

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

7:00 P.M.

DECEMBER 20, 2016

MEMBERS PRESENT: Chairman David Rheume, Vice-Chairman Charles LeMay, Arthur Parrott, Jeremiah Johnson, Chris Mulligan, Patrick Moretti, Peter McDonell, John Formella

MEMBERS EXCUSED: Jim Lee

ALSO PRESENT: Jane Ferrini, Planning Department

I. ELECTION OF OFFICERS

*It was moved, seconded and **passed** by unanimous voice vote to re-elect David Rheume as Chairman and Charles LeMay as Vice-Chairman.*

Note: Chairman Rheume first addressed the approval of minutes. Please refer to Section III, Approval of Minutes.

II. OTHER BUSINESS

- A) Board of Adjustment Rules & Regulations (*This item was postponed from the November 15, 2016 meeting.*)

Chairman Rheume addressed the two proposed rules changes from the Board's work session: 1) alternates being involved with cases and 2) speaking time during presentations and public comment. He stated that alternates would sit with all other Board members during the meeting and could participate through the close of the public hearing, after which they would only participate in petitions when designated to do so by the Chairman.

Chairman Rheume stated that the allowable time for the public to speak would be 15 minutes for a presentation and five minutes during a public comment session. He noted that the speaking time could be increased or decreased on a case-by-case basis.

*Mr. Mulligan moved to **accept** the two rule changes, and Mr. Johnson seconded. The motion **passed** by unanimous voice vote, 7-0.*

Note: Chairman Rheume then addressed Section IV, Old Business.

III. APPROVAL OF MINUTES

A) October 11, 2016

*It was moved, seconded, and **passed** unanimously (7-0) to **approve** the October 11, 2016 minutes as amended.*

B) November 15, 2016

*It was moved, seconded, and **passed** unanimously (7-0) to **approve** the November 15, 2016 minutes as amended.*

Note: Chairman Rheume then addressed Section II, Other Business.

IV. OLD BUSINESS

Mr. Mulligan recused himself from the petition, and Mr. McDonell and Mr. Formella assumed voting seats.

1) Request for Rehearing for property located at 149 Cass Street

Chairman Rheume stated that the Board denied the variance request on October 25, and he asked the Board members for discussion on the rehearing.

Mr. Formella referred to the point raised by the memo as to whether there were any other detached dwelling units in the immediate area. He said he thought it made the point that the Board previously did approve another detached dwelling unit close by, even though he had previously said he didn't think there were any other detached dwelling units in the area. He also said that the hardship criteria were difficult to meet because the lot was large and there were other places where a detached second unit could have been placed. He said that he would not have made a different conclusion or would have agreed that it necessitated a rehearing.

Chairman Rheume noted that the other request that took place close by didn't have a dimensional variance and wasn't looking for anything related to being too close to a property boundary. He said there were unique aspects to the Cass Street petition that were different.

Mr. Johnson stated that, regarding Section 2 on two points, the applicant's advertising under the wrong name and the lack of a denial vote, he thought they were the most valid points of the

appeal and were enough to sway him to rehear the case. Vice-Chairman LeMay said he thought that having the wrong name on the application was relatively minor since it was the property that got the variance, and the neighbors would have been noticed the same way. With regard to not having a vote on the denial, he said it wasn't the Board's common practice to do that, and the information cited was a recommendation from a handbook. He said he did not consider it a procedure in error and felt that the hearing was given enough air.

Chairman Rheume said he re-watched the presentation and felt that all three votes against the applicant involved a good discussion about the reasons for denying the application and that he believed the Board was just. He also noted that there was a discussion about there being only three Board members required to provide an affirmation of accepting a motion. He said the State standard was five members and that the Board had an exception since they had seven members.

Vice-Chair LeMay stated that when he read the application for appeal, he felt that a tenth of a mile in the tight neighborhood and adjacent areas was not significant because it wasn't right in the neighborhood. He said the cited case was too far away to be part of the neighborhood and thought that the related argument was a stretch and didn't change any of the acts that pertained to the property on that particular street. He said he agreed with Chairman Rheume that the hearing was thorough and the reasons cited on both sides were valid, and he concluded that the consideration of the Board was proper, logical and within the bounds of the way the Board did business. He said he had not changed his mind.

Mr. McDonell said he had made the motion to approve it but now thought there was coherent opposition to it and felt that it was discussed thoroughly.

