

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

**7:00 P.M.**

**APRIL 18, 2017**

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

**MEMBERS EXCUSED:** Jim Lee, Patrick Moretti

**ALSO PRESENT:** Jane Ferrini, Planning Department

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Alternates Peter McDonell and John Formella sat in as voting members,

**I. APPROVAL OF MINUTES**

A) March 21, 2017

*Mr. Parrott moved to **approve** the March 21, 2017 minutes with minor amendments. Vice-Chair LeMay seconded the motion. The motion **passed** with all in favor, 7-0.*

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*Chairman Rheume stated that the applicant for Petition 4-7 for 3110 and 3020 Lafayette Road requested to postpone the petition to the May meeting.*

*It was moved, seconded, and **passed** unanimously (7-0) to consider Petition 4-7 out of order. Chairman Rheume read the petition into the record.*

*It was moved, seconded, and **passed** unanimously (7-0) to postpone Petition 4-7 to the May meeting.*

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**II. PUBLIC HEARINGS – NEW BUSINESS**

1) Case 4-1  
Petitioner: Mark McNally  
Property: 21 Brewster Street  
Assessor Plan: Map 138, Lot 11  
Zoning District: General Residence C

- Description: Expand a previously approved 6-bay, 6-car garage to accommodate 12 cars with a lift system.
- Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. Variances from Section 10.521 to allow the following: a) a 1.5'± right side yard where 10' is required; b) a 0.5'± rear yard where 20' is required; c) 54.1±% building coverage where 35% is allowed; and d) 4.6±% open space where 20% is required;
  2. A Variance from Section 10.1114.32(a) to allow vehicles to enter or leave parking spaces by passing over another space or requiring the movement of another vehicle;
  3. A Variance from Section 10.1114.21 to allow upper lift position parking spaces that are less than the required 19' in depth.

Chairman Rheume recused himself from the petition. Vice-Chair LeMay assumed Chairman Rheume's position as Chairman and read the petition into the record.

### **SPEAKING IN FAVOR OF THE PETITION**

Attorney Tim Phoenix was present on behalf of the applicant to speak to the petition. He introduced the owner Mark McNally and the engineer Alex Ross. Attorney Phoenix stated that the petition was previously approved by the Board but that the Technical Advisory Committee (TAC) raised several concerns, so the garage was made larger and a lift system was proposed. He said TAC then approved the project with a stipulation, which he read. He reviewed the petition in detail and said the criteria were met.

Mr. Parrott asked whether there was a backup power system for the lift systems. Mr. Ross stated that a backup system was required for ventilation and would be tied into the lifts.

Brook Stevens stated that he was a direct abutter and was in favor of the project but was concerned about the noise and lighting factors as well as the additional height. Mr. Ross replied that a lighting plan was reviewed with TAC. He said there would be a small light between the three garage doors and that the garage would be 15 feet tall to accommodate the lift. He noted that he did not have noise specifications for the machine but could submit them later.

In response to Mr. Mulligan's questions, Mr. Ross said the system would operate once in the morning and once at night. Mr. McNalley said it would take the lift 28 seconds to go up and down and would not be activated from inside a vehicle.

Mr. Parrott asked about a sprinkler plan. Mr. Ross said the City Ordinance did not require one but that they planned to have a sprinkler system for the entire building.

In response to Mr. Mulligan's questions, Mr. Ross said the south rear abutting property sat up higher and that the back of the garage would act as a retaining wall. He said the structure's increase in height would have no impact on abutting properties.

Tom Hudson of 30 Brewster Street said he was in favor of the petition. Karina Quintans of 51 McDonough Street said she was in favor of the project and that she and several of the neighbors thought it was an overall improvement.

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

No one rose to speak, and Vice-Chair LeMay closed the public hearing.

### **DECISION OF THE BOARD**

Vice-Chair LeMay stated that the Board received an email from Lawrence Cataldo of 133 Islington Street in support and that James Beale on Cabot Street was also in support.

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

Mr. Parrott stated that the project was an upgrade to the previous parking situation and would use new technology. He said it should be an advantage to the people who lived there and the neighbors as well.

Mr. Parrott stated that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance. He said the project would be closer to being in full conformance with the Ordinance in some ways, like maneuverability. He said it would be less conforming dimensionally in other ways, but felt that those aspects were relatively minor. He said granting the variances would do substantial justice, with the advantage on the side of the property owner, and would have no adverse effect on the neighborhood. He noted that the neighborhood association was in favor. Relating to surrounding properties, Mr. Parrott said that the property had a long unhappy history, and reducing the number of units and folks living there would benefit the whole situation. As far as hardship, Mr. Parrott said the building already existed on a small lot and had existing setbacks. He said the concrete pad and adjacent wall were a mess and would be cured by the parking structure and would be out of sight of the neighbors. He said the project was positive in all respects.

