed by right as is density and really what this Board is considering tonight is simply a very limited question of the non conforming setbacks that said we will be happy to talk about the issues and concerns to Ms. King later on. With regard to the concern about 7A (on the drawing) Mark Rogers will explain what that I said also Henry will talk about the encroachment. She says the roof is not going to encroach any further onto the abutting property; Henry will expand on this a little further.

Mr. Rogers says in regards to the white spacing A1.0 graphic, that is an egress that will be coming down from the existing 2 story space that currently extends over that interior roadway and Henry will address the setback.

Mr. Boyd says the issue regarding the Architectural overheads, there is no property line showing, those black lines are simply graphic representation of what's there. And just to clarify there is an existing portion of the overhang, a slight overhang that actually exists on the Cote

property. And why it's there is because they probably did not exactly know where the property line was when they first build the building and it's been there for a very long time. Only a survey determines where these things are. Back in time a lot of things were built right up to the property line. Mr. Azzela is right and it has to be corrected, we have to stop the building including the overhang shy of the property line and it will be corrected.

Mr. Prior – Vice Chair is asking if they are not just simply going straight up but will respect the fact that part of the existing building needs to be moved back from the property including the overhang

Mr. Boyd says that's right it is not the face of the building it is the overhang. The matter of why can't you shift the building; remember because we are building straight up, minus the overhang.

Ms. Petito is asking if it is just the overhang that is encroaching and it is not the actual building.

Mr. Boyd says it's a tenth of a foot as he sees it, but where there is the concern he will certainly have his men re-verify the location of the building. To his knowledge when he looked at it and it was more than once and he will do it again, he believes it is simply the overhang on the building and whatever that treatment is because there is a slight overhang in there.

Ms. Davies – Chair says just to be clear the proposed plan is absolutely no encroachment on the abutting property.

Mr. Boyd says we cannot build that building with a 2<sup>nd</sup> floor and encroach on that property.

Mr. Thielbar says the overhang along the whole face of from what is being discussed is going to come off when the building goes up.

Mr. Boyd says he does not know exactly what the Architectural treatment is. He says some of that building will have an enhanced overhang which is slightly larger than what is there now but in that specific area between the Cote properties they cannot expand because the building is so close to the line.

Ms. Davies – Chair wants to clarify that we answered Mr. Azzela's questions. And she just wants to make clear that just the overhang is encroaching and not the building.

Mr. Azzela says yes the overhang is encroaching. He is asking the Board that if they approve the proposal to have it stipulated. He says his other concern is the pitch and the water runoff, based on the roof lines it looks like it is dumping the water to the backend of the property in between building and he is concerned about flooding.

Mr. Prior - Vice Chair states that is a Planning Board issue.

**The Board entered deliberations:**

Ms. Davies – Chair states the 2 matters before us are the 2 buildings and their setbacks, front and side setbacks.

Mr. Thielbar says it looks very straight forward. It is a very large property. And we are looking at a small interface that's hidden from everyday view except for the Gate house were they want to put a 2<sup>nd</sup> story on. The whole project represents such a vast improvement over what is there now. And he is in favor of supporting their request if it makes it easier to bring the project forward.

Ms. Davies – Chair says that there are some concerns and issues with the abutter that need to be discussed with the Planning Board. But for our purposes she thinks it is pretty straight forward. It is a permitted use and they meet all the other criteria. And they are looking for a second floor expansion for those 2 buildings. And she agrees that it will be an improvement to the area.

Mr. Prior – Vice Chair completely agrees that it will be a great improvement to the area. However he has a concern about the 2 properties, he briefly touched on this with Attorney Somers when he asked her if the 2 properties are considered separately and he is a little concerned about the appearance of the Gate house building #3 and not so concerned about building #2. He believes they have the opportunity to put up a nice structure there, but he thinks the issues as far as egress and other than what we heard from the abutter will certainly be addressed by the Planning Board and should be addressed by the Planning Board. He does not think there is controversy surrounding the expansion about building #2, he is a little concerned about building #3, and he does not think it looks very good. To have that 2 story building right up front, he was hoping to treat them separately. But if they are treated together than he would be in favor of this application as of this stage. He does believe of giving them the nature of the proposal we should go thru the variance criteria's just to make sure we done due diligence on that, but his instinct says this is an appropriate application request to approve.

Mr. Thielbar says he agrees with Mr. Prior. He says trying to extend the existing building does not make much sense it will impact the rest of the project as it greets you when you come, but he feels they will figure that out.

