

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

7:00 P.M.

FEBRUARY 21, 2017

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

MEMBERS EXCUSED: Chris Mulligan

ALSO PRESENT: Jane Ferrini, Planning Department

I. APPROVAL OF MINUTES

A) January 17, 2017

*It was moved, seconded and **passed** unanimously (7-0) to approve the January 17, 2017 minutes.*

II. PUBLIC HEARINGS – NEW BUSINESS

Chairman Rheume stated that Mr. Formella would be the alternate.

- 1) Case #2-1
Petitioners: Ajeet Jai Singh & Kathleen Jo Singh
Property: 140 Thornton Street
Assessor Plan 160, Lot 8
Zoning District: General Residence A
Description: Construct a rear landing/deck and stairs onto a previously approved new home.
Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including a Variance from Section 10.521 to allow 33% building coverage where 25% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

The owner Ajeet Jai Singh was present to speak to the petition and said he needed a variance to improve his home's rear exit and to create another access. He also needed an additional 9 s.f. of retaining wall to prevent erosion. He reviewed the criteria and said that they would be met.

Minutes Approved 3-21-17

In response to Mr. Moretti's questions, Mr. Singh stated that the demolished building's lot coverage was approximately 28%, and that the retaining wall would be beneath the stairs and had already been calculated for.

Vice-Chair LeMay said the wall was a fundamental egress detail and asked what happened. Mr. Singh said the lot was small, and they did their best to keep the house within a reasonable size limit but were uncomfortable about adding a deck for safety reasons.

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

Vice-Chair LeMay said that he didn't like the idea, as reasonable as it sounded, of an applicant returning for the 'second bite of the apple' because it wasted the Board's time as well as the public's time. He said it wasn't up to the Board to second-guess the architectural drawings. Chairman Rheume agreed. Vice-Chair LeMay said that the retaining wall kind of got discovered as they went along but questioned the basic egress aspect.

Mr. Johnson said he also didn't like to have his time wasted but felt that designing a house was an ongoing process. He said it was simply a convenience stair that the owner wanted and thought that the reason the wall might have slipped through the cracks was because of the convenience stair. He felt that the issue was a minor one that wouldn't have changed his mind, noting that it was 35% versus 30%, with a low-lying wall on the side of the house that was probably the least offensive side.

Mr. Moretti said it looked more like an escape route than a deck. He said he wished it had been brought forth the first time but felt that the egress was necessary.

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

Mr. Moretti stated that granting the variance would not be contrary to the public interest because the petition was previously before the Board and received a lot of input. He said he thought it was a minimal request for an egress and was a hallway-type of entrance that wouldn't give much enjoyment. Granting the variance would observe the spirit of the Ordinance because the Ordinance was in place to control overbuilding, and a 3% increase was not an overextension of the variance. Substantial justice would be done because the owner would get what he needed for egress and it wouldn't be an eyesore because it would be on the back of the building. Granting the variance would not diminish surrounding property values but would add to the values because the house would be new. Mr. Moretti said he recalled that one of the concerns of the public during the previous approval was that the price of the house would go up because it was new. He said the addition would add more value to the house, and he felt that the egress was necessary so that the applicant could have rear access from the first floor, which would provide safety and well-being for his family.

Mr. Parrott said he concurred with Mr. Moretti and agreed that presenting the complete design to the Board the first time would have been preferable. He said he would support it because it was a small request in terms of actual size and percentage.

Chairman Rheaume said he would support it, even though he had some frustration about the petition returning before the Board. However, he felt it was minimal and would not affect the architectural characteristics of what was being proposed for the home. He said it was unique and small enough and that he understood the owner's concern about having to go down the four flights of stairs to evacuate the home. However, he thought that the nature of what was proposed forced some of that because the homeowner was looking to create a fairly large dwelling on a small lot from the start. He said that, in light of the fact that the petition was previously approved, he thought approving it was the right thing to do.

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

2) Case #2-2

Petitioners: LCSG, LLC

Property: 160 & 168-170 Union Street

Assessor Plan: Map 135, Lots 29 and 30

Zoning District: General Residence C

Description: Construct two (2) three-unit dwellings on a combined lot

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

1) Variances from Section 10.521 to allow a lot area per dwelling unit of 1,575± s.f. where 3,500 s.f. is required and 15.3% open space where a minimum of 20% is required;

2) A Variance from Section 10.1112.30 to allow ten (10) off-street parking spaces to be provided where 12 parking spaces are required.

Mr. Johnson recused himself from the vote, and both alternates took his voting seat.

SPEAKING IN FAVOR OF THE PETITION

Attorney John Bosen representing the applicant was present to speak to the petition. He introduced Eric Weinrieb of Altus Engineering, Mark Genetti of Henry Architecture and the contractor Tim Noonan.

Attorney Bosen stated that he had two letters of support, which he gave to the Board. He said Mr. Noonan inspected the property and recommended that the structures be demolished instead of renovated due to their deplorable condition. He reviewed the packet and said they wanted to construct two structures with three apartments each. He reviewed the criteria and said they would be met. He emphasized that the two modern structures would be more appropriate for the neighborhood, that open space and street parking would be improved, and that the traffic study was a positive one for the neighborhood.