Mr. Mulligan said he concurred with Mr. Parrott. He said the relief required was driven by feedback from TAC, and that TAC was an expression of what was in the public interest, so the public's health, safety and welfare would be enhanced. As for substantial justice, he said that the loss to the applicant if the variances were denied would outweigh the benefit to the public. He said that granting the variances would not diminish the values of surrounding properties and would improve the neighborhood and the parking situation. He said that the hardship was the same as it was the previous time, and that the size of the lot and the topography were distinguishable from others in the immediate area. Mr. Mulligan said there was no fair and substantial relationship between the purposes of the affected Ordinances and their application to the property because TAC was requiring that it be designed in such a way that the applicant needed relief. He said the use was a reasonable one and the criteria were easily met.

Mr. Johnson said the project was a good example of proof of the process of TAC taking care of an issue when the Board thought it wasn't in their purview. He said it was unfortunate that the applicant had to return, but he thought that having the Board approve the variances the first time, forward the project to TAC, and then have the applicant return made for a better project.

*The motion **passed**, with all in favor, 6-0.*

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#### 2) Case 4-2

Petitioners: Gary & Aerial Sillanpaa  
Property: 4 Sylvester Street  
Assessor Plan: Map 232, Lot 36  
Zoning District: Single Residence B  
Description: Keep 4 chickens in a 4' x 6' coop.

Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including a Special Exception under Section 10.440, Use #17.20 to allow the keeping of farm animals in a district where it is only allowed by Special Exception.

Chairman Rheume resumed his position and read the petition into the record.

#### **SPEAKING IN FAVOR OF THE PETITION**

The applicant Airial Sillanpaa was present to speak to the petition. Ms. Sillanpaa stated that their lot also had a shed. She said she would install a ready-made coop and place it between the house and the fence and it would not be visible from the road.

Mr. Mulligan asked about the red structure in the woods. Ms. Sillanpaa said it was the ‘shed of doom’ and that it would be torn down. Mr. Mulligan asked what type of wildlife was normally seen. Ms. Sillanpaa said the wildlife were squirrels, possum, and birds.

In response to Chairman Rheume’s questions, Ms. Sillanpaa said that her storage shed met the setbacks and was 10 feet back to the property line. She said that the chicken coop would not be any closer to the property line than the shed.

#### **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**

Chairman Rheume suggested a stipulation of only four chickens and no rooster.

*Mr. Mulligan moved to **grant** the special exception, with the following stipulation:*

- *that there be only four hens and no rooster.*

*Mr. Johnson seconded the motion.*

Mr. Mulligan said that the proposal was a use permitted by special exception under the Ordinance and met the first criteria. He said he was always concerned that coops would attract predators but felt that the owner had a handle on it. He said that granting the special exception would pose no hazards to the public or adjacent properties on account of fire, explosion, or release of toxic materials. There would be no detriment to property values or changes to the essential character of the area, including residential neighborhoods due to the location or scale of structures, parking areas, odors dust or other pollutants. He stated that the coop was a very small structure and, as presented, no odors or other pollutants would be generated. He said the use would not result in the creation of a traffic safety hazard or increase in the traffic in the vicinity or additional demand on municipal services. The coop would not result in an increase in storm water runoff onto adjacent properties or streets.

Mr. Johnson said he concurred with Mr. Mulligan. He said he had at first thought that there could be a potential for odor or some level of pollution if on a larger scale, but the applicant presented controls that would limit exposure. He stated that it seemed to be a very appropriate location for the coop.

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

## 3) Case 4-3

Petitioners: Peter N. Carey Revocable Living Trust, P. N. Carey & M-J Monusky, Trustees  
Property: 39 Mount Vernon Street  
Assessor Plan: Map 111, Lot 32  
Zoning District: General Residence B  
Description: Install two free-standing condensers  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. Variances from Section 10.521 to allow a right side yard and a rear yard of less than 3' where 10' is required for each;
2. A Variance from Section 10.521 to allow 47.5±% building coverage where 30% is the maximum allowed.
3. A Variance from Section 10.1332.20 to allow a sound pressure level at the lot line of the sender premises that exceeds the maximum allowed.

Mr. Mulligan recused himself from the petition.

**SPEAKING IN FAVOR OF THE PETITION**

The owner Peter Carey was present to speak to the petition. He stated that the lot was the smallest one on the street as well as in the South End. He named all four abutters and said they were in support of the petition, noting that their emails were included with the application. He reviewed the petition in detail and said that the criteria would be met.

Mr. Johnson asked whether Mr. Carey had access clearance, and Mr. Carey said he did.