Mr. Prior – Vice Chair says that he had not noticed that there was a basement until it was mentioned, which does change the nature of the construction project as well. Not significantly but it does change it, and moving the building would be much more difficult.

Ms. Davies – Chair says she does not think that the building looks bad, or would be out of place there. Once it's there it would be fine in her opinion.

Ms. Davies feels that the Board should discuss the criteria's Even though Attorney Somers had previously discussed the criteria's.

Mr. Prior - Vice Chair fairly rapidly went through the criteria's.

Mr. Prior – Vice Chair motioned to grant the variance as requested.

Ms. Petito seconded the motion.

**Motion passed unanimously.**

**New Business Continued:**

The Application of Phillips Exeter Academy for a variance from Article 5, Section 5.7.3 and 5.7.4 to permit the installation of a signage fin (with changeable displays) which will exceed the maximum dimensional sign regulations for the R2, Single Family Residential zoning district. The subject is located at 50 Court Street (Center for Theater & Dance), Tax Map Parcel #83-1. Case #08-10.

Ms. Pennell states that before they begin, in fairness and interest of full disclosure she has spent the better part of her life as an abutter at 69 Court Street and she it is up to the Board to decide whether to disqualify her or not.

Mr. Thielbar is asking if Ms. Pennell thinks it does disqualify her.

Ms. Pennell says quite frankly it does.

Mr. Thielbar agrees with Ms. Pennell.

Mr. Prior – Vice Chair says that Ms. Pennell felt the same way then when they heard the application for the Field house and the construction of the building. And there was no conflict of interest at the time.

Ms. Davies – Chair says she feels Ms. Pennell has no problem to be impartial on this subject,

Mr. Mark Leighton - Director of Facilities at Phillips Exeter Academy approached the Board tonight and showed a presentation of the Signage Fin layout and location.

Ms. Davies – Chair says that the renderings are not very informative and if there is more detail maybe the Board should look at the pictures.

Mr. Leighton presented the Board with a projected ZBA presentation outline of an Introductions and Agenda Overview. Also a South Campus Overview and a Variance application and request. He also pointed out a picture to the Board showing Court Street and the Old tennis courts that were previously there. He says they developed a master plan for the South Campus (the entire shaded area on the picture) the Theater and Dance Hall are there now is nearly completed and they relocated the Tennis Courts to were the Baseball field used to be. The New Field House is there which opened in January of 2018, and behind are parking lots and a new Storage Building for Facilities, also a new entry into Love Gym. Gilman Street was turned into a Pedestrian walkway and nearly complete. A lot of landscaping area around the Theater and Dance is being worked on and should be completed by August 2018. He is showing more renderings of plantings and where the signage should be. They had the Planning Board approval for the Theater and Dance facility back in November/December of 2015. They received approval from the Planning Board for the Field House and Parking Garage in February/March of 2016. In summer of 2016 they took down the old Thompson Cage and started construction and re-opened in January of 2018. There is also a 169 car parking garage under the Field House. He is asking for a variance request on the proposed Sign of 75 Sqft (15'H x 5'W) and 18 ft High (from Curb), the 208 Sign Ordinance Article 5, Section 5.7.3 and 5.7.4 are a maximum of 24 sqft and a maximum of 18 ft High (from Curb). The actual Sign design is pretty straight forward and simple. There will be painted black steel bars and two (2) printed plastic banners for each show four (4) times a year and both banners will be taken down after the show is done. He says the Theater and Dance Building is 46.5 ft tall. He is showing a rendering of what it would look like if they were in compliance with the Ordinance and how much of a difference it would be they would have two (2) 24 sqft signs because one (1) for Theater and one (1) for Dance and he feels that it is not appropriate for the purpose of the sign. The signs would be per Function and not per building.

Mr. Prior – Vice Chair is asking to see the previous slide with the proposed signage info on it. He is asking the applicant for an explanation on what he just said.

Mr. Leighton says that basically what they are requesting if they were in compliance is to have one (1) sign for each Theater performance. He says they would be in compliance with the height regardless.

Mr. Prior - Vice Chair is asking the applicant why he interprets the sign Ordinance for him to have the right to double it.

Mr. Leighton says they are looking at it as per function and not the building. He says we have a Theater performance more of a multi use of the building that it's a Theater and Dance building.

Mr. Prior states he does not see how that goes along with the zoning ordinance.

Mr. Leighton says the intent is clearly to maximize and that is why they are asking for the larger proposed sign.