Vice-Chair LeMay noted that the driveway was substantially wider. Mr. Weinrieb said it was a bit wider. Vice-Chair Lemay asked whether it would take up another parking space, and Mr. Weinrieb said it would not.

Mr. McDonell said that the appraiser's letter seemed general and didn't state that the development would have any impact, positive or negative, on the surrounding area. He said it seemed that the letter indicated that the average and median prices of single-family homes had gone up at the same time that development had been increasing, and another development would not negatively affect those prices. Attorney Bosen said the letter spoke to the fact that Portsmouth real estate was rising but didn't indicate that there would be a negative impact to the neighborhood. Mr. McDonell said he preferred that the letter indicate that the project would either positively or negatively impact the surrounding neighborhood. Attorney Bosen argued that the letter said it was rather unlikely that it would negatively affect local property values.

Chairman Rheume noted that a drawing demonstrated a proposed front façade for both buildings and asked how accurate it was. Mr. Genetti said it was schematic and that they were trying to show the appropriate massing. Chairman Rheume said the drawing showed two structures that were essentially the same but with a little bit of variation, like some doubling of windows. He asked what kind of variation the two buildings would have. Mr. Genetti said they weren't trying to replicate the buildings but just represent the massing.

Chairman Rheume asked whether dormers would be added on the third floor, and Mr. Genetti said there was a potential for dormers and skylights. It was further discussed.

Chairman Rheume asked why the open space requirement was dominated by the parking behind the two structures and whether there were options for reduced parking to allow some green space. Mr. Weinrieb said they felt it would be detrimental to the neighborhood and that it was better to get the parking spaces off the street. Chairman Rheume asked whether they projected a loss of more than one parking space to get to the 20%, and Mr. Weinrieb said he didn't recall but felt that getting rid of a space in the aisle might come close.

Mr. Moretti asked about storage, and snow and waste removal. Mr. Weinrieb said the trash removal would be stored inside and brought out, and the snow would be piled up and removed. In reply to further questions from Mr. Moretti, Mr. Weinrieb said storage of bikes, kayaks and so on would either be in the unit or the basement, and that the basement would probably be accessed from the stairwell.

Chairman Rheume stated that he recognized the two letters of support that were given to the Board and that the Board also received a letter in opposition from 273 Austin Street.

SPEAKING IN OPPOSITION TO THE PETITION

The following citizens spoke in opposition:

Roland Cote, 188 Union Street

Cari Feingold, 199 Union Street (who read a letter from Reid Johnson of 292 Austin Street)

Scott Rafferty, 200 Union Street

Elyse Hambacher, 220 Union Street

Todd Creamer, 199 Union Street
Brandon Frazee, 180 Union Street
Patty Buchanan, 293 Austin Street
Jeff Zurhellen, 287 Austin Street
Esther Kennedy, 41 Pickering Avenue
Rick Becksted, 1395 Islington Street
Suzy Havran, 88 Union Street
Janet Morly, 188 Union Street

The concerns included the following:

- Fails the hardship criteria for multiple reasons
- Too many residences on the lot
- Parking would result in air and noise pollution
- Increased stormwater runoff
- Too intense and too dense for the size of the lot
- Money-making motive
- The big parking lot is inconsistent with the neighborhood
- Lack of green space
- The structures would detract from the character of the neighborhood
- The development would block the sunlight
- Trash storage location
- Road too small for more off-street parking

SPEAKING TO, FOR, OR AGAINST THE PETITION

Roland Cote of 188 Union Street said he lived next to a direct abutter, Thelma Brazie, and had her letter stating that the units were still too big for the lots.

George Dempsey of 42 Dennett Street commented on what he thought should have been provided to the Board.

Patty Buchanan of 293 Austin Street said she would submit her written comments to the Board.

Attorney Bosen said they had heard that evening the same opposition they had heard before, but they had a much different plan. He said they could have presented a plan without the need for parking space but felt that what they proposed was consistent with the neighborhood. He said that, if the emotions and opinions were filtered out, the facts supported a variance being granted. He noted that the project had to go for site review but insisted that it was in keeping with the neighborhood. Attorney Bosen also noted the 8-unit property being constructed down the street. He said the parking was determined by the Ordinance, not emotion, and he knew the plan would improve the parking situation on Union Street. He said Altus Engineering was hired to do the traffic memo. He said the hardship existed because the lot was narrow, and that merging the two lots would allow more open space and allow the properties to be more zone-compliant.

Janet Morly of 188 Union Street stated that any place could be rehabilitated. She said there was no comparison to the 8-unit high-end condominiums down the street because they had underground parking, adequate storage, lots of green space, and visitor parking.

Rick Becksted of 1395 Islington Street said he had owned a contracting business for over 30 years and was familiar with the houses in the neighborhood. He said there was no hardship that warranted the developer knocking either building down.

Elyse Hambacher of 220 Union Street said the ell-shaped lot she lived on was the most non-conforming one on the street, so she felt that the developer could build a single-family home.