DECISION OF THE BOARD

*Vice-Chairman LeMay moved to **deny** the Request for Rehearing, and Mr. Parrott seconded. The motion **passed** with all in favor, 7-0.*

Mr. Mulligan resumed his seat. Mr. Formella returned to alternate status.

V. PUBLIC HEARINGS – NEW BUSINESS

- 1) Case #12-1
 - Petitioners: Benjamin N. Otis & Kristin A. Trapani Otis
 - Property: 46 McNabb Court
 - Assessor Plan: 112, Lot 59
 - Zoning District: General Residence A
 - Description: Add third floor dormers.
 - Requests:
 - The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
 1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, enlarged or structurally altered except in conformity with the Ordinance.

2. A Variance from Section 10.521 to allow a 12'8" ± primary front yard and a 6'8" ± secondary front yard where 15' is required for each.

SPEAKING IN FAVOR OF THE PETITION

The owner Ben Otis stated that the small modifications would improve the home's safety and would not change the footprint or the lot coverage. He said he submitted the approval signatures of all the abutters. He reviewed the five criteria and explained how they would be met.

Chairman Rheume said that he confirmed with the Planning Staff that they issued a revised Staff Memo addressing the side yard. Because the property was on a unique corner, the requirement for the front yard setback applied to both the front and the side, which was 15 feet on both sides. He said Mr. Otis' diagram showed 10-ft setback and that the requirement would be 15 feet on one side. He also noted that the illustration showed a wider space that needed relief, and he asked Mr. Otis whether he had two different requirements. Mr. Otis said the original was based on one front setback and that he had not been aware of the change in the secondary front yard setback. Chairman Rheume asked Mr. Otis whether his second drawing showed more area requiring relief, and Mr. Otis agreed.

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

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

DECISION OF THE BOARD

*Mr. Moretti moved to **grant** the variances for the application as presented and advertised, and Vice-Chairman LeMay seconded.*

Mr. Moretti stated that granting the variances would not be contrary to the public interest because there was no public comment and the change to the property was minimal and would not change the footprint. He said it would observe the spirit of the Ordinance because the dormers would enhance the house and would not impede on light, air, and so forth. Mr. Moretti said that granting the variances would do substantial justice and would give the applicant a house that would improve his family's living ability and extend their enjoyment of the property. Granting the variances would not diminish the values of surrounding properties because the house would be improved, the property was well established in a well-established neighborhood, and the changes would bring the house up to specifications. As far as the hardship criteria, Mr. Moretti said it was a unique property on a corner lot that resulted in two front setbacks. The hardship was that the property was situated to one side, and if it was centered, it would have passed all the criteria. For that reason, he believed that the variances should be granted.

Mr. Mulligan said he concurred with Mr. Moretti and had nothing to add.

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

Mr. Formella assumed a voting seat and Mr. McDonnell returned to alternate status.

2) Case #12-2

Petitioners: Finnian & Company, owner, Jay & Amanda McSharry, applicants

Property: 871 Middle Road

Assessor Plan: 232, Lot 119

Zoning District: Single Residence B

Description: Demolish rear garage and barn and construct single-family dwelling.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.513 to allow a second free-standing dwelling on a lot where only one free-standing dwelling is allowed.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 6,879± s.f. where 15,000 s.f. is required.

SPEAKING IN FAVOR OF THE PETITION

The designer Brendan McNamara was present on behalf of the applicant. He reviewed the packet and noted that the property was described as a duplex on the tax map but wasn't used as one and was technically two separate lots. He discussed the history of the building permit and said the applicant wanted to restore the property to its previous two-family condition but in a different configuration. He said that all the dimensional requirements were met, other than the dwelling unit per lot size, and that the new building would be in the required setbacks.

Mr. Moretti noted that the existing house was a duplex and asked whether it would be kept as such. Mr. McNamara said it would not because it had stopped being a duplex in 2007, when it was made into a CPA office, and that the intent was to remove the office part and turn it into a single-family residence with a free-standing small single-family residence in the rear.

Mr. Mulligan noted that Mr. McNamara had said the property was more than one lot and was involuntarily merged at one point. He asked whether the applicant requested that the City Council unmerge the lots at all. Mr. McNamara said he had not and had no plans to do so. He said the lots would have been side by side. Mr. Mulligan asked whether it would bisect the existing house and whether there was any documentation. Mr. McNamara said it would bisect the existing house but there was no related documentation.