Mr. McDonell noted that the packet indicated a request for a right and rear yard setback of 8 inches but that Mr. Carey had said that it was something less. Mr. Carey said he found that the bulkhead and rear boundary fence weren't parallel and that the Mitsubishi unit would be tighter than the 8 inches as originally thought. He further discussed the measurements.

Chairman Rheaume asked what dimensions Mr. Carey wanted. Mr. Carey said he wanted 4 inches from the rear boundary and 5 feet on the side boundary.

Vice-Chair LeMay noted that Mr. Carey was asking for a variance for the sound pressure levels specified in the Ordinance but was not suggesting an alternative. Mr. Carey said the York unit would not get louder than 77 decibels and averaged 69 decibels, and that the Mitsubishi unit would be even quieter. Vice-Chair LeMay suggested that Mr. Carey meet the requirements at the distance required for the setback, even though it wasn't on his property, to help get the machine to the intended level. They discussed it further.

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

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

**DECISION OF THE BOARD**

Chairman Rheume stated that the fact that the unit was up against the lot line invoked the Ordinance. There was further discussion about whether the sound pressure requirement would be met at 10 feet.

*Vice-Chair LeMay moved that the variances be **granted** as requested, with the following stipulation:*

- *That the sound level requirement specified by the Ordinance be at the minimum legal setback distances per the Zoning Ordinance.*

He also noted that the stipulation applied to Variance #3 and wanted it noted for the record that the request was changed from 8 inches to 4 inches.

*Mr. Johnson seconded the motion.*

Vice-Chair LeMay stated that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance. He said it would not change the nature of the neighborhood. Substantial justice would be done because the justice was the balance of providing some protection of sound level for the neighbors against the owner's desire to have an air-conditioned home. He said that granting the variances would not diminish the value of surrounding property values because keeping the value of the applicant's property with the air conditioning and so forth would move in that direction. As for the unnecessary hardship test, he said that the size of the property in conjunction with the size of the house and the tightness and age of the neighborhood contributed to making it a hardship for the property.

Mr. Johnson concurred with Vice-Chair LeMay and said that the stipulation might protect Mr. Carey in the future if there was a problem with the decibel level.

Chairman Rheume read the measurement rules section, noting that the mechanical system would be set back at least 10 feet from the property line. He said the stipulation would work.

*The motion **passed** with all in favor, 6-0.*

#### 4) Case 4-4

Petitioner: Richard M. & Françoise Kinney c/o the Connable Office Inc  
 Property: 65 Broad Street  
 Assessor Plan: Map 129, Lot 11  
 Zoning District: General Residence A  
 Description: Construct a 1½ story right-side addition and front steps.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. Variances from Section 10.512 to allow the following: a) a 7'2" ± primary front yard where 15' is required; and b) a 4'4" ± right side yard where 10' is required.

Mr. Mulligan resumed a voting seat.

#### **SPEAKING IN FAVOR OF THE PETITION**

Michael Wade of Eliot and Eliot Architecture was present on behalf of the applicant to speak to the petition. He read a statement from the owner explaining why the variances were needed. He reviewed the drawings and noted that they only wanted the variance for the kitchen on the side property line, not the front property line.

Chairman Rheume verified that the applicant didn't need the 7.2-ft front yard setback variance. He said the kitchen was a substantial renovation to several different areas of the house. Mr. Wade said the kitchen was the driving force. Chairman Rheume said there was a lot more going on than just the kitchen.

**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**

Chairman Rheume noted that the petition was for a right side yard setback. Mr. Mulligan noted that the existing deck encroached at 4'4", making it a vertical expansion of an existing setback encroachment. Chairman Rheume agreed but said it was a substantial increase in size.

*Mr. Johnson moved to **grant** the variances as presented and advertised. Mr. Parrott seconded the motion.*

Mr. Johnson said the project was a bit more than met the eye but noted that the home was one of the smaller ones in the neighborhood, so he didn't think that the vertical expansion or the other additions throughout the house would overwhelm anything around it. He said it was a vertical expansion of the existing non-conforming setback and that no further relief was requested. He said the house next to it was sited to the opposite side of the property and that the closest abutter's garage sat between the applicant's property and 69 Broad Street.

Mr. Johnson stated that granting the variances met the first two criteria and fell in line with the character of the neighborhood. He said he didn't see the project as a threat to the public's health, safety or welfare. Mr. Johnson said that granting the variances would do substantial justice because he didn't see any harm to the general public and felt that the project seemed to be a reasonable renovation enlargement of property by modernizing the kitchen and adding a bedroom to the first floor. He said the value of surrounding properties would not be negatively affected because the project would be a tasteful upgrade and would refresh the property. He felt that it would only enhance the surrounding properties, and if it didn't raise property values, they would at least remain neutral. Mr. Johnson said the main hardship was the siting of the current building on the property and, when accounting for the driveway location and the current siting of the house, the property was somewhat narrow. He said the building was already sited far to one side, and with the driveway adjacent to the building on the other side, he thought it made sense for some of the building components to be where they were.