Mr. Prior – Vice Chairs says that the applicant stated a slight increase, but it really is almost triple the allowed amount and far from slightly. He is also asking the applicant that the reason for asking for this size is not because he is buying a pre-bought and from the application it was unclear whether it may have been a pre-bought sign with flashing lights or something like that.

Mr. Leighton says no there is no flashing light, just a simple up light on both sides. The reason they wanted a larger sign is not just the words but also the graphics involved and for it to be legible when someone drives or walks by. He says it is not just a marquee banner but they are trying to be a little bit more artistic with the approach.

Ms. Pennell states that the sign appears to be blocking the O'Neil House and that this is a residential street.

Mr. Leighton says that is correct.

Mr. Thielbar states that the rules say 24 ft and 10 sqft high and the 10ft high is not measured from the bottom of the sign. The proposed sign is twice as high as and 3 times bigger than it should. And on top of that the applicant is asking for a digital display.

Mr. Leighton says they are not asking for a digital display, it is not in anything that they brought in.

Mr. Merrill is asking if there will be just lights underneath the sign and he heard thru rumors that somebody wanted the whole wall to be lighted.

Mr. Leighton says no there will only be some simple up lights.

Mr. Prior is asking if the lights need zoning approval.

Mr. Eastman says just the sign.

Mr. Thielbar thinks it is dangerous for the student body to hang this sign.

Mr. Leighton says a good thing is that they will not be doing it. He feels for the purpose of the sign the proposed size is appropriate and needed. He also feels visually it is not a negative impact on the area.



Ms. Petito is asking what is directly across the street from the building, is it Academy property or homes.

Mr. Leighton says that is Academy property, so is the house on the corner they just purchased. The white house showing, the O'Neil house and the 2 houses down are also Academy property.

Ms. Petito is asking when there are no performances will there be no banners and will it be just an empty frame or a banner that says something else.

Mr. Leighton says the plan is to not have anything, the name of the building will be on the building itself. It will just be an open frame until the next Event and there are four (4) performances a year.

Ms. Davies – Chair says she believes that the events are open to the public and that is the intend for having a bigger sign to attract the Public.

Mr. Leighton says there is no charge for a performance and it is open to the public. And this is part of helping to promote that it is a Theater and Dance Building an Arts Building and instead of having just having letters on the sign they want it to be a little more artistic. The intend is not a visual banner but a printed banner that they would install.

Mr. Thielbar is asking Mr. Eastman the Building Inspector if the applicant can start over again with building signs when they come and put the name on the side of the building.

Mr. Eastman says no, we have historically allowed building identification of the donor's name, which is not included in this and is not considered as signage.

Mr. Thielbar is asking what the name of the building will be.

Mr. Leighton says it is the David and Stacey Goel Center for Theater and Dance.

There is no Public present.

**The Board entered deliberations:**

Mr. Prior – Vice Chair says he does not see any hardship and does not see anything wrong with the existing size dimensions that are allowed. However he finds it intrusive in a residential neighborhood and unnecessary and does not believe there is a benefit. He believed the benefit of the applicant clearly outweighs the visual impairment that is going to be experienced by the general public seeing that sign on that street. He would like to go thru the crite-

ria's to discuss them but does not feel that the proposed sign is appropriate on Court Street. He sees no rational of tripling the size of the allowed sign and increasing the height substantially. It is an extraordinary request and seems completely unnecessary and certainly not in the spirit of the zoning ordinance.

Ms. Davies – Chair says that even though this is an Academic building it is still in a residential neighborhood and all the other signage is pretty unobtrusive and this request is hardly unobtrusive.

Mr. Prior – Vice Chair says that all other signs are very subtle and this request is not.

Mr. Merrill is asking if the visual effect would change with the trees and landscaping. And is it only being noticeable now because there is no landscaping.

Mr. Thielbar says if you put landscaping and trees in front of it you might as well not have it.

Mr. Merrill is saying what about behind the sign and not right in front of it.

Mr. Prior says it would have a moderate impact but also thinks we are approving a sign that is three (3) times the size that is allowed.

Ms. Davies says the requested sign is analogous to a billboard sign, even though it is a different shape.

Mr. Merrill is asking the board if they would object to a sign that big on a building.

Mr. Prior says yes he would because it is three (3) times the size of the allowed sign in the zoning ordinance.

Mr. Thielbar says he does not believe the proposed sign will be empty all year long.