Mr. Mulligan said he struggled with the hardship issue because the Ordinance required 15,000 square feet per dwelling unit and the existing use did not even meet that. He said the applicant was asking that a second dwelling be approved, even though there wasn't enough space for the existing dwelling. Mr. McNamara stated that the Ordinance had been overlaid onto a developed condition, so the majority of properties didn't meet the zoning they existed in. He noted that it would have been a duplex at the time of the overlay.

Chairman Rheaume said there was historic information that he validated with the Planning staff. He said that Mr. McNamara had stated that the 1992 Board decision to make the existing building into a duplex wasn't identified in the Staff Report, yet there were variances granted to

convert the single-family dwelling into a duplex at that time, so it would imply that it wasn't a single-family dwelling. He said he didn't agree that it was an overlay of an existing condition but believed that the zoning existed and the Board granted some relief to that zoning in 1992.

Vice-Chair LeMay agreed that there was history there and that most recently it was back to a single-family dwelling. He asked whether the CPA office was formerly one of the two living units. Mr. McNamara said it wasn't, that it was the front portion of the house and did not align with the amenities. Vice-Chair LeMay said he had a hard time finding what the hardship was. Mr. McNamara said the intent was to address the issue of higher density within the City and that the applicant wouldn't be asking for relief if there was no justification, but there was the prior use of a duplex, which was acceptable at the time.

SPEAKING IN OPPOSITION TO THE PETITION

Susan Dedenberg of 44 Wibird Street said she represented several neighbors and had a petition, which she passed to the Board members. She said they opposed the two dwelling units in one lot and felt there was no hardship because the owner knew the house was in a single-family residence area when he bought it and also knew that two dwellings on one lot was prohibited.

Lyle Grovelle of 20 Woodworth Avenue and Joel Marquis of One Leavitt Avenue stated that most of the houses in the neighborhood were conforming and that granting the variances would set a precedent.

Avi Magidoff of 132 Pearson Street said she opposed the petition because she felt it was an investment property and was not in the public interest to increase density.

Catherine Wentworth of 126 Pearson Street said she was an abutter and felt that putting two buildings on the property would overload it.

Michael McCann of 80 Pearson Street said there was no hardship because the residence was bought as a single-residence one.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. McNamara stated that the applicant met the lot coverage dimensional requirements.

DECISION OF THE BOARD

Vice-Chairman said that when he looked at the property, he was struck by how wooded it was behind it, which was consistent throughout the neighborhood. He said the rhythm of houses in the neighborhood were single-family ones, with a few houses having accessory structures in the back, and then woods. He didn't see anything with stacked living units going back into the depth of that entire property.

Mr. Parrott said that what struck him was how perfectly ordinary the applicant's house and lot were. In terms of compliance, he said the lot was substandard in lot area. He thought the house

needed some updating but was sizable and looked like it belonged in the neighborhood. He said a variance should be issued when a Zoning Ordinance impacted something in an unreasonable way or prevented someone from doing something nonsensical and that he couldn't see anything unusual in the house on the lot from thousands of others in the City. He noted that the two garages in the back were falling apart from neglect, which was no fault of the City or the Board, and he couldn't find one aspect that would justify a variance. He said the property could be used as a single family house, like it had for a long time, and he felt that shoehorning a second house in the back was detrimental to the concept of zoning, which was to keep consistency in a particular area. He said he could not support it.

Mr. Johnson said that in six months, if the house was owner-occupied, the owner could have two dwelling units on the property. He said it wasn't always easy to keep things the same, and doing so did not achieve much progress. He said that fringe neighborhoods were a good opportunity to increase density, but unfortunately there wasn't really a hardship to put a second home on the single-family lot and the Board had to deal with the zoning as they had it in front of them. For that reason, he said he could not support the variance request.

Mr. Moretti said he had an issue with the second dwelling unit and thought it would be different if the existing house was being expanded. He said he could see the need for a second dwelling but could also understand the neighbors not wanting it there.

Mr. Formella said he agreed with Mr. Johnson that the second dwelling unit could be allowed but felt that it should be smaller. Mr. Mulligan said that what was unique about the property was that it abutted a place of worship for the neighborhood, which was a quiet use, and that the issue of overcrowding was probably not as acute as the neighbors suggested. However, he felt that the lot didn't have enough area for a single dwelling. Chairman Rheume said he felt the same way. He noted that the Accessory Dwelling Unit (ADU) Ordinance would come up in the summer and that the Planning Board was making suggestions to the City Council, but he felt that the request asked for was far beyond that.