Mr. Parrott concurred with Mr. Johnson and added that the project was obviously a major rebuild of the house but that the amount of relief asked for was minor. He said it was a nice upgrade to the house and as well as a benefit to the neighborhood.

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

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5) Case 4-5

Petitioners: Jesse M. & Sarah L. Lynch  
 Property: 19 Sunset Road  
 Assessor Plan: Map 153, Lot 19  
 Zoning District: Single Residence B  
 Description: Reconstruct an existing garage in the same footprint with an expansion in height.

- Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance from Section 10.571 to allow an accessory structure to be located in the required front yard and closer to the street than the principal structure.
  2. A Variance from Section 10.573.20 to allow a 7'± rear yard where 19' is required.
  3. A Variance from Section. 10.321 to allow a lawful nonconforming building to be reconstructed or enlarged without conforming to the requirements of the Ordinance.

Vice-Chair LeMay recused himself from the petition.

### **SPEAKING IN FAVOR OF THE PETITION**

Mark Batchelder of Seaport Engineering was present to speak to the petition on behalf of the applicant. He noted that the existing garage had a lot of structural concerns and said it would be replaced with the same footprint, location and non-conforming setbacks but would increase in height by a half-story. He also said that a staircase would be added to exit the second level of the garage.

Mr. Johnson said that the added stair seemed to allow for 15'2" for cars in the garage and was concerned that the swinging door into the garage would reduce it to 2'8", which seemed tight. He asked whether there was consideration for more depth. Mr. Batchelder said he didn't think the owner had considered more depth and that the intent was not to have two cars in the garage at the same time.

Chairman Rheume asked if the door was required by code. Mr. Batchelder said he wasn't sure.

Mr. Parrott noted that many full-size cars were 16 feet and wouldn't pass the test at 15'2".

Chairman Rheume said that the second floor was significantly dormered and wanted to ensure that the intent was just for simple storage, with no plans to run water for a bathroom. Mr. Batchelder agreed.

The owner Jesse Lynch stated that all the abutters were in support. Mr. Mulligan asked whether the existing garage was built at the same time as the house was. Mr. Lynch said he believed that it was.

### **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 as presented and advertised, and Mr. McDonell seconded.*

Mr. Mulligan said that he agreed with Mr. Johnson's sentiment about how he was almost in favor of granting more relief because of the topography and the substandard garage design, and he felt that it was reasonable for the applicant to want to stay within the confines of the limited design and modernize it and raise the roof. Mr. Mulligan stated that granting the variances would not be contrary to the public interest nor to the spirit of the Ordinance, and that the essential characteristics of the neighborhood would not be altered. Mr. Mulligan noted that the existing garage was unsafe, and its renovation would improve the public's health, safety and welfare. He said the project would pose no public injury to the rights of others. Granting the variance would do substantial justice because the loss to the applicant if denied would not be counterbalanced by any gain to the public if the Board required that the setbacks be met. He said it was a modest, newer structure that would be much more useful for the applicant.

Mr. Mulligan stated that granting the variance would not diminish the values of surrounding properties because the upgrade was significant and would enhance the property's value as well as have a positive effect on surrounding properties. He also noted that there were no objections from the closest neighbor. Mr. Mulligan said that literal enforcement would result in unnecessary hardship because the property had many special conditions, including the existing setback non-conformances, the challenging topography, and the fact that it was a corner lot and the garage had frontage on Foss Avenue, whereas the main entrance to the house was on Sunset Avenue. He said there was no fair and substantial relationship between the purpose of the setback Ordinance and the application to the property. The use was a reasonable one and met all the criteria.

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

*The motion passed with all in favor, 6-0.*

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6) Case 4-6

Petitioners: Andrew Marks and Valerie Miller  
 Property: 1953 Lafayette Road  
 Assessor Plan: Map 268, Lot 7  
 Zoning District: Single Residence B  
 Description: Conduct palm and tarot readings and install a free-standing sign.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Special Exception under Section 10.440, Use # 19.22 to allow a Home Occupation II in a district where it is only allowed by Special Exception.
2. A Variance to allow a 15± s.f. free-standing sign in a district where free-standing signs are not allowed.

Vice-Chair LeMay resumed a voting seat.

**SPEAKING IN FAVOR OF THE PETITION**

The owners Andrew Marks and Valerie Miller were present to speak to the petition. Ms. Miller said she needed to move her business into her home due to her child's illness. She said she also needed a sign, pointing out that she was surrounded by businesses across Lafayette Road that had much larger signs, so she wouldn't change the character of the neighborhood.