Ms. Petito says even if it is empty then it is a big metal structure.

Mr. Thielbar says it does not violate criteria four (4) but violates everything else.

Mr. Prior does a brief reading of the criteria's.

Mr. Prior – Vice Chair motioned to deny the application for variance for the sign on the basis that it does not meet criteria 1, 2, and 5.

Motion was seconded by Mr. Thielbar.

**Motion passed unanimously.**

Mr. Leighton asked to approach the Board again.

Ms. Davies says there is no problem with him approaching the Board again and speak, but the application is over.

Mr. Leighton approached the Board and states that he disagrees with the approach of the decision that is the Boards protocol. He says as far as residential area, there are exceptions. He is looking at the ordinance now and if they were a civic organization the residential allowance would be up to 40 sqft. He says as far as the 24 sqft, he understands that it is a residential area and he thinks that zoning board also approved a 46.6 ft building that is 20 ft off the road. There is also property across the road that is not higher and to them it is in context and was already approved. He thinks it is unfortunate that the Board took that stance. He says there is one thing he would not mind if it was possible tonight is the opinion of the Board having two (2) 24 sqft signs, one (1) for Dance and one (1) for Theater.

Ms. Davies says that if the applicant wanted to submit a new application as a civic organization, perhaps that might be more favorable.

Mr. Prior – Vice Chair says he is not prepared to make any comments on either of those.

Mr. Leighton says he is not asking the Board for 40sqft, just bringing up the point of that there is exceptions that there is more than 24 sqft.

Mr. Prior says the Board has to vote on the application before them. And this is not a discussion to have with them.

Mr. Leighton said that was fine and he apologized for having brought up the discussion.

#### **Election of Officers:**

Ms. Davies pointed out that the Chair position is open.

Mr. Prior – Vice Chair calls point of order on who are the full time members as opposed to the Alternates.

Ms. Petito says she is now a full time member.

Mr. Thielbar says she would be a good candidate for the Chair position.

Ms. Petito says she is not ready to be in the Chair position yet.

Mr. Prior – Vice Chair says he believes the other members have already served.

Ms. Davies – Chair says the only other full time member they have is Kevin and he is not here today.

Ms. Davies says it is good to change it up and not have the same person be the Chair year after year. Since there is none currently volunteering for the Chair position, Ms. Davies says she can do it for one more year?

Mr. Prior – Vice Chair is nominating Ms. Petito for Vice Chair and says it is simply an opportunity to be the Chair in the Chair's absence. He is also at this time making a nomination of a slate of Laura Davies's Chair to Joanne Petito as Vice Chair and Rick Thielbar as Clerk for the coming year.

Ms. Petito says she would be willing to do that.

Ms. Davies - Chair is stating for the record that next year it should definitely be someone else, other than herself.

Mr. Prior – Vice Chair is asking if Alternates can vote.

Mr. Thielbar says he is pretty sure that they cannot and that three (3) is enough to vote.

Ms. Davies - Chair says there are four (4) fulltime members present tonight and we can do this.

Mr. Prior – Vice Chair read that only regular members of the Board are eligible to be an officer and that majority of the vote is regular members of the Board, Chair Vice Chair and Clerk.

Mr. Prior – Vice Chair motioned that he would like to nominate Ms. Laura Davies as the Chair.

Mr. Thielbar seconded the motion.

**3-0 Motion passed.**

Mr. Prior – Vice Chair motioned that he would like to nominate Ms. Joanne Petito as the Vice Chair.

Motion was seconded by Mr. Thielbar.

**3-0 Motion passed.**

Mr. Prior – Vice Chair motioned that he would like to nominate Mr. Rick Thielbar as the Clerk.

Ms. Davies – Chair Seconded the motion.

**3-0 Motion passed.**

**Approval of the Minutes March 20<sup>th</sup> 2018:**

The Board discussed amendments to be made and decided to review them again until the next meeting.

**Approval of the Minutes April 17<sup>th</sup> 2018:**

The Board discussed amendments to be made

Mr. Prior – Vice Chair Motioned to approve the April 17, 2008 Minutes as amended.

Mr. Thielbar seconded the motion.

**Motion passed unanimously.**

Mr. Prior motioned to adjourn the Meeting.

Mr. Thielbar seconded the motion.

**Motion passed unanimously.**

The session was adjourned by Ms. Davies- Chair at 10:30 pm. Next Meeting is scheduled for June 19, 2018

Respectfully submitted,  
Melody Hypolite  
Recording Secretary