

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

7:00 P.M.

**SEPTEMBER 27, 2016
Reconvened From
SEPTEMBER 20, 2016**

MEMBERS PRESENT: Chairman David Rheame, Arthur Parrott, Jeremiah Johnson, Patrick Moretti, Christopher Mulligan, James Lee, Peter McDonell

MEMBERS EXCUSED: Vice-Chairman Charles LeMay

ALSO PRESENT: Jane Ferrini, Planning Department

REVISED AGENDA

Mr. Parrott moved to appoint Mr. Mulligan as Vice-Chairman during any recusal of Chairman Rheame, seconded by Mr. Moretti. The motion passed by a unanimous voice vote 7-0-0.

Messrs. Johnson and Formella recused themselves for the following petition. Alternate McDonell assumed a voting seat.

I. OLD BUSINESS

A) Request for Rehearing for property located at 996 Maplewood Avenue.

Mr. McDonell felt nothing in the request warrants a rehearing. The motion was made with a reasoning for that action, which was stated into the record. The basis for granting the variance did not include crediting the applicant for their efforts.

Mr. Moretti did not see an error and thought the Board was fair after reviewing it twice.

Mr. Parrott stated that his initial thought remained unchanged in that the discussion lacked consideration for the hardship criteria.

Chairman Rheame determined that several of the individuals that applied for the motion for rehearing would be considered abutters, which was enough information to warrant consideration. He felt that the decision of the Board was not made in error. Five members

voted on the decision and he felt that having all seven members would have likely not changed the outcome. The request did not consist of anything of concern nor constituted as a rehearing.

DECISION OF THE BOARD

Mr. Moretti moved to deny the Request for Rehearing, seconded by Mr. Lee.

Mr. Moretti felt the rehearing would not overturn any information that has not already been found. Mr. Lee concurred.

The motion passed by a roll call vote 5-1, with Mr. Parrott opposed.

Messrs. Johnson and Formella resumed their seats. Chairman Rheume recused himself for the following petition. Alternates Formella and McDonell assumed voting seats.

II. PUBLIC HEARINGS

Mr. Moretti moved to vote on Case #9-11 out of order, seconded by Mr. Parrott. The motion passed by a unanimous roll call vote 5-0-0.

- 8) Case #9-8
- Petitioner: Brian D. Hogan Revocable Trust of 2008, Brian D. Hogan, Trustee, owner, Mark McNally, applicant
- Property: 21 Brewster Street
Assessor Plan 138, Lot 11
- Zoning District: General Residence C
- Description: Convert rooming house to 6-unit condominium structure with a 6-bay garage.
- Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Special Exception under Section 10.440, Use #1.42 to allow six dwelling units where this use is allowed by Special Exception.
 2. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
 3. Variances from Section 10.521 to allow the following:
 - a) A lot area per dwelling unit of 1,386.33± s.f. where 3,500 s.f. is required;
 - b) A 1.5'± right side yard setback where 10' is required;
 - c) A 0.5'± rear yard setback where 20' is required;
 - d) 50.01%± building coverage where 35% is the maximum

- allowed;
- e) 10.44%± open space where 20% is the minimum required.
4. A Variance from Section 10.1114.32(a) to allow vehicles entering and leaving parking spaces to pass over another parking space or require the movement of another vehicle.

Chairman Rheaume recused himself from any discussion and vote on the petition. Mr. Mulligan became acting Chairman.

SPEAKING IN FAVOR OF THE PETITION

Elizabeth Moreau, Attorney for Great Oak Title Services, LLC

Ms. Moreau's presentation included the following statements:

- The proposed plan to the property are positive changes since it has been scarcely managed and vacant for at least the past year.
- The purpose for the special exception is to allow for a six-unit building, yet the zoning allows for up to four, and for increased square footage beyond the requirements. A 6-bay garage and parking alterations are also proposed in the plan.
- Pictures of the existing conditions of the building were presented.
- The proposed building would remove the entrance allowing more open space and curb appeal at the front of the building. The sides of the building would be recessed to fit balconies, an elevator, and stairs within the existing footprint. The parking area behind the building will be reconstructed to help improve the topography.
- The applicant is decreasing the intensity of the building use, therefore, decreasing any hazard of fire, explosion, or release of toxic materials. There will be no detriment to surrounding property values and would likely increase those values. It is decreasing the number of residents and vehicles accessing the property. Given that, there is no indication of traffic hazard or congestion and less demand on municipal services. The structure and garage will remain the same size, which will not significantly increase storm water runoff.
- The variance is not contrary to public interest since the neighborhood has shown their support. The proposed building matches the essential character of neighborhood and increases the lot area per dwelling. It will be modernized to meet health codes. The property is located along a steep embankment and modifications to the rear parking area are reasonable and will not affect the public. There is strong public interest to eliminate the poorly managed boarding house that currently exists.

Ms. Moreau replied to Mr. Johnson the current condition of the back driveway is gravel. Mr. Johnson expressed concerns that the open space is greatly reduced and there will be quite a bit of asphalt. Ms. Moreau noted that the open space will increase by 1% to 10% under the anticipated zoning changes.

Mr. Moretti asked how the drainage will be controlled. Ms. Moreau replied a gutter system will be installed.

Jeff Alderson, 99 Brackett Road, Rye, NH

Mr. Alderson explained how the configuration of the roof system is not suited for proper drainage. Mr. Johnson clarified that the concern is regarding the asphalt runoff. Mr. Alderson replied that there will be a complete landscape on the property because nothing that currently exists is able to be reused.

Mr. Parrott asked what will be done to recondition the area where it appears to have a concrete, half retaining wall between the property line and the building. Ms. Moreau replied that the retaining wall will be fully repaired by replacement and then the new garage will support the topography of that area. Mr. Alderson noted that Concrete Solutions was hired to repair the wall and that a building permit cannot be obtained without addressing the retaining wall. Ms. Moreau added that the wooden fence on the easterly side will be replaced and there is constant grade at the end of the retaining wall. Mr. Alderson noted that the fence was previously required to be installed.

Ms. Moreau explained to Mr. Mulligan that the intention for a six-unit building was to have three floors and two units per floor and provides approximately 1,500 s,f,

Mr. Mulligan asked how the traffic entering and exiting the narrow driveway will be managed. Ms. Moreau replied that it is meant to be a one way in both directions.

Mr. Mulligan asked how many vehicles used to traverse into the property. Ms. Moreau understood from the abutters that there were often an extreme amount of vehicles traveling in and out of the house.

Ms. Moreau explained to Mr. Mulligan that the applicant is seeking to request a waiver from site review because the site is not changing.

Karina Quintans, 51 McDonough Street

Ms. Quintans introduced herself as representing the Islington Street Neighborhood Association. She stated that the property has experienced 30 years of code violations and lack of proper building management. The fire took place in summer of 2015 and there have been reported instances of sexual assault, a decaying body was found, and repeat bed bug situations. The application has been reviewed and she found no issue with the request for variance.

Kelly Hurd, 30 Brewster Street

Ms. Hurd introduced herself as a volunteer at Crossroads. The level of vehicle congestion is a concern and she hoped that it could be a one-way street. She praised Mark McNally for his generosity and willingness to help others by performing quality work to be proud of.

William Hurd, 26 Brewster Street

Mr. Hurd noted that a new sewer pipe was installed on his property with thanks to Mr. McNally. He looks forward to seeing positive improvements to the property and complimented Mr. McNally's exceedingly high standards in his work.

George Claborn, 40 Brewster Street Unit 2

Mr. Claborn stated he has heard several abutters express their excitement for Mr. McNally to improve the property. In his own experience, he has witnessed the commendable work that Mr. McNally performs.

Erin Proulx, 99 Marne Avenue and 57 McDonough Street

Ms. Proulx felt it is an overall huge improvement to the property and is a reasonable use. The large size of the building makes sense for six units and any smaller than that would not fit in with the neighborhood. She felt the City would greatly benefit from Mr. McNally's work.

Brian Whitworth, 86 Islington Street #1

Mr. Whitworth noted there was a special exception in another project granted to build rooming house of six one-bedroom condominiums. The layout is similar to that project with the long alley, except that it did not have the proposed garage.

Mr. Mulligan mentioned that much written communication was received expressing support for the request. The names of the individuals were stated into the record as follows:

- Beatrice and Lawrence Cataldo, 133 Islington Street #10
- Andrew Martin, 230 McDonough Street
- Julieanne and Alex Ross, 39 Brewster Street
- Timothy McLoughlin, 7 McDonough Street
- Randle Wright, 30 Sudbury Street
- Christian Paulsen, 82 Langdon Street
- Carol Clark, 28 Rockingham Street

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

No one rose to speak, and Mr. Mulligan closed the public hearing.

DECISION OF THE BOARD

Mr. Johnson asked whether or not a 35-room boarding house could still be a viable use, given that it exists in the GRC district and has been vacant for a period of time. Ms. Ferrini explained there are two approaches if the same use was proposed, but either way the abandonment would have to be addressed.

Mr. Johnson stated six units is more than reasonable considering the history of the property. His concerns were mainly regarding parking, traffic flow, and partially for the

size of the building in proportion to the lot size. He noted that any new development over more than three units will likely require Site Review.

Mr. Moretti moved to grant the special exception as presented and advertised, seconded by Mr. Parrott.

Mr. Moretti stated his response to each special exception criteria presented in the application as follows:

1. The building will continue to provide residential dwellings and appears to continue the existing type of use.
2. There would likely not have a decrease in property values and, in fact, could increase the surrounding values.
3. This was a 30-unit building that had several cars traveling and it will be greatly reduced.
4. A great reduction in demand of municipal services and enforcement.
5. The applicant has addressed the drainage.

Mr. Parrott concurred with Mr. Moretti's response to the criteria. He added that six units are allowed by special exception. This immediate neighborhood has a wide variety of homes from single to multi, thus it is consistent with area in terms of physical appearance and use of the building.

The motion passed by unanimous roll call vote 7-0

Mr. Parrott stated the variances reflect what exists on the ground. It was evidently stated that it is a large building on a small lot. Any changes with respect to retaining walls would be improvement. The backyard which has rough poured concrete pad will be removed and replaced with a modern garage. The driveway will be enhanced. The variances appear obvious and he felt the request pertains to only existing features.

The backyard setback will be smaller with the garage than the current location. The remnants of a concrete structure probably do not qualify for a setback.

Mr. Parrott moved to grant the variances as presented and advertised, seconded by Mr. Johnson.

Mr. Parrott stated his response to each variance criteria presented in the application as follows:

1. The neighbors have clearly stated the variance is not contrary to the public interest.
2. The structure and density required is in the spirit of the ordinance since it requests six units.
3. The variance would do justice. There is a long history of boarding room house operating unsuccessfully, thus, the proposed plan will benefit the developer and the neighborhood. There is no overriding interest that it should not be approved.

4. The proposed use will not harm surrounding properties, which the neighbors agree with.
5. The unnecessary hardship is demonstrated by the pre-existing, very large building on a lot that is smaller than what current zoning would require for such a structure.

Mr. Johnson concurred with Mr. Parrott's response to the criteria. He noted that the parking situation is undesirable, however, it would be unreasonable to mitigate the parking and traffic concerns as desired.

Mr. Mulligan stated his support for the motion. He found the variance request reasonable. The only significant change from what currently exists is the rear setback and garage reconfiguration, which is a reasonable alteration to the property.

The motion passed by unanimous roll call vote 7-0.

Chairman Rheume returned to the Chair position.

9) Case #9-9

Petitioner: Patricia A. Monaco

Property: 9 Falkland Place #A1

Assessor Plan 212, Lot 26-1C

Zoning District: General Residence B

Description: Massage Therapy Use.

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

1. A Special Exception under Section 10.440, Use #19.22 to allow a Home Occupation 2 where the use is allowed by Special Exception.

DECISION OF THE BOARD

The Board acknowledged that the petition had been withdrawn as a Special Exception was not required for this use.

Mr. McDonell resumed an Alternate seat. Mr. Formella remained in a voting seat.

10) Case #9-10

Petitioners: Harry S. Furman & Kathleen E. Straube

Property: 557 State Street

Assessor Plan 137, Lot 33

Zoning District: General Residence C

Description: Construct 160± s.f. second floor addition.

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, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from 10.521 to allow an 0.8'± right side yard setback where 10' is required.

SPEAKING IN FAVOR OF THE PETITION

Laury Swavey, 72 School Street, Waltham, MA

Ms. Swavey's presentation included the following statements:

- The purpose of the project is to renovate the center section of a single family residence. The roof is in disrepair with rotted beams, which is causing leaks. Any renovation within the existing layout would not meet current ceiling height requirements. The purpose of the request for special exception is for dimensional requirements.
- The nonconforming section is above the existing floor plan that is only 0.6 feet away from property line, which is where the roof will be raised.
- Rebuilding the roof would not be possible in current code. The extra space is required to maintain the same number of bathrooms and bedrooms.
- The proposed plan is in the spirit of the ordinance, provides no threat to the public and does not change the existing character of the neighborhood.

Mr. Mulligan asked to confirm whether the variance is solely to extend the footprint upward and outward slightly. Ms. Swavey replied that it is.

Mr. Mulligan asked to confirm if the the most affected surrounding property appears to be an 8-unit apartment. Ms. Swavey confirmed that it is.

Mr. Johnson asked if the building inspector had been notified about the renovation. Ms. Swavey answered that it had.

Ms. Swavey replied to Chairman Rheaume that the roof will be line with the rest of the house.

Ms. Swavey explained to Chairman Rheaume that to travel to that section of the house requires going through the bathroom and down a few steps.

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

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

DECISION OF THE BOARD

Mr. Mulligan moved to grant the petition as presented and advertised, seconded by Mr. Parrott.

Mr. Mulligan stated his response to each variance criteria presented in the application as follows:

- 1-2. Granting the variance is not contrary to public interest and spirit of the ordinance.
3. The existing non-conforming structure compared to the proposed is a relative increase, thus granting a variance provides substantial justice.
4. The values of surrounding properties will not be diminished. It is modest given the scope and the large size of the dwelling. Yet, the nearest abutter most affected is a relatively large, multi-unit apartment building and which would not be affected.
5. There exists a large dwelling on a non-conforming lot, which already violates the setbacks. The proposal is for vertical expansion within the current footprint.

Mr. Parrott asked the status of the back deck. Ms. Swavey replied it will be replaced in-kind.

Mr. Parrott concurred with Mr. Mulligan's response to the criteria.

Chairman Rheume expressed support for the motion even with regard to the setback. There would not be a negative impact and the additional height is not as significant of a consideration as it could be. The addition will naturally have the setback issue given the nature of the property.

The motion passed by a unanimous roll call vote 7-0.

Mr. Mulligan recused himself from the following petition. Mr. McDonell assumed a voting seat.

11) Case #9-11

Petitioner: Michael F. McNeilly, owner, Alden Properties, LLC, applicant

Property: 246 Austin Street

Assessor Plan 135, Lot 63

Zoning District: General Residence C

Description: Vertical expansion of existing two-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 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 653.40± s.f. where 3,500 s.f. is required.

DECISION OF THE BOARD

Mr. Moretti moved to postpone the petition to the October 18, 2016 Board of Adjustment meeting, seconded by Mr. Parrott. The motion passed by a unanimous voice vote 5-0-0.

Mr. Mulligan resumed his voting seat. Alternate Formella returned to Alternate status. Alternate McDonell remained in a voting seat.

12) Case #9-12

Petitioners: Jennifer L. Bell & Harold G. Beresin

Property: 23 Marston Avenue

Assessor Plan 150, Lot 3

Zoning District: General Residence A

Description: Construct a 12'± x 25.5'± rear addition and attached 24'± x 17'± garage.

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, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow a 7'3"± left side yard setback where 10' is required.

SPEAKING IN FAVOR OF THE PETITIONHarold Beresin, 23 Marston Avenue

Mr. Beresin's presentation included the following statements:

- The property currently consists of a single family residence. The insurance company notified the owners that the shed requires renovation because of the poor conditions and the roof tiles tilting towards the neighbor's yard.
- The applicant would like to remove the shed and install a garage that fits in with the design of the home and the character of the neighborhood.
- The left rear corner would be 7'3" versus the 10' requirement.
- The nearest abutting structure is about 40-50 feet from the property line and the addition would not encroach that abutter's space.
- The addition would help maximize the home's use and it would not require a second level.
- The abutting neighbors would be thrilled to see the dilapidated shed removed, which is built with unattractive metal poles.

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 petition as presented and advertised, seconded by Mr. Johnson.

Mr. Moretti stated his response to each variance criteria presented in the application as follows:

1. The shed is being removed and a new structure will be added closer to the house. The public interest is that the shed is dilapidated and not worth fixing and the improvement will make the property more attractive.
2. The spirit of ordinance will be observed with a minimal adjustment.
3. The owner will have an improved living space; thus, substantial justice has been met.
4. The surrounding property values will not be diminished since the abutters will not view the shed.
5. The hardship is that the lot line is very narrow and a modern car requires garage to be a certain size. The setback will be violated with that.

Mr. Johnson concurred with Mr. Moretti’s response to the criteria. He added that the footprint is sizable and the living space is modest. The proposed garage is modest in design and the extension is the most sensible place.

The motion passed by a unanimous roll call vote 7-0.

13) Case #9-13

Petitioners: Foundation for Seacoast Health, owner, Hope for Tomorrow Foundation, applicant

Property: 315 Banfield Road

Assessor Plan 266, Lots 4 (portion), 5 & 6

Zoning District: Industrial

Description: Construct and operate a K-8 Elementary School.

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 10.440.3.21 to allow a primary or secondary school in a district where the use is not permitted.

SPEAKING IN FAVOR OF THE PETITION

Peter Loughlin, Attorney

Mr. Loughlin’s presentation included the following statements:

- In August, he presented a brief history of the school. The St. Patrick's school building is no longer adequate and the school must either close permanently or find a new site.
- The site at 315 Banfield Road is the intended new location and a purchase and sales agreement has been signed. The South side of Banfield Road is zoned for industrial uses and schools are not a permitted use. Schools are only permitted in GRB, Gateway, and Waterfront districts. It may be difficult to find a site that is not in a business zone that is accommodating.
- As stated in the August 31, 2016 letter, there are a variety of land uses surrounding the site to include, Girl Scouts, single family homes, welding shops, automotive businesses, and the recycling center.
- The addition of the school will not have a detrimental impact on the property. The extensive vegetation to the west of the property would make the site almost invisible from the neighbor's property.
- It is reasonable to conclude that the school is in the public's interest.
- The property has been land banked by Foundation for Seacoast Health for almost 20 years with the intent for the further growth in the organization. The Foundation for Seacoast Health would realize its return on investment on the land while providing a public good.
- The zoning district specifically permits non-residential purposes in the industrial zone. The proposed St. Patrick's Academy is designed per the definition of a social service campus and would be a permitted use if proposed in a community campus.
- There is no clear relationship between the purpose of the Ordinance provisions and the specific application of the provision of the property given that the surrounding uses are not normally industrial.
- This part of the industrial zone has been developed in a non-traditional manner that is more consistent with proposal. The area includes a vast majority owned by the Foundation for Seacoast Health and Water Country. The City plans to use another portion for extending the recycling center and providing athletic fields, which will be within walking distance to the proposed St. Patricks Academy.
- Foundation for Seacoast Health is well aware of traffic issues in regards to the Water Country operation. Finding a use that is consistent for Seacoast Health, but not imposing traffic was of considerable consideration. Peak hours from the school are 2-3pm, while on Banfield Road it is 4-5pm.

Chairman Rheaume asked if a walking path will be constructed from Banfield Road to the parcel. Mr. Loughlin replied that it is planned and would be multi-use.

Chairman Rheaume asked if a more detailed traffic study will be conducted. Mr. Loughlin summarized the findings of the traffic study. The peak hours do not conflict with Water Country. During the peak hour on Banfield Road from 4-5pm, it is estimated that an additional 25 vehicles will be added. The traffic study expert was confident that it would not be an issue.

Chairman Rheume asked what the clients thought about positioning a large collection of students near industrial sites. Mr. Loughlin explained that there would not be contact given the fence and the size and topography of the site.

Mr. Moretti asked if sidewalks or bicycle lanes would be proposed. Mr. Loughlin noted that there will eventually be a proposal for a sidewalk on Banfield Road, but the exact size and location is yet to be defined.

Mr. Mulligan noted the application stated the facility is designed to accommodate 250 students. Mr. Loughlin explained the school currently enrolls about 125 students, but that is expected to increase with the access to the playground and improved cafeteria.

Jim Broom, Rye, NH

Mr. Broom felt the St. Patrick's Academy has had a profound impact on him. He reached out to Hope for Tomorrow when he heard the school was faced with either discontinuing or relocation. He felt that Hope for Tomorrow looks to provide sustainability for any future development in Portsmouth. He believed that St. Patrick's Academy being located on the campus will only add value to their mission.

Rick Bean, Athletic Director at St. Patrick's Academy

Mr. Bean described his personal experiences in athletics when attending St. Patrick's Academy several years ago and compared it to what the athletics programs offer today. The parents want more technology and physical activities. The new location will provide more options for physical activities and the school plans to request to compete on an equal basis to have their own home game.

Ted Connors, Newington, NH, St. Patrick's Academy Alumni

Mr. Connors felt the transition is important to ensure the education continues after almost a century and a half. He stated his favorable support for the consideration.

Jean Spear, 49 Mt. Vernon Street

Ms. Spear conveyed how important it is for the St. Patrick's Academy community to be a part of the Portsmouth. She noted that the school has made an effort to give back to the community through various activities, such as volunteering at the Fairy House tours, students doing community service, bringing school events to the Music Hall, and more. She expressed hope that the school remains in Portsmouth.

Sarah Lahey, 260 Aldrich Road

Ms. Lahey felt the school has impacted her life immensely and has provided her several opportunities. The school has prepared her to succeed and it continues to benefit the students. She described her personal experience as to why she switched to St. Patrick's Academy in elementary school and what positive outcomes resulted from that change. She explained why it would be tragic for the school to move outside of Portsmouth and emphasized that the important benefits to the students should continue to be provided.

Kathy Logan, 21 Blossom Street

Ms. Logan supported the application and felt the current location has outlived its area. The community campus would be a wonderful site and there would be minimal traffic. The school would complement other programs on the community campus. Allowing the variance would be an outstanding benefit to the school community.

Frank Getman, 606 Union Street

Mr. Getman has lived in the area for over 20 years and graduated from St. Patrick's Academy. He is involved with the School Board and the Hope for Tomorrow Foundation. He felt there is a symbiotic relationship between the school and the City. The School is involved in the Christmas parade and helps to provide donations to homeless individuals. He hoped that the school can maintain their relationship with the Portsmouth Music and Arts Center by keeping a location in Portsmouth. When residents send their kids to the private school, it also provides a financial benefit to the City.

Karsten Pohl, 416 Dennett Street

Mr. Pohl spoke in favor of the petition and felt the school is an important aspect of City life. He is Chair of the Physics Department at UNH and enjoys the students that come from St. Patrick's Academy.

Bill Webb, 2 Harding Road

Mr. Webb felt the proposal could be another showcase to a learning institution much like the public High School, the Middle School, and the public Library.

Sonja Baroni, 40 Pleasant Point Drive

Ms. Baroni stated her support for the petition and noted that she is a long-term resident in the area and also a business owner on Banfield Road.

Jonathan Hort, 563 Sagamore Avenue #2

Mr. Hort described his personal experiences that led him to become cynical toward teaching. Amongst many experiences working at other organizations, such as UNH and the military, he felt that St. Patrick's Academy has been the most welcoming and felt that culture should have the opportunity to continue. He is a first grade and preschool teacher and enjoys the family atmosphere.

SPEAKING IN OPPOSITION TO THE PETITION

None.

SPEAKING TO, FOR, OR AGAINST THE PETITION

John Lyons, Foundation for Seacoast Health

Mr. Lyons described the substantial amount of various types of funding that the Foundation for Seacoast Health provides to the community. St. Patrick's Academy fits in perfectly with the surrounding uses. They will be presenting to the Planning Board both the subdivision to the City and the subdivision to St. Patrick's school upon the variance being granted.

Chairman Rheume stated an e-mail was received from Andrea Amiko, 823 Banfield Road, regarding the conditions on Banfield Road and concerns about traffic associated with the new school.

DECISION OF THE BOARD

Mr. Mulligan reminded that the request is a use variance, which is typically a grave consideration because it is requesting something that is not otherwise permitted. He agreed that there are a number of institutional uses in the area that appear to be compatible with the placement of the school. The spirit of the ordinance and value of surrounding properties benefits to the public are impacted. This is a reasonable use for a somewhat challenging property.

Mr. Johnson echoed Mr. Mulligan's statements. He expressed concerns for the traffic because the area is not a place conducive for pedestrians and bicyclists given the vehicles traversing on Ocean Road. He supported the efforts to intensify the bike paths, walking paths, school and playing fields.

Chairman Rheume understood that schools in several communities are beginning to relocate to community campuses versus neighborhoods. The surrounding uses are not entirely compatible with the school and he hoped that it will help to transform that portion of the City. He only demerit is Banfield Road for walking and biking in the short-term, which might pose some challenges. The traffic will be considered by the Planning Board. The proposed location makes sense for the property and will hopefully offer more advantages in the future.

Mr. Mulligan moved to grant the petition as presented and advertised, seconded by Mr. Parrott.

Mr. Mulligan stated his response to each variance criteria presented in the application as follows:

1. Granting the variance would not be contrary to public interest. The proposed project and as stated before is surrounded by a number of institutional type uses. Those seem to be compatible with character of the neighborhood.
2. The elementary school would not have altering impact on character of the neighborhood.
3. The variance would result in substantial justice. Limiting the use would not be beneficial. The proposed use is similar enough to the area and not residential.
4. Granting the variance will not diminish the impact on surrounding properties and sees no negative effect in the area.
5. It is a large lot and the applicant has pointed out there is significant frontage in a neighborhood with compatible uses. There will still be substantial amount of open, green space. There is not a substantial relationship between table of uses that forbid the school in the industrial zone. It is a reasonable site for this use.

Mr. Parrott concurred with Mr. Mulligan's response to the criteria. He added that it is evidently an unusual area for the City given the various uses. The zoning is likely going to change and the property is large enough to provide adequate buffer from the surrounding abutters. Most of the students will be bussed or driven to school. The use is reasonable for the particular lot. Even though it is an industrial district, there has not been much industrial development in the area.

The motion passed by a unanimous roll call vote 7-0.

Alternate McDonnell recused himself from the following petition. Alternate Formella assumed a voting seat.

14) Case #9-14

Petitioners: Daniel P. & Eileen M. Doyon

Property: 456 Sherburne Road

Assessor Plan 261, Lot 20

Zoning District: Single Residence B

Description: Convert existing accessory structure into a second dwelling unit.

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

1. A Variance from 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 8,276.40± s.f. where 15,000 s.f. per dwelling unit is required.

SPEAKING IN FAVOR OF THE PETITION

Derek Durbin, Attorney

Mr. Durbin's presentation included the following statements:

- The recent draft for the zoning amendment for accessory dwelling units and a few letters of support were provided to the Board.
- The existing accessory structure functions as an in-law parent. An electrical panel designed to code exists on the accessory structure. It was used as a home woodshop until 2002 and then was kept minimally heated. It has not yet been converted, although he has everything necessary except for approval from the Board.
- The exact dimensions were provided and noted that the proposed living space would be 585 s.f., which would be considered an efficiency type of in-law apartment. The primary residence is over 1,100 s.f. of living space.
- It would likely qualify as a garden cottage under the drafted accessory dwelling unit Ordinance, which is limited to 500 s.f. Thus, it slightly exceeds that standard.
- Nothing regarding density and character of the property as a result of allowing the accessory dwelling unit. The particular structure is only suited for one person to

- live in. It does share common utilities with the primary residence on the property. It would likely not be used for multiple tenants.
- The State law allowing ADUs in single residential districts promotes this type of use because of the ability to provide affordable housing as well as opportunities for families to stay together.
 - The current application is consistent with public interest. The variance will not alter the single family neighborhood which is contained. If the variance relief were denied, the family would have to find an assisted living facility and there would be no public benefit.
 - There would be no change to the character of the neighborhood. The neighborhood is in support of the application and two letters were submitted to staff expressing support
 - The primary residence is relatively small in context of the lot it sits on and in comparison with other properties in the area. It is a small additional amount of living space being added to the property that already has a small residential structure on it.
 - It's fair to consider the proposed ordinance change as well as statutory mandate to provide for this type of use in the SRB district. It would require a special exception under those regulatory changes.

Mr. Mulligan felt there is a strong case for disability hardship and wondered if that would help the applicant expedite the process. Mr. Durbin noted that based on the recent draft Ordinance for ADUs, the applicant would have to seek dimensional relief because the floor area exceeds the standard. It is a reasonable situation regardless the potentially 85-foot variance.

Mr. Durbin replied to Chairman Rheume that if the Board determined no hardship exists, then he would resubmit the request for alternative relief.

Chairman Rheume asked whether the individual would qualify as a disability. Mr. Durbin replied that the statute is ambiguous and speculated that the individual could qualify.

Chairman Rheume cited the Ordinance regarding granting a variance on the basis of a disability hardship.

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

Chairman Rheume felt that any concern for two vehicles in the driveway was no longer an issue.

Mr. Mulligan acknowledged the zoning and law will change soon. The applicant would need to request relief from the Board even if it was postponed until after the draft Ordinance was adopted. It isn't a presupposition, but it does support substantial justice.

Mr. Parrott agreed with Mr. Mulligan and added that it is probable this be a prime example of the situation where the law intends to address and provide relief to those that live in the zoning districts.

Chairman Rheume noted the law is forthcoming. Advanced relief that they think the law won't allow once the ordinance is adopted. There is a concern that it will set short-term precedent until the Ordinance is adopted. The applicant demonstrated why the request is necessary, but it is a concern that there could be undesirable consequences to granting it.

Mr. Mulligan noted that the request based on a disability variance does not have to have a limited duration. Chairman Rheume acknowledged that statement.

Mr. Mulligan moved to grant the petition as presented and advertised, seconded by Mr. Parrott.

Mr. Mulligan stated his response to each variance criteria presented in the application as follows:

1. The essential character of the neighborhood would remain and would not increase in an adverse way the density.
2. Granting the variance would result in substantial justice. The Ordinance change is being presupposed.
3. The structure already exists in its current footprint. The increase in density on the lot in terms of the number of people is minimal.
4. Little enforcement of the ordinance shows minimal hardship. The primary dwelling structure is relatively small.

Mr. Parrott concurred with Mr. Mulligan's response to the criteria.

Chairman Rheume stated his support for the application.

The motion to grant the petition was passed by a unanimous roll call vote 7-0-0.

Mr. Lee moved to continue the Board of Adjustment meeting past 10:00 p.m. which was seconded by Mr. Parrott. The motion passed by a unanimous voice vote 7-0-0.

Mr. McDonnell returned to Alternate status. Mr. Formella remained in a voting seat.

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- 15) Case #9-15
Petitioners: Justice C. Rines & Thea E. Murphy
Property: 372 Wibird Street
Assessor Plan 132, Lot 6

Zoning District: General Residence A

Description: Replace attached one-car garage/living space with a two-car garage/living space.

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, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from 10.521 to allow a 1.43'± right side yard setback where 10' is required.

SPEAKING IN FAVOR OF THE PETITION

Justice Rines, 372 Wibird Street

Mr. Rines' presentation included the following statements:

- The current garage cannot be used and the sonar tubes are grossly inadequate. The piers that support the corners do not go down deep enough. Since it is not suitable for a garage and they want to preserve the space, it is more cost effective to tear down and rebuilt it.
- The other consideration is not recommended to augment the living space upstairs. The room above the garage is a six inch drop on the right and 8 inch drop to the left.
- Extending the footprint would not change the feel of the neighborhood and the proposed changes are not contrary to the Ordinance.
- Given the current state of the house and comparable value and selling points, and it will enhance surrounding property values.
- Abutting properties would not be negatively affected by the garage.
- The two-car garage will reduce the danger of backing into Wibird Street.
- Little enforcement of the ordinance will result in hardship. The existing structure would likely lead to further problems because it is a long and narrow lot. The house is already nonconforming and 30% of the property exists in the setbacks, which presents potential hardship.

Mr. Johnson asked what controlling factor prevents shifting more towards the driveway. Mr. Rines explained that the road is fairly narrow and preserving the access to the second floor and roof life would be problematic.

SPEAKING IN OPPOSITION TO THE PETITION

William Bothwright and Deborah, 45 Marsten Avenue

Mr. Bothwright stated his property abuts the rear of Mr. Rines' property and sits 25 feet below. He expressed concerns for the increased runoff as a result of the contours of the properties and the lack of buffer between the two structures. Allowing the structure to come 1'6" from the property line is not within the spirit of the Ordinance. He also felt the increased square footage is excessive. The owner is an attorney and understood the chances of receiving a variance.

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 noted a typographical error in the setback measurements.

Mr. Moretti saw no issue with the proposed addition, but did have concern for potential encroachment on the lot line.

Mr. Mulligan felt the right yard setback is currently encroaching with the closest point at 2.6'. The applicant is proposing natural extension of buffer. All the homes in the neighborhood appear to be perpendicular to the street, but the lots are not and shaped like a trapezoid. There is no issue with the natural extension of the home that acts as a buffer and it is already a significant nonconformity.

Mr. Johnson moved to grant the petition as presented and advertised, seconded by Mr. Mulligan.

Mr. Johnson stated his response to each variance criteria presented in the application as follows:

1. The application is not contrary to the public interest.
2. The proposed addition is in concert with several surrounding properties.
3. Substantial justice has been met.
4. The benefit to the applicant outweighs the harm to other individuals. It helps that the lot is trapezoidal shape, the adjacent abutter was also sighted to the lot and is somewhat shielded by the driveway and it does help the case.
5. They are looking for quite a bit of relief. They are at 2 feet in change.

Mr. Mulligan concurred with Mr. Johnson's response to the criteria. He added that the opposition heard did not speak to the relief being requested. The plan complies with the rear yard setback. What's proposed is in the height requirements of the zone. Building coverage, open space requirements, and all dimensional standards are met.

Mr. Parrott reiterated there exists increased sideline encroachment and there could be an opportunity to make it more in conformance with sideline setbacks. He did not support the motion.

Chairman Rheume explained the alternative option and its implication, which led him to determine that there would be hardship for the applicant to move the addition away from the lot line. He did not see a negative effect to the abutter as substantial. Most of the homes in the neighborhood would also be in the setback due to the physical layout of the properties. He stated his support for the motion.

The motion passed by a roll call vote 4-3, with Mr. Moretti, Mr. Parrott, and Mr. Lee opposed.

Mr. Moretti recused himself from the following petition. Alternate McDonnell assumed a voting seat. Mr. Formella continued in a voting seat.

16) Case #9-16

Petitioners: Gregory and Elizabeth LaCamera

Property: 34 Rock Street

Assessor Plan 138, Lot 18

Zoning District: General Residence C

Description: Replace an 8.5'± x 14'± left rear addition with a 12'± x 14'± structure.

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, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
2. Variances from Section 10.521 to allow the following:
 - a) An 8'5"± left side yard setback where 10' is required;
 - b) A 2'10"± rear yard setback where 20' is required; and
 - c) 53.28%± building coverage where 35% is the maximum allowed.

Chairman Rheume recused himself from any discussion and vote on the petition. Mr. Mulligan became acting Chairman.

SPEAKING IN FAVOR OF THE PETITION

Greg LaCamera

Mr. LaCamera explained that the plan intends to demolish existing outlet move it by 3.5 feet. It will be raised to 8.4' clearance. There is a small addition on top with a large staircase next to neighbor's. An abutter, Robin Husslage, stated her support for the request. It is expected to increase the property value. The only access way to that room is through another room, which is very narrow.

SPEAKING IN OPPOSITION TO THE PETITION

Mr. McDonnell cited a letter received from Jean Wright, 26 Rock Street, that the addition will greatly reduce the sunlight that enters her kitchen. She did agree that the building on the property is due for improvements.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one rose to speak, and Mr. Mulligan closed the public hearing.

DECISION OF THE BOARD

Mr. Johnson moved to grant the petition as presented and advertised, seconded by Mr. Parrott.

Mr. Johnson thought it is a tasteful design and the setback encroachment is not much different than the existing and that is mainly due to the lot size. He stated his response to each variance criteria presented in the application as follows:

1. Aesthetically, it is not out of character or poses threat or injury to public right.
2. It's reasonable for the applicant to propose the modest addition to create a more reasonable use of the house.
3. A small revision to what currently exists.
4. The site is relatively small and awkward mildly in size. The current conditions are in need and the addition would provide slight remedies to existing nonconformities.
5. The hardship is the sighting at the building.

Mr. Parrott concurred with Mr. Johnson's response and added that the additional relief given that the structure is very small for this building on the neighborhood.

The motion passed by a unanimous roll call vote 6-0.

Chairman Rheume returned to the Chair position.

III. OTHER BUSINESS

The Board reached consensus to meet on October 11, 2016 for the workshop to discuss the responsibilities and roles of the Chair and Board.

IV. ADJOURNMENT

Mr. Parrott moved to adjourn the September 27, 2016 Board of Adjustment meeting at 11:05p.m., seconded by Mr. Moretti. The motion passed by a unanimous voice vote 7-0.

NOTICE TO MEMBERS OF THE PUBLIC WHO ARE HEARING IMPAIRED

If you need assistance to attend a meeting, please contact the Human Resources Department at 610-7274.