*Mr. Parrott moved to **deny** the variances for the application, and Vice-Chairman LeMay seconded.*

Mr. Parrott said that one of the tests of the first two criteria was that the change must not alter the essential characteristics of the neighborhood. He said the neighborhood was very much a single-family one, which meant single-family homes, one structure per lot, and a lot of similarities around it with lot sizes and home sizes. He said putting a second full-sized house in the backyard of the property would be a major change to the essential characteristics of the neighborhood, so the application did not satisfy the first two criteria. He said that the benefit to the applicant should not be outweighed by any hardship to the public, and the other individuals were the nearby property owners whose properties would be affected if the petition were approved because it would be a major change to the neighborhood over time. As far as the values of surrounding properties not being diminished, he said the Board heard no testimony or evidence of that, and he felt that the change would not be positive. He said the property was being used exactly as it should be according to the zoning, which was a single-family house on a

lot that was almost conforming, so literal enforcement of the Ordinance would not result in unnecessary hardship and would be a continuation of what had been there for a long time. Vice-Chairman LeMay said the Board was correct to be circumspect in approving second dwelling units on properties, especially seeing that the new ADU zoning was coming and would have guidelines as to what the City was concerned about preserving, and he felt that it wasn't up to the Board to second-guess where that would wind up. He felt that the density issue as well as the bigger issue of adding a second dwelling unit put the Board in uncharted territory.

Chairman Rheume noted that the applicant said the property had a previous duplex use. He said the existing house could have two units but the creation of a completely separate house was something different than what was granted by the Board in 1992.

The motion to deny passed with all in favor, 7-0.

Mr. McDonnell assumed a voting seat and Mr. Formella returned to alternate status.

- 3) Case #12-3
 Petitioners: Thomas E. Erickson & Ellen M. Pongrace, owners, and Chris and Kristin Martin, applicants
 Property: 27 Sewall Road
 Assessor Plan: 170, Lot 12
 Zoning District: Single Residence B
 Description: Add front and rear dormers and rear deck.
 Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, enlarged or structurally altered except in conformity with the Ordinance.
 2. A Variance from Section 10.521 to allow a 22'± front yard for the dormer where 30' is required.
 3. A Variance from Section 10.521 to allow a 9'± left side yard for the dormer where 10' is required.

SPEAKING IN FAVOR OF THE PETITION

The owner Chris Martin stated that he needed to add dormers to the home to make more livable space for his family. He said the existing footprint would be kept.

In response to Mr. Moretti's questions, Mr. Martin said the 22-ft front setback would be from the north corner and that the entry would be removed.

Mr. McDonnell asked whether Mr. Martin spoke to the abutters, and Mr. Martin said he had not.

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

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

DECISION OF THE BOARD

*Mr. Mulligan moved to **grant** the variances for the application as presented and advertised, and Mr. Johnson seconded.*

Mr. Mulligan noted that the proposal was just a vertical expansion within the existing footprint, but the footprint violated a few setbacks and the proposal would not create a mass or scale out of the ordinary within the neighborhood or have a negative effect on adjacent properties.

Mr. Mulligan said that granting the variances would not be contrary to the public interest or to the spirit of the Ordinance because the essential characteristics of the neighborhood would not be compromised by the modest dormer additions. Substantial justice would be done because he could not see the hardship to the applicant if denied against the corresponding gain to the public. He said the setbacks were already violated and did not overpower any neighboring properties. Granting the variances would not diminish property values because what was proposed was a tasteful and appropriate update of a modest dwelling that would have a positive impact on property values. As to the hardship, he said the special conditions of the property were that it was an existing nonconforming status as to the setbacks, and there was no fair and substantial relationship between the purpose and the application of the property. There would be sufficient light, air, emergency access, and so on, and there would be no negative impact. He had heard from no one in the public that said otherwise. He said the petition met all the criteria.

Mr. Johnson said he applauded the applicant in increasing his living space without seemingly affecting his neighbors. Mr. McDonell said he was initially a bit concerned that the south of the house was pretty close to the north face of the house next to it, but it wasn't something that he would be unusually concerned about and he had heard no opposition.

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

Mr. Formella assumed a voting seat and Mr. McDonell returned to alternate status.