The project contractor Tim Noonan said he that his staff went into the building to see whether it was equitable to fix it. He said a new building would be more efficient and safer.

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

DECISION OF THE BOARD

Mr. Lee said he noticed a pattern in his two years on the Board of recycling of applications and felt that the applicant's petition was one of them. He said that nothing had really changed and that he saw no hardship and would oppose the petition.

Vice-Chair LeMay said he recalled that the Board's previous discussion involved the encroachment of the parking lot on the back neighbor and felt it was a legitimate concern for the neighbor. He said he had previously asked where the snow would be put and whether there would be a dumpster. He said he was troubled by the fact that from looking at the floor plans, he couldn't figure out how the stairs would work, with landings up and down and so forth. He wondered how the stairs would work and noted that there was only one back door on the entire building that was in one unit. He said he realized that the Board wouldn't have flushed-out plans but said they had just seen in the previous hearing what could happen when there was inadequate egress. He said they sometimes got a convenient plan presented to them and could wrap their heads around it, but in the applicant's case, he felt there was no place to make that sort of accommodation because it was buttoned right in as it was the first time. He said it was a small lot and not unusually shaped, and he felt three or four units would be more appropriate than the six that were reduced from ten units. He said he had no problem with someone buying a property and renovating it for money.

Mr. McDonell said that he thought the application, except for the back parking, was in keeping with the character of the neighborhood, but that he didn't see the hardship. He said the back parking area was good but felt it would result in a lot of parking that would be very close to a few houses and would negatively impact some of the property values.

Mr. Parrott stated that lot coverage was an important issue and thought there had to be an independent egress from a third-floor apartment. He said that anything built would take up space on the ground and felt that the percentage of lot coverage was simply not there. He said he didn't think it had been thought through and he agreed with Chairman Rheume's comments about dormers. He felt that the Board was presented with a stripped-down project that would have modifications later on. He said that he had previously rambled on about special conditions

with respect to the hardship test and had to admit that he was of the same opinion because the specific language the Board had to deal with came from the law. As far as the property having special conditions that distinguished it from other properties in the area, Mr. Parrott said that, from looking up and down the street at the tax map, the property in terms of size, shape and orientation was no different than other properties in the area. He said the property, in fact, was almost identical to several of the neighboring properties. He said the area was laid out as a cookie-cutter type of development and that a whole bunch of lots that were almost identical were laid out along the street, so the hardship test was important because it was the baseline requirement. He said the underlying condition was that the property had to have special conditions – ‘special’ implying being different from others – and he could not see what that might be in that particular case. He said the Board had other cases before them where the lots were huge or tiny or strange shapes and something different from the neighbor’s, but he felt that was not the case in the applicant’s petition.

Mr. Moretti said he was opposed to the parking and driveway the first time. He said he thought the applicant did a great job in making the building conform to the streetscape but was still concerned about a car’s bright lights in the driveway shining into someone’s bedroom at 2 in the morning. He also felt that taking up all the green space and the back parking directly facing the houses would be a hardship for the neighborhood.

Chairman Rheaume rhetorically asked whether the two existing structures were beyond renovation, although he thought the barn might be. He said the Board didn’t have a lot of jurisdiction over demolition and that the profit motive was a landowner’s right, but the Ordinance provided limits. He said that the petition was improved, but he was still concerned about the open space. He said that converting the back parcel into a giant parking lot would change the neighborhood’s character and would probably be detrimental to the tenants as well. He said he preferred to see more green space. He noted that the argument for the hardship criteria, stating that the current buildings already had encroachment issues and that the project would do better, had some balance, but he didn’t see where the neighborhood gained anything by an improvement in the encroachments. He asked whether it was possible to find some way out by constructing new buildings, and thought there could be, but he didn’t see the third top-floor unit being a workable unit as presented and felt that the Board needed a lot more information to see how it could be workable. He said the number of units could be reduced as well as the impact of the parking. He said the applicant had the right to have a fair amount of coverage space, but he felt that just asking for that relief for the amount of parking needed was still asking for too much.

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

Mr. Lee said his motion was based on the unnecessary part and that he didn’t see any special conditions or unnecessary hardship.

Mr. Parrott said he concurred with Mr. Lee and would reference his prior comments. He said the application had to satisfy all five criteria and failed to satisfy one.

Vice-Chair LeMay stated that a few other requirements weren’t met, including substantial justice in terms of harm to the neighborhood versus the benefit to the developer. He said that not having

a hardship was adequate to deny the petition, but he thought that the first two requirements were not met as well.

Chairman Rheume said he would support the motion. He referred to his comments relating to the general characteristics of the neighborhood and thought there could be something there that could tell him that what was proposed to replace the two existing buildings, which he thought could be workable with something brand new, could be something positive to the neighborhood. He said he just had not seen enough in what the applicant presented at that point to convince him of that, so he still felt it was wanting in that area as well.

*The motion to **deny** the application **passed** unanimously, 7-0.*

3) Case #2-3

Petitioners: Colman C. Garland & North Woods Revocable Trust, John D. Rust, Trustee & Rust Family Trust, Libby K Rust, Trustee, owners, & David Calkins, applicant.