Mr. Johnson asked whether the sign would be illuminated by exterior lights, and Ms. Miller agreed.

Mr. Johnson asked Ms. Miller whether she got a lot of walk-in traffic. Ms. Miller said she did when her office was downtown, but didn't expect to on Lafayette Road. She also noted that she saw no more than three clients a day and never more than one client at a time.

In response to Mr. Mulligan's questions, Ms. Miller said she saw one client on a typical winter day and 3-5 clients during the summer in her Portsmouth office. She said the goal of the sign was to let people know that she had relocated and to help them find her. She submitted a photo of the sign to the Board. Mr. Mulligan said there seemed to be a lot of asphalt in front of the house and asked whether the house had a business at one time. Ms. Miller said she didn't know. She said she installed a new driveway.

Mr. Parrott stated that Ms. Miller had made a point of saying she was surrounded by commercial uses across the street, but he pointed out that the area across the street was a different district in which signs were allowed. He said Lafayette Road was a boundary between 100 feet of residential and office/research, which was all commercial. Ms. Miller said the neighborhood character was commercial on that strip. Mr. Parrott said Ms. Miller was on the border of Elwyn Park but was still in a purely residential district, and that the rules applied to that zone.

Mr. Johnson asked whether Ms. Miller would consider a smaller sign, and she stated she would. Chairman Rheume asked Ms. Miller whether she planned to do any newspaper, website or word-of-mouth advertising to make people aware of her new location, and she said she did not.

### **SPEAKING IN OPPOSITION TO THE PETITION**

Sarah Lachance of 1953 Lafayette Drive said she was opposed to the petition because it would change the residential character of the neighborhood. She said she was also concerned with setting a precedent. Mr. Mulligan asked her whether she was opposed to both the sign and the special exception for the home occupation. Ms. Lachance said she was very opposed to the sign.

Joe O'Neill of 1935 Lafayette Road said he had no problem with the business but was concerned that the illuminated sign would be hazardous to houses in the area.

Mark Allinson of 2007 Lafayette Road said he had lived in the neighborhood for 55 years and was very concerned about the signage and felt that it could set a precedent.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

Rick Becksted of 1395 Islington Street suggested a temporary sign instead of a permanent one.

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

### **DECISION OF THE BOARD**

Mr. Johnson said he felt that the applicant's business model would fit the special exception and noted that it was on the border of the residential zone and would have a low number of clients on a busy day but felt that the signage was a different situation. Vice-Chair LeMay agreed, noting that there was no hardship in the property and that the signage could change the neighborhood. Mr. Mulligan compared the petition with the previous Rockingham Building petition, noting that clients would be existing ones looking for the business and would be able to find it without a sign.

Mr. Parrott said that a significant difference between commercial and residential properties was the question of signs and that people expected to see signs in a commercial area, so prohibiting them in residential zones made sense. He said that putting a sign in front of the home would cast negative aspersions on the nearby properties. He said it would be detrimental and would absolutely change the character of the neighborhood. He said the special exception was a different situation, and that a sign noting that walk-ins were welcome was not consistent with the applicant's guarantee that there would be no more than one client at a time. Mr. Parrott said a sign of any size was the mark of a commercial zone and would set a bad precedent because the nearby properties were residential.

Mr. Johnson said the zones were pretty lines on paper and butted up against each other, and the buffer lines in those ones were always treated differently, but the reality was that someone driving to that

location would see houses, commercial and industrial properties, and an abundance of signs. He said it was a gray area. It was further discussed. Chairman Rheame said he was concerned with starting a precedent and that people driving by would be distracted by the sign.

*Mr. Mulligan moved to **grant** the special exception and to **deny** the variance. Vice-Chair LeMay seconded the motion.*

### **Special Exception**

Mr. Mulligan said the proposed use was permitted by special exception in that particular zone, and what was proposed would not present any hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials because they didn't exist in that business. He said that granting the special exception would pose no detriment to property values in the vicinity or change the essential characteristics of the neighborhood on account of the location of buildings or other structures, public access ways, and so on. He said there would be no pollutants, odor, smoke, gas, dust and so on because they were not part of the business, as well as no noise, glare, unsightly materials, and vehicles. Granting the special exception would pose no increase in traffic safety hazards or increase in traffic because the business would be on a major thoroughfare that already handled substantial traffic. He noted that the applicant made modifications to the driveway to permit people to back out safely. Granting the special exception would pose no excessive demand on municipal services and so on because none were implicated in the business. There would be no significant increase of storm water runoff and no change in the existing built environment. He said all the criteria for a special exception were met.

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

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

### **Variance**

Mr. Mulligan stated that, to grant a variance, the Board had to find that all the criteria were met. He said the unnecessary hardship was not met because it required that the Board find that there was something unique about the property in relation to nearby properties and would be an undue burden to comply with the Ordinance as written. He said the Board was sympathetic to the applicant's circumstances but felt that there was no hardship associated with the property such that it would need a sign – it was a business that was likely to generate clients that already existed or by other means, and not by means of transient traffic on Lafayette Road. He said there were other means of getting word out to so that people would find the business, like GPS. He said the petition did not meet the substantial justice criteria and thought the loss to the general public would outweigh any gain to the applicant if the variances were granted.

Vice-Chair LeMay concurred with Mr. Mulligan and said it came under the spirit of the Ordinance tested by a change in the neighborhood and felt that the sign would change the flavor of the area.

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

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Chairman Rheame noted the late hour and suggested postponing some of the petitions to the following week. It was further discussed.

*It was moved, seconded and **passed** by a vote of 6-1, with Mr. Parrott voting against the motion, to hear Petitions 4-8 and 4-9 and to postpone the last two petitions to the following week.*

## 7) Case 4-7

- Petitioners: Weeks Realty Trust, Kaley E. Weeks, Trustee and Bursaws Pantry, LLC, owners and Plan Ahead, Inc. applicant
- Property: 3110 and 3020 Lafayette Road
- Assessor Plan: Map 292, Lots 151-1, 151-2 and 152
- Zoning District: Single Residence B (Lots 151-1&2) and Mixed Residential Business (Lot 152)
- Description: Construct a retail facility of up to 15,000 s.f. with a drive-through window and lanes.
- Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance or Special Exception under Section 10.440 to allow a retail use in districts where it is not allowed or only allowed by Special Exception.
  2. A Variance from Section 10.1113.20 to allow off-street parking to be located in any front yard or between a principal building and a street.
  3. A Variance from Section 10.835.31 to permit a drive-through facility to be located within 100' of a residential district and within 50' of a lot line.
  4. A Variance from Section 10.835.32 to permit drive-through lanes to be located within 50' of a residential district and within 30' of a lot line.
  5. A Variance to allow a building, structure or parking area to be located 65'± from the centerline of Lafayette Road where 80' is required.

**DECISION OF THE BOARD**

*It was moved, seconded, and passed unanimously (7-0) to postpone the petition to the May meeting as requested by the applicants.*

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## 8) Case 4-8

- Petitioner: Deer Street Associates
- Property: 163 Deer Street (Lot/Building 4)
- Assessor Plan: Map 125, Lot 17-2
- Zoning District: Character District 5 and the Downtown Overlay District
- Description: Install a drive-through facility in connection with the construction of a four-story mixed use structure.
- Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance under Section 10.440, Use #19.40 to allow a drive-through facility as an accessory use.
  2. A Variance from Section 10.516.20 to allow a 5'± rear yard adjoining a railroad right-of-way where 15' is required.
  3. A Variance from 10.5A41.10D to allow a front lot line buildout of 66%± where 80% is required.
  4. A Variance from Section 10.835.31 to allow an outdoor service facility (ATM) 49.7'± from the rear lot line and 48'± from the front lot line where 50' is required for each.
  5. A Variance from Section 10.835.32 to allow a drive-through bypass lane 11.3'± from a lot line where 30' is required.

Mr. Formella recused himself from the petition.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Tim Phoenix was present on behalf of the applicant to speak to the petition. He introduced other members of the team, including Kim Rogers, Tracy Kozak, and Mike Penney.

Attorney Phoenix stated that they were there to discuss Building 4 and Lot 4. He noted that the bank's ATM would be on Building 4 but that the bank itself would be in Building 5. He said the other buildings and uses were all dependent on Lot 4. He reviewed the criteria in detail and said they would be met.

Mr. McDonell asked that the 15-ft requirement for the railroad right-of-way be discussed. Mr. Rogers stated that the restrictive covenant only restricted the building of structures but that the railroad had the right to operate and build on that side of the tracks, although there wouldn't be room for them to do so.

In response to Chairman Rheume's questions, Mr. Rogers said the ITM device was an interactive machine that would allow bank personnel to speak to a customer but had no connection to the other building. He said it would be available 24 hours a day. He said the bank was a commercial bank in which most of the work was done offsite or in the bank, with less use of the ATM and ITM. He said that the bank insisted on having the ITM and that it had to be in Lot 4.

Chairman Rheume asked whether Buildings 3 and 5 were also in the 15-ft buffer zone to the railroad. Attorney Phoenix agreed but said they were not far enough in the overall design to know what variances were needed for those buildings. Chairman Rheume said the proposed parking garage looked like it had additional property that was getting closer to the railroad tracks. He asked about the property line and whether the City negotiated something to provide more distance between it and the property. It was further discussed. Mr. Penney said there wasn't enough room for a train to pass safely through on the building side of the tracks and felt that it wasn't possible to put in a third track. He said he didn't know whether there was an easement or not.

**SPEAKING IN OPPOSITION TO THE PETITION**

Rick Becksted of 1395 Islington Street said that the HDC had not signed off on Lot 4 and asked how the Board could grant a variance on a building that had not been defined yet. He discussed it at length.

**SPEAKING TO, FOR, OR AGAINST THE PETITION**

Mr. Rogers stated that Lot 4 was a lynchpin for the whole development and that the Planning Director had asked him to present it to the Board. He said they also needed permission to locate the transformers on Lot 4 because it would affect Lot 3. Mr. Johnson asked Mr. Rogers how sure he felt about the numbers presented under the different variances. Mr. Rogers said they were pretty certain but couldn't guarantee that the HDC or TAC wouldn't request changes. He said they were comfortable with the various pieces, however, and noted that the City engineers were in on their plans.

Attorney Phoenix stated that Lots 3 and 6 had received more attention because they didn't require the HDC's review. He said that 99% of the HDC's comments had to do with Building 5 but that he hadn't heard much concern about Building 4. He said they met the height and coverage requirements and made the structure smaller. He said that none of the variances for Lot 4 had to do with the HDC's review and that they just needed guidance in order to do anything on the other lots.

Rick Becksted of 1395 Islington Street said the project wasn't that old and suggested that the petition be postponed until TAC further weighed in or until the HDC made its decision.

Mr. Penney noted that the area around the core of Building 4 would be used for stormwater management for Lots 3, 4 and 5 and would take up additional space constraints, which he said TAC was aware of.

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

### **DECISION OF THE BOARD**

Mr. Johnson discussed the process and how the Board normally liked to see a smaller project before it would go before TAC or the HDC. He said that the project's nature, size and complexity was such that it would be impossible for the applicant to come before the Board before getting through the schemes of each lot. Therefore, he said that granting or not granting variances was at risk for the applicant's time and the Board's time and said the applicant was asking for variances that their due diligence told them they needed, and felt they had developed the project far enough along to go before the Board. He said he was sure they would be back to tweak the numbers, but he didn't see any other way to piecemeal it. He said it wouldn't be possible to address the variances for all the properties at one time.

Chairman Rheaume said that the BOA was traditionally the first stop and that he wasn't concerned that the applicant came to them first. He said that if the HDC was not okay with the hole going through the

middle of the building and the additional two stories of office space, the building wouldn't get to be that tall and would have a smaller footprint. He said that the variances for the drive-through facility, first lot line buildout issue, and distances for the ATM wouldn't change very much, and that the biggest issue was the 5-ft rear yard adjoining the railroad right-of-way that would impact whether or not the building would have the extra hole in the middle and go out two stories closer to the tracks. It was further discussed.

*Vice-Chair LeMay moved to **grant** the variances as presented, and Mr. Parrott seconded the motion.*

Vice-Chair LeMay said that the applicant was trying to carve out the different possibilities and consider what might be tweaked down the road as part of an overall project. He said if the Board didn't have any serious concerns with what was proposed, and given the fact that the project wouldn't get bigger as there were no expansion options, they wouldn't lose anything by approving it. He said the other Boards had the flexibility to pull the project in if warranted. He said granting the variance would not be contrary to the public interest and would observe the spirit of the Ordinance because there were so many pieces in play that it was hard to say that denying it would keep the neighborhood the same. There would be changes that would fit in as part of the overall project. Granting the variance would do substantial justice because it would allow the applicant to proceed with the other Boards and give everyone a little flexibility, yet preserve the public interest in terms of maintaining the setbacks where they were critical. It would not diminish the value of surrounding properties because it would be another building similar to others in the neighborhood, and he didn't see anything detrimental to surrounding properties. As for the unnecessary hardship, he said it was a puzzle piece that had to fit in with the other pieces involved, and given the proximity to the tracks, the road layout, the new parking garage and all the constraints they placed on the property, there was no reason to impose a hardship by applying the strict letter of the law regarding those particular variances.

Mr. Parrott concurred with Vice-Chair LeMay, noting that when there was a complex design and process, one had to focus on some aspect, determine specifics and work out from that center point and you may encounter something in the future that requires you to go back and make a change. He noted that two things that would not move were the street and the railroad and said the railroad company was the arbiter of what they needed for clearances on the tracks. He felt that the City's Ordinances would not take precedence over the necessary rules of the railroad. He also noted that the dimensions were relatively

small so he thought the variance requests were reasonable and were a starting point. He said there could be changes in the future as the design process worked its way through the various Boards and reviews. He said it was appropriate for those reasons to approve the variances.

Chairman Rheume said he supported the motion and felt that the Ordinance wanted to prevent a little kiosk in the middle of a sea of asphalt, which would not be the case here. He said the project was a series of buildings as components of a complete development and that Building #4 took the traffic burden off the surrounding buildings. He said the bypass lane and the ATM/ITM machines had reasonable dimensions, and he didn't see any potential negative impact with the 5' dimension to the railroad's right-of-way. He said that additional railroad function closer to the property would, if it ever were to take place, be a short spur line for passenger movement, which might not even be feasibly possible.

*The motion **passed** with all in favor, 6-0.*

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

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9) Case 4-9

Petitioner: S&G Realty  
 Property: Chevrolet Avenue (number not assigned)  
 Assessor Plan: Map 147, Lot 30  
 Zoning District: General Residence C  
 Description: Parking for three townhouses  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.1113.20 to allow off-street parking to be located in any front yard or between a principal building and a street.
2. A Variance from Section 10.1114.32 to allow vehicles to enter and leave parking spaces by passing over another parking space or requiring the moving of another vehicle, and to leave the parking area by backing into a public street.

Mr. Formella resumed a voting seat.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Phoenix was present to speak to the petition on behalf of the applicants Scott Brown and Gayle Huff Brown of S&G Realty. He also introduced the engineer John Chagnon. Attorney Phoenix reviewed the petition and distributed photos to the Board. He then reviewed the criteria detailing how they were met.

Mr. Johnson noted that the surrounding properties were used as justification for stacking parking and backing into the street, which he thought was a reasonable argument because the Ordinance would allow it for two units or less anyway.

Mr. Mulligan asked whether the driveway was where the stacked parking or dedicated parking for each unit would be, and Attorney Phoenix stated it was. Mr. Mulligan said there was a distinction in the Ordinance between dwellings and dwelling units, but he said the units were all single-family ones

conjoined into a townhouse configuration and that was the reason the two Ordinances applied. However, he pointed out that the rationale for exempting single-family residences from the stacking requirement was that in a single household, juggling vehicles could be managed better than for several different households in the same space. He said they were dedicated driveways for each unit.

**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 as presented and advertised, and Mr. Parrott seconded the motion.*

Mr. Mulligan said that granting the variances was not contrary to the public interest nor to the spirit of the Ordinance. He said that what was proposed had been previously approved by the Board. He said the characteristics of the neighborhood would remain residential and that the public's health, safety and welfare would not be affected. Granting the variances would do substantial justice because there would be no gain to the public that would outweigh the loss to the applicant if the Board denied the variance. He said that denying the variances for parking-related issues would kill the entire project. He said the Board approved the parking implicitly when they previously approved the lot area variance. Granting the variances would not diminish surrounding property values. He said approval had already been granted for the project with no diminution. He said the parking had not changed. As for literal enforcement resulting in unnecessary hardship, the property had special conditions, such as the L-shape of the lot that forced the development to the front of the lot and impacted where structures could be sited. Mr. Mulligan said that there was no fair and substantial relationship between the general public purposes of the ordinance provisions and their specific application to this property. He said the reason stacked parking was allowed in single-family residences was because there wasn't a lot of conflict expected, which wasn't the situation with that particular petition. He said the use was a reasonable one and met all the criteria.

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

Chairman Rheume said his biggest concern was the uncertainty about the property in front, but it looked like it was being resolved. He said it was a great little area that was being redeveloped and hoped it became a mini-downtown area for residents in the future.

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

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10) Case 4-10

Petitioners: Lauren H. Wool and Jeffrey Bower

Property: 53 Summit Street

Assessor Plan: Map 230, Lot 14

Zoning District: Single Residence B

Description: Construct an 8'± x 8'± mud room with a 4'± x 4'± covered front entry.

Requests: 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 an 11'8" ± primary front yard where 30' is required.

- 2. A Variance from Section 10.321 to allow a lawful nonconforming building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

*It was moved, seconded and **passed** unanimously (7-0) to postpone the petition to the April 25 meeting.*

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11) Case 4-11

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  
 Assessor Plan: Map 243, Lots 25 through 28  
 Zoning District: Single Residence B  
 Description: Provide less than the required frontage while creating two residential lots from four existing lots.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including a Variance from Section 10.521 to allow 0'± continuous frontage where 100' is required.

*It was moved, seconded and **passed** unanimously (7-0) to postpone the petition to the April 25 meeting.*

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**III. ADJOURNMENT**

*It was moved, seconded, and **passed** by unanimous vote to adjourn the meeting at 11:10 p.m.*

Respectfully submitted,

Joann Breault  
 BOA Recording Secretary