- 4) Case #12-4
 Petitioner: Merton Alan Investments, LLC
 Property: 30 Cate Street (at Bartlett Street)
 Assessor Plan: 165, Lot 1
 Zoning District: Character District 4-W
 Description: Construct 26 residential units within multi-dwelling unit rowhouses.
 Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
 1. A Variance from Section 10.5A41.10B to allow a 109'± secondary front yard where a 15' secondary front yard is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

Attorney Peter Loughlin on behalf of the applicant was present to speak to the petition along with Joe Almeida of DeStefano Architects. Attorney Loughlin noted that the property had been vacant for about 30 years. He briefly reviewed the property's history and said the site was challenging, with lots of impervious material. He said that the zoning was changed to get away from the industrial zoning and presently encouraged buildings close to the street, but it didn't work on that particular site, so they were seeking relief on the 15-ft setback requirement. He reviewed the criteria and said they were met. He also submitted a list of supportive abutters.

Vice-Chairman LeMay asked where the billboard was located, and Attorney Loughlin said it was on the railroad's property, between the railroad and a corner post.

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

Rick Becksted of 1395 Islington Street asked that nothing else get built in-between that and noted that he wouldn't like to see a fence. He said he was concerned about the Cate Street connector road but was more or less in support of the petition.

Joe Almeida stated that there was a lot of foot traffic in the area as well as undesirable night activity. He said they didn't have a plan for fencing but would hate to have a stipulation to not fence some of the lot.

Attorney Loughlin said the developer had already agreed to give to the City the land necessary to widen Cate Street.

DECISION OF THE BOARD

Mr. Johnson said he applauded the applicant for managing to find a place to place that many units yet require only one variance. He said it would change the character of the neighborhood but felt that it was an appropriate attempt with that many units, and he didn't want to see anything within 15 feet of that corner due to all the traffic congestion and foot traffic. He said that 109 feet was an appropriate request.

*Mr. Mulligan moved to **grant** the variances for the application as presented and advertised, and Mr. Parrott seconded.*

Mr. Mulligan said he concurred with Mr. Johnson that it was the appropriate relief. He said he liked the application a lot more than what the Board previously approved on the site, a large office building, because he felt that it was a much better use of the site. He said that granting the variance would not be contrary to the public interest and would observe the spirit of the Ordinance. The essential characteristics would be modified to some extent but would not be injurious to public rights. He said it was a desolate and underutilized property that would be enhanced and consistent with the City's plans for the west end. Granting the variance would do substantial justice because the loss to the applicant if the Board required the project to adhere to the unusual setbacks would not be balanced by any gain to the public. There would be a loss to the public for reasons that Mr. Johnson stated, and he agreed that it was a dangerous place to put

a commercial building on and wasn't an area that encouraged pedestrian traffic, so he felt that it was appropriate to organize the site the way the applicant did. Granting the variance would not diminish the value of surrounding properties but would increase it because a substantial investment was being made. As for unnecessary hardship, he said there were a number of unique conditions, including the topography, the property's narrow shape, and the fact that it was adjacent to the railroad's right-of-way, which rendered the requirements of the zone somewhat unapplicable. He said it was a blank slate, unlike the Islington Street corridor with lots of character, so it was appropriate, and there was no fair and substantial relationship between the purpose of the Ordinance and its application to the property. He said the use was a reasonable one and that the petition should be granted.

Mr. Parrott said it was a positive change and that he concurred with Mr. Mulligan and had nothing further to add.

Chairman Rheame said he would support it because he agreed that it was a good plan for the lot and was in keeping with the vision of the charettes for the west end. He said it was a walkable area of the City and a nucleus of houses and businesses would be created to support the neighborhood needs. He noted that the Planning Board would address the concern about providing fencing between the property and the railroad.

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

Mr. Johnson recused himself from the petition. Mr. Formella returned to alternate status and Mr. McDonell assumed a voting seat.

- 5) Case #12-5
 Petitioners: Pauline Dowd, owner, Tuck Realty Corporation, applicant
 Property: 288 Peverly Hill Road
 Assessor Plan: 255, Lot 8
 Zoning District: Single Residence A and Single Residence B
 Description: Open Space Planned Unit Development with 9 townhouses.
 Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
 1. A Variance from Section 10.725.31 to allow 60.15'± of street frontage where 100' is required.

SPEAKING IN FAVOR OF THE PETITION

Attorney Tim Phoenix of Hoefle, Phoenix, Gormley, and Roberts was present to speak to the petition on behalf of the applicant and introduced Mike Garrepy of Tuck Realty and the engineer Joe Coronati of Jones and Beach.

Attorney Phoenix distributed a memo from the traffic engineer Stephen Pernaw and a letter from the realtor Nathan Dickey stating that granting the variance would not diminish property values. He discussed the parcel, noting that the single-family home would be demolished and replaced with a 9-unit townhouse development. He said the only requirement the proposal did not meet

was the 100-ft frontage one. He reviewed the reasons why he felt that the proposal met all the criteria and should be approved.

Mr. Mulligan stated that in order to get an approved planned unit development, the number of units had to be divided by the developable area on the lot and not the entire lot area. He asked whether all the wetlands and developable area had been factored and divided by nine, resulting in more than 15,000 square feet. Mr. Coronati said the wetlands were subtracted from the calculation and that only the uplands were used and that there were enough developable uplands for nine units. Mr. Mulligan asked whether the vegetation on the lot would be disturbed. Mr. Coronati said some existing vegetation would be retained and noted that the rear of the abutting property was heavily wooded. He said most of the vegetation on the lot was on Peverly Road.

Chairman Rheume said the handout from Mr. Pernaw included a diagram labeled S.D. 1 and that the Planning Department received one labeled P1. Attorney Phoenix said the issue was corrected and forwarded to the Planning Department.

Chairman Rheume asked whether the applicant would require a Conditional Use Permit for the planned unit development, and Attorney Phoenix said he would look into it.

Chairman Rheume said his biggest concern was that the Planning Staff said that, in 1985, an action was taken that wasn't mentioned in the application, where a request went before the Board for a similar 9-unit development and was granted the special exception but denied the variance for the 6-ft frontage. He said it was a similar precedent to what the applicant was asking for and asked whether Attorney Phoenix had recognized it. Attorney Phoenix said he had just learned of it and had checked the Planning Department Staff Memo but didn't see it mentioned. Chairman Rheume said it was in the Staff Report. Attorney Phoenix said it was not in the public report and that he didn't think Fisher vs. Dover would apply. It was further discussed, and Attorney Phoenix agreed that it should be part of the record.

Chairman Rheume asked whether the structure near the wetlands would also be demolished, and Attorney Phoenix said it would. Chairman Rheume said the original subdivision plan indicated that the Planning Board stipulated Lot 2 having access to the road only after the 60-ft wide portion of Lot 3. He said it was the current 297 Peverly Hill Road property that had an action taken since 1978 to allow them to have direct access to Peverly Hill Road and that the substantial driveway could potentially complicate the proposed road. He asked whether the property would be reconnected to the roadway. Attorney Phoenix said the house had access to Peverly Hill Road but also had a driveway access that the applicant had agreed to leave, so there could be a driveway off to the left.

Chairman Rheume also noted that there was another note on the subdivision plan indicating that, if more than one house was built on Lot 3, the access road must be built to the City's specifications for residential streets. He asked whether the roadway would comply with that. Attorney Phoenix said it would not and that it had been done for a standard subdivision. He said the Planning Board put that stipulation in, which conflicted with the open space planned unit developments. He said it was a Planning Board issue, and Chairman Rheume said he agreed.

SPEAKING IN OPPOSITION TO THE PETITION

Dean Colburn of 287 Peverly Hill Road said he was opposed because he felt that the development would increase traffic and safety concerns.

Shannon Harrison, owner of Children's Garden Preschool, said she was concerned about safety and felt that the travel speed survey did not reflect the actual high speeds on Peverly Road. She was also concerned about the development's driveway being directly across from the preschool. Vice-Chair LeMay asked Ms. Harrison how many trips were made in and out of her property, and she there were between 20 and 25 cars twice a day, between the hours of 8:00 and 2:00.

Don Jones of 296 Peverly Hill Road said that adding to the present traffic would exacerbate the problem and that site lines were a concern.

Mr. Beaupre of 297 of Peverly Hill Road said he had trouble getting out of his driveway, even though he had 70 more feet of visibility from having moved his driveway to the other side of the house. He said the development's proposed driveway was in an extremely dangerous spot and would impede the road's traffic flow.

Philip Stokel of 83 Peverly Road said that water runoff issue was a concern and that there was no plan for a sidewalk and drainage. He said his property had become a man-made wetland.

James Reis of 305 Peverly Hill Road said he owned the horse farm and felt there was nothing to back up the presumed 1978 intent in the application for a larger subdivision and that the traffic study did not deal with the traffic volume and the difficulty of getting on and off the road. He said the project would double the number of residences that he could see from his property and that it would significantly change the neighborhood.

Tom Reis of 305 Peverly Hill Road said the horse farm was tied up in conservation and felt that the project would eliminate his view of the woods and diminish the character of the farm as well as have a major impact on the nearby natural habitat and the wetlands.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Phoenix said they respected the concerns of the neighbors but felt that the added effect of nine homes on the road was negligible because it was a busy road to begin with. He said they would not touch the wetlands and that the issue was the effect of the variance and not the effect on traffic, views, foliage, and so on. He said there was no difference between 60 and 100 feet.

Dean Colburn said it was an issue of getting out of the driveway than whether or not Peverly Hill Road could absorb 18 more cars.

DECISION OF THE BOARD

Vice-Chair LeMay said he heard thoughtful comments from the neighbors that had very little to do with 40, 60 or 100 feet of the driveway adding a tiny percentage of the Peverly Road traffic.

Mr. Parrott said he wished the traffic study had more information so that he could make a better informed judgment. He said it had no traffic count, wait time, or percentage of what the road could handle. He also asked what a definition of a stopping site distance was. Mr. McDonell said he would have liked to have seen the traffic report sooner, but he understood the question before the Board, which was whether their approval of the 60-ft street frontage variance would exacerbate public health and safety issues. He said he was not sure that it would.

Mr. Moretti said that neither the applicant nor the neighbors brought information relating to traffic stops, speeding, tickets, and the amount of police due diligence on Peverly Hill Road.

Chairman Rheume said the traffic was a legitimate concern but the issue was what the Board was approving that night, which was 60 feet versus 100 feet of frontage. He said the 1978 plan was put together when the thinking was that the 60-ft corridor was provided as a driveway for the residents, with a potential of being a corridor to provide traffic access to Peverly Hill Road. He asked whether it would change the character of the neighborhood to add the access road to a development allowed per the Ordinance. He said it was intended to allow for additional traffic coming out of the very large lot to be able to access Peverly Hill Road and that the Planning Department would look at it. He referred to the 1985 case and said that the reasons the Board denied it didn't hold as much weight back then and explained why. He said it was a good thing that the (adjacent) farm was conservation land, but that it wasn't realistic to expect the conservation feature to be extended to nearby properties.

Vice Chair LeMay briefly read some of the points made from the 1985 case and said that the criteria for a variance had changed dramatically over the years and felt that there was no smoking gun of things that had not been discussed or that could give the Board pause to overturn the conceptual, given the passage of time.

*Mr. Formella moved to **grant** the variances for the application as presented and advertised, and Mr. Mulligan seconded.*

Mr. Formella stated that there was a lot going on, with concerns about traffic and nine townhomes, but felt that the variance request was pretty modest because the Board was only considering whether or not to allow 60 feet of frontage where 100 feet was required. He said that granting the variance would not be contrary to the public interest and would observe the spirit of the Ordinance because allowing only 60 feet where 100 feet was required would not alter the essential character of the area. He said he didn't think the health, safety and welfare of the public would be threatened by 60 feet of frontage and didn't see how it would create more traffic problems. Granting the variance would do substantial justice because of the loss to the applicant if they could not develop their property. He said there would be no harm to the public by allowing less frontage. He said there was no evidence that surrounding properties would be diminished and that the applicant's realtor report indicated that they would not be diminished. Literal enforcement would result in unnecessary hardship because the property was unique due to its shape and the fact that there were only 60 feet of frontage and a narrow way back to the rest of the property. If a variance was not allowed, the property wouldn't be developable. He said the use was reasonable because it was permitted in the zone and the only relief needed was the frontage. He felt that nine townhomes was a reasonable use on the parcel.

Mr. Mulligan stated that the concerns articulated by the public in opposition had to do with the density of the project and nothing to do with the relief requested. He said the amount of density and the development were permitted by right. He said the applicant could subdivide his property at some point if the project didn't go forward and that he agreed that what was proposed was beneficial from an open space perspective. Given that the amount of frontage was necessarily limited and there was no other way to create frontage on Peverly Hill Road, he said that any development would require some relief on that property. He said the application met all the criteria and also agreed that it would require a Conditional Use Permit and additional vetting from the Planning Board.

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

VI. ADJOURNMENT

*It was moved, seconded, and **passed** by unanimous vote to adjourn the meeting at 10:20 p.m.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary