

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

7:00 P.M.

**OCTOBER 18, 2016
TO BE RECONVENED
OCTOBER 25, 2016**

MEMBERS PRESENT: Chairman David Rheaume, Vice-Chairman Charles LeMay, Arthur Parrott, Christopher Mulligan, Jeremiah Johnson, James Lee, Patrick Moretti, Peter McDonell, John Formella

MEMBERS EXCUSED:

ALSO PRESENT: Jane Ferrini, Planning Department

Chairman Rheaume announced that the 200 Spaulding Road petition for work force housing was postponed to the November 15, 2016 meeting.

Chairman Rheaume also referred to the Board's previous work session and possible changes to the Rules and Regulations and asked whether the Board would agree to the following for the evening:

- a) Alternates would be allowed to ask questions during the presenter session and public comment but could offer no commentary after the public hearing was closed; and
- b) the time elements imposed would allow 15 minutes for the presenter and five minutes for speakers, with additional time allowed if necessary.

*It was moved, seconded and **passed** unanimously (7-0) to **approve** the two items above.*

I. APPROVAL OF MINUTES

A) September 20, 2016

DECISION OF THE BOARD

*It was moved, seconded and **passed** unanimously (7-0) to approve the September 20, 2016 minutes as amended.*

II. PUBLIC HEARINGS – OLD BUSINESS

A) Case #9-1

Petitioner: 393 New Castle Avenue LLC

Property: 390 New Castle Avenue

Assessor Plan 207, Lot 6

Zoning District: Single Residence B

Description: Raise existing structure 18"± and convert to 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 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) 96'± continuous street frontage where 100' is required.
 - b) A lot depth of 40'± where 100' is required.
 - c) A rear yard setback of 2'± where 30' is required;
 - d) A front yard setback of 25' where 30' is required; and
 - e) Minimum lot area per dwelling unit of 3,580± s.f. where 15,000 s.f. is required.

SPEAKING IN FAVOR OF THE PETITION

Attorney Tim Phoenix representing Mark and Ellen Hepp was present to speak to the petition. He confirmed that the Fisher vs. Dover issue was resolved. He stated that letters of support were received from the neighbors, which Mr. Hepp distributed to the Board. Attorney Phoenix stated that the major reason for the requested relief was that the building was being raised 18 inches to remove it from the flood zone, and that all the other requirements were dimensional ones. He noted that the existing structure was a prior non-conforming one and that there was ample parking on the site. He emphasized that the proposed micro-units were desirable in Portsmouth.

Chairman Rheume asked whether there would be additional storage. Mr. Hepp stated that half of the garage would have storage as well as the vaulted gable and that the residents would be able to still make use of the garage.

In response to Mr. Mulligan's questions, Attorney Phoenix stated that the property was presently being used for storage and parking, and that residents and the public parked on the property as well as across the street on the applicant's other property. Mr. Mulligan asked where the people would park if the petition was approved, and Mr. Hepp said there were twelve places to park, enough to accommodate all the units.

David White of 127 New Castle Avenue said the building was historic and that the owners simply wanted to improve it and not build out.

Andrea Goldsworthy of 393 New Castle Avenue said she resided on the second and third floors of the main house and supported the restoration. She also noted that there was ample parking.

SPEAKING IN OPPOSITION TO THE PETITION

Attorney Bernie Pelech on behalf of Pamela Hall of 4 Pleasant Point Drive stated that the lot area per dwelling unit was a fifth of what was required by the Ordinance and believed that it was contrary to the spirit and intent of the Ordinance. He reviewed the reasons why he thought parking would be an issue. He stated that the petition did not meet the five criteria.

Martha Stolzer of 5 Pleasant Point Drive said she owned the property that directly abutted 390 New Castle Avenue. She said the neighborhood was primarily a single-owner occupied one and that congestion was a big issue and would affect her home's value. She felt that turning the building into a rental property was not necessary and that it could evolve into short-term rentals.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Phoenix said he respected the parking concerns but noted that there was ample parking on the property and that anyone could park on a public street. He emphasized that the applicant was not requested short-term rentals. He said the petition would meet the criteria of air, light and space and restore the historic look of the building.

Vice-Chairman LeMay asked about the garage. Attorney Phoenix said it was not historic. Mr. Hepp said he would dress up the exterior if the petition got approved.

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

DECISION OF THE BOARD

Chairman Rheume stated that the Board had information from supporters and two emails in opposition.

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

Mr. Mulligan stated that the major points of opposition were the parking and issues surrounding the use of the property as well as the property across the street. While they were important issues, he said the property and the change of use proposed could support the modest additional parking burden. He said the apartment would be a micro one and not likely to generate overcrowding.

Mr. Mulligan stated that granting the variances would not be contrary to the public spirit and would not alter the essential character of the neighborhood or threaten the health, safety and welfare of the public. The essential character of the neighborhood would remain residential in nature and would not be compromised. Given the extremely small size of the proposed dwelling, he said it would not negate the public's health, safety and welfare. Granting the variances would result in substantial justice because the loss to the applicant if denied would outweigh any possible gain to the public. He said the applicant wanted to preserve what was a unique and historic structure, and if denied, the only use would be some type of glorified shed, so the gain to the public by holding fast to all the dimensional requirements would be outweighed by the loss to the applicant. Granting the variance would not diminish the values of surrounding properties because the building and the lot would be vastly improved. The structure itself would not be modified dimensionally in any significant way other than being raised slightly, so the sight lines and visual effect on surrounding properties would not be changed. Literal enforcement of the Ordinance would not result in unnecessary hardship because there were many special conditions of the property, including the fact that it was a corner lot surrounded by water on the remaining two sides, it was a historic building with a colorful character, and it was something that the City should want to see preserved. Mr. Mulligan said he did not believe that there was a fair and substantial relationship between the purpose of the dimensional requirements and their application to the property. The reason for the dimensional requirements was to avoid overcrowding and over-intensity of use, and he did not see that being the case. He said the use was a reasonable one, a residential use in a residential zone, and the petition met all the criteria.

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

Chairman Rheume said he would support the motion somewhat reluctantly because he recognized that tiny living spaces was a growing trend in the country and felt there would be some benefit for the public by restoring the building. He said he hoped the applicant would restore the other structure on the property to help improve the neighborhood, and he also said he didn't feel that the parking would significantly change.

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

B) Case #9-5

Petitioner: Amba Realty LLC

Property: 806 Route One By-Pass

Assessor Plan 161, Lot 43

Zoning District: Business

Description: Allow a second free-standing sign on a lot.

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 10.1243 to allow two free-standing signs on a lot where only one free-standing sign is allowed.

Sign One (left side of lot)

2. A Variance from Section 10.1253.10 to allow a 4'± setback from the front lot line where 20' is the minimum required.

Sign Two (right side of lot)

3. A Variance from Section 10.1251.20 to allow a sign area for a free-standing sign of 120± s.f. where 100 s.f. is the maximum sign area allowed.
4. A Variance from Section 10.1253.10 to allow a 12'± setback from the front lot line where 20' is the minimum required.

Mr. Mulligan recused himself from the vote, and Mr. McDonell was the alternate.

SPEAKING IN FAVOR OF THE PETITION

The owner Rita Patel reviewed her petition and stated that she would stand by the criteria stated on her application. She said all the criteria were met.

In response to Vice-Chairman LeMay's questions, Ms. Patel stated that the sign on the left side of the lot over the bridge presently existed, and that the second sign was at the corner of the entrance between the gas station and the convenience store and was the sign she wanted to continue using.

In answer to Mr. Moretti's questions, Ms. Patel said the signs would be lit by focus lights and would use the same stanchions and outside lights. She didn't specify the hours of operation. In answer to Chairman Rheume's questions, Ms. Patel stated that the wall sign attached to the building would remain, that the sign by the bridge wasn't visible because of the trees by the Shell station, and that the wording on the tall sign by the bridge would remain the same.

SPEAKING IN OPPOSITION TO THE PETITION AND/OR

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Mr. McDonell stated that the two signs had been present for a long time and that the footprint would remain the same. He stated that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance because the purpose of the sign ordinance was to maintain and enhance the character of the City and to protect the public from distracting and hazardous displays. The essential character of the neighborhood would not be altered because the signs would remain the same and would pose no threat to the public's health's, safety and welfare. Granting the variances would do substantial justice. He saw no harm to the public and a substantial benefit to the applicant by advertising the business. It would not diminish the values of surrounding properties because the signs had been there for decades. As far as unnecessary hardship, Mr. McDonell said that the special conditions of the property, like the bypass on the south side of the property, obscured visibility to the site and required a tall sign on the property. He said a fair and substantial relationship did not exist between the purpose of the Ordinance and the special application to that condition for the property, and he felt that the proposed use was a reasonable one.

Mr. Moretti said he concurred with Mr. McDonell. He said the sign was there for over 40 years and remembered when it advertised a pancake house. He said it wasn't a substantial change. Although he shared the concern that the sign was near a school and advertised beer, wine and tobacco, he said it was a business but hoped that the applicant would change that one sign.

Chairman Rheaume said he would not support the motion because he felt that the nature of the business was mostly local and the little sign along the bridge and the sign on the building itself were adequate enough to show people where to turn in. He said the second sign on the bridge would be seen mostly by people in transit to the school and felt that it wasn't necessary and was time for it to become disused.

Mr. Parrott said that he had difficulty finding the hardship. He said the sign had been there a long time, but the business nature was new and a lot of the local traffic would know where it was. He said he concurred with respect to the issued of the appropriateness of the wording on the sign. He said he would not support the motion because he felt there was no hardship.

Vice-Chairman LeMay said he felt there was justification for the sign on the south end of the property because the business could not be seen until one was under the bridge. He said it was a hardship due to the location of the bridge and the fact that the building was tucked into the corner.

*The motion **passed**, with 5 in favor and Chairman Rheaume and Mr. Parrott voting in opposition, 5-2.*

C) 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. Variances from Section 10.521 to allow the following:
 - a) A 0'± front yard setback where 5' is required;
 - b) A 3.75'± right side yard setback where 10' is required;
 - c) A 2.6'± left side yard setback where 10' is required; and
 - d) 2'± rear yard setback where 20' is required.

Mr. Mulligan recused himself, and Mr. Formella was the alternate.

SPEAKING IN FAVOR OF THE PETITION

Attorney John Bosen representing the applicant was present to speak to the petition and introduced the owner of Alden Properties, Shawn Peters. He stated that the structure was old and once part of a larger lot that was broken up. He said the applicant wanted to upgrade the existing structure and would only require vertical expansion that would comply with the height code.

Attorney Bosen referenced the abutter's letter of opposition relating to light and air issues and said that the lot was very small and renovations would not put the structure any closer to the abutter's property, and he also noted that the abutter had a huge tree on his property that already blocked his light. He said the most affected neighbor was in approval and that there would not be further impact on street parking. He reviewed the criteria and said they were met.

Vice-Chairman LeMay asked whether the development of 244 Austin Street was coordinated with the petition since it was adjacent to the building. Attorney Bosen said that, to his knowledge, it was not. Vice-Chairman LeMay asked whether any windows faced 244 Austin Street. Mr. Peters said there were no windows on the back wall of the property because it was a fire wall. Mr. Johnson asked whether the first floor would remain the same and if the foundation would change. Attorney Bosen said the first floor would be renovated and that the foundation would be addressed.

Chairman Rheume clarified that the current structure was adequate, that the applicant would build off of that and create second and third stories, and that the first story would be re-used. He asked the reason for such a steep gable roof. Attorney Bosen said the building was 35 feet tall and would match the house behind it. He said the 35-ft height was from the sub floor, with an additional three feet to the grade level.

Mr. Johnson asked whether the steep roof was habitable or would be used for storage. Mr. Peters said the third floor was living space, with attic space above it.

Greg Mahanna of 235-237 Austin Street said the project would improve the neighborhood as well as the building because the building had always been in disrepair.

**SPEAKING IN OPPOSITION TO THE PETITION AND/OR
SPEAKING TO, FOR, OR AGAINST THE PETITION**

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

DECISION OF THE BOARD

Mr. Parrott asked why the application didn't address parking. Chairman Rheume said he had talked to the Planning Department about it. The building was currently a two-family dwelling and would continue that way, so it was not a change in use and wouldn't affect parking. Mr. Parrott said he wanted it on the record that the structure would not turn into a 3-family one.

Chairman Rheume said he had some concerns because the Board had approved the house behind the building because the building was existing, and the applicant was replacing exactly what existed before, which helped preserve the quirky nature of both properties. He said that made the applicant's building much taller in front of that other structure and would change the dynamic, and he also felt that there was a lot of relief asked for. It was a small lot, and he thought the existing structure could be renovated and improved vertically, but two full stories with a tall gable roof would change the essential character of the neighborhood and was against the light and air criteria.

Mr. Moretti said the other building was quite large and the fire wall indicated that there was probably the intent of building in front of that building. He said he didn't see the vertical expansion as a problem.

*Mr. Parrott moved to **deny** the variances for the application as presented and advertised. There was no motion to second.*

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

Mr. Moretti stated that the building was an eyesore for the streetscape and needed care, and the applicant proposed a building that would reshape the streetscape and bring the look of the street back to some type of quality. He said granting the variances would observe the spirit of the Ordinance because the project would stay within the footprint. He noted that the slightly higher building behind it was approved. It would do substantial justice because the building was in desperate need of repair. Its scope would not be changed and would be brought up to code, and parking wasn't an issue. Granting the variances would not diminish the values of surrounding properties because the applicant's property was substandard to the neighborhood and improving it would raise the values of surrounding properties, if not sustain them. As far as unnecessary hardship, Mr. Moretti said that the light and air issue with the abutter was affected by the large tree and noted that the applicant's building was almost a full lot away from that abutter. He said the building was in very tough shape and needed to go up vertically.

Mr. Johnson said he had a hard time at first with the height meeting the criteria of not being contrary to the public interest. He was concerned about light and air infringing on the neighbor, but after visiting the site, he realized that it would work and would allow for a larger than seemingly necessary height increase. He said he concurred with Mr. Moretti.

The motion passed, with 5 in favor and Chairman Rheaume and Mr. Parrott voting in opposition, 5-2.

III. PUBLIC HEARINGS – NEW BUSINESS

1) Case #10-1

Petitioner: Jask Realty Trust

Property: 114 Gosling Road

Assessor Plan 215, Lot 3

Zoning District: Office Research

Description: Replace free-standing sign.

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 10.1281 to allow a nonconforming sign to be reconstructed or replaced without bringing it into conformity with the Ordinance.
2. Variances from Section 10.1253.10 to allow a 10'± front yard setback and a 10' right side yard setback where 20' is required for each setback.

Mr. Mulligan resumed his voting seat.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech on behalf of Jask Realty Trust was present to speak to the petition. He noted that the City brokered an agreement with Ryder relating to the trucks leaving their engines running all night and disturbing the nearby mobile home park by installing a new sign stating that there would be no running engines between midnight and 7 a.m. He said the wind kept moving the sign because of the foundation, however, so the applicant wanted to shorten the sign by 10 feet and put it back in the same location, albeit with different lettering. He reviewed the criteria and said they were met.

SPEAKING IN OPPOSITION TO THE PETITION

Jesse Page stated that he was a resident of the mobile home park and that the previous sign on the building wasn't enforced, so he was concerned about whether or not the sign would be enforced.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Mr. Johnson said he thought it was a reasonable request, especially since the sign would replace a sign that was in the same location for quite some time. He said the new sign would be more conforming because it would lower the height by 10 feet. He stated that granting the variances

would not be contrary to the public interest and would observe the spirit of the Ordinance and would pose no threat to the public's health, safety and welfare. Substantial justice would be done. He said he didn't see any benefit to the public that would be outweighed by the benefit to the applicant and thought it was reasonable that the applicant would request the ability to replace an existing sign that had been there for a long time. Granting the variances would not diminish the value of surrounding properties because no one could argue that the mobile park property value may increase if the sign was actually adhered to. As far as the hardship issue, Mr. Johnson said that the hardship would probably be the specific siting because if the sign had to adhere to the setbacks, it would be less viewable, so placing it near the street seemed to be the only option. He added that the site was accessed by only one direction.

Mr. Lee said he concurred with Mr. Jonson and had nothing to add.

Chairman Rheume noted that the Board had approved a stipulation in 2002 stating that refrigerated trucks would not run within the 100-ft area within the back property line. He told the abutter that he could contact the Planning Department to make sure it was enforced.

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

2) Case #10-2

Petitioners: John Douglas Deihl III & Stephanie Guay Deihl

Property: 380 Richards Avenue

Assessor Plan 112, Lot 12

Zoning District: General Residence A

Description: Reconstruct rear addition with 1 story and 2½ story sections.

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 2.3'± right side yard setback where 10' is required.
3. A Variance from Section 10.521 to allow 29.8%± building coverage where 25% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

The project designer Brendan McNamara representing the owners was present to speak to the petition. He distributed three letters of support from the abutters to the Board. Mr. McNamara reviewed the packet, noting that the Victorian was a great shape and that the applicant simply wanted to expand it and would use the existing rear addition as a base.

Chairman Rheume said that the addition would be a bit higher than the current roof. Mr. McNamara said it was because the house had a hip roof with gable dormers and also had a flat 10'x10' section.

Steve Scott of 377 Richards Avenue said the irregular lot lines in the area made siting the homes in the neighborhood challenging, so the building would match the neighborhood's character.

SPEAKING IN OPPOSITION TO THE PETITION AND/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 Vice-Chairman LeMay seconded.*

Mr. Mulligan stated that granting the variances would not be contrary to the public interest or to the spirit of the Ordinance because the public’s health, safety and welfare would not be compromised and the essential character of the neighborhood would remain. The relief requested was an existing right yard setback that would be maintained, and the applicant was slightly reducing the building coverage. Granting the variances would result in substantial justice because the loss to the applicant if denied would not be counterbalanced by any gain to the public. Surrounding property values would not be diminished because they would be enhanced by the applicant replacing a few unfortunate additions with one that was much more in keeping with the existing architecture. As for the hardship, Mr. Mulligan said the structure was an existing non-conforming one that already slightly exceeded the lot coverage requirements and violated the side yard setback. The applicant would maintain the existing footprint and move into more conforming building coverage, so there would be no fair and substantial relationship between the purpose of the dimensional requirements and the application to the property. He said the use was a residential one in a residential zone and was reasonable.

Vice-Chairman LeMay said he concurred with Mr. Mulligan, and the fact that support was heard from the abutters on all four sides was compelling.

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

3) Case #10-3

Petitioner: Iiro O. Lehtinen

Property: 740 Woodbury Avenue

Assessor Plan 236, Lot 8-1

Zoning District: Single Residence B

Description: Construct a 27’± x 24’± two-story garage.

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

1. Variances from Section 10.573.20 to allow a 5’± left side yard setback where 10’ is required and a 5’± rear yard setback where 17’ is required.

SPEAKING IN FAVOR OF THE PETITION

The contractor Jeff Halldorson representing the owner stated that the applicant wanted to build a two-car garage due to his expanding family. He noted that a turnaround driveway would be created to make it easier to drive off the property. He said that all the abutting neighbors except one did not meet the existing setbacks and that the location for the garage was the only one that made sense.

Vice-Chairman LeMay said it was a large lot and asked why the garage had to go within five feet of the back lot line and be closer to the neighbor's house. Mr. Halldorson said it was due to the elevation and that any other location would be restricted by sewer lines. Since the sewer lines were not indicated on the plan, Vice-Chairman LeMay asked Mr. Halldorson to point them out, which he did.

Chairman Rheume noted that sewer lines were discovered on the left-hand corner of the property. Mr. Halldorson agreed and said there was a difference of 6-7 feet between the back yard and the existing driveway, so they wanted to shave it down and make it a more gradual slope. He said the footprint would be smaller by putting the staircase outside. In answer to Mr. Parrott's questions, Mr. Halldorson stated that the upstairs would be used for storage and would not be used for residential space and that there was existing power. Mr. Parrott emphasized that the storage space could not be used for future residential living space.

Mr. Johnson asked whether the 3-ft overhang in the back was to cover the stairway, and Mr. Halldorson agreed. Chairman Rheume asked whether the stairway was no more than three feet wide and was covered by the overhang, and Mr. Halldorson agreed, noting that there was a deck.

In response to Vice-Chair LeMay's questions, Mr. Halldorson stated that a person had to go behind the building to get up to the second floor because the owner thought it would look better, that there were no internal staircase, and that wood would be stored under the 3-ft extension over the stairs. He also further explained the sewer pipe locations.

Mr. Parrott said he was confused as to what the actual dimensions were because the table showed a street frontage of 50 feet and a lot depth of 117 feet, yet the zoning map showed something different. Chairman Rheume said the table was probably an error because the 75-ft width was shown on the tax map and was the figure represented by the applicant. Mr. Halldorson confirmed that the front lot line was 150'x75' and said it had been surveyed. Mr. Parrott said the concern about the sewer pipe might be affected if the lot dimensions were in question. Mr. Halldorson said the pipe was in the back corner of the lot and that a foundation would not be placed there. In answer to Mr. Parrott's question about whether he could move it five feet to the center of the lot, Mr. Halldorson said he couldn't because the space was needed for the turnaround.

David Perkins of 759 Woodbury Avenue said he lived directly across the street and supported the design plan because it would esthetically add to the neighborhood.

Fred Horvath of 710 Woodbury Avenue said he was a direct abutter and supported the proposal because it would help the esthetics and property values of the neighborhood.

**SPEAKING IN OPPOSITION TO THE PETITION AND/OR
SPEAKING TO, FOR, OR AGAINST THE PETITION**

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

DECISION OF THE BOARD

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

Mr. Lee stated that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance because the addition would not impact any abutters. Substantial justice would be done because the benefit to the applicant would outweigh any harm to the general public. Granting the variances would not diminish the value of surrounding properties, and the literal enforcement of the Ordinance would result in unnecessary hardship because the applicant needed the additional space for storage and the special conditions of the property necessitated that the two-car garage be built for extra space.

Mr. Johnson said he concurred with Mr. Lee and added that it was a fair-sized property that looked smaller in person than it did on the City map. He said the applicant made a convincing argument that the side setback variance was justified. By changing the grade and creating a turnaround, people wouldn't have to back out into busy Woodbury Avenue. Pushing the garage over and creating the turnaround space would also place the garage more into the middle of the backyard. He said those two issues were hardships.

Chairman Rheume said he would support the motion because, even though the new garage was substantial and he had thought it could be moved away from the property line a bit, the slope of the property dictated its position relative to the rear property line. He also considered the awkward turns on the driveway and the fact that there wasn't much around the property.

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

4) Case #10-4

Petitioner: Seacoast Development Group LLC

Property: Rockingham Avenue

Assessor Plan 235, Lot 2, Sub-Lot #3

Zoning District: Single Residence B

Description: One lot in three-lot subdivision with less than required depth.

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 10.521 to allow lot depth of 61.84'± for proposed Lot 3 where 100' is the minimum required.

SPEAKING IN FAVOR OF THE PETITION

Attorney Tim Phoenix representing Seacoast Development was present to speak to the petition. He discussed the reasons for not meeting the lot depth requirements and reviewed the criteria, saying they would be met.

Mr. Lee asked about the cost range. Jim Lazianus of Seacoast Development stated that the potential size of the house would place it in the lower price range for Portsmouth. He said they did not intend to build houses but would sell the lots to retail users.

Chairman Rheume clarified that what was being proposed was that Lot 3 would match the Subdivision Plan S2 and not the conceptual lot plan that was provided. Attorney Phoenix agreed.

SPEAKING IN OPPOSITION TO THE PETITION

Bonita Stockton said she was a resident and walked the wooded pathway in the area. She was concerned that houses built on the lot would necessitate cutting down more trees and would create sound and pollution issues as well as encroach on the pathway.

Justin Richardson of 586 Woodbury Avenue distributed his written comments to the Board. He said he was concerned that the buffer would disappear and the sound levels would increase, impacting the neighborhood. He said the development was dense and felt there was no hardship for the applicant. He also suggested that the City hire a consultant to evaluate various problems.

Jeff Loring of 73 Rockingham Avenue said he was a civil engineer and was against the petition because he felt two lots were more reasonable than three and was also concerned about the noise and the fact that the driveway would be closer to the highway ramp and unsafe.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Phoenix stated that the property was surveyed and there was no density issue. As for the noise level, he said there was existing traffic noise from the highway and Rockingham Avenue. He said the applicant had the right to develop the property and noted that, if the petition was denied, a larger home might be built on it eventually. He said there was an additional buffer between the property line and the bike/walk path and there was no intention to cut the trees.

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

DECISION OF THE BOARD

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

Vice-Chairman LeMay stated that the variance being asked for was a fairly minor one. The hardship was the narrow shape of the lot and the way the lot depth was measured, making a large and adequately deep lot look relatively small. He pointed out that the 10-ft elevation where the bike path began and where the house was situated was quite a slope. He noted that there was no incentive to take the trees down and that there was plenty of hardship in the lot.

Vice-Chairman LeMay stated that granting the variance would not be contrary to the public interest or to the spirit of the Ordinance because the petition did not conflict with the explicit or implicit purpose of the Ordinance or materially affect the character of the neighborhood by having additional homes in the strip. He said the strip was bigger than it first appeared. Granting the variance would do substantial justice. The benefit to the applicant was substantial and the harm to the general public was small. The value of surrounding properties would not be diminished. He said he didn't see any reason why developing homes that weren't larger than the abutter's would have a negative effect on property values.

Mr. Mulligan said he concurred with Vice-Chairman LeMay and felt that it was important to note that all the dimensional requirements, like the setbacks that affected neighboring properties on Rockingham Avenue, would be met by all three lots proposed. He agreed that there were special conditions to the property that constituted an unnecessary hardship, noting that the third lot was a triangular one with an unusual shape. He said there was no fair and substantial relationship between the purpose of the depth requirement and its application to a triangular lot. He said the applicant had said that making the lot smaller and bringing it into closer conformance would make no sense. He said the use was reasonable, a residential one in a residential area, and that the

applicant was entitled to have two lots as well as very minimal relief for the third lot. The change in the status quo would have an effect on some of the character of the neighborhood but not in a marked degree, and he felt that in order to deny a variance, the Board had to find that the essential character of the neighborhood would be altered, and he didn't see how that was possible. He said the applicant was proposing a single residential use in a single residence neighborhood.

Mr. Moretti said he would support the motion because it was a restoration of what the neighborhood was prior to the highway going in. He said he understood the concerns with sound, air and light, but felt that the developer's rights to develop the property back into a single residence was correct, and the small hardship of the angles of the property drove the request.

Chairman Rheume said he would support the motion and felt that the minor relief request was logical. He said that some of the abutters had legitimate points but could bring them to the Planning Board.

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

Due to the late hour at this point in the meeting, it was decided to postpone the last two petitions to the following week's meeting.

Mr. Parrott moved to postpone Petitions #7 and #8 to the October 25, 2016 meeting, and Mr. Formella seconded. The motion passed with all in favor, 7-0.

- 5) Case #10-5
 Petitioner: S&G Realty
 Property: Chevrolet Avenue
 Assessor Plan 147, Lot 30
 Zoning District: General Residence C
 Description: Construct a three-unit townhouse.
 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 10.521 to allow a lot area per dwelling unit of 3,357± s.f. where 3,500 s.f. per dwelling unit are required.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech representing S&G Realty was present to speak to the petition and introduced the applicant Gail Huff Brown. He reviewed the petition, noting that the lot was rezoned in July to the GRC District but was previously mixed residential business. He said the lot was surrounded by multi-family dwellings and part of an old subdivision, and that the proposed building would meet everything but the lot area per dwelling unit. He reviewed the criteria and said they would be met.

Mr. Mulligan asked whether 600 square feet would be added, and Attorney Pelech said it would not. Mr. Mulligan said the Board had heard from one of the abutters who claimed that the applicant also owned property on Friend Street. Attorney Pelech said the 23 Friend Street residence was a condominium and the lot had been a separate one for over a hundred years. He said both lots were in the Brown family but had never been merged. In response to further questions from Mr. Mulligan, Attorney Pelech said the intent was to access the units from

Chevrolet Street and not Friend Street and that the common area in the back of Friend Street would perhaps be made into a back yard or a common garden.

Chairman Rheume noted that there was a requirement for six parking spaces. Attorney Pelech said it had to go before Site Plan Review. He said there were three spaces in the garage and three in the driveway. Chairman Rheume then concluded that the intent was to have a short driveway and that it seemed most of the parking spots would not be on the applicant's land if they didn't own the front portion of it. He asked whether the Planning Board had weighed in. Attorney Pelech said he spoke with a Planning Board representative and that it wasn't an issue for the BOA. In answer to further questioning from Chairman Rheume, Attorney Pelech said the applicant had not tried to prove 100 years of continuous use of the land and add it to his property to make it simpler because his predecessors had used it for a hundred years and no one had challenged it.

SPEAKING IN OPPOSITION TO THE PETITION

Catherine Whelan of 660 Middle Street stated that she was also speaking on behalf of the other three owners and asked why a new non-conforming use was being created. She said the applicant was trying to gain excessive profit through a variance. She said the criteria would not be met and that no hardship was proven.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Pelech stated that the Brown family once owned the entire block and that the amount of variance was 96% of what was required. He said the application did meet the spirit and intent of the Ordinance, and the test was whether or not the building would substantially alter the essential character of the neighborhood, which it would not.

Vice-Chairman LeMay asked whether there was a parking area adjacent to the parcel of Friend Street. Attorney Pelech said there was a parking space off Friend Street.

Chairman Rheume asked what the intent was for parking. Attorney Pelech said that the building was presently a condominium and would probably have no inherent parking with it but noted that an easement for the parking space could be obtained.

Gail Huff Brown stated that her husband's great-grandfather used to own the entire lot and that there were six garage units on Chevrolet Avenue for people who lived in the multi-family homes. She said the surrounding homes all belonged to her husband's family, and he had bought the last one from his mother. She also noted that the parking situation had been that way for 134 years with no questions.

Chairman Rheume said his point was that the applicant was counting on the section of property in the front for three parking spaces and that it could become an issue.

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

DECISION OF THE BOARD

Chairman Rheume stated that the neighborhood was changing and was recently rezoned from MRB to GRC as part of an effort to consider the future of the West End. He said there was an opportunity for some higher densities and noted that the City Council and the Planning Board did

some things to create more of a sense of density. He said the West End could become a new focal point, seeing that there was a lot of redevelopment happening. He said he would the unknown parcel in front of the property was odd and if it were the applicant's property, they would not have to appear before the Board.

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

Mr. Mulligan stated that the relief being requested was relief from the lot area requirement, so it was a density issue, and he felt that the amount of relief requested was modest compared to the amount of density that would result. He said he was not simply looking at the existing multi-family houses but also recognizing that the immediate adjacent abutting lot was GRA, so there was the ability to integrate the proposed development that would not be contrary to the spirit of the Ordinance or the values that the City had been trying to promote. He said it was an opportunity to increase the amount of housing in the residential neighborhood in a manner that was not inconsistent with either what was there or what was permitted.

Mr. Mulligan stated that granting the variance would not be contrary to the public interest or to the spirit of the Ordinance because what was proposed would not alter the essential character of the neighborhood. The neighborhood would remain a dense residential one, with multi-family dwellings in the immediate and adjacent areas. The public's health, safety and welfare would not be threatened because the amount of space on the lot was large enough to support the three units requested. He said if the applicant formally acquired by adverse possession the lot that was in limbo, there was no question that it would meet all the requirements for the density issue. Granting the variance would do substantial justice because the applicant's request was modest in terms of amount of relief required, and the loss to the applicant would outweigh any gain to the public if the Board required strict compliance with the Ordinance. It would not diminish surrounding property values because what was currently on the property were a few garages, and the petition would be an improvement and would increase the values of surrounding properties. He noted that some of the surrounding properties were commercial in nature and would not be affected. As for literal enforcement of the Ordinance resulting in unnecessary hardship, he said there were special conditions of the property, including that it was oddly shaped with frontage on two different streets and was very close to meeting the requirement that the applicant was seeking relief from, so he could see no fair and substantial relationship between the purpose of the lot area per dwelling requirement and its application to the property. He said the proposal was not an over-intensification.

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

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

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- 6) Case #10-6
 Petitioner: Thomas M. Penaskovic
 Property: 29 Burkitt Street
 Assessor Plan 160, Lot 19
 Zoning District: General Residence A
 Description: Construct a 14'± x 23'± detached 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 10.521 to allow a 3'± right side yard setback where 10' is required.
2. A Variance from 10.521 to allow 28.93%± building coverage where 25% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

The owner Thomas Penaskovic stated that he had several photos of his unique situation and noted a neighbor's letter of approval in the packet. He said he needed a garage and that he owned one of the two driveways.

Chairman Rheume asked whether there had been a previously-existing garage. Mr. Penaskovic said there was an existing slab on the other property that used to have a garage and that the slab would be torn up when his neighbor rebuilt his property.

In response to further questions from Chairman Rheume, Mr. Penaskovic said the evidence from the tax map that showed a structure was actually a fence that split the properties. He explained how he had originally indicated that the garage would be 12 feet tall but the pitch of the house roof necessitated that the garage be closer to 16 feet tall so that it would match. He said it would be no higher than 16 feet and would be a one-story garage with a pitch with possible storage.

SPEAKING IN OPPOSITION TO THE PETITION AND/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 Mr. Parrott seconded.*

Mr. Moretti stated that granting the variances would not be contrary to the public interest or to the spirit of the Ordinance because there was no public interest for or against the petition. He said it was a small request for a line adjustment to the garage. It would do substantial justice because the modification would allow the applicant to enjoy the property, use the garage, and get full use of the property. Granting the variances would not diminish the value of surrounding properties because the project would improve the applicant's property and add to the neighbors' property values. Relating to the hardship, Mr. Moretti said the garage was a modest addition to the property and the hardship was that, without the granting, the applicant could not get the full use of their property.

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

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

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- 7) Case #10-7
 Petitioner: Cross Roads House
 Property: 600 Lafayette Road

Assessor Plan 243, Lot 2

Zoning District: Gateway

Description: Erect a 12'± x 16'± shed.

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 10.573.20 to allow a 5'9" right side yard setback where 10' is required for an accessory structure.

DECISION OF THE BOARD

*Mr. Parrott moved to **postpone** the petition to the October 25, 2016 meeting, and Mr. Formella seconded. The motion **passed** with all in favor, 7-0.*

8) Case #10-8

Petitioner: Charles A. Corlin

Property: 736 Middle Street

Assessor Plan 148, Lot 24

Zoning District: Single Residence B

Description: Construct a 24'± x 24'± detached garage and 8'± x 16'± shed.

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

1. Variances from 10.573.20 to allow a 3'± right side yard setback for a shed where 10' is required and a 6'± rear yard setback for a garage where 15' is required.

DECISION OF THE BOARD

*Mr. Parrott moved to **postpone** the petition to the October 25, 2016 meeting, and Mr. Formella seconded. The motion **passed** with all in favor, 7-0.*

IV. OTHER BUSINESS

Chairman Rheume stated that City Attorney Sullivan wanted to review the conflict of interest issue at the November 15 meeting and said the Board would have to be present at 6:30 instead of 7:00. He also said that the Planning Department was updating the rules and regulations from the Board's work session and hoped to have a draft of it for the same meeting.

V. ADJOURNMENT

*It was moved, seconded, and **passed** by unanimous vote to adjourn the meeting at 11:00 p.m.*

Respectfully submitted,

Joann Breault

BOA Recording Secretary