Property: Off Moffat Street between Swett Avenue and Woodworth Avenue

Assessor Plan: Map 243, Lots 25, 26, 27, and 28

Zoning District: Single Residence B

Description: Create two (2) residential lots from four (4) existing vacant lots

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including Variances from Section 10.521 for the following:

- 1) Lot area and lot area per dwelling unit of 10,412± s.f. where 15,000 s.f. is required;
- 2) Continuous street frontages of 86.02'± and 86.00'± where 100' is required.

Mr. Johnson resumed his voting seat and Mr. McDonell was the alternate.

SPEAKING IN FAVOR OF THE PETITION

Derek Durbin on behalf of the applicant was present to speak to the petition. He introduced the applicant David Calkins and Eric Weinrieb of Altus Engineering.

Mr. Durbin reviewed the petition and the history of the property. He said the requested relief was minimal and that they were seeking a variance for lot area of a little under 5,000 square feet. He reviewed the criteria. He pointed out that they were proposing significant roadway and ingress/egress improvements that would include a connection via Moffat Street. He said the appraiser stated that there would be no detriment to the neighborhood and that the proposed use of single family homes was reasonable.

Mr. Moretti asked whether it was possible that development would occur down the street. Mr. Durbin said the wetlands buffer extended out quite a bit and that the Planning Department considered the lots to be the last buildable ones in the area. Mr. Calkins then explained how the buffer cut through some of their lots. Mr. Moretti noted that some of the lots became corner ones and changed the development of other lots. Mr. Weinrieb stated that no other development

would occur because there were no other opportunities. Mr. Moretti asked about Lots 223 and 224. Mr. Weinrieb said the property had no development value.

Chairman Rheume said there could be a potential of extending Swett and Woodworth Avenues so that two corner lots would become almost conforming. Mr. Calkins said they had considered that but weren't able to get an answer from the owners of the abutting lots. Chairman Rheume said it seemed likely that the abutting lots would not be developable.

Mr. McDonell said that, where the wetlands were depicted, the building envelope looked small but that reasonably-sized houses could be built on both lots, without any setback variance, and asked for confirmation that no setback variance relief would be sought in the event that Swett and Woodworth were extended. Mr. Durbin said it wasn't determined whether they had been accepted but knew that utilities ran through certain points. He said the plan was contingent on the street being considered public ways and if not, they would be re-dedicated. Mr. Calkins said the houses were chosen for those lots to fit within the setbacks and that they would not seek additional variances.

SPEAKING IN OPPOSITION TO THE PETITION

Allison Tanner of 380 Greenleaf Avenue said the City crafted ordinances for a purpose and that increasing population density wasn't necessarily to the benefit of the neighborhood. She said the 5,000 s.f. variance was too much and would set a precedent for the area.

Duane Hoeman of 175 Swett Avenue said he was the abutter of Lot 26 and was concerned that the proposed connection of streets would exacerbate the existing safety issues on his street. He said he was also concerned that the wildlife and open spaces would be impacted.

Rich Dutty of 56 Swett Avenue said he lived three houses away from the proposed development. He said that he and the neighbors wanted the neighborhood to remain the way it was and was concerned about the increase of cars that would go up a dangerous hill.

Bruce Sandmaier of 248 Peverly Hill Road said he was concerned about the roadway access, the 100-ft buffer zone that prevented more building, and the impact of wildlife.

Neil Robinson of 170 Swett Avenue passed out photos of the steep hill. He said it was a one-lane road on which snowplows and dumptrucks got stuck. He said that Moffat Street was a dirt road and didn't exist and that Woodworth and Swett Avenues would be affected by a u-turn.

Sophie Robinson of 170 Swett Avenue said she concurred with all the comments in opposition.

Kenneth Greenwood said he lived at the corner of Woodworth Avenue and McClintock and felt that a new street would change the makeup of the neighborhood.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Bosen said he represented Brad and Sara Honeyman of 22 Moffat Street, whose lot was to the west of the development, and that they were neither for nor against but were concerned about an appropriate buffer between their backyard and the development. He said they were

concerned about protecting the wetlands to the south and asked that the proposal go through a site plan review.

Rick Becksted of 1395 Islington noted the \$20,000 tax deduction for owning a house on a busy street and asked whether it would have a negative effect on the neighborhood. He pointed out that increasing the traffic volume would have a negative effect on surrounding home values.

Mr. Durbin said that the concerns expressed were speculative in nature. He said the plan was conceptual and that there was a process to follow. He said they were requesting fairly minimal zoning relief and balancing the vested rights of landowners against the public interest. As far as the speculation about the roadway, hill, and traffic flow, Mr. Durbin said the applicant had volunteered to develop a loop after meeting with Public Works, and that was where they were getting the scope. He said they tried to work with the neighbors and that the neighbors had not expressed the conservation and planning concerns then.

Mr. Calkins said he made it clear that the looped road was a result of meetings with the City to improve the two dead-end roads and was more to allow the traffic to go out toward Woodworth Avenue to reduce the hill's impact.

Rich Dutty of 56 Swett Avenue said it sounded like he should be thankful that the developer was building only two houses. He said that every abutter and every neighbor spoke against the petition and that no one wanted the turn-around or more cars in that area.

Neal Robinson of 170 Swett Avenue said that the neighbors did not want the two roads connected due to potential increase in traffic.

Allison Tanner of 380 Greenleaf Avenue said she wasn't speculating about the amount of impervious that increased with every house that was built.

Sophie Robinson of 170 Swett Avenue said her friends wouldn't visit her because of the hill.

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

DECISION OF THE BOARD

The Board discussed the petition. Mr. McDonnell said he thought the public would have been as opposed even if no variances were sought and a single lot with a large single house were proposed. He said he didn't know that the concerns followed the type of variance approval being sought. He said he understood the concerns about losing some open space, even though it wasn't public property. He said there was a paper street, regardless of whether a physical street was constructed there, so he didn't know if the concerns would be less if a development was allowed by right without any kind of variance.

Vice-Chair LeMay said the development was very similar to the facing two lots and the sizes of the proposed houses were similar to the houses on those two lots. He noted that the 100-ft buffer was put in a few years before, and that if one took if every wetlands in Portsmouth and took the buffer, there would be nothing left to develop. He said the applicant wasn't proposing to go into

the buffer, met the requirements, and wasn't asking for a variance. He also noted that the owner had vesting rights and was combining the lots to a size similar to everything else in the area.

Mr. Johnson said he understood the traffic concerns but didn't feel that there would be an increase in traffic due to the connection of the two roads. He said that there would be no further people coming down the street aside from the people connected with the new family homes and felt that the average came out a little less than what was presented from the opposition.

Mr. Moretti said if Moffat Street wasn't connected and the developer moved Swett Avenue down and bought the lot, he would have his 100 feet and meet all the criteria. He said that the applicant could put a house there without going before the Board and noted that the applicant was building on Moffat Street to keep the streetscape the same, create a loop, and eliminate having to do something different with the street.

Mr. Lee mentioned a Portsmouth Herald ad from 1903, noting that there were 108 lots to begin with and that they were all sold at once, some of which were bought for speculation. He concluded that over a hundred years ago, the intent was to develop all the lots, so he thought that maybe it was time to develop the applicant's two lots.

Mr. Parrott said he didn't think the public's concerns would be realized because Moffat Street wouldn't lead to anywhere and the loop road would give the neighbors an alternate route. He said he thought it would be a positive and not a negative.

Chairman Rheume stated that the value of the wetlands, as well as wildlife preservation, was more recognized than ever before and that the developer had done what was necessary to respect the neighborhood. He said he felt that the cut-through was a good option because trucks wouldn't have to back up the steep hill. The Board had to balance the interests of the neighbors with the property owner, who had the right to develop the property within the law. He said one lot was too small, and because the abutting properties were undevelopable, the balancing test was met.

Chairman Rheume said that if the Board wanted to approve the petition, he would recommend a stipulation for site plan review. He thought it was important, especially with the wetland buffers. He said he suspected that the Planning Board would choose to do that anyway, but he thought it was an important issue to put forward and felt there would be another opportunity for the neighborhood to come out again and discuss the cut-through. He said the cut-through was another item that the Planning Board would consider and weigh the Board's input versus the Public Works input and other inputs.

*Vice-Chair LeMay moved to **grant** the variance for the application as presented and advertised, with the **stipulation** that the proposed plan be submitted to the Planning Board for site plan review. Mr. Lee seconded the motion.*

Vice-Chair LeMay referenced the copious amount of discussion and said the first two criteria were met by the fact that the essential nature of the neighborhood would not change by adding two houses where there were already several houses of the same type and size and organized the same way on similar-quality lots. Granting the variance would do substantial justice because the developer's rights would be balanced against those of the neighborhood and there would be no

damage to anyone else, provided that the site plan review addressed the wetland buffers, traffic circulation, and the quality of roads in that area. Granting the variance would not diminish surrounding properties because it was the sort of thing that, after years, the houses looked pretty much like they had always been there and the value would not be affected. He said he thought it would be worse if a larger home were built on one conforming lot. Relating to hardship, he said that given the history, the combination of lots, and the wetland buffer location, the hardship test was easily met with respect to the ability to develop the lots.

Mr. Lee said that, based on the ad in the Portsmouth Herald in 1903 and the fact that there was a planned subdivision at that time, it had been well over 100 years and the intent was clear to develop the lots at some point in time. He said that, for the four lots to become two, he felt that time was here.

*The motion **passed** with all in favor, 7-0, with the **stipulation** that the proposed plan be submitted to the Planning Board for site plan review.*

*It was moved, seconded and **passed** unanimously (7-0) to continue the meeting beyond 10:00.*

4) Case #2-4

Petitioners: Portsmouth City Investment Realty Trust, Christopher McInnis, Trustee, owner, Islamic Society of the Seacoast Area, applicant

Property: At Maplewood Avenue (number not yet assigned)

Assessor Plan: Map 220, Lot 90

Zoning District: Single Residence B

Description: Construct a 4,000± s.f. building to house a religious place of assembly.

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

- 1) A Special Exception for Section 10.440 to allow a religious place of assembly in a district where the use is only allowed by special exception.
- 2) A Variance from Section 10.521 to allow 47'± of continuous street frontage where 100' is required.

Mr. Moretti recused himself from the petition, and both alternates took voting seats.

SPEAKING IN FAVOR OF THE PETITION

Attorney John Bosen representing the applicant was present to speak to the petition. He introduced the Director of the Islamic Society, Dr. Mohammed Ibrahim. Attorney Bosen stated that the Portsmouth site would fill a void between the Portland, ME and Manchester sites. He noted that primary services would be on Friday between 1 and 2 p.m. Attorney Bosen reviewed the special exception criteria and said they would be met. He said they would go through a site plan review. He then reviewed the variance criteria and said they would be met.

Vice-Chair LeMay asked what the facility's capacity would be. Dr. Ibrahim said they did not expect more than 50-60 congregants in the short term but anticipated an expansion contingency that would result in 100 congregants in the long term.

In response to Chairman Rheaume's questions, Dr. Ibrahim said it would be a one-story building, educational purposes wouldn't require expansion, and other uses might potentially involve a smaller number of people in the evenings.

Mr. Parrott asked about special events that would involve hundreds of people. Dr. Ibrahim said they would continue to book the Frank Jones Center for those events and did not plan to add a commercial kitchen to the building.

Chairman Rheaume noted that the Board had received an email from Rabbi David Ross of the Portsmouth Center Temple Israel in favor of the petition.

Reverend Maren Tirabassi of 271 Lafayette Road said she was the pastor at the Madbury Union Congregational Church and was thrilled to have the Islamic Society as part of the Portsmouth community.

Robert Fellows said he was the pastor of the Community Congregational Church in Greenland and had a close relationship with the Islamic Society because they were partners in service to the Seacoast Family Promise. He attested to their positive impact on the community.

Eric Weinrieb of 9 Middle Road said he was a member of Temple Israel and welcomed the Islamic Society to the community.

Jerry Johnson of 348 Maplewood Avenue said it was a great use of the site.

SPEAKING IN OPPOSITION TO THE PETITION

Francesca Fernald of 1000 Maplewood Avenue said she was concerned about traffic and parking issues and the potential of 50 additional cars on her busy road.

Ed Miller of 5 Central Avenue asked what the relationship was between the property owner and the applicant and whether there was a pending purchase and sale agreement. Chairman Rheaume said the applicant was vetted by the Planning Department. Mr. Reed said he was concerned about the special use exception as well as parking, egress, and snow and trash removal.

George Dempsey of Dennett Street felt there was a lack of engineering drawings and a traffic study and posed a possible traffic conflict with services and the dismissal of a nearby school.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Ed Miller of 5 Central Avenue said he was against the petition because the property owner knew what type of property he bought and that speculation did not guarantee success. He said there was no hardship preventing him from developing the site in the SRB zone.

Jillian Johnson of 113 Osprey Drive said she would prefer that the site have affordable housing.

Ellen Bolton of Woodbury Avenue said she was against the petition because of traffic concerns.

Esther Kennedy of 41 Pickering Avenue said she was opposed to the petition because of the lack of hardship and because she thought the neighborhood should remain a neighborhood.

Rick Becksted of 1395 Islington Street said he was concerned about traffic congestion and was opposed to the petition.

Lincoln Soldati of 51 Islington Street said he was in favor of the petition because it was a perfect use for a special exception and would not significantly increase traffic in the area.

Ed Miller again rose to speak and stated that approving the petition would not be consistent with the intent of the Ordinance and emphasized that the property was zoned SRB.

Attorney Bosen said the Islamic Society intended to purchase the property and be long-term neighbors and that there would be a site review. He said the traffic congestion numbers were not accurate, that it was a modest, appropriate use and that religious assembly places were allowed by special exception and fit the character of the neighborhood.

Francesca Fernald said she got her numbers from the City's site development website.

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

DECISION OF THE BOARD

Mr. Johnson stated that a 4,000-s.f. place of assembly was about the size of two large houses and felt that there were plenty of uses of space inside a building that didn't have occupants. He said that the net use of a building couldn't be determined by the footprint of the exterior. He said the parking count might be high or low, but the City Ordinance stated that for a place of assembly, there should be a parking spot for every person. He said it seemed that the applicant met the parking requirement and didn't need a variance. He said a religious place of assembly was a special exception in the SRB district. He said he lived on Maplewood Avenue, where one wouldn't think a place of assembly would fit it, but he thought it was important that it was considered as a special exception because the most common place for religious assemblies was within neighborhoods and they were an important part of the fabric of the neighborhoods. He thought it could be an appropriate application. He said the traffic would be what it was but felt there was plenty of access to Maplewood Avenue and that it was close to the highway.

Mr. Lee said that, the last two times, the Board rejected the application for a special exception, using the rationale that it was improperly zoned. He said they suggested that the proper venue was for the City agency to ask that the property be rezoned. He said that nothing had changed since then, and he thought the warehouse would have generated a lot less traffic than a church of any kind. He said his thoughts had not changed and that he would not support the application.

Vice-Chair LeMay said the Board had two things in front of them, one of which was a special exception, and they got to decide whether the criteria for it were met. He said that the area was zoned for the use, with the questions answered for the special exception, so it was pretty much a finding of fact. He said the other issue was whether 47.3 feet was adequate where 100 feet was required. He said it seemed to him that when the Route 95 went through, 50 feet was left for access for the property. He said that, presumably, someone was compensated at that time for any

loss of access to the property, and although the frontage requirement wasn't known at that time, the frontage requirement may have boosted but clearly enough was left with anticipation that there would be a place to put an adequate access to the property. He said that 47 feet was substantial enough for a wide driveway and felt that it was the criteria in that regard.

Chairman Rheume said that one of the major distinctions was that some of the previous proposals that went before the Board required a variance for the use. He said it was an allowed use in the SRB that the Planning Board approved, and the City Council said it was a place of religious assembly, which is what the Planning Board looked at carefully and determined. He said that, however it looked and whatever different types of religious activity might take place there, it met the definition of the Ordinance as recognized in the law for a place of religious assembly, so it was an allowed use. He said that the special exception criteria were put in place for the Board to ensure that it was an appropriate use for the parcel. He said the bar wasn't as high as the variance one. He said there was some discussion about the stormwater runoff, which he felt that the Planning Board would look at more carefully and work with experts. He said there were plenty of other similar developments with appropriate drainage issues and felt that the project's location had more advantages because it was more elevated and could easily accept stormwater coming onto the property, and perhaps even handle it better than currently.

Chairman Rheume asked whether it was in keeping with the neighborhood in terms of the scale of buildings or other structures, access ways and so on. He said that what was proposed was not an incredibly tall building but a single-story one, about 4,000 square feet. As noted, he said it could be less than what was seen in some larger homes or two medium-sized homes, so they weren't talking about an extremely large building that would impose on the neighborhood.

Chairman Rheume said that the traffic was the toughest test to get over as a hurdle. He said the Board had heard the two sides of the argument. He said there were other locations in the City where there were religious places of assembly on busy roads, e.g. on Lafayette Road, Middle Road and Woodbury Avenue, and the City managed to survive with having the churches in those locations. He said there could be perhaps a short-term imposition on traffic, and noted that it was unique in that it was a Friday afternoon imposition rather than a Sunday morning one. He said the Planning Board would look at it more carefully and get a detailed traffic analysis.

Chairman Rheume said there were 52 parking spaces, seven of which were handicapped, so there were maybe 50 cars trying to leave in a short period of time. He felt that was a fair number but far from overwhelming. He noted that it was fairly close to accesses as well as access onto a major highway. He said it wasn't like that traffic would be letting out and going into congested neighborhoods.

Mr. Parrott stated that two significant proposals were turned down for good reasons. He said there was a lot of discussion about the area being zoned SRB and felt it should be developed that way. He said it had been four years and that there were many opportunities for developers to put single-family homes at that site, but it hadn't happened, which to him was the most significant thing. He said there were ample opportunities and a healthy market, but no one had done it.

*Vice-Chair LeMay moved that the special exception for the application be **granted** as presented and advertised, and Mr. Johnson seconded.*

Vice-Chair LeMay noted that there had been a lot of good discussion. He said that standards were provided by the Ordinance for the particular use as permitted by the special exception and that the applicant had identified that it was an acceptable use in the SRB one, so he felt that the

special exception was applicable. He said that granting the special exception would pose no hazard to the public or adjacent property on account of fire, explosion, or release of toxic materials. There would be no detriment to surrounding property values or change in the essential characteristic of any area, including residential neighborhoods and businesses and industrial districts on account of location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutants, noise, glare, or unsightly storage of equipment, vehicles, or other materials. He said it was a single-story building in a lot behind the existing house, including a parking lot in a big open area, and the criteria was met. Granting the special exception would pose no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity. He said that, from an every-week standpoint, it was a drop in the bucket and intensified on Fridays from 1 to 2 p.m. He pointed out that there were many other places of religious assembly on busy roads and that 50 or fewer cars managed to make their way onto the road once a week. He said that the big deal for the application was that it was concentrated into one short period of time but felt that, through the Planning Department process, it would be worked out. He said if it was too intense, a traffic policeman could be hired or a yellow blinking traffic light could be installed. Granting the special exception would pose no excessive demand on municipal services. There would be no significant stormwater runoff onto adjacent properties or street. He said that there could be a pervious parking material determined during site review as an option to keep the pervious area down but felt that the building itself was not huge in terms of impervious lot.

Mr. Johnson said he concurred with Vice-Chair LeMay and had nothing to add.

*The motion **passed**, with 6 in favor and Mr. Lee voting against.*

*Mr. Johnson then moved that the variance be **granted** for the application as presented and advertised, and Mr. McDonell seconded.*

Mr. Johnson said he would echo his previous comments. He said he did not believe that the application conflicted with the explicit or implicit purpose of the Ordinance because, although the structure wasn't a single-family residence, it was allowed through careful consideration within the City's single-family residential neighborhoods and served an important purpose. He said that hopefully it would become part of the fabric of the single-family residential zone in that part of town. Granting the variance would not threaten the public's health, safety or welfare or be injurious to the public rights in any way because he felt that it was in line with the spirit of the Ordinance. Substantial justice would be done. Mr. Johnson said he didn't see any harm to the general public that would be outweighed by harm to the applicant. He said the access to the driveway would be 24 feet wide, give or take, and based on the large size of the lot, it would be a serviceable area for users of the space to access. He added that it would also be accessible to safety or utility personnel and would be worked out through TAC. Granting the variance would not diminish the value of surrounding properties because he felt that the property could be a market improvement and that the value of surrounding properties could be increased socially and community-wise. Literal enforcement resulting in unnecessary hardship would be met, and he believed the case was made for that. He said the hardship in regard to the property couldn't really be argued, especially knowing the history of taking part of the property for the Interstate and the lot's unique shape and size as well as its relationship to the business zone and being the last residential lot buffering a business zone. He said that its relationship between the highway and the business zone was cause for an additional hardship justification.

Mr. McDonell said he echoed Mr. Johnson's comments. He said they were talking about allowing 47 feet of street frontage where a hundred feet was required, and that they already had the use that was allowed. He said that having that smaller frontage wouldn't change the essential character of the neighborhood nor threaten the public's health, safety and welfare. As for the traffic concerns, the fact that it was a 47-ft wide opening on the street as opposed to a 100-ft one would not change any public health or safety concerns that might arise and would be something addressed in the site plan review. Mr. McDonell said that the special conditions of the lot were its irregular shape and the narrowness at the road, and although it butted up against the overpass and had potential sight line concerns, he did not think that a 47-ft wide opening as opposed to a 100-ft one was something that would concern him. For those reasons, he said he supported it.

Chairman Rheume said he would support the motion. He said the project had a small frontage on Maplewood Avenue, but the purpose for requiring a 100-ft wide frontage was for keeping houses that were right up against the road from seemingly being overcrowded. He said the lot was unique and thought there was a hardship because it was a very large lot with an expanse going back but with a small footprint on the road. He said what was proposed was an equitable use because there was plenty of room for the driveway leading up to a parking area and there would be a relatively small structure on the lot. He said the use was recognized by the Ordinance and didn't think the one variance asked for was an exceptional hurdle. He said it could be accepted based on the Board's criteria and said it was also another opportunity for the Planning Board to discuss details such as sight lines and traffic studies.

The motion passed, with 6 in favor and Mr. Lee abstaining from the vote.

5) Case #2-5

Petitioners: Sarah Parker (Natt) and David Natt

Property: 76 Brackett Lane

Assessor Plan: Map 206, Lot 6

Zoning District: Single Residence B

Description: Construct a 10'± x 15'± rear addition and a front farmers porch.

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

1) Variances from Section 10.521 to allow a rear yard of 10'8"± where 30' is required, a right side yard of 8'10"± where 10' is required, a front yard of 16'± where 19' is required, and 22.3%± building coverage where 20% is the maximum allowed.

2) A Variance from Section 10.321 to allow a non-conforming building to be extended, enlarged or structurally altered except in conformance with the Ordinance.

Mr. Moretti resumed his voting seat, and Mr. Formella was the alternate.

SPEAKING IN FAVOR OF THE PETITION

The owner Sarah Natt was present to speak to the petition and stated that the lot was oddly shaped and that she wouldn't go beyond the structure for the rear setback. She said the rear area wasn't usable for outdoor space and that she wanted to add a master bedroom and a bathroom.

Chairman Rheume noted that the project would encroach closer to the back neighbor and asked whether they had been apprised. Ms. Natt said both abutters and the neighbor across the street were in favor of the project.

The architect Michelle Shields said she was in favor of the master bedroom expansion because it was small. She said the porch would provide an alternative sunny space to the dark backyard.

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

Mr. Lee stated that granting the variances would not alter the essential character of the neighborhood or threaten the public health, safety or welfare or other public rights. It would create an unnecessary hardship on the applicant because she needed a bedroom and a porch. Granting the variances would observe the spirit of the Ordinance and do substantial justice because the lot was irregular and the Board had to make allowances for that. He said that a new structure would not reduce the property values but, to the contrary, would make the neighborhood more attractive and enhance surrounding property values.

Mr. Parrott said the addition was straightforward, would make the house more livable, and would not impose on any neighbors.

Chairman Rheume said the hardship was the lot's odd shape, and he noted that the Board had granted relief to the applicant previously for similar reasons and felt it was a continuation of that. He said the Board was sometimes concerned about multiple bites of the apple, but in that case, he felt it was a different direction and could understand that the applicant needed the additional relief. He thought that it would be a pleasing result that would enhance nearby property values.

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

III. ADJOURNMENT

*It was moved, seconded, and **passed** by unanimous vote to adjourn the meeting at 11:35 p.m.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary